

# Agenda Item Form

Agenda Date: July 27, 2004 <sup>SV</sup>

Districts Affected: 1

Dept. Head/Contact Information: Irene Ramirez, P.E., Interim City Engineer Ext. 4422/Bashar Abugalyon, P.E., Interim Assistant City Engineer Ext. 4157

## Type of Agenda Item:

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Resolution   | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements                               | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement                         | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use                             | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements                                    | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input checked="" type="checkbox"/> Other <u>Conditional 'B' Building Permits</u> |   |  |

## Funding Source:

- General Fund  
 Grant (duration of funds: \_\_\_\_\_ Months)  
 Other Source: \_\_\_\_\_

## Legal:

- Legal Review Required      Attorney Assigned (please scroll down): None       Approved       Denied

Timeline Priority:    High       Medium       Low      # of days: \_\_\_\_\_

## Why is this item necessary:

Requested by: Colony Partners, L.P.

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

No costs

## Statutory or Citizen Concerns:

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits  
Lomas del Sol Unit 1 Subdivision

## Departmental Concerns:

Department recommends approval

CITY CLERK DEPARTMENT  
JUL 28 AM 10 40

Date: July 22, 2004

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:  
July 27, 2004

Item should read as follows:

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

Lomas del Sol Unit 1 Subdivision (District 1)

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Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION  
CONTACT INTERIM ASSISTANT CITY ENGINEER BASHAR ABUGALYON, P.E.  
AT 541-4157.

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City Clerk's Use

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

ENGINEERING DEPARTMENT

Development Division

DATE: July 22, 2004  
TO: Mayor & City Council  
FROM: Bashar Abugalyon, P.E., Interim Assistant City Engineer ~~BA~~  
SUBJECT: Conditional "B" Building Permits  
Lomas del Sol Unit 1 Subdivision (District 1)

The above referenced request is scheduled for City Council Regular Agenda on July 27, 2004. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be issued until all of the improvements affecting that lot have been completed and approved by the City.

Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the subdivider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.

1845 Northwestern Dr. Ste C  
El Paso, Texas 79912

tel [915] 877.4155 fax [915] 877.4334



[www.csaengineers.com](http://www.csaengineers.com)

Karlsruher Inc. dba CSA Consulting Engineers

July 21, 2004

City of El Paso  
City Engineering Department  
2 Civic Center Plaza  
El Paso, Texas 79999

Attn: Mr. Bashar Abugalyon

Re: Lomas del Sol Unit 1

Dear Mr. Abugalyon:

As you are aware, all improvements for Lomas del Sol Unit 1 are in the process of being completed. Paving of the streets is anticipated to be completed in the week of July 26. We will then complete the as-built plans and schedule a City Council meeting agenda item requesting that the City Council accept the subdivision improvements.

We are respectfully requesting Conditional "B" Building Permits due to the economic hardship of building construction requirements. We have attached copies of the development agreements with the builders for your files.

We appreciate your assistance in this urgent matter. If you have any questions, or need any further information regarding this subdivision, please call me at 877-4155.

Sincerely,

John C. Karlsruher, P.E.  
President

**COPY**

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 7<sup>th</sup> day of July, 2004, by and between Colony Partners L.P., (hereinafter referred to as "Developer"), a Texas corporation, and Bowling Construction (hereinafter referred as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code,

WHEREAS, Developer is the owner and developer of Lomas Del Sol Unit I, a subdivision in the City of El Paso County, Texas (hereinafter referred to as 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 Municipal code (Building and Construction) (hereinafter referred to as 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 the 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 Title 18 (Building and Construction) of the El Paso Municipal 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 Deputy Director for Engineering 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 (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to 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 the 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 the 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 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 Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
- 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 Deputy Director for Engineering 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:**

**APPLICANT:**

Colony Partners, LP

Bowling Construction

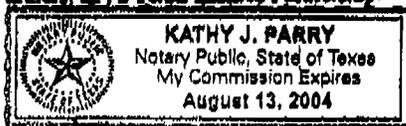
By: *Russell Hanson*  
Russell Hanson, Manager

By: *Garrett J. Bowling*  
Name: Garrett J. Bowling  
Title: PRESIDENT

State of Texas

County of El Paso

This instrument was acknowledged before me on this 7<sup>th</sup> day of July, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.

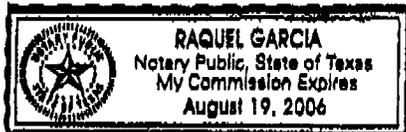


*Kathy J. Parry*  
Notary Public, State of Texas

State of Texas

County of El Paso

This instrument was acknowledged before me on this 6<sup>th</sup> day of July, 2004, by Garrett J. Bowling, President of Bowling Construction, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.



*Raquel Garcia*  
Notary Public, State of Texas

Doc# 20040049978

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (hereinafter referred to as "Agreement") is entered into effective the 27<sup>th</sup> day of May, 2004, by and between Colony Partners L.P. (hereinafter referred to as "Developer"), a Texas corporation, and M.A. Homes, LLC (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Lomas Del Sol Unit 1, a subdivision in the City of El Paso County, Texas (hereinafter referred to as 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 Municipal code (Building and Construction) (hereinafter referred to as 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 the 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 Title 18 (Building and Construction) of the El Paso Municipal 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 Deputy Director for Engineering 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 (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to 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 the 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 subdividers 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 the 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 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 Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
- 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 Deputy Director for Engineering 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 entire 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:

Colony Partners LP

By:

Russell Hanson, Manager

APPLICANT:

M.A. Homes, LLC

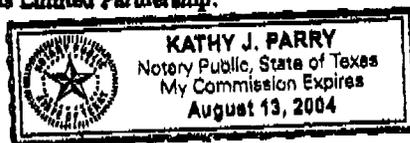
By:

Mustafa Ali, Manager

State of Texas

County of El Paso

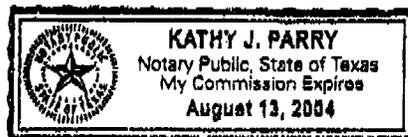
This instrument was acknowledged before me on this 27th day of May, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.



State of Texas

County of El Paso

This instrument was acknowledged before me on this 27th day of May, 2004, by Mustafa Ali, Manager of M.A. Homes, LLC, a limited liability corporation, on behalf of said corporation.



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### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 11<sup>th</sup> day of May, 2004, by and between Colony Partners L.P., (hereinafter referred to as "Developer"), a Texas corporation, and Mission Homes, Inc. (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Lomas Del Sol Unit 1, a subdivision in the City of El Paso County, Texas (hereinafter referred to as 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 Municipal code (Building and Construction) (hereinafter referred to as 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 the 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 Title 18 (Building and Construction) of the El Paso Municipal 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 Deputy Director for Engineering 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 (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to 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 the 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

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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 the 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 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 Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
- 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 Deputy Director for Engineering 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:**

Colony Partners, LP

By: Russell Hanson  
Russell Hanson, Manager

State of Texas

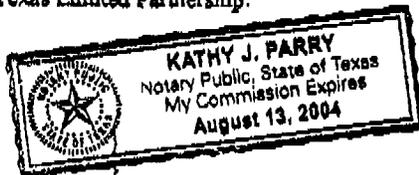
County of El Paso

**APPLICANT:**

Mission Homes, Inc.

By: Rigoberto Mendez  
Rigoberto Mendez, President

This instrument was acknowledged before me on this 14<sup>th</sup> day of May, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.



State of Texas

County of El Paso

Kathy J. Parry  
Notary Public, State of Texas

This instrument was acknowledged before me on this 14<sup>th</sup> day of May, 2004, by Rigoberto Mendez, of Mission Homes, Inc., a Texas corporation, on behalf of said corporation.



Kathy J. Parry  
Notary Public, State of Texas



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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 the 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 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 Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
- 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 Deputy Director for Engineering 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 entire 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:**

Colony Partners, LP

Classic American Homes, Inc.

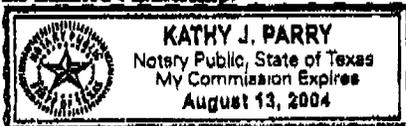
By: *Russell Hanson*  
Russell Hanson, Manager

By: *James P. Johnson, Jr.*  
Name: James P. Johnson, Jr.  
Title: President

State of Texas

County of El Paso

This instrument was acknowledged before me on this 7<sup>th</sup> day of May, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.

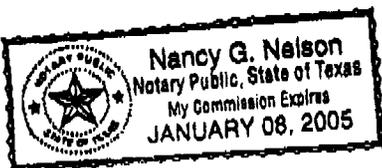


*[Signature]*  
Notary Public, State of Texas

State of Texas

County of El Paso

This instrument was acknowledged before me on this 7<sup>th</sup> day of May, 2004, by *James P. Johnson, Jr.* of Classic American Homes, Inc., a Texas corporation, on behalf of said corporation.



*Nancy G. Nelson*  
Notary Public, State of Texas

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 27 day of April, 2004, by and between Colony Partners L.P., (hereinafter referred to as "Developer"), a Texas corporation, and Peinado Family Limited Partnership, d/b/a Quality Craft Homes, (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Lomas Del Sol Unit 1, a subdivision in the City of El Paso County, Texas (hereinafter referred to as 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 Municipal code (Building and Construction) (hereinafter referred to as 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 the 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 Title 18 (Building and Construction) of the El Paso Municipal 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 Deputy Director for Engineering 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 (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to 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);
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  - c. a Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to the 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 subdivision 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

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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 the 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 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 Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
- 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 Deputy Director for Engineering 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 ensure 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:**

Colony Partners, LP

By: *Russell Hanson*  
Russell Hanson, Manager

**APPLICANT:**

Peinado Family Limited Partnership, d/b/a Quality Craft Homes

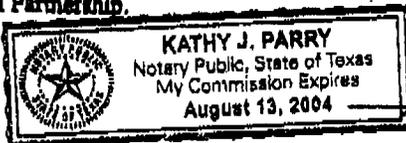
By: *Kelly Peinado*  
Kelly Peinado, President

State of Texas

County of El Paso

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This instrument was acknowledged before me on this 27<sup>th</sup> day of April, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.



*Kathy J. Parry*  
Notary Public, State of Texas

State of Texas

County of El Paso

This instrument was acknowledged before me on this 27<sup>th</sup> day of April, 2004, by Kelly Peinado, President of Peinado Family Limited Partnership, d/b/a Quality Craft Homes, a Texas corporation, not a limited liability corporation.



*Kathy J. Parry*  
Notary Public, State of Texas

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 23 day of April, 2004, by and between Colony Partners L.P. (hereinafter referred to as "Developer"), a Texas corporation, and Albert Gomez Builders, Inc. d/b/a Diamond Star Homes (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Lomas Del Sol Unit 1, a subdivision in the City of El Paso County, Texas (hereinafter referred to as 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 Municipal code (Building and Construction) (hereinafter referred to as 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 the 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 Title 18 (Building and Construction) of the El Paso Municipal 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 Deputy Director for Engineering 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 (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to 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 the 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 subdividers, 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

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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 the 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 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 Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
- 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 Deputy Director for Engineering 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 enforce 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:**

Colony Partners, LP

Albert Gomez Builders, Inc., d/b/a Diamond Star Homes, a Texas corporation

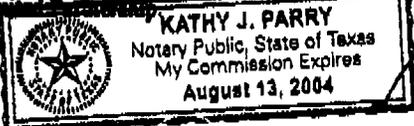
By: *Russell Hanson*  
Russell Hanson, Manager

By: *Lorena Diaz*  
Name: Lorena Diaz  
Title: Secy - TIOPAS

State of Texas

County of El Paso

This instrument was acknowledged before me on this 23 day of April, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.

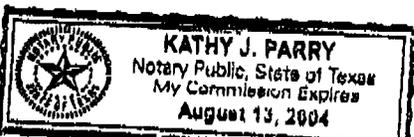


*Kathy J. Parry*  
Notary Public, State of Texas

State of Texas

County of El Paso

This instrument was acknowledged before me on this 23 day of April, 2004, by *Lorena Diaz* of Albert Gomez Builders, Inc., d/b/a Diamond Star Homes, a Texas corporation, on behalf of said corporation.



*Lorena Diaz*  
Notary Public, State of Texas