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.”

Santolina Level A
Development Agreement
SANTOLINA LEVEL A
DEVELOPMENT AGREEMENT

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”.

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

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

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

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

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

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

AGREEMENT

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

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

3. Administration.

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

<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Gross % of Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village</td>
<td>48%</td>
</tr>
<tr>
<td>Industrial &amp; business park</td>
<td>15%</td>
</tr>
<tr>
<td>Major Public Open Space</td>
<td>7%</td>
</tr>
<tr>
<td>Regional Parks</td>
<td>3%</td>
</tr>
<tr>
<td>Open space</td>
<td>13%</td>
</tr>
<tr>
<td>Urban center</td>
<td>5%</td>
</tr>
<tr>
<td>Business park</td>
<td>5%</td>
</tr>
<tr>
<td>Town center</td>
<td>4%</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Dwelling Units Thresholds</th>
<th>Jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,000</td>
<td>300</td>
</tr>
<tr>
<td>2,500</td>
<td>700</td>
</tr>
<tr>
<td>3,000</td>
<td>2,000</td>
</tr>
<tr>
<td>3,500</td>
<td>3,500</td>
</tr>
<tr>
<td>4,000</td>
<td>4,500</td>
</tr>
<tr>
<td>4,001 to 12,540</td>
<td>1.25 Jobs per Dwelling Unit¹</td>
</tr>
<tr>
<td>12,541 to 25,080</td>
<td>1.39 Jobs per Dwelling Unit</td>
</tr>
<tr>
<td>25,081 to 34,000</td>
<td>1.59 Jobs per Dwelling Unit</td>
</tr>
<tr>
<td>34,001 to Full Buildout</td>
<td>2.0 Jobs per Dwelling Unit at Full Buildout</td>
</tr>
</tbody>
</table>

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 house) per the MRCOG 2040 MTP.

The Santolina jobs to housing ratio anticipates substantially more jobs per dwelling unit than currently exists on the west side (.56) during the first third of the development phases, and the same number of jobs per dwelling unit as currently exists on the east side (1.39 or 2½ times the number of jobs per dwelling unit on the west side) during the second third of the development phases and a jobs to housing ratio surpassing the current jobs to housing ratio on the east side during the last third of the development phase. 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.

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

Employment Categories as Defined by MRCOG:

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

Retail Employment: The sum of employment in the North America Industrial Classification System (NAICS) categories of retail trade and eating and drinking establishments.
Service Employment: The sum of employment in the North America Industrial Classification System (NAICS) categories of finance and insurance, real estate, rental and leasing, professional, scientific, and technical services, management of companies, administrative and support and waste management and remediation services, educational services, healthcare and social assistance, arts, entertainment, and recreation, accommodation, other services, and public administration including government employment.

5. Planned Communities Criteria Requirements.

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

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

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

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

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

6. Infrastructure Improvements.

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

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

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

6.2 **Issues Concerning Particular Infrastructure.**

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

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

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

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

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

6.3 Phasing of Project and Infrastructure. The Project shall be developed in multiple phases at such times, location and size as determined by market demand or the Owner. The Project Infrastructure improvements shall be installed in phases on an as needed basis and sized to serve the phase of the Project then proposed for and/or being developed. The Owner’s portion of all costs incurred for the construction of System Infrastructure that benefits the Project shall be based on a fair-share, proportionate cost determination as described in Section 6.4.
Notwithstanding, residential development shall occur in a sequential manner adjacent to existing infrastructure and consistent with ABCWUA’s policies, consistent with the master plan.

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

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

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

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

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

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

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

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

7. No Net Expense.

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

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

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

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


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

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

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

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

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

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

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

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

and

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

and

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

and

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


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

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

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

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

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

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

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

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

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

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

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

11.8 Term of Agreement. The term of this Agreement shall commence upon
the execution date of this Agreement and shall extend until completion of the Project.
11.9 **No Waiver of Rights.** Neither the County nor Owner shall be under any obligation to exercise at any time any right granted to a Party. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party’s right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

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

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

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

11.13 **Time of Essence.** Time is of the essence in implementing the terms of this Agreement.

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

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

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

11.17 Findings and Conditions. If and to the extent any findings and conditions adopted in conjunction with the master plan approval are specifically addressed in the Development Agreement, the language of the Development Agreement shall control if it is more specific.
Executed as of the day and year first set out above.

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
Owner:

WESTERN ALBUQUERQUE LAND HOLDINGS LLC, a Delaware limited liability company

By: ____________________________________________

By: ____________________________________________

Name: ______________________________
Title: ______________________________

STATE OF NEW MEXICO )
COUNTY OF BERNALILLO ) ss.

This instrument was acknowledged before me on the ___ day of __________, 2015, by
__________________________, the
__________________________ for Western Albuquerque Land Holdings, LLC, a Delaware
limited liability company, for and on behalf thereof.

__________________________
Notary Public

My Commission Expires: __________________________
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, Bohannan 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.