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

DEPARTMENT: Engineering

AGENDA DATE: July 12, 2005

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

DISTRICT(S) AFFECTED: 4

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.

Painted Dunes Unit Two, Block 1, Lot 2, 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 EP Land Acquisition., owner and developer for Painted Dunes Unit Two, Block 1, Lot 2 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:** _____

CITY CLERK DEPT.
05 JUL -1 PM 3:31

CONDE INC

June 30, 2005

Bashar Abugalyon, P.E.
Land Development Section Head
City Engineering Department
#2 Civic Center Plaza
El Paso, Texas 79902

Re: *Painted Dunes Unit Two, Lot 2, Block 1, Conditional "B" Building Permit*

Mr. Abugalyon,

We respectfully request you consider approval of a "Conditional B" building permit for the Dollar General store on McCombs Drive located on Lot 2, Block 1 of Painted Dunes Unit Two. This request is being made in conformance with Municipal Code Chapter 18.02.103.1.1.6.1 "Building permits for lots in approved Subdivision" paragraph 2C. The drainage facilities (*temporary pond*) have been constructed and inspected for conformance to plans and approved by the "Construction Division" of the Engineering Department.

The inability to obtain a building permit will create an economic hardship for our client. We need to start building construction as soon as possible. Your expediency in this matter would be greatly appreciated Thank you for your time and consideration in this matter.

Sincerely,

Yvonne C. Curry, P.E.
Project Manager

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 6th day May, 2005, by and between **EPT LAND ASSETS LP** a Texas limited partnership, hereinafter referred to as "Developer", and **AGMAR PARTNERS, L.P.** hereinafter referred to as "Applicant", for the purposes of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of **PAINTED DUNES SUBDIVISION UNIT TWO** a subdivision in the City of El Paso, El Paso County, Texas (the "Subdivision"); and

WHEREAS, the public improvement 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 if 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 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 containing 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 Application 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:

EPT LAND ASSETS LP.
BY: EPT LAND ACQUISITION, LLC
ITS GENERAL PARTNER

By: _____
Richard Aguilar

APPLICANT:

AGMAR PARTNERS, L.P.
BY: E. P. HOLDINGS, INC.
ITS GENERAL PARTNER

By: _____
Meyer Marcus, President

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 6 day of May, 2005, by RICHARD AGUILAR of EPT LAND ASSETS LP, a Texas corporation, on behalf of said corporation.

MARGARITA GUERRERO
NOTARY PUBLIC
State of Texas
Comm Exp 09 28 2008

NOTARY PUBLIC FOR THE STATE OF TEXAS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this [illegible] day of May, 2005, by MEYER MARCUS, President of E P HOLDINGS, INC., a Texas corporation, on behalf of said corporation.

EVE NICOLE CARRASCO
NOTARY PUBLIC
In and for the State of Texas
My commission expires
03-01-2008

NOTARY PUBLIC FOR THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

AGMAR PARTNERS, L.P.
6500 MONTANA
EL PASO, TEXAS 79925