

SANTOLINA DEVELOPMENT AGREEMENT

2:30 pm DRAFT June 22, 2015

Proposed language revisions based on amended Findings & Conditions approved by the Bernalillo Board of Commission at the Zoning Meeting of June 16, 2015.

Changes in this Draft Revision

Condition #2 amended language with the addition of the following words placed in Section 5.5 (pg. 5) of draft Development Agreement:

- Strike “any” and replace with “this”
- Add “current” between “this” and “Commission...”

Condition #3 revision to original CPC language with amended language is referenced in Section 4.4 (pg. 4) of draft Development Agreement. Additional language in Section 4.4 (pg. 4) was added to include a definition of jobs; and definitions of employment categories as defined by MRCOG.

Condition #5 amended language is referred to in Section 6.2.1 (pg. 6) of draft Development Agreement.

Condition #10 amended language was added to Sections 6.3 (pg. 7) and 8.3 (pg. 10) of draft Development Agreement with the addition of the word “notwithstanding” at the beginning of the sentence. At the end of the section addition of the words, “...,consistent with the master plan.”

Condition #18 amended language was added to Section 6.11 of draft Development Agreement. Additionally in Section 6.11 on page 9, line 22 the word “pursue” was stricken and replaced with the word “explore.”

Section 8.4: Additional language added on line 30 after the word ,“...Agreement; provided, that in the event of a conflict between this Section 8.4 and Section 3.1, section 3.1 shall govern.”

Exhibit B, pg. 19 added in June 16, 2015.

**Santolina Level A
Development Agreement**

June 22, 2015 – 2:30 pm Draft

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**SANTOLINA LEVEL A
DEVELOPMENT AGREEMENT**

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This SANTOLINA LEVEL A DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of the ___ day of _____, 2015 by and between WESTERN ALBUQUERQUE LAND HOLDINGS LLC, a Delaware limited liability company (“**Owner**”), and BERNALILLO COUNTY, a political subdivision of the State of New Mexico (“**County**”). Owner and the County are individually referred to as a “**Party**” and are jointly referred to as the “**Parties**”.

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BACKGROUND INFORMATION:

A. Owner is the current owner of approximately 13,851 acres of land located on Bernalillo County’s Southwest Mesa, generally bounded by Interstate 40 on the north; the escarpment area and the area around 118th Street on the east; the grant boundary separating this property from the Pajarito Mesa on the south; and the escarpment area separating this property from the Rio Puerco Valley on the west, and is more particularly described on Exhibit A attached hereto (the “**Property**”).

B. Long range development in Bernalillo County is guided by the Albuquerque/Bernalillo Comprehensive Plan (the “**Comprehensive Plan**”).

C. The County initially adopted the Planned Communities Criteria of the Comprehensive Plan on October 23, 1990, and re-established the Planned Communities Criteria on May 24, 2012 (the “**Planned Communities Criteria**”) in order to implement the planned communities provisions in the Comprehensive Plan.

D. The Planned Communities Criteria creates three (3) levels of approval for planned communities: “Level A”, “Level B”, and “Level C”. The first is the Level A Community Master Plan (the “**Master Plan**” or “**Level A Plan**”) to which this Agreement applies. The second is the Level B Village Master Plan (the “**Village Plan**” or the “**Level B Plan**”). The third is the Level C Subdivision or Site Development Plan (the “**Subdivision/Site Plan**” or the “**Level C Plan**”) for Subdivision or Building Permit. At each more detailed level of planning, specific design, location, and development issues will be refined in accordance with the higher level plan. Accordingly, the Village Plan will further refine the Master Plan, and the Subdivision/Site Plan will further refine the Master Plan and the Village Plan. In addition, separate and future development agreements will be entered into for each level of review, as described in the Planned Communities Criteria. The Village Plan and/or Subdivision/Site Plan development agreements will, with greater specificity, delineate development responsibilities for infrastructure design and construction costs, contributions, reimbursements, credits and public and private financing with respect to specific segments of the Project.

E. As provided for in the Planned Communities Criteria, Owner has caused to be prepared a Master Plan, a copy of which is attached hereto as Exhibit B. The Master Plan is subject to approval by the Board of County Commissioners (the “**Governing Body**”). The

1 development of the Property as provided in the Master Plan is referred to herein as the
2 “**Project**”.

3
4 F. The Planned Communities Criteria, at Section 5. D. (4), requires Owner to present
5 to the County, in conjunction with the Master Plan, a Level A development agreement to: (i)
6 codify the Master Plan and the Land Use Plan illustrated at Exhibit 7 in the Master Plan (“**Land**
7 **Use Plan**”), (ii) outline a preliminary infrastructure/service agreement to cover phasing of the
8 Master Plan and public services/facilities, and designation of financial, operations and
9 management responsibilities over time, (iii) commit to mitigation of negative consequences of
10 development when known, (iv) provide an assignable agreement under mutually agreeable terms
11 which will be permanent unless renegotiated, (v) provide a document suitable for recording, and
12 (vi) identify incentives to be provided by the County to the Owner (collectively, the “**PCC Level**
13 **A Development Agreement**”). This Agreement constitutes the PCC Level A Development
14 Agreement.

15
16 G. The County previously adopted a Planned Community zoning designation by
17 Ordinance No. 2012-18, dated September 11, 2012.

18
19 H. Contemporaneously with the adoption of this Agreement and the Master Plan, the
20 Property is being zoned Planned Community (“**PC Zoning**”), pursuant to Section 19.5 of the
21 Bernalillo County Comprehensive Zoning Ordinance, in order to establish a zone category which
22 allows the uses controlled by the Master Plan.

23
24 I. The County’s administration has approved and entered into this Agreement
25 subject to approval of the Governing Body.

26
27 NOW, THEREFORE, in consideration of the mutual covenants and conditions contained
28 herein, the Parties agree as follows:

29
30 AGREEMENT

31
32 1. Background Information. The Background Information and the exhibits attached
33 hereto are incorporated into the body of this Agreement.

34
35 2. Authorization. This Agreement is authorized by Article X of the New Mexico
36 Constitution; New Mexico statutes 4-37-1, *et seq.* NMSA 1978 (Powers); 3-21-1, *et seq.* NMSA
37 1978 (Zoning); 4-57-1, *et seq.* NMSA 1978 (Planning); Bernalillo County Resolution No. 2012-
38 46 approved by the Bernalillo County Commission on May 22, 2012 (Planned Communities
39 Criteria: Policy Element); and Bernalillo County Ordinance No. 2012-18 approved by the
40 Bernalillo County Commission on September 11, 2012 (Planned Communities Zoning).

41
42 3. Administration.

43 3.1 Future County Commission Actions. Nothing in this Agreement shall be
44 construed to prohibit a future County Commission from regulating for the health, safety and
45 welfare of County residents; provided that such regulation is rationally related to the alleviation
46 of legitimate threats to public health, safety and welfare.

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3.2 Agreement Intents and Purposes. The Parties shall perform all further acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the intent and purposes of this Agreement.

3.3 Related Approvals. This Agreement is contingent upon action by the Governing Body approving the Master Plan, the Land Use Plan, the PC Zoning, and this Agreement.

3.4 Recordable Instrument. This Agreement is in recordable form and will be recorded with the Bernalillo County Clerk and simultaneously submitted to the Director of Planning and Development for Bernalillo County.

4. Allowances.

4.1 Master Plan. Owner has submitted to the County for approval the Master Plan which includes the Land Use Plan. The Master Plan (a) complies with the submittal requirements of the Planned Communities Criteria, (b) furthers the intent, policies and goals of the Comprehensive Plan and the Planned Communities Criteria, and (c) establishes the scope of the permitted development for the Property.

4.2 Land Uses. The Master Plan and the Land Use Plan establish: (a) a series of land use districts acknowledged by the PC Zoning for the Property, pursuant to the Land Use Plan, (b) permissible uses allowed within each land use district, (c) the allowable densities for each land use district, (d) certain site characteristics for each land use district, and (e) procedures for implementing the foregoing, including without limitation, procedures to amend the Master Plan. The Master Plan, the Land Use Plan, and the PC Zoning are consistent with and serve to implement the Comprehensive Plan and the Planned Communities Criteria.

4.3 Land Use Projections. The Level A Land Use Plan currently provides for the following gross percentages of land use types:

| <u>Land Use Category</u> | <u>Gross % of Property</u> |
|----------------------------|----------------------------|
| Village | 48% |
| Industrial & business park | 15% |
| Major Public Open Space | 7% |
| Regional Parks | 3% |
| Open space | 13% |
| Urban center | 5% |
| Business park | 5% |
| Town center | 4% |

4.4 Housing/Employment. The Level A Plan has been approved based upon the Property having a reasonable balance between residential and employment land uses such that the Project maintains the characteristics of a self-sustaining community throughout the

Comment [MRE1]: Amended Condition #3 referenced in this section.

1 period of development. If residential uses outpace employment uses to create a significant
 2 imbalance in the housing/employment link, County shall have the right to use such imbalance as
 3 a basis for withholding future residential building permits by denial of future Level C residential
 4 subdivision submittals. At the time of subdivision approval, any imbalance between jobs and
 5 dwelling units will be evaluated pursuant to the dwelling unit threshold table below.

| <u>Dwelling Units Thresholds</u> | <u>Jobs</u> |
|----------------------------------|---|
| 2,000 | 300 |
| 2,500 | 700 |
| 3,000 | 2,000 |
| 3,500 | 3,500 |
| 4,000 | 4,500 |
| 4,001 to 12,540 | 1.25 Jobs per Dwelling Unit ¹ |
| 12,541 to 25,080 | 1.39 Jobs per Dwelling Unit |
| 25,081 to 34,000 | 1.59 Jobs per Dwelling Unit |
| 34,001 to Full Buildout | 2.0 Jobs per Dwelling Unit at Full Buildout |

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10 ¹ The 2012 Job Housing Ratio east of the Rio Grande is 1.39 (jobs per house) west of the Rio Grande is .56 (jobs per
11 house) per the MRCOG 2040 MTP.

12
13 The Santolina jobs to housing ratio anticipates substantially more jobs per dwelling unit than
14 currently exists on the west side (.56) during the first third of the development phases, and the
15 same number of jobs per dwelling unit as currently exists on the east side (1.39 or 2½ times the
16 number of jobs per dwelling unit on the west side) during the second third of the development
17 phases and a jobs to housing ratio surpassing the current jobs to housing ratio on the east side
18 during the last third of the development phase. Nevertheless, as stated in the Santolina Level A
19 Master Plan and evidenced by the land use category area percentages, the ultimate goal remains
20 an approximate jobs to housing ratio of 2:1 or 75,000 jobs at full buildout.

21
22 **Definition of Job - A job is a position held by a full-time employee (35 hours per week), or a**
 23 **full-time equivalent employee, in any industry. A full-time equivalent employee (FTE) is**
 24 **the aggregate number of hours per month of service of employees, who are less than full-**
 25 **time, divided by 140.**

Comment [MRE2]: Added as a result of the discussion at Zoning Meeting.

26
27 **Employment Categories as Defined by MRCOG:**

28
29 **Basic Employment: The sum of employment in the North America Industrial**
 30 **Classification System (NAICS) categories of agriculture, forestry, fishing and hunting,**
 31 **mining, utilities, information, construction, manufacturing, transportation and**
 32 **warehousing, and wholesale trade. Basic also includes military employment.**

33
34 **Retail Employment: The sum of employment in the North America Industrial**
 35 **Classification System (NAICS) categories of retail trade and eating and drinking**
 36 **establishments.**

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2 Service Employment: The sum of employment in the North America Industrial
3 Classification System (NAICS) categories of finance and insurance, real estate, rental and
4 leasing, professional, scientific, and technical services, management of companies,
5 administrative and support and waste management and remediation services, educational
6 services, healthcare and social assistance, arts, entertainment, and recreation,
7 accommodation, other services, and public administration including government
8 employment.
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11 5. Planned Communities Criteria Requirements.
12

13 5.1 Codification of the Master Plan and Land Use Plan. The adoption of the
14 Master Plan, the Land Use Plan, the PC Zoning, and approval of this Agreement and the
15 recording of this Agreement shall satisfy the Master Plan codification requirement of the Planned
16 Communities Criteria.
17

18 5.2 Preliminary Infrastructure/Service Agreement. This Agreement, including
19 Section 6 below, satisfies the Preliminary Infrastructure/Service Agreement requirement of the
20 Planned Communities Criteria.
21

22 5.3 Commitment to Mitigation of Negative Impacts. Owner agrees to mitigate
23 the negative impacts resulting from development of the Property; as such negative impacts may
24 be identified in the Level B and Level C review process.
25

26 5.4 Assignable Agreement. As set forth in **Section 11.6** below, this
27 Agreement is assignable and expresses the terms and conditions mutually agreed to by the
28 Parties. The terms and conditions are permanent unless the Parties re-negotiate and agree to
29 amend this Agreement.
30

31 5.5 County Incentives. Except as otherwise expressly provided herein, the
32 Parties have not yet considered specific incentives to be provided by the County to Owner. The
33 Parties acknowledge that the County's current economic development policies, incentives and
34 programs are more particularly described under Bernalillo County Economic Development
35 Financing Policy & Procedures. Nothing in any this development agreement shall commit
36 this current Commission and future Commissions to public funding or financing
37 mechanisms.

Comment [MRE3]: Amended Condition #2

38 6. Infrastructure Improvements.
39

40 6.1 Categorizing Infrastructure. The Level B and/or Level C development
41 agreements will categorize infrastructure improvements, using industry practices and standards
42 customarily acceptable to and uniformly applied by Bernalillo County, as: (i) infrastructure that
43 solely benefits the Project (the "**Project Infrastructure**"), and/or (ii) infrastructure that benefits
44 the Project as well as other real property (the "**System Infrastructure**"). The determination of
45 whether infrastructure is Project Infrastructure or System Infrastructure shall be determined
46 using industry practices and standards customarily acceptable to and uniformly applied by

1 Bernalillo County. The owner of the Project Infrastructure or System Infrastructure shall be
2 responsible for the operation and maintenance of the infrastructure that it owns.

3
4 6.1.1 Project Infrastructure. Owner shall be responsible for all the costs
5 and expenses associated with all Project Infrastructure, which is that infrastructure that solely
6 benefits the Project. Project Infrastructure may be funded by Owner directly or from any and all
7 available financing mechanisms.

8
9 6.1.2 System Infrastructure. Owner will be responsible for its
10 proportionate share, as determined using industry practices and standards customarily acceptable
11 to and uniformly applied by Bernalillo County of the cost and expense associated with System
12 Infrastructure. The County will reasonably cooperate and participate with Owner and other
13 governmental and quasi-governmental entities and utility service providers with respect to any
14 System Infrastructure. System Infrastructure may be funded from any and all available financing
15 mechanisms.

16
17 6.2 Issues Concerning Particular Infrastructure.

18
19 6.2.1 Roadway Infrastructure. Owner shall be responsible for the
20 design, construction and dedication of all transportation improvements that are reasonably
21 necessary to service the Project and that are designated as Project Infrastructure. Any property
22 that is not within the boundaries of the Level A Plan, such as the Metropolitan Detention Center,
23 Sandia Motor Sports and Cerro Colorado landfill (“**Existing Uses**”) is not a part of the Project.
24 Owner shall not be responsible for any infrastructure associated with the Existing Uses, unless
25 determined to be System Infrastructure. Owner shall be responsible for its proportionate share of
26 the design, construction and dedication of all transportation improvements designated as System
27 Infrastructure. Owner has prepared a Transportation Master Plan which is described in the
28 Master Plan; however, such Master Plan is subject to adjustment through the more detailed
29 analysis to be conducted in connection with Level B Plans and Level C Plans. Owner shall not
30 be required to correct existing roadway deficiencies; however, the County may require Owner to
31 mitigate additional negative impacts resulting from the development of the Project which are
32 identified through the Level “B” and Level “C” review process.

Comment [MRE4]: Amended Condition #5
referenced in this section.

33
34 6.2.2 Industrial Development Impacts. Any development that provides
35 for industrial uses that actually generate truck traffic carrying heavy loads (“**HVT**”) and such
36 HVT negatively impact existing roadway infrastructure that is otherwise in serviceable
37 condition, then the developer of the Level C Plan may be required to address and mitigate, using
38 industry practices and standards customarily acceptable to and uniformly applied by Bernalillo
39 County, such negative impacts caused by such HVT.

40 6.2.3 Storm Water Drainage Infrastructure. Owner shall be responsible
41 for the design and construction of all storm water drainage infrastructure that is reasonably
42 necessary to service the Project and designated as Project Infrastructure. Owner shall be
43 responsible for its proportionate share of the design, construction and dedication of all storm
44 water drainage improvements that are designated as System Infrastructure. The preliminary
45 storm water management plan is described in the Master Plan, but is subject to adjustment
46 through the more detailed analysis to be conducted in connection with Level B Plans and Level

1 C Plans. If the Albuquerque Metropolitan Arroyo Flood Control Authority (“**AMAFCA**”)
2 provides storm water drainage infrastructure for the Project, the Owner may enter into separate
3 agreements with AMAFCA concerning the terms of providing such storm water infrastructure to
4 the Project. All matters associated with existing and/or future AMAFCA storm water drainage
5 infrastructure for the Project shall be resolved solely between Owner and AMAFCA. The
6 County will not promote, support or enact any ordinance, legislation or policy that interferes with
7 and/or restricts the Owner’s use of AMAFCA existing and/or future infrastructure and/or
8 agreements between the Owner and AMAFCA, as long as that use does not diminish or
9 otherwise negatively affect current County flood or drainage infrastructure.

10
11 6.2.4 Open Space, Parks, Recreation and Trail Facilities. Development
12 of open space, park, recreation and trail facilities shall comply with the Level A Plan. The Level
13 A Plan must be amended, if a Level B Plan or Level C Plan provide for changes to the types and
14 general locations of open space, park, recreation and/or trail facilities that significantly deviate
15 from the intent and framework established by the Level A Plan. Owner shall dedicate to the
16 County: (a) all open space, park, recreation and/or trail facilities that are designated Project
17 Infrastructure; and (b) the Owner's proportionate share of System Infrastructure. All dedications
18 shall be subject to the reservation of reasonable rights necessary for the development of the
19 Project, including but not limited to roadway, utility and drainage easements. All lands and
20 facilities dedicated and/or constructed by Owner must meet the industry practices and standards
21 customarily acceptable to and uniformly applied by Bernalillo County. The owner of the open
22 space, park, recreation or trail facilities shall be responsible for operating and management of
23 those facilities. The land area of any open space, park, recreation and/or trail facilities will be
24 considered in calculating the land use densities and open space requirements for the Project.

25
26 6.2.5 Water and Sewer Infrastructure. It is currently anticipated that the
27 Albuquerque Bernalillo County Water Utility Authority (“**Authority**”) will provide water and
28 sewer service for the Project. Owner has prepared a conceptual Water Master Plan and a
29 conceptual Wastewater Master Plan, which are described in the Master Plan; however, such
30 master plans are subject to adjustment through the more detailed analysis to be conducted in
31 connection with Level B Plans and Level C Plans. If the Authority provides water and sewer
32 service for the Project, the Owner will enter into a separate development agreement with the
33 Authority concerning the terms of providing such water and sewer service to the Project. All
34 matters associated with water and sewer infrastructure for the Project shall be resolved solely
35 between Owner and the Authority. The County will not promote, support or enact any
36 ordinance, legislation or policy that interferes with and/or restricts the Owner’s use of the
37 Authority’s water and sewer infrastructure and/or agreements between the Owner and Authority,
38 as long as that use does not diminish or otherwise negatively affect current County water or
39 sewer service.

40
41 6.3 Phasing of Project and Infrastructure. The Project shall be developed in
42 multiple phases at such times, location and size as determined by market demand or the Owner.
43 The Project Infrastructure improvements shall be installed in phases on an as needed basis and
44 sized to serve the phase of the Project then proposed for and/or being developed. The Owner’s
45 portion of all costs incurred for the construction of System Infrastructure that benefits the Project
46 shall be based on a fair-share, proportionate cost determination as described in **Section 6.4.**

1 **Notwithstanding, residential development shall occur in a sequential manner adjacent to**
2 **existing infrastructure and consistent with ABCWUA’s policies, consistent with the master**
3 **plan.**

Comment [MRE5]: Amended Condition #10

4
5 6.4 Proportionate Share Requirements. As set forth in **Section 6.1** above,
6 Owner shall be responsible for the costs of Project Infrastructure, and Owner shall only be
7 responsible for its proportionate share of the costs of System Infrastructure. Owner’s
8 proportionate share of the costs of System Infrastructure shall be based on a fair-share,
9 proportionate cost determination, considering total infrastructure capacity and the capacity
10 required to serve the Project. If Owner elects to construct and/or pay for more than its
11 proportionate share of any System Infrastructure, the County will allow the Owner to recover
12 through any legal means all of the costs incurred by Owner in connection with such System
13 Infrastructure that exceed Owner’s proportionate share.

14
15 6.5 Impact Fees. The County and Owner will comply with the New Mexico
16 Development Fees Act at 1978 NMSA, §§ 5-8-1, et seq. (the “**Act**”) and the Bernalillo County
17 Impact Fees Ordinance at Chapter 46-1, et seq. (the “**Ordinance**”) to the extent the Ordinance
18 and its implementation is not inconsistent with the Act, with the understanding that it is
19 anticipated the Project will be its own separate service area, except that Owner shall remain
20 obligated to comply with the terms and provisions of this **Section 6** pertaining to Infrastructure
21 Improvements.

22 6.6 Level of Service. The County will provide public services to the Project
23 consistent with the level of service provided to the remainder of the unincorporated areas of the
24 County. The design and construction requirements for all infrastructure improvements within the
25 Project will comply with the Master Plan and the applicable level(s)-of-service in the remainder
26 of the unincorporated areas of the County and pursuant to County policies applied in a non-
27 discriminatory manner.

28
29 6.7 Conveyance of Infrastructure Improvements. Upon completion of any
30 public roadway infrastructure, drainage facilities, parks, open space and trails, or any other
31 County infrastructure improvement, wherever located, constructed for the benefit of the general
32 public, which also benefits the Project, the County will accept the conveyance of any such
33 improvements and shall thereafter own, operate and maintain such improvements at its sole cost
34 and expense unless otherwise agreed upon at the time of such conveyance. The County reserves
35 the right to not accept infrastructure that is not designed and built to the County’s standards.

36
37 6.8 County Capital Improvement Plan. The County may incorporate into its
38 Capital Improvement Plan System Infrastructure identified in future Level B Plans and Level C
39 Plans approved by the County.

40
41 6.9 General Cooperation. The County will cooperate with Owner in
42 connection with the funding, design and construction of all infrastructure improvements.

43 6.10 Existing Special Use Permits / Certain Interim Uses. All sites within the
44 Santolina Level A boundary area governed by a Special Use Permit or any site expected to be
45 developed with local, state and/or federal support shall be governed by Section 18, Special Use

1 Permits and Section 24, Administration of the Zoning Code until a Level B Plan, affecting such
2 site, has been adopted by Bernalillo County. No special use permit shall be issued without a
3 demonstration of available necessary infrastructure and utilities, including water, electricity and
4 sewer, to be installed before, or concurrently with, development of the site.

5 6.11 Pre-Level C Platting. No building permits for vertical construction may
6 be granted on sites, other than those provided for in Section 6.10, until a Level C subdivision or
7 site development plan affecting the subject property has been approved. However, Owner may
8 complete plats that do not authorize-vertical construction in order to define boundaries of parcels
9 within the Master Plan area. Prior to or concurrent with the first Level B Plan approval, the
10 subject Level A master planned property shall be legally platted (“Boundary Plat”). A summary
11 platting procedure, such as that allowed for ‘a minor subdivision’ under County ordinances, shall
12 be permitted for the Boundary Plat, and for any subsequent platting actions, but not for major
13 subdivisions, prior to a Level C plan or a Level C subdivision plat approval. The Boundary Plat
14 and any subsequent plats, submitted in advance of a Level C plan or a Level C subdivision plat
15 approval shall provide legal access (easements) to all existing and proposed tracts within the
16 platted area, but infrastructure installation or guarantee shall not be required prior to Level C
17 plan or Level C subdivision plat approval; because, before building permits can be granted or
18 development can proceed, additional land use approvals and infrastructure installation and/or
19 guarantees are required at the Level C Plan approval stage and/or at the Level C subdivision plat
20 approval stage. Further, because there are existing parcels, which are grandfathered lots within
21 the Master Plan area, Owner may also employ the County replat procedure, without
22 infrastructure requirements, to achieve reconfigured lots in advance of a Level C subdivision
23 submittal. Additionally, in order to standardize the pre-Level C subdivision submittal process,
24 the County agrees to **pursue explore** the adoption of a bulk land subdivision procedure, similar to
25 that available in the City of Albuquerque, for the creation of pre-Level C subdivision lots. **Any**
26 **subdivision will occur in compliance with the County’s Subdivision Ordinance.**

Comment [MRE6]: Ammended Condition #18

27
28 7. No Net Expense.

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30 7.1 The Test. The Comprehensive Plan provides that planned communities
31 shall not be a net expense to the County. The “no net expense” policy is a mutual commitment
32 to achieve the goal of a responsible balance of infrastructure costs, including construction,
33 operation and maintenance, shared between the public and private sectors. The “no net expense”
34 test is satisfied if the County’s on-site public expenditures and off-site public expenditures
35 reasonably allocated to the Project have been, or will be, off-set by revenues and/or economic
36 and fiscal benefits (direct, indirect and induced) from the Project.

37
38 7.2 Satisfaction of the Test at Master Plan and Village Plan Levels.

39 7.2.1 Level A. Owner engaged David Taussig & Associates to prepare
40 Fiscal and Economic Impact Studies for the Project both dated August 22, 2013 (collectively, the
41 “**Impact Study**”), which are on file with the County and incorporated herein by this reference.
42 The purpose of the Impact Study was to provide a detailed summary of the projected fiscal and
43 economic impacts and benefits to the County as a result of the development of the Project. The
44 Impact Study concludes that the County will receive significant positive fiscal and economic

1 impacts as a result of the development of the Project; therefore, the Santolina Project fully
2 satisfies the “no net expense” policy contained in the Comprehensive Plan.

3 7.2.2 Level B. The Level B analysis for subsequent development phases
4 of the Project must also satisfy the “no net expense” policy. If the development of a phase results
5 in a revenue shortfall, then such shortfall will be mitigated. If the development of a phase results
6 in excess revenue, then such excess revenue will be carried forward and used when applying the
7 no net expense test to future phases.

8 8. Parties’ Rights.

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10 8.1 Property Rights. Owner shall have the right to develop and complete the
11 Project as provided in this Agreement, the Master Plan, the Land Use Plan, and the adopted PC
12 Zoning.

13
14 8.2 Master Plan. Owner shall have the right to develop the Project and engage
15 in land uses in the manner and to the extent set forth in and pursuant to the applicable provisions
16 of this Agreement, the Master Plan, the Land Use Plan, and the PC Zoning.

17
18 8.3 Timing of Development. In recognition of the size of the Project, the
19 time required to complete development, the need for development to proceed in phases, and the
20 possible impact of economic conditions, cycles, varying market conditions and financing
21 availability during the course of development, Owner shall have the right to develop the Property
22 in such order and at such rate and time as the market dictates, subject to the conditions of this
23 Agreement and approved Level B Plans and Level C Plans. **Notwithstanding, residential
24 development shall occur in a sequential manner adjacent to existing infrastructure and
25 consistent with ABCWUA’s policies, consistent with the master plan.**

Comment [MRE7]: Amended Condition #10

26
27 8.4 Compliance with County Regulations; Conflicts. The establishment of the
28 rights under this Agreement shall not preclude the application of County ordinances, rules,
29 regulations and procedures of general applicability (“**County Regulations**”), except to the extent
30 that such County Regulations conflict with the provisions of this Agreement; **provided, that in
31 the event of a conflict between this section 8.4 and section 3.1, section 3.1 shall govern.** The
32 Owner does not waive its rights to oppose adoption of any such proposed ordinances or
33 regulations that are not already in existence.

34
35 8.5 Changes in Regulations. This Agreement shall not preclude the
36 application of changes in County Regulations, which may occur from time to time during the
37 term of this Agreement, if specifically mandated and required by changes in State or Federal
38 laws or regulations, to development of the Property. To the extent that such changes in County,
39 State or Federal laws prevent or preclude compliance with one or more provisions of this
40 Agreement, the County and Owner shall cooperate as may be required to amend this Agreement
41 to enable compliance to the extent reasonably possible.

42
43 9. Cooperation in the Event of Legal Challenge. In the event of any administrative,
44 legal or equitable action or other proceeding instituted by any person not a party to this

1 Agreement challenging the validity of any provision of any of the approvals including this
2 Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or
3 final judgment including all appeals. Each Party shall select its own legal counsel and retain
4 such counsel at its own expense.

5
6 10. Notices. Any notice or communication required hereunder between the County,
7 or Owner must be in writing, and may be given either personally or by registered or certified
8 mail, return receipt requested. If given by registered or certified mail, such notice or
9 communication shall be deemed to have been given and received on the first to occur of: (i)
10 actual receipt by any of the addressees designated below as the Party to whom notices are to be
11 sent, or (ii) fifteen (15) business days after a registered or certified letter containing such notice,
12 properly addressed, with postage prepaid, is deposited in the United States mail. If personally
13 delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is
14 addressed. Any Party may at any time, by giving thirty (30) days written notice to the other
15 Party, designate any other address in such notice or communication shall be given. Except in
16 case of notice of termination, in which event, Expanded Notice shall be given, such notices or
17 communications shall be given to the Parties at their addresses set forth below:

18
19 If to the County: Bernalillo County
20 Attn: Tom Zdunek, County Manager
21 One Civic Plaza – 10th Floor
22 Albuquerque, NM 87102
23 Telephone: (505) 468-7000
24 Fax: (505) 462-9813
25 E-Mail: tzdunek@bernco.gov

26
27 and

28
29 If to Owner: Western Albuquerque Land Holdings Inc.
30 c/o Garrett Development Corporation
31 Attn: Jeff Garrett
32 6991 East Camelback Road, Suite D212
33 Scottsdale, AZ 85251
34 Telephone: (480) 236-5059
35 Fax: (505) 897-8597
36 E-mail: jeff@gdc-az.com

37
38 and

39
40 Western Albuquerque Land Holdings LLC
41 c/o Jeffrey P. Hubbard, Esq.
42 Brier, Irish, Hubbard & Erhart, PLC
43 2400 East Arizona Biltmore Circle Drive, Suite 1300
44 Phoenix, AZ 85016
45 Telephone: 602-515-0160
46 Fax: 602-522-3945

1 E-Mail: jhubbard@bihlaw.com

2
3 and

4
5 Western Albuquerque Land Holdings LLC
6 c/o John P. Salazar, Esq.
7 Rodey Law Firm
8 201 Third Street NW, Suite 2200
9 Albuquerque, NM 87102
10 Telephone: (505) 768-7220
11 Fax: (505) 768-7395
12 E-mail: jsalazar@rodey.com

13
14 11. Miscellaneous General Provisions.

15
16 11.1 Enforced Delay. Whether stated or not, all periods of time in this
17 Agreement are subject to this Section. Neither Owner nor the County, as the case may be, shall
18 be considered to have caused a default in the event such Party's delay in the performance of a
19 non-monetary obligation under this Agreement is due to causes beyond its control and without its
20 fault, negligence or failure to comply with applicable laws including, but not restricted to, (i) acts
21 of God, acts of the Federal or state government, acts of a third party, litigation or other action
22 authorized by law concerning the validity and enforceability of this Agreement or relating to
23 transactions contemplated hereby, fires, floods, epidemics, quarantine, restrictions, strikes,
24 embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or
25 materialmen due to such causes, act of a public enemy, war, terrorism or act of terror, nuclear
26 radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor
27 strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of
28 eminent domain by any governmental body on behalf of any public, quasi-public, or private
29 entity, or declaration of moratorium or similar hiatus directly affecting the Property by any
30 governmental entity; (ii) the order, judgment, action, or determination of any court,
31 administrative agency, governmental authority or other governmental body (collectively, an
32 "Order") which delays the completion of the work or other non-monetary obligation of the Party
33 claiming the delay, unless it is shown that such Order is the result of the failure to comply with
34 Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good
35 faith of any such Order shall not constitute or be construed or deemed as a waiver by a Party of
36 Enforced Delay; and (iii) unreasonable delay in processing or unreasonable denial of any
37 application, permit, license, request for approval, plan, plat or other submittal made by Owner to
38 any governmental agency other than the County (an "Enforced Delay").
39

40 11.2 Limited Severability. In the event that any provision of this Agreement is
41 declared void or unenforceable (or is construed as requiring the County to do any act in violation
42 of any applicable law) such provision shall be deemed severed from this Agreement and this
43 Agreement shall otherwise remain in full force and effect; provided that this Agreement shall
44 retroactively be deemed reformed to the extent reasonably possible in such a manner so that the
45 reformed agreement (and any related agreements effective as of the same date) provide
46 essentially the same rights and benefits (economic and otherwise) to the Parties as if such

1 severance and reformation were not required. The Parties further shall perform all acts and
2 execute all amendments, instruments and consents necessary to accomplish and to give effect to
3 the intent and purposes of this Agreement as and if reformed in accordance with this Section.
4

5 11.3 Further Assurances. Each Party shall perform such other and further acts
6 and to execute and deliver such additional agreements, documents, affidavits, certifications,
7 acknowledgments and instruments as any other Party may reasonably request from time to time
8 to consummate, evidence, confirm or carry out the intent and purposes of this Agreement.
9

10 11.4 Construction. Each reference in this Agreement to any of the rights
11 approved hereunder shall be deemed to refer to the rights as they may be amended from time to
12 time pursuant to the provisions of this Agreement, whether or not the particular reference refers
13 to such possible amendment. This Agreement has been reviewed and revised by legal counsel for
14 the County and Owner, and no presumption or rule that ambiguities shall be construed against
15 the drafting party shall apply to the interpretation or enforcement of this Agreement.
16

17 11.5 Successors and Assigns. The provisions of this Agreement are binding
18 upon and shall inure to the benefit of the Parties, and all of their successors in interest and
19 assigns; provided; however, that Owner's rights and obligations hereunder may be assigned, in
20 whole or in part, only to a person or entity that has acquired title to the Property or a portion
21 thereof or an interest therein. In the event of a complete assignment, Owner shall be released
22 from all of its obligations under this Agreement, provided that: (i) Owner agrees in writing to
23 assign all of its obligations under this Agreement to such assignee, (ii) the assignee agrees in
24 writing to assume all of such obligations, and (iii) such assignment and agreement is recorded in
25 the office of the Bernalillo County Clerk. In the event of a partial assignment, Owner shall be
26 released from the obligations assigned to and assumed by Owner's assignee, provided that: (i)
27 Owner agrees in writing to assign certain of its obligations under this Agreement to such
28 assignee, (ii) the assignee agrees in writing to assume the obligations assigned to such assignee,
29 and (iii) such assignment and agreement is recorded in the office of the Bernalillo County Clerk
30 and provides for the allocation of obligations being retained by the Owner and the obligations
31 being assigned to and assumed by the assignee. This Agreement shall not impose any obligations
32 upon and shall automatically terminate without the execution or recordation of any further
33 document or instrument as to any residential or commercial lot which has been finally
34 subdivided and sold with a completed structure thereon for which a certificate of occupancy or
35 equivalent has been issued. Thereafter, such lot shall be released from and no longer be subject
36 to or burdened by the provisions of this Agreement. A default by a subsequent owner of a portion
37 of the Property shall not be deemed a default by Owner or any other subsequent owner of a
38 different portion of the Property, and the County may not withhold or condition its performance
39 under this Agreement, or exercise any remedy, as to Owner or any subsequent owner of a portion
40 of the Property who is not in default of this Agreement. With the exception of Owner and the
41 County, no subsequent owner of a portion of the Property may enforce this Agreement as against
42 any other owner of a portion of the Property.
43

44 11.6 Secured Lender's Rights, Including Right to Cure. A secured lender or
45 mortgagee is any lender whose loan is secured by property within the Project boundaries. Any
46 mortgagee that wishes to receive notices of default from the County pursuant to this Agreement

1 may provide written notice to the County requesting such notice. The County shall notify any
2 such mortgagee requesting notice of default under this Agreement, and provide to any such
3 mortgagee the same opportunity to cure as is provided to Owner herein. Such action shall not
4 give rise to any liability on the part of the mortgagee, and this Agreement shall not be terminated
5 by the County as to any mortgagee: (a) who has requested notice but the mortgagee is not given
6 notice by the County or (b) if either of the following is true:

7
8 (a) The mortgagee cures any default involving the payment of money
9 by Owner within sixty (60) days after notice of default;

10
11 (b) As to defaults requiring title or possession of all or any portion of
12 the Property to effectuate a cure: (i) the mortgagee agrees in writing, within ninety (90) days
13 after the written notice of default, to perform the proportionate share of Owner's obligations
14 under this Agreement allocable to that part of the Property in which the mortgagee has an interest
15 conditioned upon the mortgagee's acquisition of that part by foreclosure (including a trustee
16 sale) or by a deed in lieu of foreclosure; (ii) the mortgagee commences foreclosure proceedings
17 to reacquire title to all or the applicable portion of the Property within the ninety (90) days and
18 thereafter diligently pursues the foreclosure to completion; and (iii) the mortgagee (or any
19 purchaser of Owner's interest at foreclosure, or trust, or sale, or by deed in lieu of foreclosure)
20 promptly and diligently cures the default after obtaining title or possession. Subject to the
21 foregoing, in the event any mortgagee records a notice of default as to its mortgage or deed of
22 trust, Owner's rights and obligations under this Agreement may be transferred to the mortgagee
23 or to any purchaser of Owner's interest at a foreclosure or trustee sale and until such transfer the
24 Owner shall remain liable for all such obligations unless released by the County.

25
26 The County recognizes that the provisions of this Agreement may be a matter of concern
27 to any mortgagee intending to make a loan secured by a mortgage or deed of trust encumbering
28 the Property or a portion thereof. If such mortgagee should require, as a condition to such
29 financing, any modification of this Agreement to protect its security interest in the Property or
30 portion thereof, the County shall execute the appropriate amendments; provided, however, that
31 the County shall not be required (but is permitted) to make any modification that would (i)
32 materially and adversely affect the County's rights hereunder, or (ii) increase the County's
33 obligations hereunder.

34
35 This Agreement may be amended without the approval or execution of any such
36 amendment by any mortgagee. However, if the County receives notice from a mortgagee
37 requesting a notice of proposed amendment, the County shall provide a copy of any proposed
38 amendment to such mortgagee.

39
40 11.7 Covenant of Good Faith and Fair Dealing. Each Party shall use its best
41 efforts and take and employ all necessary actions to ensure that the rights secured by the other
42 Parties through this Agreement can be enjoyed and no Party shall take any action that will
43 deprive the other Parties of the enjoyment of the rights secured through this Agreement.

44
45 11.8 Term of Agreement. The term of this Agreement shall commence upon
46 the execution date of this Agreement and shall extend until completion of the Project.

1
2 11.9 No Waiver of Rights. Neither the County nor Owner shall be under any
3 obligation to exercise at any time any right granted to a Party. Failure by a Party to insist upon
4 the strict performance of any of the provisions of this Agreement by the other Party, or the
5 failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a
6 waiver of such Party's right to insist and demand strict compliance by the other Party with the
7 terms of this Agreement thereafter. No waiver shall be effective unless it is in writing and is
8 signed by the Party asserted to have granted such waiver.
9

10 11.10 Governing Law, Interpretation and Conflict Resolution. This Agreement
11 and any dispute arising hereunder shall be governed and interpreted in accordance with the laws
12 of the State of New Mexico. This Agreement shall be construed as a whole according to its fair
13 language and common meaning to achieve the objectives and purposes of the Parties, and the
14 rule of construction to the effect that ambiguities are to be resolved against the drafting Party
15 shall not be employed in interpreting this Agreement, all Parties having been represented by the
16 counsel in the negotiation and preparation of this Agreement. If there is a conflict between the
17 body of this Agreement and one or more of the Exhibits to this Agreement, including the Master
18 Plan or any document or submittal associated with or pertaining to the Master Plan, the body of
19 this Agreement shall control.
20

21 11.11 Exhibits and Recitals. Any exhibit attached hereto shall be deemed to
22 have been incorporated into this Agreement by this reference with the same force and effect as if
23 fully set forth in the body of this Agreement. The recitals set forth at the beginning of this
24 Agreement and the introductory paragraph preceding the recitals are incorporated into this
25 Agreement, and the Parties hereby confirm the accuracy of the recitals.
26

27 11.12 Day. Day shall mean a calendar day. However, if the last day of any time
28 period stated in this Agreement or the date on which any obligation to be performed under this
29 Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time
30 period or the date of performance, as applicable, shall be extended so that it shall end on the next
31 succeeding day which is not a Saturday, Sunday or legal holiday.
32

33 11.13 Time of Essence. Time is of the essence in implementing the terms of this
34 Agreement.
35

36 11.14 Entire Agreement. This Agreement constitutes the entire agreement
37 between the Parties pertaining to its subject matter. All prior and contemporaneous agreements,
38 representations and understandings of the Parties, oral or written (including any term sheets,
39 discussion outlines or similar documents), are hereby superseded and merged into this
40 Agreement.
41

42 11.15 Amendment. The Agreement may be amended or modified from time to
43 time by mutual consent of the parties following the same legal formalities followed in the
44 approval of this Agreement and approval of an adopting resolution in the same manner as the
45 original Agreement is approved. Amendment or modification of the Master Plan by the Owner
46 shall comply with the procedural and substantive provisions of state statutes, and County plans

1 and ordinances in effect on the date of application for such amendment or modification. If the
2 County enters into a development agreement in the future for a project containing at least 500
3 acres with another landowner outside of Santolina that provides terms or conditions which, when
4 taken as a whole, are more favorable to that landowner than provided in this Agreement, then the
5 County and the Owner may amend this Agreement to include the more favorable terms or
6 conditions so that this Agreement, on a go forward basis is, at least, as favorable to Owner as the
7 terms and conditions contained in the development agreement entered into with the other
8 landowner.

9
10 11.16 Counterparts. This Agreement may be executed in two (2) or more
11 counterparts, including facsimile and/or electronic counterparts, each of which shall be deemed
12 an original, but all of which together constitute one (1) and the same instrument. The signature
13 pages from one (1) or more counterparts may be removed from such counterparts and such
14 signature pages all attached to a single instrument so that the signatures of all Parties may be
15 physically attached to a single document.

16
17 11.17 Findings and Conditions. If and to the extent any findings and conditions
18 adopted in conjunction with the master plan approval are specifically addressed in the
19 Development Agreement, the language of the Development Agreement shall control if it is more
20 specific.

21
22
23 [Balance of Page Intentionally Left Blank; Signature Page Follows]
24
25
26

1 Executed as of the day and year first set out above.

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COUNTY:

BERNALILLO COUNTY, a political subdivision of the State of New Mexico

By: _____
Its: County Manager

BOARD OF COUNTY COMMISSIONERS

Maggie Hart Stebbins, Chair

Art De La Cruz, Vice Chair

Debbie O'Malley, Member

Lonnie C. Talbert, Member

Wayne A. Johnson, Member

ATTEST:

Maggie Toulouse Oliver, County Clerk

APPROVED AS TO FORM:

County Legal

1 **Owner:**
2
3 WESTERN ALBUQUERQUE LAND HOLDINGS LLC, a Delaware limited liability company

4
5 By: _____

6
7
8 By: _____

9 Name: _____

10 Title: _____

11
12 STATE OF NEW MEXICO)

13) ss.

14 COUNTY OF BERNALILLO)

15
16 This instrument was acknowledged before me on the ___ day of _____, 2015, by
17 _____, the _____
18 _____ for Western Albuquerque Land Holdings, LLC, a Delaware
19 limited liability company, for and on behalf thereof.

20
21 _____
22 Notary Public

23
24
25 My Commission Expires: _____

26

EXHIBIT A
Legal Description of Property

EXHIBIT B

Master Plan

The Level A Master Plan for Santolina prepared for Western Albuquerque Land Holdings, LLC by Garrett Development Corporation, Consensus Planning, Bohannon Huston, Inc. and SEC Planning, LLC dated **June 16, 2015**. A copy of the Master Plan may be obtained from the County or Owner at the addresses set forth in the PCC Level A Development Agreement.

