

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

**DEPARTMENT:**     Engineering

**AGENDA DATE:**    September 6, 2005

**CONTACT PERSON/PHONE:**     Rick Conner, P.E., City Engineer Ext. 4423

**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.

**Park Hills Subdivision Unit 6 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 EP PARK HILLS II, LTD., owner and developer for Park Hills Subdivision Unit 6.**

**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: August 25, 2005

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:  
September 6, 2005.

Item should read as follows:

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

Park Hills Subdivision Unit 6 (District 1)

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Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION  
CONTACT CHIEF DEVELOPMENT ENGINEER BASHAR ABUGALYON, P.E.  
AT 541-4157.

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City Clerk's Use

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

**EP PARK HILLS II, LTD.**

**1790 Lee Trevino, #601  
El Paso, Texas 79936  
(915) 592-0290**

August 16, 2005

Bashar M. Abugalyon, P.E.  
Engineering Section Chief  
City Engineering Department  
2 Civic Center Plaza  
El Paso, Texas 79901

Re: Park Hills Unit 6

Dear Bashar:

EP Park Hills II, Ltd., the owner and developer of Park Hills Unit Six, is respectfully requesting the approval of conditional "B" building permits for this subdivision.

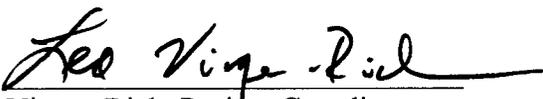
All of the subdivision improvements are completed. Request for street improvement acceptance is being prepared and is expected to be submitted to the City of El Paso in the next week or two. Development agreements for this subdivision are filed with the County Clerk's Office and enclosed with the request.

The need for requesting Conditional "B" Permits is to allow the home builder to fulfill contract obligations for pre-sale contracts signed for this subdivision. Not meeting the delivery dates set on the contracts would constitute a hardship to the homebuilder due to breach of contract.

Please call us should you have any questions.

Respectfully,

EP PARK HILLS II, LTD.

By:   
Leo Virgen-Rich, Project Coordinator

sm

Enclosures

**PARK HILLS UNIT SIX**  
**Development Agreement Status**  
**a/o August 16, 2005**

<u><b>Builder</b></u>	<u><b>Status</b></u>
ABC Creative Homes, Inc.	In Process
R.C. Baeza & Associates, Inc.	Enclosed
Cardel Construction, Inc.	In Process
EC Family, Ltd.	*
Edward's Homes, Inc.	In Process
Gaddy Construction Company	*
Guard Building Corp.	*
GKR Enterprises, Inc.	*
Harmon Custom Homes, LLC	In Process
Heavenly Homes	*
La Jolla Builders, LLC	*
Carlos G. & Yvette E. Lascurain	Enclosed
MRQ Construction, LLC	In Process
New Horizon Builders, Inc.	*
Oeste Homes, Inc.	In Process
Padilla Homes, Inc.	Enclosed
Jaime Papa & Laurie Martin	*
Albert L. Porter, Inc.	In Process
Robert's Construction of El Paso	Enclosed
Sarah D. Homes, Inc.	*
Tryac, LLC	*
Winton Custom Builders, Inc.	Enclosed
Phil Youngblood Custom Homes, Inc.	*

\* Have not paid for lots yet. Will be processed when lot pay off is requested.

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**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 15th of June, 2005, by and between **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **R.C. BAEZA & ASSOCIATES, INC.**, 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 **PARK HILLS UNIT SIX** 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), single-family attached dwelling(s), or two family 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, 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 (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) 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 sub-divider, 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 hold 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. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. 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.

6. 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.

7. 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:

EP PARK HILLS II, LTD.  
BY: EP PARK HILLS, INC.  
ITS GENERAL PARTNER

R.C. BAEZA & ASSOCIATES, INC.

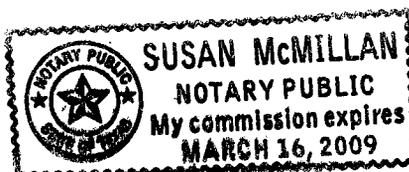
By: Timothy C. Foster  
Timothy C. Foster, President

By: Robert C. Baeza  
Robert C. Baeza, President

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

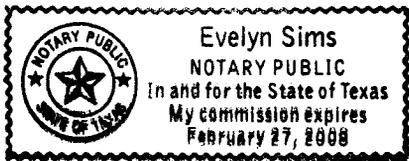
This instrument was acknowledged before me on this <sup>20th</sup> ~~15th~~ day of June, 2005, by TIMOTHY C. FOSTER, President of EP PARK HILLS, INC. a Texas corporation, on behalf of said corporation.

Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this 28<sup>th</sup> day of June, 2005, by ROBERT C. BAEZA, President of R.C. BAEZA & ASSOCIATES, INC. a Texas corporation on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

EP PARK HILLS II, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

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Doc. 20050051120

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 1st of June, 2005, by and between **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **CARLOS G. and YVETTE E. LASCURAIN**, 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 **PARK HILLS UNIT SIX** 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), single-family attached dwelling(s), or two family 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, 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 (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) 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 sub-divider, 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 hold 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. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. 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.

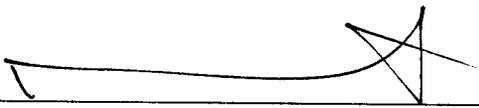
6. Release. Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The City Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

7. 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.

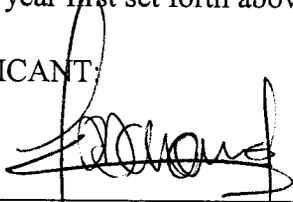
This Agreement is executed to be effective on the date and year first set forth above.

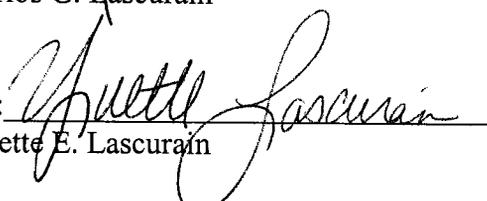
DEVELOPER:

EP PARK HILLS II, LTD.  
BY: EP PARK HILLS, INC.  
ITS GENERAL PARTNER

By:   
Douglas A. Schwartz, Vice President

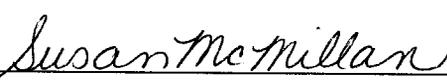
APPLICANT:

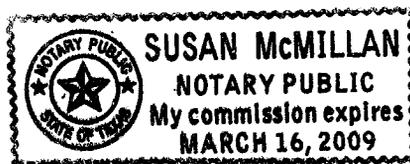
By:   
Carlos G. Lascrain

By:   
Yvette E. Lascrain

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

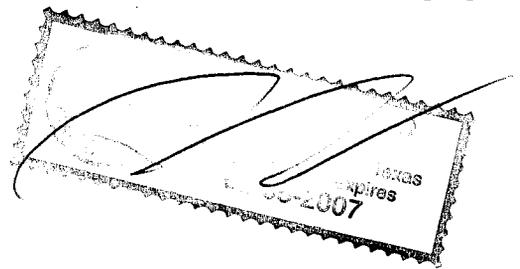
This instrument was acknowledged before me on this 1st day of June, 2005, by DOUGLAS A. SCHWARTZ, Vice President of EP PARK HILLS, INC. a Texas corporation, on behalf of said corporation.

  
NOTARY PUBLIC FOR THE STATE OF TEXAS

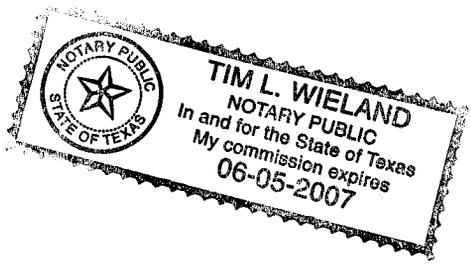


STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 6<sup>th</sup> day of June, 2005, by CARLOS G. and YVETTE E. LASCURAIN for the purposes herein stated.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS



AFTER RECORDING RETURN TO:

EP PARK HILLS II, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 20th of June, 2005, by and between **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **PADILLA HOMES, INC.**, 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 **PARK HILLS UNIT SIX** 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), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

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(c) 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 sub-divider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

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

DEVELOPER:

APPLICANT:

EP PARK HILLS II, LTD.  
BY: EP PARK HILLS, INC.  
ITS GENERAL PARTNER

PADILLA HOMES, INC.

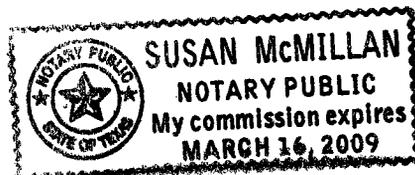
By: Timothy C Foster  
Timothy C. Foster, President

By: Rafael Padilla  
Rafael Padilla, President

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

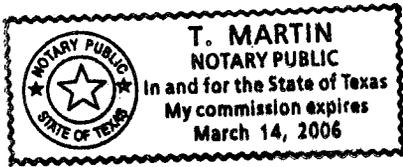
This instrument was acknowledged before me on this 20th day of June, 2005, by TIMOTHY C. FOSTER, President of EP PARK HILLS, INC. a Texas corporation, on behalf of said corporation.

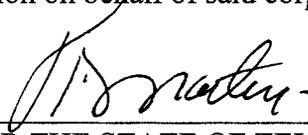
Susan McMILLAN  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on this 22 day of JUNE, 2005, by RAFAEL PADILLA, President of PADILLA HOMES, INC., a Texas corporation on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

EP PARK HILLS II, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 20th of June, 2005, by and between **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **ROBERT NAJERA, INC. D/B/A ROBERT'S CONSTRUCTION OF EL PASO**, 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 **PARK HILLS UNIT SIX** 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), single-family attached dwelling(s), or two family dwelling(s) on a lot or lots within the Subdivision; and

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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 (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) 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 sub-divider, 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 hold 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. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. 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.

6. 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.

7. 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:

EP PARK HILLS II, LTD.  
BY: EP PARK HILLS, INC.  
ITS GENERAL PARTNER

ROBERT NAJERA, INC. D/B/A  
ROBERT'S CONSTRUCTION OF  
EL PASO

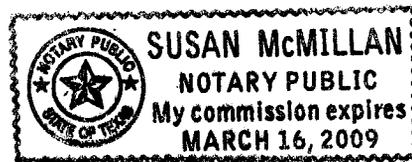
By: Timothy C Foster  
Timothy C. Foster, President

By: Robert Najera  
Robert Najera

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

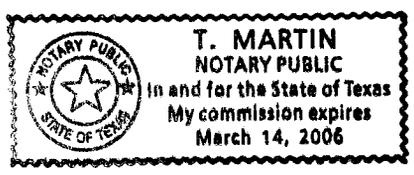
This instrument was acknowledged before me on this 20th day of June, 2005, by TIMOTHY C. FOSTER, President of EP PARK HILLS, INC. a Texas corporation, on behalf of said corporation.

Susan McMillan  
NOTARY PUBLIC FOR THE STATE OF TEXAS



STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 20 day of JUNE, 2005, by ROBERT NAJERA of ROBERT'S CONSTRUCTION OF EL PASO, for the purposes herein stated.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

EP PARK HILLS II, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

CCWALD

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**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into effective the 25<sup>th</sup> of May, 2005, by and between **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Developer", and **WINTON CUSTOM BUILDERS, INC.**, 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 **PARK HILLS UNIT SIX** 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), single-family attached dwelling(s), or two family 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, 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 (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) 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 sub-divider, 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 hold 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. Development Work Delays Caused By Applicant. In order to efficiently continue development of the subdivision, all Applicants taking an Early Start MUST place all building materials, signs, vehicles, construction equipment and/or trailers or any other similar items that might obstruct or interfere with developers continuing work behind the parkway of any and all lots. The parkway is defined as the area in front of the lot, or adjacent lot, 15 feet behind the back of the curb. Should any development delays be incurred due to the non-compliance of this requirement, the Applicant will be held responsible for any and all delays in Developer's work and or Developer's subcontractors or Utility Companies work including, but not limited to, all costs of said delays and rescheduling of the work in progress.

5. 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.

6. 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.

7. 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:

EP PARK HILLS II, LTD.  
BY: EP PARK HILLS, INC.  
ITS GENERAL PARTNER

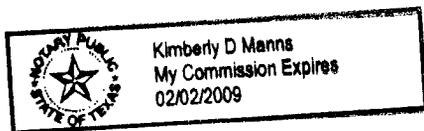
WINTON CUSTOM BUILDERS, INC.

By: David Brandt  
David Brandt, Vice President

By: Herschel Stringfield  
Herschel Stringfield, President

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

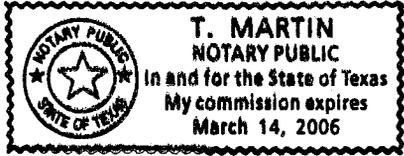
This instrument was acknowledged before me on this 25<sup>th</sup> day of May, 2005, by DAVID BRANDT, Vice President of EP PARK HILLS, INC. a Texas corporation, on behalf of said corporation.



Kimberly D. Manns  
NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 25 day of MAY, 2005, by HERSCHEL STRINGFIELD, President of WINTON CUSTOM BUILDERS, INC., a Texas corporation, on behalf of said corporation.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

EP PARK HILLS II, LTD.  
1790 LEE TREVINO, SUITE 601  
EL PASO, TEXAS 79936

RECORDED