

SANTOLINA DEVELOPMENT AGREEMENT

12:00 pm DRAFT June 1, 2015

Line numbers added to document for easier reference

Language Correction: Section 4.4

Table Correction:

1. Added word “per” to third to last row for consistency.
2. Added term “per dwelling unit” to last row for consistency.

| <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 |

Last Sentence in Section 4.4

Original Language:

Nevertheless, as stated in the Santolina Level A Master Plan and evidenced by the land use category area percentages, the ultimate goal remains an approximate jobs to housing ratio of 2:0 or 75,000 jobs at full buildout

Corrected Language:

Nevertheless, as stated in the Santolina Level A Master Plan and evidenced by the land use category area percentages, the ultimate goal remains an approximate jobs to housing ratio of 2:1 or 75,000 jobs at full buildout

This corrected sentence is interpreted as, “Two(2) jobs to One(1) dwelling unit.”

**Santolina Level A
Development Agreement**

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:

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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**”).

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

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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.

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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.

1
2 3.2 Agreement Intents and Purposes. The Parties shall perform all further acts
3 and execute all amendments, instruments and consents necessary to accomplish and to give
4 effect to the intent and purposes of this Agreement.

5
6 3.3 Related Approvals. This Agreement is contingent upon action by the
7 Governing Body approving the Master Plan, the Land Use Plan, the PC Zoning, and this
8 Agreement.

9
10 3.4 Recordable Instrument. This Agreement is in recordable form and will be
11 recorded with the Bernalillo County Clerk and simultaneously submitted to the Director of
12 Planning and Development for Bernalillo County.

13
14 4. Allowances.

15
16 4.1 Master Plan. Owner has submitted to the County for approval the Master
17 Plan which includes the Land Use Plan. The Master Plan (a) complies with the submittal
18 requirements of the Planned Communities Criteria, (b) furthers the intent, policies and goals of
19 the Comprehensive Plan and the Planned Communities Criteria, and (c) establishes the scope of
20 the permitted development for the Property.

21
22 4.2 Land Uses. The Master Plan and the Land Use Plan establish: (a) a series
23 of land use districts acknowledged by the PC Zoning for the Property, pursuant to the Land Use
24 Plan, (b) permissible uses allowed within each land use district, (c) the allowable densities for
25 each land use district, (d) certain site characteristics for each land use district, and (e) procedures
26 for implementing the foregoing, including without limitation, procedures to amend the Master
27 Plan. The Master Plan, the Land Use Plan, and the PC Zoning are consistent with and serve to
28 implement the Comprehensive Plan and the Planned Communities Criteria.

29
30 4.3 Land Use Projections. The Level A Land Use Plan currently provides for
31 the following gross percentages of land use types:

32

| <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% |

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44 4.4 Housing/Employment. The Level A Plan has been approved based upon
45 the Property having a reasonable balance between residential and employment land uses such
46 that the Project maintains the characteristics of a self-sustaining community throughout the

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.
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| <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 5. Planned Communities Criteria Requirements.
23

24 5.1 Codification of the Master Plan and Land Use Plan. The adoption of the
25 Master Plan, the Land Use Plan, the PC Zoning, and approval of this Agreement and the
26 recording of this Agreement shall satisfy the Master Plan codification requirement of the Planned
27 Communities Criteria.
28

29 5.2 Preliminary Infrastructure/Service Agreement. This Agreement, including
30 Section 6 below, satisfies the Preliminary Infrastructure/Service Agreement requirement of the
31 Planned Communities Criteria.
32

33 5.3 Commitment to Mitigation of Negative Impacts. Owner agrees to mitigate
34 the negative impacts resulting from development of the Property, as such negative impacts may
35 be identified in the Level B and Level C review process.

1 5.4 Assignable Agreement. As set forth in **Section 11.6** below, this
2 Agreement is assignable and expresses the terms and conditions mutually agreed to by the
3 Parties. The terms and conditions are permanent unless the Parties re-negotiate and agree to
4 amend this Agreement.

5
6 5.5 County Incentives. Except as otherwise expressly provided herein, the
7 Parties have not yet considered specific incentives to be provided by the County to Owner. The
8 Parties acknowledge that the County’s current economic development policies, incentives and
9 programs are more particularly described under Bernalillo County Economic Development
10 Financing Policy & Procedures.

11
12 6. Infrastructure Improvements.

13
14 6.1 Categorizing Infrastructure. The Level B and/or Level C development
15 agreements will categorize infrastructure improvements, using industry practices and standards
16 customarily acceptable to and uniformly applied by Bernalillo County, as: (i) infrastructure that
17 solely benefits the Project (the “**Project Infrastructure**”), and/or (ii) infrastructure that benefits
18 the Project as well as other real property (the “**System Infrastructure**”). The determination of
19 whether infrastructure is Project Infrastructure or System Infrastructure shall be determined
20 using industry practices and standards customarily acceptable to and uniformly applied by
21 Bernalillo County. The owner of the Project Infrastructure or System Infrastructure shall be
22 responsible for the operation and maintenance of the infrastructure that it owns.

23
24 6.1.1 Project Infrastructure. Owner shall be responsible for all the costs
25 and expenses associated with all Project Infrastructure, which is that infrastructure that solely
26 benefits the Project. Project Infrastructure may be funded by Owner directly or from any and all
27 available financing mechanisms.

28
29 6.1.2 System Infrastructure. Owner will be responsible for its
30 proportionate share, as determined using industry practices and standards customarily acceptable
31 to and uniformly applied by Bernalillo County of the cost and expense associated with System
32 Infrastructure. The County will reasonably cooperate and participate with Owner and other
33 governmental and quasi-governmental entities and utility service providers with respect to any
34 System Infrastructure. System Infrastructure may be funded from any and all available financing
35 mechanisms.

36
37 6.2 Issues Concerning Particular Infrastructure.

38
39 6.2.1 Roadway Infrastructure. Owner shall be responsible for the
40 design, construction and dedication of all transportation improvements that are reasonably
41 necessary to service the Project and that are designated as Project Infrastructure. Any property
42 that is not within the boundaries of the Level A Plan, such as the Metropolitan Detention Center,
43 Sandia Motor Sports and Cerro Colorado landfill (“**Existing Uses**”) is not a part of the Project.
44 Owner shall not be responsible for any infrastructure associated with the Existing Uses, unless
45 determined to be System Infrastructure. Owner shall be responsible for its proportionate share of
46 the design, construction and dedication of all transportation improvements designated as System

1 Infrastructure. Owner has prepared a Transportation Master Plan which is described in the
2 Master Plan; however, such Master Plan is subject to adjustment through the more detailed
3 analysis to be conducted in connection with Level B Plans and Level C Plans. Owner shall not
4 be required to correct existing roadway deficiencies; however, the County may require Owner to
5 mitigate additional negative impacts resulting from the development of the Project which are
6 identified through the Level “B” and Level “C” review process.
7

8 6.2.2 Industrial Development Impacts. Any development that provides
9 for industrial uses that actually generate truck traffic carrying heavy loads (“HVT”) and such
10 HVT negatively impact existing roadway infrastructure that is otherwise in serviceable
11 condition, then the developer of the Level C Plan may be required to address and mitigate, using
12 industry practices and standards customarily acceptable to and uniformly applied by Bernalillo
13 County, such negative impacts caused by such HVT.

14 6.2.3 Storm Water Drainage Infrastructure. Owner shall be responsible
15 for the design and construction of all storm water drainage infrastructure that is reasonably
16 necessary to service the Project and designated as Project Infrastructure. Owner shall be
17 responsible for its proportionate share of the design, construction and dedication of all storm
18 water drainage improvements that are designated as System Infrastructure. The preliminary
19 storm water management plan is described in the Master Plan, but is subject to adjustment
20 through the more detailed analysis to be conducted in connection with Level B Plans and Level
21 C Plans. If the Albuquerque Metropolitan Arroyo Flood Control Authority (“AMAFCA”) provides
22 storm water drainage infrastructure for the Project, the Owner may enter into separate
23 agreements with AMAFCA concerning the terms of providing such storm water infrastructure to
24 the Project. All matters associated with existing and/or future AMAFCA storm water drainage
25 infrastructure for the Project shall be resolved solely between Owner and AMAFCA. The
26 County will not promote, support or enact any ordinance, legislation or policy that interferes with
27 and/or restricts the Owner’s use of AMAFCA existing and/or future infrastructure and/or
28 agreements between the Owner and AMAFCA, as long as that use does not diminish or
29 otherwise negatively affect current County flood or drainage infrastructure.
30

31 6.2.4 Open Space, Parks, Recreation and Trail Facilities. Development
32 of open space, park, recreation and trail facilities shall comply with the Level A Plan. The Level
33 A Plan must be amended, if a Level B Plan or Level C Plan provide for changes to the types and
34 general locations of open space, park, recreation and/or trail facilities that significantly deviate
35 from the intent and framework established by the Level A Plan. Owner shall dedicate to the
36 County: (a) all open space, park, recreation and/or trail facilities that are designated Project
37 Infrastructure; and (b) the Owner’s proportionate share of System Infrastructure. All dedications
38 shall be subject to the reservation of reasonable rights necessary for the development of the
39 Project, including but not limited to roadway, utility and drainage easements. All lands and
40 facilities dedicated and/or constructed by Owner must meet the industry practices and standards
41 customarily acceptable to and uniformly applied by Bernalillo County. The owner of the open
42 space, park, recreation or trail facilities shall be responsible for operating and management of
43 those facilities. The land area of any open space, park, recreation and/or trail facilities will be
44 considered in calculating the land use densities and open space requirements for the Project.
45

1 6.2.5 Water and Sewer Infrastructure. It is currently anticipated that the
2 Albuquerque Bernalillo County Water Utility Authority (“**Authority**”) will provide water and
3 sewer service for the Project. Owner has prepared a conceptual Water Master Plan and a
4 conceptual Wastewater Master Plan, which are described in the Master Plan; however, such
5 master plans are subject to adjustment through the more detailed analysis to be conducted in
6 connection with Level B Plans and Level C Plans. If the Authority provides water and sewer
7 service for the Project, the Owner will enter into a separate development agreement with the
8 Authority concerning the terms of providing such water and sewer service to the Project. All
9 matters associated with water and sewer infrastructure for the Project shall be resolved solely
10 between Owner and the Authority. The County will not promote, support or enact any
11 ordinance, legislation or policy that interferes with and/or restricts the Owner’s use of the
12 Authority’s water and sewer infrastructure and/or agreements between the Owner and Authority,
13 as long as that use does not diminish or otherwise negatively affect current County water or
14 sewer service.
15

16 6.3 Phasing of Project and Infrastructure. The Project shall be developed in
17 multiple phases at such times, location and size as determined by market demand or the Owner.
18 The Project Infrastructure improvements shall be installed in phases on an as needed basis and
19 sized to serve the phase of the Project then proposed for and/or being developed. The Owner’s
20 portion of all costs incurred for the construction of System Infrastructure that benefits the Project
21 shall be based on a fair-share, proportionate cost determination as described in **Section 6.4**.
22

23 6.4 Proportionate Share Requirements. As set forth in **Section 6.1** above,
24 Owner shall be responsible for the costs of Project Infrastructure, and Owner shall only be
25 responsible for its proportionate share of the costs of System Infrastructure. Owner’s
26 proportionate share of the costs of System Infrastructure shall be based on a fair-share,
27 proportionate cost determination, considering total infrastructure capacity and the capacity
28 required to serve the Project. If Owner elects to construct and/or pay for more than its
29 proportionate share of any System Infrastructure, the County will allow the Owner to recover
30 through any legal means all of the costs incurred by Owner in connection with such System
31 Infrastructure that exceed Owner’s proportionate share.
32

33 6.5 Impact Fees. The County and Owner will comply with the New Mexico
34 Development Fees Act at 1978 NMSA, §§ 5-8-1, et seq. (the “**Act**”) and the Bernalillo County
35 Impact Fees Ordinance at Chapter 46-1, et seq. (the “**Ordinance**”) to the extent the Ordinance
36 and its implementation is not inconsistent with the Act, with the understanding that it is
37 anticipated the Project will be its own separate service area, except that Owner shall remain
38 obligated to comply with the terms and provisions of this **Section 6** pertaining to Infrastructure
39 Improvements.
40

41 6.6 Level of Service. The County will provide public services to the Project
42 consistent with the level of service provided to the remainder of the unincorporated areas of the
43 County. The design and construction requirements for all infrastructure improvements within the
44 Project will comply with the Master Plan and the applicable level(s)-of-service in the remainder
45 of the unincorporated areas of the County and pursuant to County policies applied in a non-
46 discriminatory manner.

1 6.7 Conveyance of Infrastructure Improvements. Upon completion of any
2 public roadway infrastructure, drainage facilities, parks, open space and trails, or any other
3 County infrastructure improvement, wherever located, constructed for the benefit of the general
4 public, which also benefits the Project, the County will accept the conveyance of any such
5 improvements and shall thereafter own, operate and maintain such improvements at its sole cost
6 and expense unless otherwise agreed upon at the time of such conveyance. The County reserves
7 the right to not accept infrastructure that is not designed and built to the County’s standards.
8

9 6.8 County Capital Improvement Plan. The County may incorporate into its
10 Capital Improvement Plan System Infrastructure identified in future Level B Plans and Level C
11 Plans approved by the County.
12

13 6.9 General Cooperation. The County will cooperate with Owner in
14 connection with the funding, design and construction of all infrastructure improvements.

15 6.10 Existing Special Use Permits / Certain Interim Uses. All sites within the
16 Santolina Level A boundary area governed by a Special Use Permit or any site expected to be
17 developed with local, state and/or federal support shall be governed by Section 18, Special Use
18 Permits and Section 24, Administration of the Zoning Code until a Level B Plan, affecting such
19 site, has been adopted by Bernalillo County. No special use permit shall be issued without a
20 demonstration of available necessary infrastructure and utilities, including water, electricity and
21 sewer, to be installed before, or concurrently with, development of the site.

22 6.11 Pre-Level C Platting. No building permits for vertical construction may
23 be granted on sites, other than those provided for in Section 6.10, until a Level C subdivision or
24 site development plan affecting the subject property has been approved. However, Owner may
25 complete plats that do not authorize vertical construction in order to define boundaries of parcels
26 within the Master Plan area. Prior to or concurrent with the first Level B Plan approval, the
27 subject Level A master planned property shall be legally platted (“Boundary Plat”). A summary
28 platting procedure, such as that allowed for ‘a minor subdivision’ under County ordinances, shall
29 be permitted for the Boundary Plat, and for any subsequent platting actions, but not for major
30 subdivisions, prior to a Level C plan or a Level C subdivision plat approval. The Boundary Plat
31 and any subsequent plats, submitted in advance of a Level C plan or a Level C subdivision plat
32 approval shall provide legal access (easements) to all existing and proposed tracts within the
33 platted area, but infrastructure installation or guarantee shall not be required prior to Level C
34 plan or Level C subdivision plat approval; because, before building permits can be granted or
35 development can proceed, additional land use approvals and infrastructure installation and/or
36 guarantees are required at the Level C Plan approval stage and/or at the Level C subdivision plat
37 approval stage. Further, because there are existing parcels, which are grandfathered lots within
38 the Master Plan area, Owner may also employ the County replat procedure, without
39 infrastructure requirements, to achieve reconfigured lots in advance of a Level C subdivision
40 submittal. Additionally, in order to standardize the pre-Level C subdivision submittal process,
41 the County agrees to pursue the adoption of a bulk land subdivision procedure, similar to that
42 available in the City of Albuquerque, for the creation of pre-Level C subdivision lots.
43

44 7. No Net Expense.
45

1 7.1 The Test. The Comprehensive Plan provides that planned communities
2 shall not be a net expense to the County. The “no net expense” policy is a mutual commitment
3 to achieve the goal of a responsible balance of infrastructure costs, including construction,
4 operation and maintenance, shared between the public and private sectors. The “no net expense”
5 test is satisfied if the County’s on-site public expenditures and off-site public expenditures
6 reasonably allocated to the Project have been, or will be, off-set by revenues and/or economic
7 and fiscal benefits (direct, indirect and induced) from the Project.
8

9 7.2 Satisfaction of the Test at Master Plan and Village Plan Levels.

10 7.2.1 Level A. Owner engaged David Taussig & Associates to prepare
11 Fiscal and Economic Impact Studies for the Project both dated August 22, 2013 (collectively, the
12 “**Impact Study**”), which are on file with the County and incorporated herein by this reference.
13 The purpose of the Impact Study was to provide a detailed summary of the projected fiscal and
14 economic impacts and benefits to the County as a result of the development of the Project. The
15 Impact Study concludes that the County will receive significant positive fiscal and economic
16 impacts as a result of the development of the Project; therefore, the Santolina Project fully
17 satisfies the “no net expense” policy contained in the Comprehensive Plan.

18 7.2.2 Level B. The Level B analysis for subsequent development phases
19 of the Project must also satisfy the “no net expense” policy. If the development of a phase results
20 in a revenue shortfall, then such shortfall will be mitigated. If the development of a phase results
21 in excess revenue, then such excess revenue will be carried forward and used when applying the
22 no net expense test to future phases.

23 8. Parties’ Rights.
24

25 8.1 Property Rights. Owner shall have the right to develop and complete the
26 Project as provided in this Agreement, the Master Plan, the Land Use Plan, and the adopted PC
27 Zoning.
28

29 8.2 Master Plan. Owner shall have the right to develop the Project and engage
30 in land uses in the manner and to the extent set forth in and pursuant to the applicable provisions
31 of this Agreement, the Master Plan, the Land Use Plan, and the PC Zoning.
32

33 8.3 Timing of Development. In recognition of the size of the Project, the
34 time required to complete development, the need for development to proceed in phases, and the
35 possible impact of economic conditions, cycles, varying market conditions and financing
36 availability during the course of development, Owner shall have the right to develop the Property
37 in such order and at such rate and time as the market dictates, subject to the conditions of this
38 Agreement and approved Level B Plans and Level C Plans.
39

40 8.4 Compliance with County Regulations; Conflicts. The establishment of the
41 rights under this Agreement shall not preclude the application of County ordinances, rules,
42 regulations and procedures of general applicability (“**County Regulations**”), except to the extent
43 that such County Regulations conflict with the provisions of this Agreement. The Owner does

1 not waive its rights to oppose adoption of any such proposed ordinances or regulations that are
2 not already in existence.

3
4 8.5 Changes in Regulations. This Agreement shall not preclude the
5 application of changes in County Regulations, which may occur from time to time during the
6 term of this Agreement, if specifically mandated and required by changes in State or Federal
7 laws or regulations, to development of the Property. To the extent that such changes in County,
8 State or Federal laws prevent or preclude compliance with one or more provisions of this
9 Agreement, the County and Owner shall cooperate as may be required to amend this Agreement
10 to enable compliance to the extent reasonably possible.

11
12 9. Cooperation in the Event of Legal Challenge. In the event of any administrative,
13 legal or equitable action or other proceeding instituted by any person not a party to this
14 Agreement challenging the validity of any provision of any of the approvals including this
15 Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or
16 final judgment including all appeals. Each Party shall select its own legal counsel and retain
17 such counsel at its own expense.

18
19 10. Notices. Any notice or communication required hereunder between the County,
20 or Owner must be in writing, and may be given either personally or by registered or certified
21 mail, return receipt requested. If given by registered or certified mail, such notice or
22 communication shall be deemed to have been given and received on the first to occur of: (i)
23 actual receipt by any of the addressees designated below as the Party to whom notices are to be
24 sent, or (ii) fifteen (15) business days after a registered or certified letter containing such notice,
25 properly addressed, with postage prepaid, is deposited in the United States mail. If personally
26 delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is
27 addressed. Any Party may at any time, by giving thirty (30) days written notice to the other
28 Party, designate any other address in such notice or communication shall be given. Except in
29 case of notice of termination, in which event, Expanded Notice shall be given, such notices or
30 communications shall be given to the Parties at their addresses set forth below:

31
32 If to the County: Bernalillo County
33 Attn: Tom Zdunek, County Manager
34 One Civic Plaza – 10th Floor
35 Albuquerque, NM 87102
36 Telephone: (505) 468-7000
37 Fax: (505) 462-9813
38 E-Mail: tzdunek@bernco.gov

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40 and
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1 If to Owner: Western Albuquerque Land Holdings Inc.
2 c/o Garrett Development Corporation
3 Attn: Jeff Garrett
4 6991 East Camelback Road, Suite D212
5 Scottsdale, AZ 85251
6 Telephone: (480) 236-5059
7 Fax: (505) 897-8597
8 E-mail: jeff@gdc-az.com
9

10 and

11
12 Western Albuquerque Land Holdings LLC
13 c/o Jeffrey P. Hubbard, Esq.
14 Brier, Irish, Hubbard & Erhart, PLC
15 2400 East Arizona Biltmore Circle Drive, Suite 1300
16 Phoenix, AZ 85016
17 Telephone: 602-515-0160
18 Fax: 602-522-3945
19 E-Mail: jhubbard@bihlaw.com
20

21 and

22
23 Western Albuquerque Land Holdings LLC
24 c/o John P. Salazar, Esq.
25 Rodey Law Firm
26 201 Third Street NW, Suite 2200
27 Albuquerque, NM 87102
28 Telephone: (505) 768-7220
29 Fax: (505) 768-7395
30 E-mail: jsalazar@rodey.com
31

32 11. Miscellaneous General Provisions.
33

34 11.1 Enforced Delay. Whether stated or not, all periods of time in this
35 Agreement are subject to this Section. Neither Owner nor the County, as the case may be, shall
36 be considered to have caused a default in the event such Party's delay in the performance of a
37 non-monetary obligation under this Agreement is due to causes beyond its control and without its
38 fault, negligence or failure to comply with applicable laws including, but not restricted to, (i) acts
39 of God, acts of the Federal or state government, acts of a third party, litigation or other action
40 authorized by law concerning the validity and enforceability of this Agreement or relating to
41 transactions contemplated hereby, fires, floods, epidemics, quarantine, restrictions, strikes,
42 embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or
43 materialmen due to such causes, act of a public enemy, war, terrorism or act of terror, nuclear
44 radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor
45 strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of
46 eminent domain by any governmental body on behalf of any public, quasi-public, or private

1 entity, or declaration of moratorium or similar hiatus directly affecting the Property by any
2 governmental entity; (ii) the order, judgment, action, or determination of any court,
3 administrative agency, governmental authority or other governmental body (collectively, an
4 “**Order**”) which delays the completion of the work or other non-monetary obligation of the Party
5 claiming the delay, unless it is shown that such Order is the result of the failure to comply with
6 Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good
7 faith of any such Order shall not constitute or be construed or deemed as a waiver by a Party of
8 Enforced Delay; and (iii) unreasonable delay in processing or unreasonable denial of any
9 application, permit, license, request for approval, plan, plat or other submittal made by Owner to
10 any governmental agency other than the County (an “**Enforced Delay**”).
11

12 11.2 Limited Severability. In the event that any provision of this Agreement is
13 declared void or unenforceable (or is construed as requiring the County to do any act in violation
14 of any applicable law) such provision shall be deemed severed from this Agreement and this
15 Agreement shall otherwise remain in full force and effect; provided that this Agreement shall
16 retroactively be deemed reformed to the extent reasonably possible in such a manner so that the
17 reformed agreement (and any related agreements effective as of the same date) provide
18 essentially the same rights and benefits (economic and otherwise) to the Parties as if such
19 severance and reformation were not required. The Parties further shall perform all acts and
20 execute all amendments, instruments and consents necessary to accomplish and to give effect to
21 the intent and purposes of this Agreement as and if reformed in accordance with this Section.
22

23 11.3 Further Assurances. Each Party shall perform such other and further acts
24 and to execute and deliver such additional agreements, documents, affidavits, certifications,
25 acknowledgments and instruments as any other Party may reasonably request from time to time
26 to consummate, evidence, confirm or carry out the intent and purposes of this Agreement.
27

28 11.4 Construction. Each reference in this Agreement to any of the rights
29 approved hereunder shall be deemed to refer to the rights as they may be amended from time to
30 time pursuant to the provisions of this Agreement, whether or not the particular reference refers
31 to such possible amendment. This Agreement has been reviewed and revised by legal counsel for
32 the County and Owner, and no presumption or rule that ambiguities shall be construed against
33 the drafting party shall apply to the interpretation or enforcement of this Agreement.
34

35 11.5 Successors and Assigns. The provisions of this Agreement are binding
36 upon and shall inure to the benefit of the Parties, and all of their successors in interest and
37 assigns; provided; however, that Owner’s rights and obligations hereunder may be assigned, in
38 whole or in part, only to a person or entity that has acquired title to the Property or a portion
39 thereof or an interest therein. In the event of a complete assignment, Owner shall be released
40 from all of its obligations under this Agreement, provided that: (i) Owner agrees in writing to
41 assign all of its obligations under this Agreement to such assignee, (ii) the assignee agrees in
42 writing to assume all of such obligations, and (iii) such assignment and agreement is recorded in
43 the office of the Bernalillo County Clerk. In the event of a partial assignment, Owner shall be
44 released from the obligations assigned to and assumed by Owner’s assignee, provided that: (i)
45 Owner agrees in writing to assign certain of its obligations under this Agreement to such
46 assignee, (ii) the assignee agrees in writing to assume the obligations assigned to such assignee,

1 and (iii) such assignment and agreement is recorded in the office of the Bernalillo County Clerk
2 and provides for the allocation of obligations being retained by the Owner and the obligations
3 being assigned to and assumed by the assignee. This Agreement shall not impose any obligations
4 upon and shall automatically terminate without the execution or recordation of any further
5 document or instrument as to any residential or commercial lot which has been finally
6 subdivided and sold with a completed structure thereon for which a certificate of occupancy or
7 equivalent has been issued. Thereafter, such lot shall be released from and no longer be subject
8 to or burdened by the provisions of this Agreement. A default by a subsequent owner of a portion
9 of the Property shall not be deemed a default by Owner or any other subsequent owner of a
10 different portion of the Property, and the County may not withhold or condition its performance
11 under this Agreement, or exercise any remedy, as to Owner or any subsequent owner of a portion
12 of the Property who is not in default of this Agreement. With the exception of Owner and the
13 County, no subsequent owner of a portion of the Property may enforce this Agreement as against
14 any other owner of a portion of the Property.
15

16 11.6 Secured Lender's Rights, Including Right to Cure. A secured lender or
17 mortgagee is any lender whose loan is secured by property within the Project boundaries. Any
18 mortgagee that wishes to receive notices of default from the County pursuant to this Agreement
19 may provide written notice to the County requesting such notice. The County shall notify any
20 such mortgagee requesting notice of default under this Agreement, and provide to any such
21 mortgagee the same opportunity to cure as is provided to Owner herein. Such action shall not
22 give rise to any liability on the part of the mortgagee, and this Agreement shall not be terminated
23 by the County as to any mortgagee: (a) who has requested notice but the mortgagee is not given
24 notice by the County or (b) if either of the following is true:
25

26 (a) The mortgagee cures any default involving the payment of money
27 by Owner within sixty (60) days after notice of default;
28

29 (b) As to defaults requiring title or possession of all or any portion of
30 the Property to effectuate a cure: (i) the mortgagee agrees in writing, within ninety (90) days
31 after the written notice of default, to perform the proportionate share of Owner's obligations
32 under this Agreement allocable to that part of the Property in which the mortgagee has an interest
33 conditioned upon the mortgagee's acquisition of that part by foreclosure (including a trustee
34 sale) or by a deed in lieu of foreclosure; (ii) the mortgagee commences foreclosure proceedings
35 to reacquire title to all or the applicable portion of the Property within the ninety (90) days and
36 thereafter diligently pursues the foreclosure to completion; and (iii) the mortgagee (or any
37 purchaser of Owner's interest at foreclosure, or trust, or sale, or by deed in lieu of foreclosure)
38 promptly and diligently cures the default after obtaining title or possession. Subject to the
39 foregoing, in the event any mortgagee records a notice of default as to its mortgage or deed of
40 trust, Owner's rights and obligations under this Agreement may be transferred to the mortgagee
41 or to any purchaser of Owner's interest at a foreclosure or trustee sale and until such transfer the
42 Owner shall remain liable for all such obligations unless released by the County.
43

44 The County recognizes that the provisions of this Agreement may be a matter of concern
45 to any mortgagee intending to make a loan secured by a mortgage or deed of trust encumbering
46 the Property or a portion thereof. If such mortgagee should require, as a condition to such

1 financing, any modification of this Agreement to protect its security interest in the Property or
2 portion thereof, the County shall execute the appropriate amendments; provided, however, that
3 the County shall not be required (but is permitted) to make any modification that would (i)
4 materially and adversely affect the County's rights hereunder, or (ii) increase the County's
5 obligations hereunder.
6

7 This Agreement may be amended without the approval or execution of any such
8 amendment by any mortgagee. However, if the County receives notice from a mortgagee
9 requesting a notice of proposed amendment, the County shall provide a copy of any proposed
10 amendment to such mortgagee.
11

12 11.7 Covenant of Good Faith and Fair Dealing. Each Party shall use its best
13 efforts and take and employ all necessary actions to ensure that the rights secured by the other
14 Parties through this Agreement can be enjoyed and no Party shall take any action that will
15 deprive the other Parties of the enjoyment of the rights secured through this Agreement.
16

17 11.8 Term of Agreement. The term of this Agreement shall commence upon
18 the execution date of this Agreement and shall extend until completion of the Project.
19

20 11.9 No Waiver of Rights. Neither the County nor Owner shall be under any
21 obligation to exercise at any time any right granted to a Party. Failure by a Party to insist upon
22 the strict performance of any of the provisions of this Agreement by the other Party, or the
23 failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a
24 waiver of such Party's right to insist and demand strict compliance by the other Party with the
25 terms of this Agreement thereafter. No waiver shall be effective unless it is in writing and is
26 signed by the Party asserted to have granted such waiver.
27

28 11.10 Governing Law, Interpretation and Conflict Resolution. This Agreement
29 and any dispute arising hereunder shall be governed and interpreted in accordance with the laws
30 of the State of New Mexico. This Agreement shall be construed as a whole according to its fair
31 language and common meaning to achieve the objectives and purposes of the Parties, and the
32 rule of construction to the effect that ambiguities are to be resolved against the drafting Party
33 shall not be employed in interpreting this Agreement, all Parties having been represented by the
34 counsel in the negotiation and preparation of this Agreement. If there is a conflict between the
35 body of this Agreement and one or more of the Exhibits to this Agreement, including the Master
36 Plan or any document or submittal associated with or pertaining to the Master Plan, the body of
37 this Agreement shall control.
38

39 11.11 Exhibits and Recitals. Any exhibit attached hereto shall be deemed to
40 have been incorporated into this Agreement by this reference with the same force and effect as if
41 fully set forth in the body of this Agreement. The recitals set forth at the beginning of this
42 Agreement and the introductory paragraph preceding the recitals are incorporated into this
43 Agreement, and the Parties hereby confirm the accuracy of the recitals.
44

45 11.12 Day. Day shall mean a calendar day. However, if the last day of any time
46 period stated in this Agreement or the date on which any obligation to be performed under this

1 Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time
2 period or the date of performance, as applicable, shall be extended so that it shall end on the next
3 succeeding day which is not a Saturday, Sunday or legal holiday.
4

5 11.13 Time of Essence. Time is of the essence in implementing the terms of this
6 Agreement.
7

8 11.14 Entire Agreement. This Agreement constitutes the entire agreement
9 between the Parties pertaining to its subject matter. All prior and contemporaneous agreements,
10 representations and understandings of the Parties, oral or written (including any term sheets,
11 discussion outlines or similar documents), are hereby superseded and merged into this
12 Agreement.
13

14 11.15 Amendment. The Agreement may be amended or modified from time to
15 time by mutual consent of the parties following the same legal formalities followed in the
16 approval of this Agreement and approval of an adopting resolution in the same manner as the
17 original Agreement is approved. Amendment or modification of the Master Plan by the Owner
18 shall comply with the procedural and substantive provisions of state statutes, and County plans
19 and ordinances in effect on the date of application for such amendment or modification. If the
20 County enters into a development agreement in the future for a project containing at least 500
21 acres with another landowner outside of Santolina that provides terms or conditions which, when
22 taken as a whole, are more favorable to that landowner than provided in this Agreement, then the
23 County and the Owner may amend this Agreement to include the more favorable terms or
24 conditions so that this Agreement, on a go forward basis is, at least, as favorable to Owner as the
25 terms and conditions contained in the development agreement entered into with the other
26 landowner.
27

28 11.16 Counterparts. This Agreement may be executed in two (2) or more
29 counterparts, including facsimile and/or electronic counterparts, each of which shall be deemed
30 an original, but all of which together constitute one (1) and the same instrument. The signature
31 pages from one (1) or more counterparts may be removed from such counterparts and such
32 signature pages all attached to a single instrument so that the signatures of all Parties may be
33 physically attached to a single document.
34

35 11.17 Findings and Conditions. If and to the extent any findings and conditions
36 adopted in conjunction with the master plan approval are specifically addressed in the
37 Development Agreement, the language of the Development Agreement shall control if it is more
38 specific.
39
40
41

42 [Balance of Page Intentionally Left Blank; Signature Page Follows]
43
44

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

2
3 **COUNTY:**

4
5 BERNALILLO COUNTY, a political subdivision of the State of New Mexico

6
7
8 By: _____
9 Its: County Manager

10
11
12 **BOARD OF COUNTY COMMISSIONERS**

13
14
15 _____
16 Maggie Hart Stebbins, Chair

17
18 _____
19 Art De La Cruz, Vice Chair

20
21 _____
22 Debbie O'Malley, Member

23
24 _____
25 Lonnie C. Talbert, Member

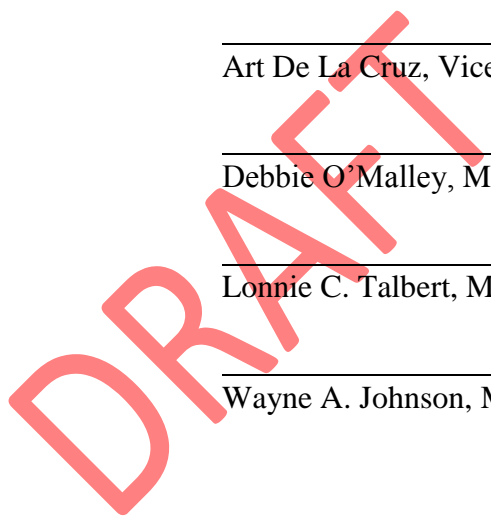
26
27 _____
28 Wayne A. Johnson, Member

29 **ATTEST:**

30
31 _____
32 Maggie Toulouse Oliver, County Clerk

33
34
35
36 **APPROVED AS TO FORM:**

37
38 _____
39 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 _____
23 Notary Public

24
25 My Commission Expires: _____

26

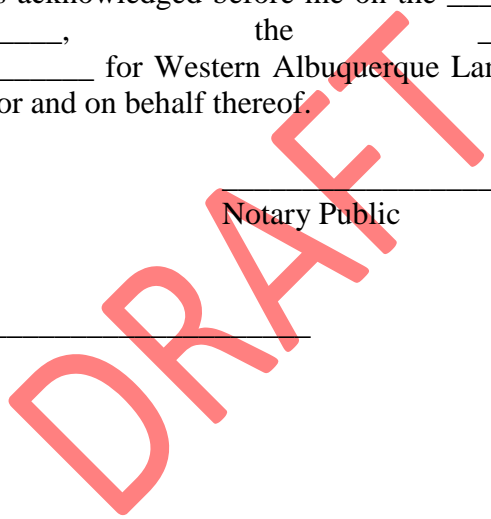


EXHIBIT A

Legal Description of Property

DRAFT

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 _____. 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.

DRAFT

DRAFT