

**Santolina Level A
Development Agreement**

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AGRE R:\$25.00 M. Toulouse Oliver, Bernalillo County



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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 10th day of August, 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**”).

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

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

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

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

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

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

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

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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

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

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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).

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42 3. Administration.

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

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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.
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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:
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<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.
 6
 7

<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. Qualifying jobs must
 21 be located within the boundaries of the Santolina master plan area.
 22

23 Definition of Job - A job is a position held by a full-time employee for at least 35 hours per
 24 week, or a full-time equivalent employee, in any industry. A full-time equivalent employee
 25 (FTE) is the aggregate number of hours per month of service of employees, who are less than
 26 full-time, divided by 140.
 27

28 Employment Categories as Defined by MRCOG:

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 30 Basic Employment: The sum of employment in the North America Industrial Classification
 31 System (NAICS) categories of agriculture, forestry, fishing and hunting, mining, utilities,
 32 information, construction, manufacturing, transportation and warehousing, and wholesale trade.
 33 Basic also includes military employment.
 34

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

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

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11 5.1 Codification of the Master Plan and Land Use Plan. The adoption of the
12 Master Plan, the Land Use Plan, the PC Zoning, and approval of this Agreement and the
13 recording of this Agreement shall satisfy the Master Plan codification requirement of the Planned
14 Communities Criteria.
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16 5.2 Preliminary Infrastructure/Service Agreement. This Agreement, including
17 Section 6 below, satisfies the Preliminary Infrastructure/Service Agreement requirement of the
18 Planned Communities Criteria.
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20 5.3 Commitment to Mitigation of Negative Impacts. Owner agrees to mitigate
21 the negative impacts resulting from development of the Property; as such negative impacts may
22 be identified in the Level B and Level C review process.
23

24 5.4 Assignable Agreement. As set forth in Section 11.6 below, this
25 Agreement is assignable and expresses the terms and conditions mutually agreed to by the
26 Parties. The terms and conditions are permanent unless the Parties re-negotiate and agree to
27 amend this Agreement.
28

29 5.5 County Incentives. The Parties acknowledge that the County's current
30 economic development policies, incentives and programs are more particularly described under
31 Bernalillo County Economic Development Financing Policy & Procedures. Nothing in this
32 development agreement shall commit this current Commission and future Commissions to public
33 funding or financing mechanisms.
34

35 6. Infrastructure Improvements.

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37 6.1 Categorizing Infrastructure. The Level B and/or Level C development
38 agreements will categorize infrastructure improvements, using industry practices and standards
39 customarily acceptable to and uniformly applied by Bernalillo County, as: (i) infrastructure that
40 solely benefits the Project (the "**Project Infrastructure**"), and/or (ii) infrastructure that benefits
41 the Project as well as other real property (the "**System Infrastructure**"). The determination of
42 whether infrastructure is Project Infrastructure or System Infrastructure shall be determined
43 using industry practices and standards customarily acceptable to and uniformly applied by
44 Bernalillo County. The owner of the Project Infrastructure or System Infrastructure shall be
45 responsible for the operation and maintenance of the infrastructure that it owns.
46

1 6.1.1 Project Infrastructure. Owner shall be responsible for all the costs
2 and expenses associated with all Project Infrastructure, which is that infrastructure that solely
3 benefits the Project. Project Infrastructure may be funded by Owner directly or from any and all
4 available financing mechanisms.

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6 6.1.2 System Infrastructure. Owner will be responsible for its
7 proportionate share, as determined using industry practices and standards customarily acceptable
8 to and uniformly applied by Bernalillo County of the cost and expense associated with System
9 Infrastructure. The County will reasonably cooperate and participate with Owner and other
10 governmental and quasi-governmental entities and utility service providers with respect to any
11 System Infrastructure. System Infrastructure may be funded from any and all available financing
12 mechanisms.

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14 6.2 Issues Concerning Particular Infrastructure.

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16 6.2.1 Roadway Infrastructure. Owner shall be responsible for the
17 design, construction and dedication of all transportation improvements that are reasonably
18 necessary to service the Project and that are designated as Project Infrastructure. Any property
19 that is not within the boundaries of the Level A Plan, such as the Metropolitan Detention Center,
20 Sandia Motor Sports and Cerro Colorado landfill (“**Existing Uses**”) is not a part of the Project.
21 Owner shall not be responsible for any infrastructure associated with the Existing Uses, unless
22 determined to be System Infrastructure. Owner shall be responsible for its proportionate share of
23 the design, construction and dedication of all transportation improvements designated as System
24 Infrastructure. Owner has prepared a Transportation Master Plan which is described in the
25 Master Plan; however, such Master Plan is subject to adjustment through the more detailed
26 analysis to be conducted in connection with Level B Plans and Level C Plans. Owner shall not
27 be required to correct existing roadway deficiencies; however, the County may require Owner to
28 mitigate additional negative impacts resulting from the development of the Project which are
29 identified through the Level “B” and Level “C” review process.

30
31 6.2.2 Industrial Development Impacts. Any development that provides
32 for industrial uses that actually generate truck traffic carrying heavy loads (“HVT”) and such
33 HVT negatively impact existing roadway infrastructure that is otherwise in serviceable
34 condition, then the developer of the Level C Plan may be required to address and mitigate, using
35 industry practices and standards customarily acceptable to and uniformly applied by Bernalillo
36 County, such negative impacts caused by such HVT.

37 6.2.3 Storm Water Drainage Infrastructure. Owner shall be responsible
38 for the design and construction of all storm water drainage infrastructure that is reasonably
39 necessary to service the Project and designated as Project Infrastructure. Owner shall be
40 responsible for its proportionate share of the design, construction and dedication of all storm
41 water drainage improvements that are designated as System Infrastructure. The preliminary
42 storm water management plan is described in the Master Plan, but is subject to adjustment
43 through the more detailed analysis to be conducted in connection with Level B Plans and Level
44 C Plans. If the Albuquerque Metropolitan Arroyo Flood Control Authority (“AMAFCA”) provides
45 storm water drainage infrastructure for the Project, the Owner may enter into separate
46 agreements with AMAFCA concerning the terms of providing such storm water infrastructure to

1 the Project. All matters associated with existing and/or future AMAFCA storm water drainage
2 infrastructure for the Project shall be resolved solely between Owner and AMAFCA. The
3 County will not promote, support or enact any ordinance, legislation or policy that interferes with
4 and/or restricts the Owner's use of AMAFCA existing and/or future infrastructure and/or
5 agreements between the Owner and AMAFCA, as long as that use does not diminish or
6 otherwise negatively affect current County flood or drainage infrastructure.

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8 6.2.4 Open Space, Parks, Recreation and Trail Facilities. Development
9 of open space, park, recreation and trail facilities shall comply with the Level A Plan. The Level
10 A Plan must be amended, if a Level B Plan or Level C Plan provide for changes to the types and
11 general locations of open space, park, recreation and/or trail facilities that significantly deviate
12 from the intent and framework established by the Level A Plan. Owner shall dedicate to the
13 County: (a) all open space, park, recreation and/or trail facilities that are designated Project
14 Infrastructure; and (b) the Owner's proportionate share of System Infrastructure. All dedications
15 shall be subject to the reservation of reasonable rights necessary for the development of the
16 Project, including but not limited to roadway, utility and drainage easements. All lands and
17 facilities dedicated and/or constructed by Owner must meet the industry practices and standards
18 customarily acceptable to and uniformly applied by Bernalillo County. The owner of the open
19 space, park, recreation or trail facilities shall be responsible for operating and management of
20 those facilities. The land area of any open space, park, recreation and/or trail facilities will be
21 considered in calculating the land use densities and open space requirements for the Project.

22
23 6.2.5 Water and Sewer Infrastructure. Albuquerque Bernalillo County Water
24 Utility Authority (“**Authority**”) may provide water and sewer service for the Project. Owner has
25 prepared a conceptual Water Master Plan and a conceptual Wastewater Master Plan, which are
26 described in the Master Plan; however, such master plans are subject to adjustment through the
27 more detailed analysis to be conducted in connection with Level B Plans and Level C Plans. If
28 the Authority provides water and sewer service for the Project, the Owner will enter into a
29 separate development agreement with the Authority concerning the terms of providing such
30 water and sewer service to the Project. All matters associated with water and sewer infrastructure
31 for the Project shall be resolved solely between Owner and the Authority. The County will not
32 promote, support or enact any ordinance, legislation or policy that interferes with and/or restricts
33 the Owner's use of the Authority's water and sewer infrastructure and/or agreements between the
34 Owner and Authority, as long as that use does not diminish or otherwise negatively affect current
35 County water or sewer service.

36
37 6.3 Phasing of Project and Infrastructure. The Project shall be developed in
38 multiple phases at such times, location and size as determined by market demand or the Owner.
39 The Project Infrastructure improvements shall be installed in phases on an as needed basis and
40 sized to serve the phase of the Project then proposed for and/or being developed. The Owner's
41 portion of all costs incurred for the construction of System Infrastructure that benefits the Project
42 shall be based on a fair-share, proportionate cost determination as described in Section 6.4.
43 Notwithstanding, residential development shall occur in a sequential manner adjacent to existing
44 infrastructure and consistent with ABCWUA's policies, consistent with the master plan.