

ATTACHMENT 3



County of Bernalillo State of New Mexico

Planning and Development Services
111 Union Square SE, Suite 100
Albuquerque, New Mexico 87102
Office: (505) 314-0350
www.bernco.gov/zoning-building-and-planning/

NOTIFICATION OF DECISION BOARD OF COUNTY COMMISSIONERS

COMMISSIONERS

Maggie Hart Stebbins, Chair
District 3

Art De La Cruz, Vice Chair
District 2

Debbie O'Malley, Member
District 1

Lonnie C. Talbert, Member
District 4

Wayne A. Johnson, Member
District 5

COUNTY MANAGER

Tom Zdunck

ELECTED OFFICIALS

Tanya R. Giddings
Assessor

Maggie Toulouse Oliver
Clerk

Willow Misty Parks
Probate Judge

Manuel Gonzales III
Sheriff

Manny Ortiz
Treasurer

June 19, 2015

Western Albuquerque Land Holdings
P. O. Box 56790
Albuquerque, NM 87187

SUBJECT: FILE NO: SPR-20130004

LEGAL DESCRIPTION: Consensus Planning and John P. Salazar of the Rodey Law Firm, agents for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College and Martin Eckert, agent for Albuquerque Public Schools is proposing a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36 T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools)

ACTION: APPROVED A PLANNED COMMUNITIES LEVEL A MASTER PLAN CALLED THE SANTOLINA MASTER PLAN

To Whom It May Concern:

At the June 16, 2015 public hearing, the Board of County Commissioners approved the request for a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections

30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural. The decision was based on the following Findings and is subject to the following Conditions.

Findings:

1. This is a request for a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, RI E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,851 acres, generally zoned A-1 Rural Agricultural.
2. The request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone) (CZ-20130009).
3. The Santolina development will take place within the next 40-50 years in accordance with the Level A Santolina Master Plan and subsequent Level B and Level C Plans. The Plan is responsive to the population and economic growth that is anticipated to occur in the Albuquerque Metropolitan Area by the Mid-Region Council of Governments.
4. The plan includes goals of providing for mixed land uses, a broad range of housing, employment, educational, and recreational opportunities in distinct residential village centers, industrial/business parks, parks and Open space, an urban center, a business park, and a town center with an open space network that provides connections to all portions of the development. The plan area will have a total build-out of approximately 38,045, dwelling units with concentrations that eventually will be high enough to support transit and extensive open space, parks, and trail networks. The overall gross residential density of the Santolina Community is 2.7 dwelling units per acre, as specified in the Level A Plan.
5. The Santolina Level A Master Plan is consistent with the Albuquerque/Bernalillo County Comprehensive Plan policies for the Reserve Area that call for substantial self-sufficiency and environmental sensitivity and development that is at no net cost to Bernalillo County.
6. The Santolina Level A Master Plan complies with the criteria found in the Planned Communities Criteria for Level A Master Plans for land use, transportation, environment and open space, and government and public services, in a manner that can serve as the basis for a Development Agreement between the County of Bernalillo and the applicant and for subsequent Level B and Level C Plans required for the development of the Santolina Community.
7. The Level A Development Agreement is being prepared for execution by the Board of County Commissioners and the Developer at the time of approval of the Level A Santolina Master Plan and Planned Communities Zoning to ensure compliance with the Level A Planned Communities Criteria and that the development will be at no net cost to Bernalillo County. Development agreements with other local governments are not required at this stage.

8. Section 19.5.A.2 PC Planned Communities Zone of the Zoning Code requires the Level A Development Agreement to govern the interim permissive and conditional uses until a Level B plan has been adopted. The area proposed for the Level A Santolina Planned Community currently has existing sites that contain Special Use Permits as approved and regulated by Section 18, Special Use Permits of the Zoning Code and potential sites for local and state economic development projects. The remaining portions of the Santolina boundary area is undeveloped and are expected to remain undeveloped until a Level B and Level C plan is adopted.
 9. The proposed Santolina development is suited for approval as a planned community as a result of (1) a large contiguous tract of land primarily under a single ownership, (2) its location on the urban fringe with limited existing development or infrastructure and the potential to function as a self-sufficient community, (3) its proximity to existing suburban and urban areas, (4) its potential for a wide range of activities, land uses and housing types, (5) its opportunity for a network of community open space and recreation facilities, (6) its opportunity for an integrated multi-modal transportation network, and (7) its opportunity to provide a systematic and financially responsible provision of infrastructure and community facilities.
 10. The Santolina Level A Transportation Plan and Land Use Plans recognize the importance of maintaining a reasonable balance between residential uses and employment uses throughout the development of the property. The jobs/housing balance is a critical component of the sustainability of Santolina.
 11. The Santolina Level A Transportation Plan provides an acceptable transportation network that will adequately serve the proposed development, will connect to existing and proposed future roadways, and will be followed and further elaborated upon in subsequent Level B and Level C Planning.
 12. A Santolina Level A Fiscal Impact Analysis and an Economic Impact Analysis have been prepared in conformity with the Level A Planned Communities Criteria and demonstrates substantial benefits to Bernalillo County. However, there are no concrete assurances that market demand currently exists for the development.
 13. The Santolina Level A Master Plan provides for a permanent open space buffer and an internal open space network consistent with the Planned Communities Criteria and with the Albuquerque/ Bernalillo County Comprehensive Plan. Per the Planned Communities Criteria, Major Public Open Space (MPOS) has been distinguished from other 'Open Space.' The method of conveyance and proposed phasing of conveyance in MPOS will be identified in Level B plans.
 14. Created open space/parks will be developed to fit within the transportation grid system. The collectors and minor streets within the transportation grid system may be adjusted to accommodate protected cultural, archeological and/or geographical significant properties as described in the "environmental and open space" section of the PCC that do not fit within the grid system.
 15. The Santolina Level A Master Plan provides for a network of parks, recreation and open space facilities consistent with the currently adopted Bernalillo County Parks, Open Space and Trails Master Plan.
 16. A Level 1 Archeological study has been conducted as required for a Level A Planned Communities Master Plan. More detailed investigations are required by the Planned Community Criteria for Level B and Level C plans, as well as by the Bernalillo County Subdivision Ordinance.
-

17. In accordance with the purpose and intent of its Water Conservation Ordinance to reduce per capita water use, encourage responsible use of water, and require conservation measures for new development and preserve water supplies within Bernalillo County, and in accordance with Policy L of the ABCWUA's Water Resource Management Strategy, the County has taken water supply availability and cumulative impacts into account in making a land use development decision and in determining the legal and physical availability of water for the Santolina Master Plan.
18. Through a letter dated 29 July 2014, ABCWUA has represented that they are capable of serving the master planned community, contingent upon the developer's ability to comply with ABCWUA current guidelines, policies, and ordinances, as amended from time to time. Through provision of the referenced letter and the associated representation by the ABCWUA, the applicant has demonstrated the physical and legal availability of water and wastewater as required in the Level A Planned Communities Criteria.
19. As represented by the applicant in Table A of applicant's 23 May 2014 memorandum which is included by the applicant in the 4 November 2014 revision to the Water Master Plan (page 3), the estimated water use (or average day use), at ultimate buildout is estimated to be 14,380 ac-ft/yr and is to be provided by the ABCWUA under terms and conditions to be determined by the ABCWUA as part of its development agreement.
20. The Santolina Level A Master Plan includes an acceptable plan for drainage and stormwater management that is consistent with the natural environment and addresses the requirements of Bernalillo County, AMAFCA, and the ABCWUA.
21. Bernalillo County has approximately \$450 million dollars in unfunded capital infrastructure facility needs currently in its 2014-2020 Capital Improvement Plan and the financial impact of Santolina infrastructure development cannot add to this unfunded amount.
22. The proposed Santolina development is within the Albuquerque Public Schools (APS) district boundaries. The schools anticipated to be needed within the (over the next forty to fifty years) are not included in APS's current Facilities Master Plan, and APS has not approved any school sites or construction of any schools within the Santolina Plan Area.
23. The request for Level A Planned Community Zoning for Santolina is consistent with Resolution 116-86. It provides an overall development strategy and master plan for the approximately 13,851 acre site over the next 40 to 50 years that is intended to result in a cohesive, sustainable community with economic benefits to Bernalillo County.
24. The request is consistent with the health, safety, and general welfare of the residents of Bernalillo County.

Conditions:

Development Agreement/No Net Expense Agreement

1. A Level A Development Agreement shall be entered into between Bernalillo County and the applicant which reflect this approval and a) clearly identifies responsibilities for development of and infrastructure and other facilities in Santolina; b) requires a link between housing and employment development in Santolina; c) maintains an overall residential density that is consistent with the Albuquerque/Bernalillo County Comprehensive Plan density requirements and is included in the

Santolina Level A Plan; d) shall adhere to water use and conservation requirements of Bernalillo County and the Albuquerque/Bernalillo County Water Utility Authority.

2. Bernalillo County and the applicant agree on the "no net expense" clause of the Planned Community Criteria. Nothing in any development agreement shall commit this Commission and future Commissions to public funding or financing mechanisms.

Jobs-housing

3. The Santolina development shall achieve a reasonable balance between residential uses and employment uses such that it maintains the characteristics of a self-sustaining community. As stated in the Santolina Level A Master Plan, an approximate jobs to housing ratio of 2-1 shall be achieved with a goal of creating no less than 75,000 jobs as indicated in the Level A Santolina Plan at the time of full buildout of Santolina. A plan for attaining the ratio shall be provided in subsequent Level B Plans, such that the anticipated job development shall occur in relation to residential development.

Transportation

4. The applicant will submit a proposed Level B Transportation Plan consistent with the Level A Transportation Master Plan, as revised, of the Santolina Level A Master Plan, prior to a Level B approval or future development activities such as building permits, that generate 500 or more cumulative peak hour trips when upon coordination with the developer BCPWD deems it necessary.
 - a. The *Santolina Access Management Plan* (SAMP) with the Traversable Median column added to Access Spacing Standards Table on Page 3 is approved. The SAMP shall be added to the Santolina Level "A" Transportation Master Plan.
 - b. Revise the Level A Transportation Network model as required by BCPWD. Revisions/reanalysis shall include, but not be limited to, the 118th St./I-40 interchange, the new proposed arterial roadways, the new urban center layout, and any other changes to the Santolina roadway network. In accordance with PCC criteria, when substantial variations are identified to the Level A Master Plan, subsequent revision/reanalysis of the Level A Transportation Network model shall be required, when upon coordination with the developer, BCPWD deems it necessary.
 - c. All appropriate items in the Addendum to the Transportation Master Plan dated November 4, 2014 shall be placed in the appropriate Level A document.
5. Written approval from the proper state and/or federal authority will be obtained prior to the improvement or expansion of State roads identified in the Level A submittal. NMDOT and FHWA (Federal Highway Administration) review and approval will also be required for any required modifications and improvements to Interstate 40 as a result of the development of Santolina and its roadway network. Future coordination with NMDOT and FHWA will be done in subsequent procedures including the Metropolitan Transportation Plan, the Transportation Improvement Plan and the State-wide Transportation Improvement Plan. The coordination of timeframes for the offsite roadway improvements and the Plan phasing will also need to be identified.
6. Funding for arterial streets and linkages, which are needed for Santolina and not programmed in the Bernalillo County Capital Improvements Program (CIP) or the Metropolitan Transportation Plan (MTP), shall be identified and submitted to the County for recommendation for inclusion in the CIP or the MTP.

Utilities/Drainage/Stormwater/Wastewater Management

7. The submitted Drainage (Stormwater) Master Plan, dated December 1, 2014, contains an addendum which includes minor inconsistencies within the calculations to the revised Land Use Master Plan. However, these inconsistencies do not alter the concept of the overall Drainage Master Plan and

therefore are acceptable for this Level A Master Plan. The applicant must provide a Drainage (Stormwater) Master Plan consistent with the proposed Level A Master Plan with any Level B submittal.

8. Prior to approval of any Level B or Level C planning document, the applicant will provide a fully executed development agreement with the ABCWUA. The development agreement should be structured to ensure compliance with the ABCWUA's existing guidelines, policies, and ordinances and as may be amended from time to time. The development agreement should, at a minimum, address residential, industrial, institutional and commercial water conservation provisions, guidelines, and design standards. The development agreement should, at a minimum, address infrastructure improvements, direct and indirect potable reuse, and water supply charges, as well as provide; a Phasing Plan consistent with ABCWUA policies. This condition shall in no way constrain the ABCWUA from imposing such requirements as it may deem necessary.
9. Prior to approval of any Level B or Level C document, the applicant shall, based on the approved ABCWUA development agreement, provide to the County a written explanation of the projected Master Plan water use and phasing and the subsequent level plans within the context of the 2024 Water Conservation Plan Goal and Program Update (July 2013) or subsequent updates.
10. Prior to approval of any Level B or Level C planning document, the applicant shall provide to the County a water conservation plan that is compliant with Bernalillo County and ABCWUA's guidelines, standards and requirements and which achieves the conservation goals expressed in the Bernalillo County Ordinance and ABCWUA's 2024 Water Conservation Plan Goal and Program Update, July 2013 and which requires compliance with subsequent revisions of the such guidelines, standards, requirements, and plans. Residential development shall occur in a sequential manner adjacent to existing infrastructure and consistent with ABCWUA's policies.
11. Water and wastewater issues for the Santolina Master Planned Community shall be resolved between the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) and the applicant prior to any Level B approval. An agreement between the applicant and ABCWUA and regarding timing, responsibilities, and maintenance of water and sewer facilities required to service Santolina will be developed and agreed upon prior to any Level B approval.
12. A drainage plan and stormwater management plan shall be submitted at the time of any Level B submittal with provisions for revision as needed to ensure consistency with any EPA-issued municipal separate stormwater system permit provisions or requirements as issued for the Urbanized Area of Bernalillo County.

Air Quality

13. Prior to any Level B Plan approval, the developer shall provide documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards and will demonstrate the intent to comply with air quality standards established by the Environmental Protection Agency (EPA).
- #### **Parks, Open Space and Trails, Archaeological Resources**
14. Development of Parks, Trails, and Open Space shall comply with the Level A Master Plan. The location of open space corridors shall be developed in accordance with the requirements of the Planned Community zone with regard to the transportation grid. If the more detailed plan deviates significantly from the intent and framework established in the higher level plan, especially in terms of fiscal impacts, then the higher level plan would need to be amended.

15. The Planned Communities Criteria requirements regarding the study and mitigation of archaeological and geotechnical resources shall be followed in Level B and Level C Santolina Plans. Prior to any Level B approval, documentation regarding the completed study and mitigation measures within the Level B plan area shall be provided.

APS

16. The developer will work cooperatively with APS to locate school sites within Santolina, which will be made available to APS on mutually agreeable terms and conditions.
17. Level B and C Plans shall be required prior to development of the Santolina Level A Master Plan Community. Level B and C development agreements, as prescribed in the Planned Communities Criteria, shall be provided. Consistency between Level A, Level B, and Level C plans shall be required throughout the development of Santolina. If the more detailed plan deviates significantly from the intent and framework established in the higher level plan, especially in terms of fiscal impacts, then the higher level plan would need to be amended.

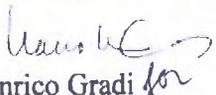
Development of Santolina and Plan Amendments

18. The Santolina Development Agreement shall include a section that pertains to Interim Uses. This section shall indicate that 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 Sections 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. No building permits shall be granted on all remaining sites until Level C plan affecting the subject property have been approved. Any subdivision will occur in compliance with the County's Subdivision Ordinance.
19. Prior to or concurrent with the first Level B Plan approval, the subject Level A master planned property shall be legally platted (the "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 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.
20. Minor corrections to the plan, such as typographical and grammatical corrections, editorial changes agreed to by County staff, or small changes to acreage related to surveying may be incorporated in the final, adopted version of the plan.
21. The request shall comply with all applicable Bernalillo County ordinances and standards.
22. The applicant shall make the following modifications to the Level A Plan (dated 12/1/14) as required by staff and agencies:

- a) Chapter 4. Zoning, p. 47. Add the following sentence under Level A Governance and Interim Uses (after ..Bernalillo County..) "No building permits shall be granted on all remaining sites until a Level C plan affecting the subject has been adopted."
- b) Change the language "publicly funded" on page 92 to "proposed for public funding."
- c) Chapter 6, Transportation, Level A Master Plan on page 95: remove the sentence "The policy supersedes other policies that may be in place for roadways within Santolina" regarding the SAMP, and remove "(by others)" regarding the extension of Gibson Boulevard.
- d) Exhibit 1 must be corrected to indicate that the Westland Master Plan was approved by both Bernalillo County and the City of Albuquerque. The Board of County Commissioners approved the Master Plan as a Rank III Plan in accordance with the Comprehensive Plan. The City of Albuquerque also approved a separate Sector Development Plan for the portion of the Master Plan that has been annexed.

If you have any questions, please feel free to contact me at 314-0385 or Catherine VerEecke at 314-0387.

Sincerely,


Enrico Gradi
Community Development Manager

EG/fs

cc: File

Please see CZ-20130009 Notice of Decision (June 18, 2015) for full list of distribution names.

**Santolina Level A
Development Agreement**

Doc# 2015073125

08/21/2015 02:24 PM Page: 1 of 67
AGRE R:\$25.00 M. Toulouse Oliver, Bernalillo County



1
2
3
4
5
6
7
8
9
10
11
12

**SANTOLINA LEVEL A
DEVELOPMENT AGREEMENT**

13
14
15
16
17
18
19

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".

20
21
22

BACKGROUND INFORMATION:

23
24
25
26
27

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").

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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

43
44
45

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

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

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

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

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

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

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

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

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

29
30 AGREEMENT

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

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

41
42 3. Administration.

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

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%

33
34
35
36
37
38
39
40
41
42
43
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

Dwelling Units Thresholds	Jobs
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

8
 9
 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:

29
 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.

1
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.

8
9 5. Planned Communities Criteria Requirements.

10 5.1 Codification of the Master Plan and Land Use Plan. The adoption of the
11 Master Plan, the Land Use Plan, the PC Zoning, and approval of this Agreement and the
12 recording of this Agreement shall satisfy the Master Plan codification requirement of the Planned
13 Communities Criteria.
14

15 5.2 Preliminary Infrastructure/Service Agreement. This Agreement, including
16 Section 6 below, satisfies the Preliminary Infrastructure/Service Agreement requirement of the
17 Planned Communities Criteria.
18

19 5.3 Commitment to Mitigation of Negative Impacts. Owner agrees to mitigate
20 the negative impacts resulting from development of the Property; as such negative impacts may
21 be identified in the Level B and Level C review process.
22

23 5.4 Assignable Agreement. As set forth in Section 11.6 below, this
24 Agreement is assignable and expresses the terms and conditions mutually agreed to by the
25 Parties. The terms and conditions are permanent unless the Parties re-negotiate and agree to
26 amend this Agreement.
27

28 5.5 County Incentives. The Parties acknowledge that the County's current
29 economic development policies, incentives and programs are more particularly described under
30 Bernalillo County Economic Development Financing Policy & Procedures. Nothing in this
31 development agreement shall commit this current Commission and future Commissions to public
32 funding or financing mechanisms.
33

34 6. Infrastructure Improvements.

35 6.1 Categorizing Infrastructure. The Level B and/or Level C development
36 agreements will categorize infrastructure improvements, using industry practices and standards
37 customarily acceptable to and uniformly applied by Bernalillo County, as: (i) infrastructure that
38 solely benefits the Project (the "**Project Infrastructure**"), and/or (ii) infrastructure that benefits
39 the Project as well as other real property (the "**System Infrastructure**"). The determination of
40 whether infrastructure is Project Infrastructure or System Infrastructure shall be determined
41 using industry practices and standards customarily acceptable to and uniformly applied by
42 Bernalillo County. The owner of the Project Infrastructure or System Infrastructure shall be
43 responsible for the operation and maintenance of the infrastructure that it owns.
44
45
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.

5
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.

13
14 6.2 Issues Concerning Particular Infrastructure.

15
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**")
45 provides 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.

7
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.
45

1 6.4 Proportionate Share Requirements. As set forth in Section 6.1 above,
2 Owner shall be responsible for the costs of Project Infrastructure, and Owner shall only be
3 responsible for its proportionate share of the costs of System Infrastructure. Owner's
4 proportionate share of the costs of System Infrastructure shall be based on a fair-share,
5 proportionate cost determination, considering total infrastructure capacity and the capacity
6 required to serve the Project. If Owner elects to construct and/or pay for more than its
7 proportionate share of any System Infrastructure, the County will allow the Owner to recover
8 through any legal means all of the costs incurred by Owner in connection with such System
9 Infrastructure that exceed Owner's proportionate share.

10
11 6.5 Impact Fees. The County and Owner will comply with the New Mexico
12 Development Fees Act at 1978 NMSA, §§ 5-8-1, et seq. (the "Act") and the Bernalillo County
13 Impact Fees Ordinance at Chapter 46-1, et seq. (the "Ordinance") to the extent the Ordinance
14 and its implementation is not inconsistent with the Act, with the understanding that it is
15 anticipated the Project will be its own separate service area, except that Owner shall remain
16 obligated to comply with the terms and provisions of this **Section 6** pertaining to Infrastructure
17 Improvements.

18 6.6 Level of Service. The County will provide public services to the Project
19 consistent with the level of service provided to the remainder of the unincorporated areas of the
20 County. The design and construction requirements for all infrastructure improvements within the
21 Project will comply with the Master Plan and the applicable level(s)-of-service in the remainder
22 of the unincorporated areas of the County and pursuant to County policies applied in a non-
23 discriminatory manner.

24
25 6.7 Conveyance of Infrastructure Improvements. Upon completion of any
26 public roadway infrastructure, drainage facilities, parks, open space and trails, or any other
27 County infrastructure improvement, wherever located, constructed for the benefit of the general
28 public, which also benefits the Project, the County will accept the conveyance of any such
29 improvements and shall thereafter own, operate and maintain such improvements at its sole cost
30 and expense unless otherwise agreed upon at the time of such conveyance. The County reserves
31 the right to not accept infrastructure that is not designed and built to the County's standards.

32
33 6.8 County Capital Improvement Plan. The County may incorporate into its
34 Capital Improvement Plan System Infrastructure identified in future Level B Plans and Level C
35 Plans approved by the County.

36
37 6.9 General Cooperation. The County will cooperate with Owner in
38 connection with the funding, design and construction of all infrastructure improvements.

39 6.10 Existing Special Use Permits / Certain Interim Uses. All sites within the
40 Santolina Level A boundary area governed by a Special Use Permit or any site expected to be
41 developed with local, state and/or federal support shall be governed by Section 18, Special Use
42 Permits and Section 24, Administration of the Zoning Code until a Level B Plan, affecting such
43 site, has been adopted by Bernalillo County. No special use permit shall be issued without a
44 demonstration of available necessary infrastructure and utilities, including water, electricity and
45 sewer, to be installed before, or concurrently with, development of the site.

1 6.11 Pre-Level C Platting. No building permits for vertical construction may
2 be granted on sites, other than those provided for in Section 6.10, until a Level C subdivision or
3 site development plan affecting the subject property has been approved. However, Owner may
4 complete plats that do not authorize vertical construction in order to define boundaries of parcels
5 within the Master Plan area. Prior to or concurrent with the first Level B Plan approval, the
6 subject Level A master planned property shall be legally platted (“Boundary Plat”). A summary
7 platting procedure, such as that allowed for ‘a minor subdivision’ under County ordinances, shall
8 be permitted for the Boundary Plat, and for any subsequent platting actions, but not for major
9 subdivisions, prior to a Level C plan or a Level C subdivision plat approval. The Boundary Plat
10 and any subsequent plats, submitted in advance of a Level C plan or a Level C subdivision plat
11 approval shall provide legal access (easements) to all existing and proposed tracts within the
12 platted area, but infrastructure installation or guarantee shall not be required prior to Level C
13 plan or Level C subdivision plat approval; because, before building permits can be granted or
14 development can proceed, additional land use approvals and infrastructure installation and/or
15 guarantees are required at the Level C Plan approval stage and/or at the Level C subdivision plat
16 approval stage. Further, because there are existing parcels, which are grandfathered lots within
17 the Master Plan area, Owner may also employ the County replat procedure, without
18 infrastructure requirements, to achieve reconfigured lots in advance of a Level C subdivision
19 submittal. Additionally, in order to standardize the pre-Level C subdivision submittal process,
20 the County agrees to explore the adoption of a bulk land subdivision procedure, similar to that
21 available in the City of Albuquerque, for the creation of pre-Level C subdivision lots. Any
22 subdivision will occur in compliance with the County’s Subdivision Ordinance.

23
24 7. No Net Expense.

25 7.1 The Test. The Comprehensive Plan provides that planned communities
26 shall not be a net expense to the County. The “no net expense” policy is a mutual commitment
27 to achieve the goal of a responsible balance of infrastructure costs, including construction,
28 operation and maintenance, shared between the public and private sectors. The “no net expense”
29 test is satisfied if the County’s on-site public expenditures and off-site public expenditures
30 reasonably allocated to the Project have been, or will be, off-set by revenues and/or economic
31 and fiscal benefits (direct, indirect and induced) from the Project.

32
33 7.2 Satisfaction of the Test at Master Plan and Village Plan Levels.

34 7.2.1 Level A. Owner engaged David Taussig & Associates to prepare
35 Fiscal and Economic Impact Studies for the Project both dated August 22, 2013 (collectively, the
36 “**Impact Study**”), which are on file with the County and incorporated herein by this reference.
37 The purpose of the Impact Study was to provide a detailed summary of the projected fiscal and
38 economic impacts and benefits to the County as a result of the development of the Project. The
39 Impact Study concludes that the County will receive significant positive fiscal and economic
40 impacts as a result of the development of the Project; therefore, the Santolina Project fully
41 satisfies the “no net expense” policy contained in the Comprehensive Plan.
42

43 7.2.2 Level B. The Level B analysis for subsequent development phases
44 of the Project must also satisfy the “no net expense” policy. If the development of a phase results

1 in a revenue shortfall, then such shortfall will be mitigated. If the development of a phase results
2 in excess revenue, then such excess revenue will be carried forward and used when applying the
3 no net expense test to future phases.

4 8. Parties' Rights.

5
6 8.1 Property Rights. Owner shall have the right to develop and complete the
7 Project as provided in this Agreement, the Master Plan, the Land Use Plan, and the adopted PC
8 Zoning.

9
10 8.2 Master Plan. Owner shall have the right to develop the Project and engage
11 in land uses in the manner and to the extent set forth in and pursuant to the applicable provisions
12 of this Agreement, the Master Plan, the Land Use Plan, and the PC Zoning.

13
14 8.3 Timing of Development. In recognition of the size of the Project, the
15 time required to complete development, the need for development to proceed in phases, and the
16 possible impact of economic conditions, cycles, varying market conditions and financing
17 availability during the course of development, Owner shall have the right to develop the Property
18 in such order and at such rate and time as the market dictates, subject to the conditions of this
19 Agreement and approved Level B Plans and Level C Plans. Notwithstanding, residential
20 development shall occur in a sequential manner adjacent to existing infrastructure and consistent
21 with ABCWUA's policies, consistent with the master plan.

22
23 8.4 Compliance with County Regulations: Conflicts. The establishment of the
24 rights under this Agreement shall not preclude the application of County ordinances, rules,
25 regulations and procedures of general applicability ("**County Regulations**"), except to the extent
26 that such County Regulations conflict with the provisions of this Agreement; provided, that in
27 the event of a conflict between this Section 8.4 and Section 3.1, Section 3.1 shall govern. The
28 Owner does not waive its rights to oppose adoption of any such proposed ordinances or
29 regulations that are not already in existence.

30
31 8.5 Changes in Regulations. This Agreement shall not preclude the
32 application of changes in County Regulations, which may occur from time to time during the
33 term of this Agreement, if specifically mandated and required by changes in State or Federal
34 laws or regulations, to development of the Property. To the extent that such changes in County,
35 State or Federal laws prevent or preclude compliance with one or more provisions of this
36 Agreement, the County and Owner shall cooperate as may be required to amend this Agreement
37 to enable compliance to the extent reasonably possible.

38
39 9. Cooperation in the Event of Legal Challenge. In the event of any administrative,
40 legal or equitable action or other proceeding instituted by any person not a party to this
41 Agreement challenging the validity of any provision of any of the approvals including this
42 Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or
43 final judgment including all appeals. Each Party shall select its own legal counsel and retain
44 such counsel at its own expense.

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

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

22 and
23

24 If to Owner: Western Albuquerque Land Holdings Inc.
25 c/o Garrett Development Corporation
26 Attn: Jeff Garrett
27 6991 East Camelback Road, Suite D212
28 Scottsdale, AZ 85251
29 Telephone: (480) 236-5059
30 Fax: (505) 897-8597
31 E-mail: jeff@gdc-az.com
32

33 and
34

35 Western Albuquerque Land Holdings LLC
36 c/o Jeffrey P. Hubbard, Esq.
37 Brier, Irish, Hubbard & Erhart, PLC
38 2400 East Arizona Biltmore Circle Drive, Suite 1300
39 Phoenix, AZ 85016
40 Telephone: 602-515-0160
41 Fax: 602-522-3945
42 E-Mail: jhubbard@bihlaw.com
43

44 and
45

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

10 11. Miscellaneous General Provisions.
11

12 11.1 Enforced Delay. Whether stated or not, all periods of time in this
13 Agreement are subject to this Section. Neither Owner nor the County, as the case may be, shall
14 be considered to have caused a default in the event such Party's delay in the performance of a
15 non-monetary obligation under this Agreement is due to causes beyond its control and without its
16 fault, negligence or failure to comply with applicable laws including, but not restricted to, (i) acts
17 of God, acts of the Federal or state government, acts of a third party, litigation or other action
18 authorized by law concerning the validity and enforceability of this Agreement or relating to
19 transactions contemplated hereby, fires, floods, epidemics, quarantine, restrictions, strikes,
20 embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or
21 materialmen due to such causes, act of a public enemy, war, terrorism or act of terror, nuclear
22 radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor
23 strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of
24 eminent domain by any governmental body on behalf of any public, quasi-public, or private
25 entity, or declaration of moratorium or similar hiatus directly affecting the Property by any
26 governmental entity; (ii) the order, judgment, action, or determination of any court,
27 administrative agency, governmental authority or other governmental body (collectively, an
28 "**Order**") which delays the completion of the work or other non-monetary obligation of the Party
29 claiming the delay, unless it is shown that such Order is the result of the failure to comply with
30 Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good
31 faith of any such Order shall not constitute or be construed or deemed as a waiver by a Party of
32 Enforced Delay; and (iii) unreasonable delay in processing or unreasonable denial of any
33 application, permit, license, request for approval, plan, plat or other submittal made by Owner to
34 any governmental agency other than the County (an "**Enforced Delay**").
35

36 11.2 Limited Severability. In the event that any provision of this Agreement is
37 declared void or unenforceable (or is construed as requiring the County to do any act in violation
38 of any applicable law) such provision shall be deemed severed from this Agreement and this
39 Agreement shall otherwise remain in full force and effect; provided that this Agreement shall
40 retroactively be deemed reformed to the extent reasonably possible in such a manner so that the
41 reformed agreement (and any related agreements effective as of the same date) provide
42 essentially the same rights and benefits (economic and otherwise) to the Parties as if such
43 severance and reformation were not required. The Parties further shall perform all acts and
44 execute all amendments, instruments and consents necessary to accomplish and to give effect to
45 the intent and purposes of this Agreement as and if reformed in accordance with this Section.
46

1 11.3 Further Assurances. Each Party shall perform such other and further acts
2 and to execute and deliver such additional agreements, documents, affidavits, certifications,
3 acknowledgments and instruments as any other Party may reasonably request from time to time
4 to consummate, evidence, confirm or carry out the intent and purposes of this Agreement.
5

6 11.4 Construction. Each reference in this Agreement to any of the rights
7 approved hereunder shall be deemed to refer to the rights as they may be amended from time to
8 time pursuant to the provisions of this Agreement, whether or not the particular reference refers
9 to such possible amendment. This Agreement has been reviewed and revised by legal counsel for
10 the County and Owner, and no presumption or rule that ambiguities shall be construed against
11 the drafting party shall apply to the interpretation or enforcement of this Agreement.
12

13 11.5 Successors and Assigns. The provisions of this Agreement are binding
14 upon and shall inure to the benefit of the Parties, and all of their successors in interest and
15 assigns; provided; however, that Owner's rights and obligations hereunder may be assigned, in
16 whole or in part, only to a person or entity that has acquired title to the Property or a portion
17 thereof or an interest therein. In the event of a complete assignment, Owner shall be released
18 from all of its obligations under this Agreement, provided that: (i) Owner agrees in writing to
19 assign all of its obligations under this Agreement to such assignee, (ii) the assignee agrees in
20 writing to assume all of such obligations, and (iii) such assignment and agreement is recorded in
21 the office of the Bernalillo County Clerk. In the event of a partial assignment, Owner shall be
22 released from the obligations assigned to and assumed by Owner's assignee, provided that: (i)
23 Owner agrees in writing to assign certain of its obligations under this Agreement to such
24 assignee, (ii) the assignee agrees in writing to assume the obligations assigned to such assignee,
25 and (iii) such assignment and agreement is recorded in the office of the Bernalillo County Clerk
26 and provides for the allocation of obligations being retained by the Owner and the obligations
27 being assigned to and assumed by the assignee. This Agreement shall not impose any obligations
28 upon and shall automatically terminate without the execution or recordation of any further
29 document or instrument as to any residential or commercial lot which has been finally
30 subdivided and sold with a completed structure thereon for which a certificate of occupancy or
31 equivalent has been issued. Thereafter, such lot shall be released from and no longer be subject
32 to or burdened by the provisions of this Agreement. A default by a subsequent owner of a portion
33 of the Property shall not be deemed a default by Owner or any other subsequent owner of a
34 different portion of the Property, and the County may not withhold or condition its performance
35 under this Agreement, or exercise any remedy, as to Owner or any subsequent owner of a portion
36 of the Property who is not in default of this Agreement. With the exception of Owner and the
37 County, no subsequent owner of a portion of the Property may enforce this Agreement as against
38 any other owner of a portion of the Property.
39

40 11.6 Secured Lender's Rights, Including Right to Cure. A secured lender or
41 mortgagee is any lender whose loan is secured by property within the Project boundaries. Any
42 mortgagee that wishes to receive notices of default from the County pursuant to this Agreement
43 may provide written notice to the County requesting such notice. The County shall notify any
44 such mortgagee requesting notice of default under this Agreement, and provide to any such
45 mortgagee the same opportunity to cure as is provided to Owner herein. Such action shall not
46 give rise to any liability on the part of the mortgagee, and this Agreement shall not be terminated

1 by the County as to any mortgagee: (a) who has requested notice but the mortgagee is not given
2 notice by the County or (b) if either of the following is true:

3
4 (a) The mortgagee cures any default involving the payment of money
5 by Owner within sixty (60) days after notice of default;

6
7 (b) As to defaults requiring title or possession of all or any portion of
8 the Property to effectuate a cure: (i) the mortgagee agrees in writing, within ninety (90) days
9 after the written notice of default, to perform the proportionate share of Owner's obligations
10 under this Agreement allocable to that part of the Property in which the mortgagee has an interest
11 conditioned upon the mortgagee's acquisition of that part by foreclosure (including a trustee
12 sale) or by a deed in lieu of foreclosure; (ii) the mortgagee commences foreclosure proceedings
13 to reacquire title to all or the applicable portion of the Property within the ninety (90) days and
14 thereafter diligently pursues the foreclosure to completion; and (iii) the mortgagee (or any
15 purchaser of Owner's interest at foreclosure, or trust, or sale, or by deed in lieu of foreclosure)
16 promptly and diligently cures the default after obtaining title or possession. Subject to the
17 foregoing, in the event any mortgagee records a notice of default as to its mortgage or deed of
18 trust, Owner's rights and obligations under this Agreement may be transferred to the mortgagee
19 or to any purchaser of Owner's interest at a foreclosure or trustee sale and until such transfer the
20 Owner shall remain liable for all such obligations unless released by the County.

21
22 The County recognizes that the provisions of this Agreement may be a matter of concern
23 to any mortgagee intending to make a loan secured by a mortgage or deed of trust encumbering
24 the Property or a portion thereof. If such mortgagee should require, as a condition to such
25 financing, any modification of this Agreement to protect its security interest in the Property or
26 portion thereof, the County shall execute the appropriate amendments; provided, however, that
27 the County shall not be required (but is permitted) to make any modification that would (i)
28 materially and adversely affect the County's rights hereunder, or (ii) increase the County's
29 obligations hereunder.

30
31 This Agreement may be amended without the approval or execution of any such
32 amendment by any mortgagee. However, if the County receives notice from a mortgagee
33 requesting a notice of proposed amendment, the County shall provide a copy of any proposed
34 amendment to such mortgagee.

35
36 11.7 Covenant of Good Faith and Fair Dealing. Each Party shall use its best
37 efforts and take and employ all necessary actions to ensure that the rights secured by the other
38 Parties through this Agreement can be enjoyed and no Party shall take any action that will
39 deprive the other Parties of the enjoyment of the rights secured through this Agreement.

40
41 11.8 Term of Agreement. The term of this Agreement shall commence upon
42 the execution date of this Agreement and shall extend until completion of the Project.

43
44 11.9 No Waiver of Rights. Neither the County nor Owner shall be under any
45 obligation to exercise at any time any right granted to a Party. Failure by a Party to insist upon
46 the strict performance of any of the provisions of this Agreement by the other Party, or the

1 failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a
2 waiver of such Party's right to insist and demand strict compliance by the other Party with the
3 terms of this Agreement thereafter. No waiver shall be effective unless it is in writing and is
4 signed by the Party asserted to have granted such waiver.

5
6 11.10 Governing Law, Interpretation and Conflict Resolution. This Agreement
7 and any dispute arising hereunder shall be governed and interpreted in accordance with the laws
8 of the State of New Mexico. This Agreement shall be construed as a whole according to its fair
9 language and common meaning to achieve the objectives and purposes of the Parties, and the
10 rule of construction to the effect that ambiguities are to be resolved against the drafting Party
11 shall not be employed in interpreting this Agreement, all Parties having been represented by the
12 counsel in the negotiation and preparation of this Agreement. If there is a conflict between the
13 body of this Agreement and one or more of the Exhibits to this Agreement, including the Master
14 Plan or any document or submittal associated with or pertaining to the Master Plan, the body of
15 this Agreement shall control.

16
17 11.11 Exhibits and Recitals. Any exhibit attached hereto shall be deemed to
18 have been incorporated into this Agreement by this reference with the same force and effect as if
19 fully set forth in the body of this Agreement. The recitals set forth at the beginning of this
20 Agreement and the introductory paragraph preceding the recitals are incorporated into this
21 Agreement, and the Parties hereby confirm the accuracy of the recitals.

22
23 11.12 Day. Day shall mean a calendar day. However, if the last day of any time
24 period stated in this Agreement or the date on which any obligation to be performed under this
25 Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time
26 period or the date of performance, as applicable, shall be extended so that it shall end on the next
27 succeeding day which is not a Saturday, Sunday or legal holiday.

28
29 11.13 Time of Essence. Time is of the essence in implementing the terms of this
30 Agreement.

31
32 11.14 Entire Agreement. This Agreement constitutes the entire agreement
33 between the Parties pertaining to its subject matter. All prior and contemporaneous agreements,
34 representations and understandings of the Parties, oral or written (including any term sheets,
35 discussion outlines or similar documents), are hereby superseded and merged into this
36 Agreement.

37
38 11.15 Amendment. The Agreement may be amended or modified from time to
39 time by mutual consent of the parties following the same legal formalities followed in the
40 approval of this Agreement and approval of an adopting resolution in the same manner as the
41 original Agreement is approved. Amendment or modification of the Master Plan by the Owner
42 shall comply with the procedural and substantive provisions of state statutes, and County plans
43 and ordinances in effect on the date of application for such amendment or modification. If the
44 County enters into a development agreement in the future for a project containing at least 500
45 acres with another landowner outside of Santolina that provides terms or conditions which, when
46 taken as a whole, are more favorable to that landowner than provided in this Agreement, then the

1 County and the Owner may amend this Agreement to include the more favorable terms or
2 conditions so that this Agreement, on a go forward basis is, at least, as favorable to Owner as the
3 terms and conditions contained in the development agreement entered into with the other
4 landowner. Nothing in this section shall be construed to mean that the County shall be obligated
5 to extend more favorable terms to the owner should the County enter into a development
6 agreement with another landowner where terms or conditions are deemed more favorable than
7 those contained within this agreement. Any changes to this agreement shall be proceeded by a
8 thirty (30) day publication period prior to final action by the commission.
9

10 11.16 Counterparts. This Agreement may be executed in two (2) or more
11 counterparts, including facsimile and/or electronic counterparts, each of which shall be deemed
12 an original, but all of which together constitute one (1) and the same instrument. The signature
13 pages from one (1) or more counterparts may be removed from such counterparts and such
14 signature pages all attached to a single instrument so that the signatures of all Parties may be
15 physically attached to a single document.
16

17 11.17 Findings and Conditions. If and to the extent any findings and conditions
18 adopted in conjunction with the master plan approval are specifically addressed in the
19 Development Agreement, the language of the Development Agreement shall control if it is more
20 specific.
21

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

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

2
3 **COUNTY:**

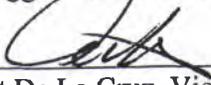
4
5 BERNALILLO COUNTY, a political subdivision of the State of New Mexico

6
7
8 By: 
9 Its: County Manager

10
11 **BOARD OF COUNTY COMMISSIONERS**

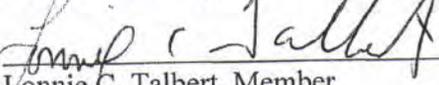
12 **VOTED 'NO'**

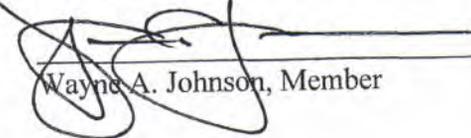
13
14
15 Maggie Hart Stebbins, Chair

16
17 
18 Art De La Cruz, Vice Chair

19 **VOTED 'NO'**

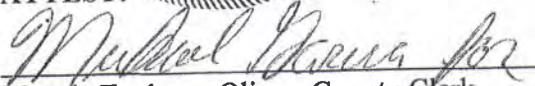
20
21 Debbie O'Malley, Member

22
23 
24 Lonnie C. Talbert, Member

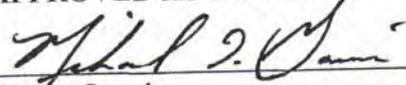
25
26 
27 Wayne A. Johnson, Member



28
29 **ATTEST:**

30
31 
32 Maggie Toulouse Oliver, County Clerk

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

36
37 
38 County Legal

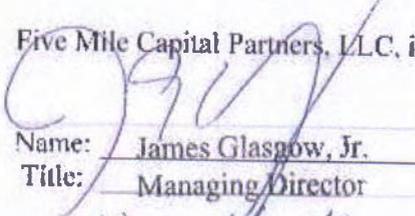
1 Owner:

2
3 WESTERN ALBUQUERQUE LAND HOLDINGS LLC, a Delaware limited liability company

4
5 By: Five Mile Capital SPE, LLC, a Delaware
6 limited liability company, its Servicing Member

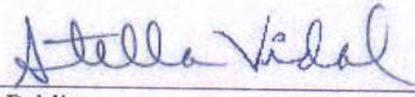
7
8 By: Five Mile Capital Pooling Domestic LLC,
9 its Sole Member

10
11 By: Five Mile Capital Partners, LLC, its Manager

12
13 By: 
14 Name: James Glasgow, Jr.
15 Title: Managing Director

16
17 STATE OF New York
18) ss.
19 COUNTY OF New York

20
21 This instrument was acknowledged before me on the 10th day of
22 August, 2015, by James Glasgow, the
23 Managing Director of Five Mile Capital Partners, LLC, Manager of Five
24 Mile Capital Pooling Domestic LLC, Sole Member of Five Mile Capital SPE, LLC, Servicing
25 Member of Western Albuquerque Land Holdings, LLC, a Delaware limited liability company,
26 for and on behalf thereof.

27
28 
29 _____
30 Notary Public

31 My Commission Expires: 4/27/19



EXHIBIT A

Legal Description of Property

The Santolina plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing approximately 13,851 acres, generally zoned PC Zone pursuant to an approved Level A Community Master Plan,

as more particularly described in and on Exhibit A-1 attached hereto.

EXHIBIT B

Master Plan

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