

Courtesy DP
#109 (14)

STATE OF TEXAS §
 §
COUNTY OF EL PASO § **CUSTOM STREET LIGHT AGREEMENT**

This Custom Street Light Agreement ("Agreement") is between the City of El Paso, hereinafter referred to as "City", and the Montecillo Owners Association, Inc., hereinafter referred to as "Grantee."

WHEREAS, property owners for Montecillo Unit 5A and 5B (all collectively referred to as the "Property") have installed, or will install, custom lighting within the Property in lieu of the required standard street lighting ; and

WHEREAS, the El Paso City Code allows for custom street lighting to be provided in accordance with Section 19.16.030; and

WHEREAS, the proposed custom street lighting plans have been reviewed and approved by the City Streets and Maintenance Department and meet the minimum requirements for standard street lighting; and

WHEREAS, Grantee shall be perpetually liable for all costs as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION.** The City has granted permission to EPT Montecillo Development East, LP (the "Developer") to install the custom street lights within the Property (the "Custom Lighting") as depicted in the final as-built plans approved by the City as part of the subdivision improvements acceptance process. The Custom Lighting has been installed, or will be installed, by the Developer on the Property which is all located in El Paso, El Paso County, Texas. The Property is shown on the attached subdivision plats, marked as Attachment "A", which is incorporated herein for all purposes. Once installed, the Custom Lighting will be accepted as part of the subdivision improvements in accordance to the requirements of Title 19 of the El Paso City Code. Upon acceptance of each of the subdivision improvements within the Property, the Custom Lighting in such subdivision within the Property, along with all other subdivision improvements, will be transferred to the City for use and maintenance except as provided under this Agreement. The Grantee will assume the responsibilities under this Agreement in perpetuity immediately following the City's acceptance of the improvements within a particular subdivision within the Property.

2. **SERVICES.** This Agreement shall not permit or be construed to permit any private use of the Site which impairs the function of the street lights for any City purpose, including but not limited to, restrictions to the visibility of such streets. The Grantee shall perform the following responsibilities, at the Grantees sole expense and for the Term of this Agreement:

- a. Pay all electricity costs directly to the utility company that are generated from the Electrical Plug located on the Custom Lighting within the Property. For purposes of this Agreement, the "Electrical Plug(s)" refers only to the electrical outlet/receptacle plug that is a part of the Custom Lighting and which is wired to a separate electrical meter.
- b. Pay all costs for electrical energy of the Custom Lighting within the Property, separate from those generated by the Electrical Plug, in accordance to Section 19.16.030 of the El Paso City Code when the following conditions are not met:
 - i. A separate rate can be charged to the City by the electric utility for the custom lighting proposed; and the total charged to the City is equal to or less than the rate for electrical energy for standard street lighting.
- c. Pay all costs associated with the maintenance of, or work done to, the Electrical Plugs within the Property. If the Grantee discovers a malfunction with an Electrical Plug, then the Grantee will immediately inform the City of the malfunction. The City will correct the malfunction and send an invoice to the Grantee for the reasonable costs of correcting the malfunction. The City will also correct any malfunctions to the Electrical Plug discovered by the City or reported by a citizen and invoice the Grantee for such reasonable costs. The Grantee will pay all invoices from the City for any work or maintenance done on the Electrical Plugs within 30 calendar days of receiving the invoice. The Grantee will not perform any work or maintenance on the Custom Lighting or the Electrical Plug. Grantee agrees that this Agreement does not convey any priority to the Grantee on work order requests on the Custom Lighting or the Electrical Plugs. The Grantee agrees that the City will treat all work order requests from the Grantee in the same manner as all other requests from the public and that timelines for repairs or maintenance to the Custom Lighting and Light Plugs will vary depending on workload. Grantee will ensure that the City has access to all Custom Lighting and Electrical Plugs at all times. In the event of the destruction of a Custom Lighting fixture, the City will replace it with a similar lighting fixture provided that that the City is able to find a similar fixture at a price that does not exceed the cost of purchasing a standard light fixture. If the City is unable to find a similar lighting fixture or if the cost exceeds the cost of obtaining a standard light fixture, then the City will replace the damaged Custom Lighting fixture with any fixture the City deems appropriate at the City's sole discretion. Prior to installing a standard streetlight in lieu of a damaged Custom Lighting fixture, the City will notify the Grantee if the City intends to install a standard light fixture and will allow the Grantee 30 calendar days to purchase a light suitable to the Grantee at the Grantee's sole expense.
- d. Provide the City with all as built plans developed by the Developer regarding the Custom Lighting. Grantee shall not construct any additional improvements, or make any additions to the Custom Lighting or the right of way within the Site without the City's permission.
- e. Report any malfunctions of the Custom Lighting to the City as soon as possible under the circumstance.
- f. File restrictive covenants and enforce the restrictive covenants to ensure that the Grantee is able to fulfill its obligations under this Agreement. The Grantee shall not

amend, without the City's permission, any portion of any restrictive covenants set up to ensure compliance of the Grantee with this Agreement.

- g. Grantee will be responsible for any damage caused by any shortage caused by the Electric Plug. The Grantee will be responsible for the costs of replacing a damaged Electric Plug. The Grantee will pay all invoices from the City for any work or maintenance done on the Electrical Plugs within 30 calendar days of receiving the invoice.
- h. Once per year, Grantee will provide a written notice to the City Manager or designee that contains the following: (1) a list of all events and/or holidays for which the Grantee will be using decorative lighting in conjunction with the Electrical Plugs and (3) a description of the decorative lighting that will be used in conjunction with the Electrical Plugs. The Grantee may update the list at any time during the year to add new events or holidays provided that the Grantee provides the list to the City with enough time prior to the new event or holiday for the City to review the electrical loads. Within 30 calendar days of receiving a notice from the Grantee, the City will provide the Grantee with a written response indicating whether the City has any objections to the electrical loads or any specific safety concerns regarding the use of decorative lighting in conjunction with the Electrical Plug. The Grantee will not install any decorative lighting for which the City has expressed specific safety concerns or objections to electrical loads. If the City does not provide a response to the Grantee within the time period specified herein, then the Grantee may proceed with the use of the decorative lights as provided in the notification from the Grantee to the City. Nothing in this section relieves the Grantee from any indemnity responsibilities under this Agreement.
- i. For all future subdivisions, other than Montecillo Unit Three Replat "B", Unit Three Replat "C", Unit Four "A", Unit 5 "A", Unit 5 "B", Unit 9 East, Unit 9 West, and Unit Eleven, the Grantee will (1) install glass light bulb covers on all lighting fixtures, and (2) ensure that all electrical plugs and lighting components operate on separate circuits.

3. CONSIDERATION. This Agreement is entered into as allowed under Section 19.16.030 of the El Paso City Code in an effort to encourage beautification of the City of El Paso. Said consideration is accepted as full and valuable consideration to the City.

4. TERM. The term of this Agreement shall be in perpetuity commencing on the Effective Date of this Agreement. For purposes of this Agreement, the Effective Date is the date when the City Manager signs the Agreement on behalf of the City.

5. CITY REPRESENTATIVE. The City Representative shall be the City Manager or designee.

6. ELECTRICAL USE. The City agrees to pay all cost of electrical energy of the Custom Lighting, separate from those generated by the Electrical Plug, in accordance to Section 19.16.030 of the El Paso City Code when the following conditions are met:

- a. A separate rate can be charged by the City by the electric utility for the custom lighting proposed; and
 - b. The total rate charged to the City is equal to or less than the rate for electrical energy for standard street lighting.
7. **VANDALISM.** Grantee shall promptly notify the City Representative of any material damage or destruction of Custom Lighting, which Grantee discovers at the Site.
8. **WORK PERFORMANCE.** The City will perform all work under normal City policies and procedures.
9. **TERMINATION.** In accordance to Section 19.16.030 of the El Paso City Code, the City may terminate this Agreement and require that any or all of the installed Custom Lighting be removed, at the Grantee's expense, when a finding is made by the City Council that the Custom Lighting creates a nuisance or is unsafe. If the City terminates the Agreement under this Section, then the Grantee will remove all Custom Lighting and replace it with standard street lighting within 30 calendar days of termination of the Agreement.
- a. If the Grantee ceases to exist as an entity or if the Grantee fails to fulfill its obligations under this Agreement, then the City may terminate this Agreement and operate the Custom Lighting as the City would operate any standard street lighting owned and operated by the City, including but not limited to the "red tagging" or closing and securing of the Electric Plug so as to prevent any further use of the Electric Plug, and/or the replacement of the Custom Lighting with any fixture in the City's sole discretion. Notwithstanding anything to the contrary, the City will provide the Grantee a 30 calendar day opportunity to cure before taking any action under this subsection.
10. **LEGAL RELATIONSHIP.** Grantee is an independent contractor and nothing herein shall be construed as creating the relationship of employer and employee or agent between the parties. Grantee shall not be entitled to any of the benefits established for City employees nor be covered by the City's Worker's Compensation Program. All of the services required hereunder will be performed by agents of Grantee, and all persons engaged in the work shall be fully qualified to perform the work.
11. **INDEMNIFICATION. GRANTEE HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CITY, THE CITY'S OFFICERS, EMPLOYEES HARMLESS FROM ANY AND ALL DEMANDS, CLAIMS, CAUSES OF ACTION, OR LOSSES FOR PERSONAL INJURY, PROPERTY DAMAGE OR DEATH DIRECTLY CAUSED BY THE ACTS OF THE GRANTEE OR ANY BREACH OF THE GRANTEE'S OBLIGATIONS UNDER THIS AGREEMENT.**
12. **INSURANCE.** the Grantee shall obtain general liability insurance in the minimum amounts of 1 million dollars per occurrence and 1 million dollars in the aggregate. The insurance

shall cover the acts and omissions of the Grantee. The Grantee shall add the City as an additional insured to the policy.

13. DISCRIMINATION. Grantee, its officers, agents, servants, employees, volunteers, and third parties will not on account of race, color, religion, sex, or national origin, permit or allow any discrimination in the work done pursuant to this Agreement.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same is in writing dated subsequent to the date hereof and duly executed by the parties hereto.

15. ASSIGNMENT.

- a. Nothing herein shall grant any real property interest to Grantee nor give rise to any vested right in Grantee, its assigns or successors in title; neither shall Grantee, its assigns or successors in title have a cause of action for damages upon revocation or termination of this Agreement.
- b. This Agreement is conditioned on Grantee executing a covenant running with the land, binding its assigns and successors in interest to pay for all costs included in this agreement and to hold the City harmless from all claims and causes of action for death, personal injury and property damage arising from the Custom Lighting Agreement.
- c. This Agreement may be assigned to and assumed totally by one or more homeowners' association of the owners of the Property, as provided for in the Declaration of Covenants, Conditions, and Restrictions applicable to Grantee. The assignment and assumption of this Agreement shall not become effective until such association shall send written notice of the assignment and assumption, signed by Grantee and a representative of such association, to the City Representative, who will forward the request to the City Manager. This Agreement shall not be assigned without the prior written consent of the City Manager. Such consent shall not be unreasonably withheld. Such assignment shall be conditioned on the homeowners' association assuming all duties and obligations under this Agreement. Upon City Manager approval of the assignment to the homeowners' association, Grantee shall be released from any further duties or obligations under this Agreement.

16. COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES. Grantee agrees to comply with all applicable laws, regulations and ordinances applicable to this Agreement.

17. BINDING AGREEMENT. The individual signing this Agreement acknowledges that he/she is authorized to do so and further warrants that he/she is authorized to commit and bind Grantee to the terms and conditions of this Agreement.

18. NOTICES. All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
ATTN: City Director of Planning and Inspections
801 Texas Avenue
El Paso, Texas 79901-1196

City of El Paso
ATTN: City Manager
300 Campbell Street
El Paso, Texas 79901-1196

Montecillo Owners Associatio, Inc.
444 Executive Center Blvd., Suite 238
El Paso, TX 79902

Either party shall have the right to change its principal office by notifying the other party of such change in accordance to this Section.

19. The parties will cooperate with each other to insure that the requirements of the El Paso City Code Section 19.16.030 are met. Both parties will modify existing documents, create new documents, and/or sign omitted documents that are necessary to comply with Section 19.16.030 of the El Paso City Code regardless of whether such necessity is discovered following the Effective Date.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

(SIGNATURES ON FOLLOWING PAGE)

[CITY SIGNATURE PAGE]

THE CITY OF EL PASO:

[Signature]
Tomás González, City Manager

APPROVED AS TO FORM:

[Signature]
Omar A. De La Rosa
Assistant City Attorney

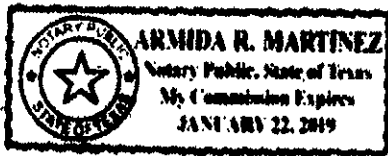
APPROVED AS TO CONTENT:

[Signature]
Victor Morrison Vega
Planning & Inspections Department

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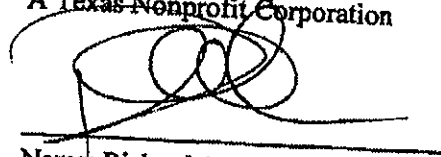
This instrument was acknowledged before me on the 11th day of July, 2018,
by Tomás González, as City Manager of the City of El Paso, Texas.



[Signature]
Notary Public, State of Texas

[GRANTEE SIGNATURE PAGE]

GRANTEE
Montecillo Owners Association, Inc.
A Texas Nonprofit Corporation

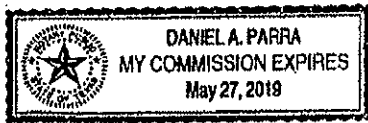


Name: Richard Aguilar
Title: Director

ACKNOWLEDGEMENT

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This instrument was acknowledged before me on the 5th day of July, 2018,
by Richard Aguilar, as Director of the Montecillo Owners
Association, Inc. a Texas Nonprofit Corporation.

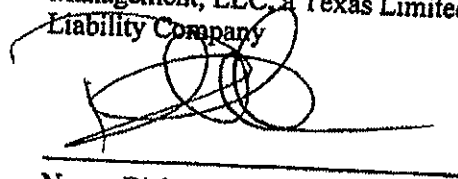

Notary Public, State of Texas

[Owners Signature Page]

Without becoming a party to this Agreement the following signatories approve the Agreement.

EPT Mesa Development, LP, a Delaware Limited Partnership

**EPT Mesa Development Management, LLC, A Delaware Limited Liability Company
By its Managing Member EPT Land Management, LLC, a Texas Limited Liability Company**

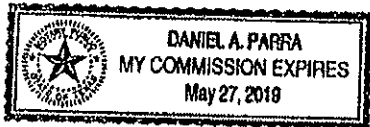


Name: Richard Aguilar
Title: Manager

ACKNOWLEDGEMENT

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This instrument was acknowledged before me on the 8th day of July, 2018, by Richard Aguilar, as Manager of EPT Land Management, LLC, a Texas Limited Liability Company, Managing Member of EPT Mesa Development Management, LLC, a Delaware limited liability company, General Partner of EPT Mesa Development, LP, a Delaware limited partnership.


Notary Public, State of Texas

[Owner signatures continue on following page]

**EPT Montecillo Development East, LP, a
Texas Limited Partnership**
By its General Partner
EPT Montecillo Development Management,
LLC, a Texas Limited liability company

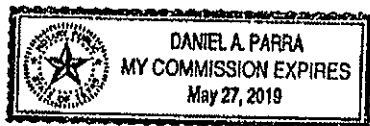


Name: Richard Aguilar
Title: Manager

ACKNOWLEDGEMENT

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This instrument was acknowledged before me on the 5th day of July, 2018,
by Richard Aguilar, as Manager of EPT Montecillo Development Management, LLC, a Texas
limited liability company, General Partner of EPT Montecillo Development East, LP, a Texas
limited partnership.


Notary Public, State of Texas

[Attachment "A" begins on following page]

ATTACHMENT "A"

ATTACHMENT "A"

Doc # 20180055656
#Pages 14 #NFPages 1
7/18/2018 4:36 PM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$78.00

eRecorded

I hereby certify that this instrument was filed on the date and time stamped
hereon by me and was duly recorded by document number in the Official
Public Records of Real Property in El Paso County.



EL PASO COUNTY, TEXAS

Delia Briones