BEFORE THE BERNALILLO COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, and PAJARITO VILLAGE ASSOCIATION,

FILE NOS. COA2015-0007/SPR-20130004
COA2015-0006/CZ-20130009

v.

BERNALILLO COUNTY PLANNING COMMISSION

SOUTH VALLEY COALITION OF NEIGHBORHOOD
ASSOCIATIONS

v. FILE NO. COA2015-0008/SPR-20130004

BERNALILLO COUNTY PLANNING COMMISSION

MOTION FOR POSTPONEMENT
OF HEARING AND ACTION
BY THE BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS

Introduction

The SouthWest Organizing Project, the New Mexico Health Equity Working Group, the Pajarito Village Association, and the South Valley Coalition of Neighborhood Associations (referred to collectively as "the Appellants") hereby request that Bernalillo County Board of County Commissioners ("the Board of County Commissioners") postpone both the hearing in this matter scheduled for May 11, 2015 and any action on the Santolina Level A Master Plan ("the Santolina Master Plan") and the proposed zone map amendment associated with the proposed Santolina development ("the Santolina zoning change").

These requests cover the Board of County Commissioners' hearing and possible action on each of the pending appeals filed by the Appellants; they are case numbers COA2015-0007/SPR-20130004, COA2015-0006/CZ-20130009, and COA2015-0008/SPR-20130004. The Appellants' requests also cover the appeals filed by other parties relating to the proposed Santolina development. They are:

- the appeal filed by Consensus Planning and John P. Salazar of the Rodey Law Firm (in case COA2015-0005/SPR-20130004); and
- the appeal filed by the South Valley Regional Association of Acequias and the Center for Social Sustainable Systems (in case COA2015-0009/SPR-20130004).

This motion is based on the inability of the Appellants to obtain the most current draft of the development agreement between Bernalillo County and the developer of the proposed Santolina development ("the Development Agreement"). The Development Agreement is being negotiated to determine important obligations of Bernalillo County and the developer of the proposed Santolina development ("the Santolina developer") concerning the proposed development, and it therefore is essential to the Appellants' claims in their appeals and to their opposition to the appeal filed by Consensus Planning on behalf of the Santolina developer.

For that reason, the Appellants can only receive a fair hearing on their appeals if they have access to the Development Agreement. In accordance with procedural due process, the Appellants therefore are entitled to a postponement of these proceedings in the matter of the Santolina zoning change, which is a quasi-judicial proceeding.

The Board of County Commissioners also should postpone the proceedings concerning the Santolina Master Plan because those proceedings are quasi-judicial.

Alternatively, if the proceedings concerning the Santolina Master Plan are not quasi-judicial in nature, the Board of County Commissioners should postpone those proceedings so that they can be conducted in accordance with fundamental fairness.

Finally, it is the Appellants' understanding that the members of the Board of County Commissioners also have not had access to the Development Agreement. Because the Board members do not have the Development Agreement, they are not in a position to make an informed decision about whether to approve the Santolina Master Plan or the Santolina zoning change, and these proceedings should be postponed until the Board members do have access to the Development Agreement.

The Appellants have not had an opportunity to contact other counsel to determine whether this Motion for a Postponement will be opposed, but because of the nature of the Motion, the Appellants presume that it will be opposed.

Argument

I. The Development Agreement is critical to the Appellants' appeals and to their opposition to the Santolina developer's appeal.

The critical nature of the Development Agreement is apparent from the conditions for approval of the Santolina Master Plan recommended by the Bernalillo County Planning Commission ("the County Planning Commission"). Those conditions call for the Development Agreement to cover water use by the proposed Santolina development (County Planning Commission condition #1), the "no net expense" requirement of the Bernalillo County Planned Community Criteria (County Planning Commission condition #2), and interim uses of the property within the Santolina Level A boundary (County Planning Commission condition #18). The issues of water use and the "no net expense"

requirement of the Planned Communities Criteria were both raised by the Appellants in their appeals. *See, e.g.,* SouthWest Organizing Project *et al.* amended appeal of Bernalillo County Planning Commission decision on Santolina Master Plan dated December 29, 2014, pages 3-7, 14-18, SouthWest Organizing Project, *et al.* amended appeal of Bernalillo County Planning Commission decision on Santolina zoning change dated December 29, 2014, pages 4-6, 6-8, and South Valley Coalition of Neighborhood Associations appeal concerning the Santolina Master Plan dated December 29, 2014, pages 5-7, 2-3.

The critical nature of the Development Agreement is also apparent from the one draft of that Agreement that the Appellants have obtained, a copy of which is attached as Exhibit A. That draft was dated November 6, 2014, and it presumably has been superseded, but it addressed issues that are important to the Appellant's appeals such as the Planned Communities Criteria (Exhibit A, page 3), Infrastructure Improvements (Exhibit A, page 4), water and sewer infrastructure (Exhibit A, pages 6-7), and the "no net expense" requirement (Exhibit A, pages 9-10).

The County Planning Commission's conditions and the November draft of the Development Agreement make clear that the Development Agreement will be relied upon by Bernalillo County and that the Agreement will address issues that are central to the appeals filed by the Appellants. Both procedural due process and fairness therefore mandate that these proceedings be postponed until the Appellants are able to have access to the most current version of the Development Agreement so that they can determine its effect on their claims and on their opposition to the appeal filed by the Santolina developer.

II. Procedural due process requires postponement of the proceedings concerning the Santolina zoning change.

A. The Board of County Commissioners must provide procedural due process in the proceeding concerning the Santolina zoning change.

The New Mexico Court of Appeals has ruled that proceedings concerning changes in zoning are quasi-judicial proceedings in which procedural due process must be provided. This ruling applies to municipalities (*see* State ex rel Battershell v. City of Albuquerque, 1989-NMCA-045, , ¶17, 108 N.M. 658, 662) and to counties (*see* Los Chavez Community Association v. Valencia County, 2012-NMCA-044, ¶¶19-22, 277 P.3d 475, 482-484).

The appeal filed by the SouthWest Organizing Project, the New Mexico Health Equities Working Group, and the Pajarito Village Association challenges the County Planning Commission's decision on the Santolina zoning change. That appeal therefore is a quasi-judicial proceeding in which procedural due process must be provided.

B. Procedural due process requires access to critical documents.

One of the most fundamental requirements of procedural due process is that a party be able to have access to and to respond to evidence against the party's position. In the words of the New Jersey Supreme Court:

> Certainly, included among the elements of procedural fairness is a chance to know the opposing evidence and argument and to present evidence and argument in response.
>
> One of the core values of judicial review of administrative action is the furtherance of accountability. Thus, an agency is never free to act on undisclosed evidence that parties have had no opportunity to rebut.

High Horizons Development Company v. State of New Jersey, 120 N.J. 40, 53, 575 A.2d 1360, 1367, citations omitted.

Here, Bernalillo County proposes to rely on the Development Agreement in the County's opposition to the positions asserted by the Appellants in their appeals. For that reason, the procedural due process that is required in the quasi-judicial proceeding concerning the Santolina zoning change mandates that the Development Agreement be disclosed to the Appellants so that they can respond to it.

III. The Development Agreement must also be disclosed in the proceedings concerning the Santolina Master Plan.

A. The proceedings concerning the Santolina Master Plan are quasi-judicial in nature.

The distinction between actions that are quasi-judicial in nature and those that are legislative in nature was considered by the New Mexico Supreme Court in Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2008-NMSC-0025, 144 N.M. 99, *rev'd on other grounds*, Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2011-NMSC-002, 149 N.M. 308. In the 2008 Albuquerque Commons Partnership v. City Council of the City of Albuquerque case, the Supreme Court considered a challenge to the City of Albuquerque's adoption of the 1995 Uptown Sector Plan. One of the issues raised in the challenge was whether the City's adoption of that Plan constituted a quasi-judicial action or a legislative action. Quoting from an earlier State Court of Appeals decision concerning this issue, the Supreme Court stated:

> [L]egislative action reflects public policy relating to matters of a permanent or general character, is not usually restricted to identifiable persons or groups, and is usually prospective; quasi-judicial action, on the other hand, generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of currently existing legal standards or policy considerations of past or present facts developed at a hearing conducted for the purpose of resolving the particular interest in question.

2008-NMSC-0025, ¶32; citation omitted.

According to these criteria, the proceedings concerning the proposed Master Plan for the Santolina development are quasi-judicial proceedings. The proceedings are being conducted by the Board of County Commissioners to determine the rights, duties, and obligations of the developer of the proposed Santolina development and of the other parties that have filed appeals from the County Planning Commission's recommendation concerning that Master Plan. Moreover, the Board of County Commissioners will make its determination on the basis of the Master Plan's compliance or lack of compliance with existing legal requirements set forth in New Mexico law and Bernalillo County ordinances and other governing measures. In addition, the proceedings have included hearings conducted for the purpose of considering the appeals that have been filed concerning the proposed Master Plan.

For these reasons, the Board of County Commissioners should conduct the proceedings concerning the Santolina Master Plan as quasi-judicial proceedings, and should require that the Development Agreement be disclosed to the Appellants.

B. The Development Agreement must be disclosed even if the Santolina Master Plan proceedings are determined to be legislative.

Even if the Santolina Master Plan proceedings are viewed as being legislative, the Board of County Commissioners should require disclosure of the Development Agreement in those proceedings in order to provide fundamental fairness to the Appellants. The Development Agreement is clearly a document on which the Bernalillo County Planning staff, the County Planning Commission, and the Board of County Commissioners intend to rely in determining their positions on the Santolina Master Plan. Unless the Development

Agreement is disclosed, the Appellants cannot determine whether that reliance is appropriate. Without access to the Development Agreement, the Appellants also cannot determine whether their concerns are being adequately addressed or whether conditions imposed on the Santolina Master Plan are sufficient to protect their interests. In order to ensure that the Appellants are given a fair opportunity to evaluate the actions of the Board of County Commissioners, the County Planning Commission, and the County Planning Staff, the Board of County Commissioners should mandate the disclosure of the Development Agreement.

IV. The members of the Board of County Commissioners cannot make informed decisions about the Santolina zoning change or the Santolina Master Plan unless the Board members have access to the Development Agreement.

As is explained above, the Development Agreement will contain provisions that are critical to the Board of County Commissioners' decisions about whether to approve the Santolina Master Plan and the Santolina zoning change and to the Board's decisions about what, if any conditions should be imposed if the Master Plan and the zoning change are approved. At the hearing on March 25-26, 2015, at least one member of the Board expressed concern about proceeding without having access to the Development Agreement. That Board member's concerns are well founded. The Board members cannot make informed decisions about the Master Plan, the zoning change, or what, if any, conditions should be imposed if the Master Plan and the zoning change are approved unless the Board members know what they are agreeing to in the Development Agreement. Without that information, the Board members are essentially agreeing to a contract with the Santolina developer without knowing what is in the contract. That is not appropriate.

Conclusion

It is clear that the Development Agreement is critical for both the Appellants and the members of the Board of County Commissioners. The Development Agreement therefore must be disclosed in order for these proceedings to provide procedural due process and fundamental fairness.

Dated: May 7, 2015.

NEW MEXICO
ENVIRONMENTAL LAW CENTER

Douglas Meiklejohn
Jonathan Block
Eric Jantz
1405 Luisa Street, Suite 5
Santa Fe, N.M. 87505
Telephone: (505) 989-9022
Facsimile: (505) 989-3769
dmeiklejohn@nmelc.org

Attorneys for the Appellants SouthWest Organizing Project, New Mexico Health Equities Working Group, and Pajarito Village Association

YNTEMA LAW FIRM, P.A.
Attorney at Law

Approved electronically on 5/7/15
Hessel E. Yntema, III
215 Gold Avenue, S.W.
Suite 201
Albuquerque, N.M. 87102
P.O. Box 1748
Albuquerque, N.M. 87103-1748
Telephone: (505) 843-9565
Facsimile: (505) 242-2879
hess@yntema-law.com

Attorney for Appellant South Valley Coalition of Neighborhood Associations

Certificate of Service

I certify that on May 7, 2015 copies of this Motion for Postponement were sent by electronic mail to:

Catherine VerEecke
Program Planner
Bernalillo County
cvereecke@bernco.gov

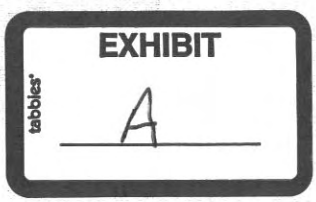
Randy Autio
Attorney
Bernalillo County
rmautio@bernco.gov

John P. Salazar
Attorney for Consensus Planning
jsalazar@rodey.com

Richard Minzner
Attorney for Consensus Planning
rminzner@rodey.com

Douglas Meiklejohn

Santolina Level A
Development Agreement



SANTOLINA LEVEL A
DEVELOPMENT AGREEMENT

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SANTOLINA LEVEL A
DEVELOPMENT AGREEMENT

This SANTOLINA LEVEL A DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the ___ day of _____, 2014 by and between WESTERN ALBUQUERQUE LAND HOLDINGS LLC, a Delaware limited liability company ("**Owner**"), and BERNALILLO COUNTY, a political subdivision of the State of New Mexico ("**County**"). Owner and the County are individually referred to as a "**Party**" and are jointly referred to as the "**Parties**".

BACKGROUND INFORMATION:

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

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

C. The County originally adopted the Planned Community Criteria of the Comprehensive Plan on October 23, 1990, and re-established the Planned Community Criteria on May 24, 2012 (the "**Planned Community Criteria**").

D. The Planned Community 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 required 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 Community Criteria, Owner has caused to be prepared a Master Plan, which is more particularly described in Exhibit B attached hereto. The Master Plan is subject to approval by the Board of County Commissioners (the "**Governing Body**"). The development of the Property as provided in the Master Plan is referred to herein as the "**Project**".

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

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

H. Contemporaneously with the adoption of this Agreement and the Master Plan, the Property is being zoned Planned Community ("**PC Zoning**"), pursuant to Section 19.5 of the Bernalillo County Comprehensive Zoning Ordinance.

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

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

AGREEMENT

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

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

3. Entitlements.

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

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

3.3 Concurrent Approval. This Agreement is contingent upon the Governing Body concurrently approving the Master Plan, the Land Use Plan, the PC Zoning, and this Agreement. The Governing Body will take action on these items concurrently as a single agenda item.

4. Planned Communities Criteria Requirements.

4.1 Codification of the Master Plan and Land Use Plan. The adoption of the Master Plan, including the Land Use Plan, and the recording of this Agreement shall satisfy the Master Plan codification requirement of the Planned Community Criteria.

4.2 Preliminary Infrastructure/Service Agreement. This Agreement, including Section 5 below, satisfies the Preliminary Infrastructure/Service Agreement requirement of the Planned Community Criteria.

4.3 Commitment to Mitigation of Negative Impacts. Owner, as a part of the Master Plan for the Property, has completed a general analysis of the Property's topography, slopes, elevation, soils, drainage, transportation and utilities as well as visual and other considerations. There are no known negative impacts of the development of the Project at this time. However, in the event that negative impacts are identified through the more detailed analysis to be conducted in conjunction with Level B Plans and Level C Plans, Owner commits to take reasonable local customary actions to mitigate negative impacts resulting from the development of the Property. The County agrees to work in good faith with Owner and dedicate the necessary resources to resolve any negative impacts of the development of the Project in a reasonable local customary manner to expedite and facilitate the development of the Project. When working to resolve any mitigation measures, the County will consider the design and expense of any proposed mitigation measures, as well as allowing any such mitigation measures to be phased as the Project develops. In addition, the County shall not require any mitigation measures that would limit the scope of the permitted development of the Project.

4.4 Assignable Agreement. As set forth in Section 11.7 below, this Agreement is assignable and expresses the terms and conditions mutually agreed to by the Parties. The terms and conditions are permanent unless the Parties re-negotiate and agree to amend this Agreement.

4.5 Recordable Instrument. This Agreement is in recordable form and will be recorded with the Bernalillo County Clerk.

4.6 County Incentives. Except as otherwise expressly provided herein, the Parties have not yet agreed to specific incentives to be provided by the County to Owner. However, the County will in good faith consider providing economic development incentives to Owner similar to other incentives provided by the County and other governmental entities to other developers, end-users, businesses and landowners from time to time for such matters as attracting (i) new businesses, operations, and employment, and (ii) retail, industrial, commercial and residential developments. Such incentives shall include, but not be limited to, promoting the use of industrial revenue bonds and the forming of public improvement districts and tax increment development districts for the Project, and any such incentives that may be used to facilitate the financing and construction of horizontal and vertical infrastructure and generally promoting the expeditious entitlement and development of the Project.

5. Infrastructure Improvements.

5.1 Categorizing Infrastructure. The Level B and/or Level C development agreements will categorize infrastructure improvements, using reasonable industry practices and standards, as: (i) infrastructure that solely benefits the Project (the "**Project Infrastructure**"), or (ii) infrastructure that benefits the Project as well as other real property (the "**System Infrastructure**"), and/or (iii) infrastructure that is typically not the responsibility of, or is funded by a source other than, a developer and/or landowner (the "**Other Infrastructure**"). A flow chart and framework for categorizing the infrastructure improvements is set forth in Exhibit C attached hereto.

5.1.1 Project Infrastructure. Owner shall be responsible for the design and construction of all Project Infrastructure, which is that infrastructure that solely benefits the Project. Project Infrastructure will be funded by Owner directly and/or from other sources (private and/or public) and/or from any and all financing mechanisms or districts otherwise available.

5.1.2 System Infrastructure. Owner will be responsible for its prorata share, as determined using reasonable industry practices and standards, of the cost and expense associated with System Infrastructure, which will be repaid on a prorata basis at the time of issuance of building permits, in the event the County advances payment of Owner's prorata share of System Infrastructure. If Owner elects to construct and/or pay for more than its prorata share of any System Infrastructure, the County will allow the Owner to recover through any legal means all of the costs incurred by Owner in connection with such System Infrastructure that exceed Owner's prorata share. Any funds expended by Owner for System Infrastructure that exceeds its prorata share will be reimbursed, refunded and/or credited to Owner prior to any other landowners being permitted to tie into or otherwise use such System Infrastructure. In addition, if Owner elects to pay for more than the Project's prorata share of the costs of any System Infrastructure, the County will use reasonable, good faith efforts, and dedicate the necessary resources, to collect from any other landowners that benefit from any System Infrastructure, such landowner's prorata share of such System Infrastructure and then reimburse and/or refund to Owner from funds collected the excess costs incurred by Owner for such System Infrastructure. Owner will have the option to pay its prorata share of the costs of any

System Infrastructure to the applicable governmental or quasi-governmental agency responsible for such System Infrastructure in lieu of any obligation to construct such System Infrastructure. After Owner makes an in-lieu payment, the County shall not preclude the entitlement and/or development of the Project requiring such System Infrastructure solely as a result of such System Infrastructure not being complete. County will reasonably cooperate and participate with Owner and other governmental and quasi-governmental entities and utility service providers with respect to any System Infrastructure Agreement.

5.1.3 Other Infrastructure. Owner will not be responsible for the cost and expense associated with the design and construction of Other Infrastructure or any portion thereof. If Owner elects to construct and/or pay for Other Infrastructure, the County will allow the Owner to recover through any legal means all of the costs incurred by Owner in connection with such Other Infrastructure. Any funds expended by the Owner for Other Infrastructure will be reimbursed, refunded and/or credited to Owner prior to any other landowners being permitted to tie into or otherwise use such Other Infrastructure. In addition, if Owner pays for Other Infrastructure, the County will use reasonable, good faith efforts to collect from the applicable party responsible for or using the Other Infrastructure, such parties prorata share of such Other Infrastructure and then reimburse and/or refund Owner from funds collected the costs incurred by Owner for such Other Infrastructure. Owner will have the right, but not the obligation, to provide funding for the costs of any Other Infrastructure to the County or any other governmental or quasi-governmental agency responsible for such Other Infrastructure in a form acceptable to Owner and such party (the "**Other Infrastructure Agreement**"). County will reasonably cooperate and participate with Owner and other governmental and quasi-governmental entities and utility service providers with respect to any Other Infrastructure Agreement. The County shall not preclude the entitlement and/or development of the Project requiring such Other Infrastructure solely as a result of such Other Infrastructure not being complete.

5.2 Issues Concerning Particular Infrastructure.

5.2.1 Roadway Infrastructure. Owner shall be responsible for the design, construction and dedication of all transportation improvements that are reasonably necessary to service the Project and that are designated as Project Infrastructure. The Metropolitan Detention Center, Sandia Motor Sports and Cerro Colorado landfill ("Existing Uses") are not a part of the Project. Owner shall not be responsible for any infrastructure, including, but not limited to, water, sewer, road, drainage, associated with the Existing Uses. Traffic generated from the Existing Uses will be required to use Central Avenue and Shelly Road and not the Project's internal roadways. Owner shall be responsible for its prorata share of the design, construction and dedication of all transportation improvements that are designated as System Infrastructure. Owner has prepared a Transportation Master Plan which is described in the Master Plan; however, such Master Plan is subject to adjustment through the more detailed analysis to be conducted in connection with Level B Plans and Level C Plans. Owner shall not be responsible for mitigating and/or re-constructing existing roadway improvements (including any deficiencies in such improvements) in any existing roadways, on/off ramps or frontage roads (including, but not limited to, Interstate 40, Interstate 25 and City, County or State routes, highways or freeways). Owner shall not be responsible for mitigating and/or constructing

roadway improvements (including any deficiencies in such improvements) in any future roadways, on/off ramps and frontage roads (including, but not limited to, Interstate 40, Interstate 25 and City, County or State routes, highways or freeways) that do not benefit and/or that are not caused by the Project.

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

5.2.3 Open Space, Parks, and Trails. Owner shall be responsible for the design and construction of all open space, parks or trails that are reasonably necessary to service the Project and that are designated as Project Infrastructure. Owner shall be responsible for its prorata share of the design and construction of all open space, parks or trails that are designated as System Infrastructure. Owner will not be required to convey any land for open space, parks or trails that are designated as System Infrastructure and/or Other Infrastructure and/or that is currently identified for acquisition by the County and/or City of Albuquerque within the Comprehensive Plan or related documents, without just compensation. The owner of the open space, parks, and or trails shall be responsible for the operation and management of the open space, parks and/or trails that it owns. The conveyance of open space, parks, and/or trails shall be subject to the reservation of reasonable rights necessary for the development of the Project, including but not limited to roadway, utility and drainage easements. The land area of any open space, parks and/or trails will be considered in calculating the land use densities and open space requirements for the Project.

5.2.4 Water and Sewer Infrastructure. It is currently anticipated that the Albuquerque Bernalillo County Water Utility Authority ("**Authority**") will provide water and sewer service for the Project. Owner has prepared a conceptual Water Master Plan and a conceptual Wastewater Master Plan, which are described in the Master Plan; however, such master plans are necessarily subject to adjustment through the more detailed analysis to be conducted in connection with Level B Plans and Level C Plans. If the Authority provides water and sewer service for the Project, the Owner will enter into a separate development agreement with the Authority concerning the terms of providing such water and sanitary sewer service to the Project. All matters associated with water and sewer infrastructure for the Project shall be resolved solely between Owner and the Authority. The County will not promote, support or

enact any ordinance, legislation or policy that interferes with and/or restricts the Owner's use of the Authority's water and sewer infrastructure and/or agreements between the Owner and Authority. Notwithstanding the above, if the Authority refuses to serve the Project or any portion thereof, the County and Owner will work together in good faith to establish a new service provider for the Project or the portion of the Project lacking a service provider.

5.2.5 School Infrastructure. All school facilities to be located within the boundaries of the Project will be funded and constructed by the Albuquerque School District, the Central New Mexico Community College, the University of New Mexico, or any other applicable school authority, and Owner shall not be required to pay any portion of the cost thereof or make any other financial, land or other contribution to any such school authority. However, Owner and one or more educational institutions may enter into agreements on mutually acceptable terms. The County will not promote, support or enact any ordinance, legislation or policy that interferes with, requires and/or restricts agreements, if any, between the Owner and any educational institution.

5.3 Cost Recapture. The County will allow the Owner, or its successors in title, to recover through financing districts, fees, credits, reimbursements, buy-in fees or any other means of recapture, reimbursement and repayment available, the costs advanced and/or incurred by Owner for Project Infrastructure, System Infrastructure, Other Infrastructure and/or any other matters or items pertaining thereto.

5.4 Phasing of Project and Infrastructure. The Project shall be developed in multiple phases at such times, location and size as determined by market demand and the Owner. The infrastructure improvements shall be installed in phases on an as needed basis and sized only as needed to serve the phase of the Project then proposed for and/or being developed. Owner shall not be required to pay for or construct any infrastructure prior to the date that Owner commences development of a phase of the Project that benefits from infrastructure. For purposes of determining Owner's prorata share of any System Infrastructure, Owner's prorata share shall be based upon the proportion of benefit to the phase of the Project then being developed.

5.5 Financing Districts. It is contemplated that multiple Tax Increment Development Districts ("**TIDDs**") and Property Improvement Districts ("**PIDs**") will be formed within the boundaries of the Project. The Parties understand that PIDs and TIDDs will be required to complete the construction and development of the Project, including related Project Infrastructure, System Infrastructure, and possibly Other Infrastructure. The Parties further understand that the approval of TIDDs and PIDs require governmental and/or quasi-governmental approval(s). Upon the filing of an application, the County administration will support the formation of the TIDDs and PIDs to achieve the maximum benefits permitted by law, and the County will act in good faith and commit the necessary resources to conduct and conclude, in a timely manner, the applicable procedures for the formation of the TIDDs and PIDs.

5.6 Impact Fees. The New Mexico Development Fees Act at 1978 NMSA, §§ 5-8-1, *et seq.*, provides that an impact fee may be imposed only to pay certain specified costs, none of which will be incurred by the County for Project Infrastructure. This Agreement is in

lieu of impact fees because the Owner is assuming responsibility for all Project Infrastructure and its prorata share of System Infrastructure, which will be repaid, on a prorata basis at the time of issuance of building permits, in the event the County advances payment of Owner's prorata share of System Infrastructure. The County will not incur any cost for Project Infrastructure or Owner's prorata share of System Infrastructure. To the extent excess Project revenues exist, such excess revenues shall be used for Project purposes, including, but not limited to, the design, construction, installation, maintenance, repair and enhancement of Project Infrastructure and/or Owner's prorata share of System Infrastructure. While no development or impact fees of any kind will be assessed against the Project, if the Parties mutually agree that the County shall assume responsibility for the design and construction of Project Infrastructure and/or Owner's prorata share of System Infrastructure, then the County and Owner may develop a special impact fee structure and service area for the Project for the purpose of imposing impact fees for the specific infrastructure improvements for which the County has assumed responsibility.

5.7 Level of Service. The County will provide public services to the Project consistent with the level of service provided to the remainder of the unincorporated areas of the County. The County will not require a level of service within the Project that is greater than the level of service provided to the remainder of the unincorporated areas of the County. The design and construction requirements for all infrastructure improvements within the Project will be substantially comparable, and equal level of service, to that of the remainder of the unincorporated areas of the County and pursuant to County policies applied in a non-discriminatory manner.

5.8 Conveyance of Infrastructure Improvements. Upon completion of any public roadway infrastructure, drainage facilities, parks, open space and trails, or any other infrastructure improvement, wherever located, constructed for the benefit of the general public, which also benefits the Project, the County, or other applicable governmental agency, quasi-governmental agency or district, will accept the conveyance of any such improvements and shall thereafter own, operate and maintain such improvements at its sole cost and expense.

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

5.10 General Cooperation. The County will cooperate with Owner in connection with the funding, design and construction of all infrastructure improvements. Such cooperation shall include assisting and sponsoring Owner in connection with Owner's applications for grants, loans and other financial benefits that may be available to pay for and/or finance infrastructure, including without limitation: the Clean Water State Revolving Fund (CWSRF); the Rural Infrastructure Program (RIP); the Capital Outlay Program/Special Appropriation Program (SAP); State Tribal Assistance Grants (STAG); American Recovery and Reinvestment Grants (ARRA) routed to New Mexico; and Transportation Investment Generating Economic Recovery (TIGER) grants.

5.11 No Benefit. The Owner will not be responsible for making any financial, land or other contributions for any infrastructure that does not benefit the Project in any material

respect or that is at a level of service greater than the level of service provided to the remainder of the unincorporated areas of the County.

5.12 Benefits and Other Funding Sources/Participation. The development of the Project and its related infrastructure combined with the reservation of land within the Project for employment, manufacturing, industrial and commercial uses will lead to improvements in existing infrastructure, and provide development and economic opportunities that, as of the date of this Agreement, do not presently exist on the west side of the Rio Grande. Project Infrastructure, System Infrastructure and Other Infrastructure may be designed and constructed pursuant to future recovery, reimbursement, credit, cooperation or development agreements and any other type of agreement between the Owner, County and/or other landowners, developers, end-users, governmental and/or quasi-governmental agencies. Nothing within this Agreement shall be interpreted to prevent the County or any other entity from participating in the costs and expenses associated with Project Infrastructure, System Infrastructure and Other Infrastructure. Notwithstanding the foregoing, in no event shall County attempt to recover from Owner, or its successors in title, the costs of any infrastructure improvements that are not the responsibility of Owner under this Agreement, or any other costs, or for which Owner has already paid or is obligated to pay either directly or indirectly through taxes, assessments, impact fees, buy-in fees, or any other means.

5.13 Existing Special Use Permits / Certain Interim Uses. All sites within the Santolina Master Plan boundary area governed by a Special Use Permit or any site expected to be developed with local, state and/or federal support, including any sites, which if developed, will create jobs, shall be governed by Sections 18, Special Use Permits and Section 24, Administration of the Zoning Code until a Level C Plan, affecting such site, has been adopted by County. Except as provided in the first sentence of this Section, no building permits shall be granted on any remaining site until Level B Plans and/or Level C Plans affecting the subject property have been approved. 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.

5.14 Other Landowners Within Master Plan Area. Albuquerque Public Schools, Central New Mexico Community College, and Youth Development, Inc., collectively own approximately 72.135 acres within the Master Plan Area. Each will be responsible for providing infrastructure to its site and/or for negotiating its own development agreement with the County for provision of infrastructure to its site. Owner has no financial or other responsibility to arrange for or provide infrastructure to sites not owned by Owner within the Master Plan area.

6. No Net Expense.

6.1 The Test. The Comprehensive Plan provides that "planned communities shall not be a net expense to local governments". The "no net expense" policy is a mutual commitment to achieve the goal of a responsible balance of infrastructure costs, including construction, operation and maintenance, shared between the public and private sectors. The "no net expense" test is satisfied if the County's on-site public expenditures and off-site public

expenditures reasonably allocated to the Project have been, or will be, off-set by revenues and/or economic and fiscal benefits (direct, indirect and induced) from the Project.

6.2 Satisfaction of the Test. Owner engaged David Taussig & Associates to prepare Fiscal and Economic Impact Studies for the Project both dated August 22, 2013 (collectively, the "**Impact Study**"), which is on file with the County and incorporated herein by this reference. The purpose of the Impact Study was to provide a detailed summary of the projected fiscal and economic impacts and benefits to the County as a result of the development of the Project. The Impact Study concludes that the County will receive significant positive fiscal and economic impacts as a result of the development of the Project. The County has approved the methodology used in the Impact Study and is satisfied that, as shown by the Impact Study and as verified by the independent third-party review commissioned by the County (Impact Data Source, Austin, Texas, Report on Economic and Fiscal Impact of the Santolina Project, dated May 7, 2014), the County's expenditures reasonably allocated to the Project will be off-set by revenues and/or benefits from the Project and that the Project will produce excess revenues and benefits over time. Therefore, the Santolina Project fully satisfies the "no net expense" policy contained in the Comprehensive Plan. To the extent positive fiscal and economic benefits and excess revenue are generated from the Project, such excess revenue will be expended on and within the Project for items that benefit the Project such as, but not limited to, the design, construction, installation, maintenance, repair and enhancement of Project Infrastructure and/or Owner's prorata share of System Infrastructure.

7. Vesting Agreements.

7.1 Vesting of Certain Property Rights. Owner shall have a vested property right to develop and complete the Project as provided in this Agreement, the Master Plan, the Land Use Plan (Exhibit 7 to the Master Plan), and the adopted PC Zoning, including without limitation, the right to implement the types and uses, variances, densities and intensities, location of uses, and the standards and procedures set forth therein.

7.2 Vested Rights. The following constitute, but do not limit, vested property rights under this Agreement:

7.2.1 No Entitlement Change. The County shall not modify, rescind, or revoke any rights or entitlements granted within and pursuant to this Agreement or take any action that impairs or impedes the rights and entitlements granted herein and pursuant hereto.

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

7.2.3 Timing of Development. In recognition of the size of the Project, the time required to complete development, the need for development to proceed in phases, and the possible impact of economic conditions, cycles, varying market conditions and financing availability during the course of development, Owner shall have the right to develop the Property

in such order and at such rate and time as the market dictates, subject to the conditions of this Agreement and approved Level B Plans and Level C Plans.

7.2.4 Uniformity of Requirements. Owner shall have the right to complete development of the Project with conditions, levels of service, standards, dedications, exactions, and requirements which are no more onerous than those set forth in the Agreement and/or those being imposed by the County on other Owners in the County on a reasonably uniform and consistent basis.

7.3 Term for Vested Rights. In recognition of the size and necessary duration of the Project, the vested rights identified above shall continue until the Project is completed.

7.4 Compliance with County Regulations. As used herein, the term **"County Regulations"** mean the County ordinances, rules, regulations, standards, procedures, and administrative policies in effect from time to time. The County Regulations applicable to the development of the Property shall be the County Regulations that are in force from time to time; provided, however, this Agreement, the Master Plan, the Land Use Plan, the PC Zoning, and any future Level B Plans and Level C Plans adopted by the County shall control over any conflicting County Regulations applicable to the development of the Property (**"Superseded Regulations"**). With the exception of the Superseded Regulations, all other applicable laws and all other County Regulations shall otherwise apply to the Property. However, Owner shall have the right to comment on or oppose adoption of any proposed ordinances or regulations which may impact the Project.

7.5 Changes in Regulations. Notwithstanding Section 7.4, this Agreement shall not preclude the application of changes in County Regulations, which may occur from time to time during the term of this Agreement and are specifically mandated and required by changes in State or Federal laws or regulations, to development of the Property. To the extent that such changes in State or Federal laws prevent or preclude compliance with one or more provisions of this Agreement, the County and Owner shall take such action as may be required to amend this Agreement in such a manner so that the amended agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such change in County Regulations had not occurred. The Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the intent and purposes of this Agreement if and as amended in accordance with this Section.

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

9. Default and Remedies. Any failure by any Party to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days

following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such sixty (60) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such sixty (60) day period. If the failure is cured, then no default shall exist and the noticing Party shall take no further action. Upon the occurrence of a default under this Agreement, the non-defaulting Party may pursue all rights and remedies available at law and equity. A default by a subsequent owner of a portion of the Property shall not be deemed a default by Owner or any other subsequent owner of a different portion of the Property, and the County may not withhold or condition its performance under this Agreement, or exercise any remedy, as to Owner or any subsequent owner of a portion of the Property who is not in default of this Agreement. With the exception of Owner and the County, no subsequent owner of a portion of the Property may enforce this Agreement as against any other owner of a portion of the Property.

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

If to the County: Bernalillo County
_____
Albuquerque, New Mexico 87103
Attn: County Manager
Fax:. _____

and

If to Owner:

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

and

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

and

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

11. Miscellaneous General Provisions.

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

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

11.2 Prompt Review Process. The Project is an important project within the County, and as such, timely reviews, inspections and approvals by the County are necessary to effectuate the development of the Project. The County will use its best efforts to promptly initiate all review, inspection and approval processes. Additionally, the County may retain independent consultants, reviewers, inspectors and advisors, at Owner's request and at Owner's cost, in order to efficiently continue the review, inspection and approval process.

11.3 Pre-Development Platting Actions. Given the significant size of the Master Plan area, Owner needs the ability to pursue pre-development platting of the Property to create manageable and distinct properties as a prelude to further more refined platting in advance of actual or coincident with development ("**Pre-Development Platting Actions**"). However, the County Succeeding Subdivision regulation may potentially restrict this ability without affording additional protection to the County. This is particularly so given the retained right of the County, pursuant to the County Development Review Authority ("**CDRA**") required review process, to utilize the Level C subdivision and site development plan requirement to secure legal and reasonable infrastructure commitments in advance of building permits. County Subdivision regulations also give the CDRA discretion for infrastructure requirements related to platting actions. Therefore, given that invocation of the Succeeding Subdivision regulation is unnecessary in this circumstance, since (a) the Level C process under CDRA auspices is sufficient to require necessary infrastructure, regardless of number of platting actions over time, and (b) all development is required to follow the CDRA Level C process, the following process shall apply to platting actions within the Master Plan area:

11.3.1 Residential and Non-Residential Land.

(a). All platting actions shall be considered "Minor" (or "**Summary**") Plat processes, reviewed and approved only by the CDRA.

(b) The "Succeeding Subdivision" regulation shall not be applicable to Pre-Development Platting Actions.

(c) Provided that legal access to all tracts, plat notifications of infrastructure deferral and appropriate Disclosure Statements are ensured with the platting action, infrastructure and related infrastructure agreements and guaranties shall not be required for

platting actions that are not specific to and concurrent with a Level C site development plan action.

(d) Platting actions that are concurrent with and specific to a Level C site development plan action may require that infrastructure be guaranteed prior to plat recordation, as reasonably determined by the CDRA. The infrastructure requirement may be tied to the platting action or as part of the Level C site development plan action.

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

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

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

11.7 Successors and Assigns. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns; provided; however, that Owner's rights and obligations hereunder may be assigned, in whole or in part, only to a person or entity that has acquired title to the Property or a portion thereof or an interest therein. In the event of a complete assignment, Owner shall be released from all of its obligations under this Agreement, provided that: (i) Owner agrees in writing to assign all of its obligations under this Agreement to such assignee, (ii) the assignee agrees in writing to assume all of such obligations, and (iii) such assignment and agreement is recorded in the office of the Bernalillo County Clerk. In the event of a partial assignment, Owner shall be released from the obligations assigned to and assumed by Owner's assignee, provided that: (i) Owner agrees in writing to assign certain of its obligations under this Agreement to such assignee, (ii) the assignee agrees in writing to assume the obligations assigned to such assignee, and (iii) such assignment and agreement is recorded in the office of the Bernalillo County Clerk and provides for the allocation of obligations being retained by the Owner and the obligations

being assigned to and assumed by the assignee. This Agreement shall not impose any obligations upon and shall automatically terminate without the execution or recordation of any further document or instrument as to any residential or commercial lot which has been finally subdivided and sold with a completed structure thereon for which a certificate of occupancy or equivalent has been issued. Thereafter, such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

11.8 Mortgagee Rights. Any mortgagee that wishes to receive notices of default from the County pursuant to this Agreement may provide written notice to the County requesting such notice. The County shall notify any such mortgagee requesting notice of default under this Agreement, and provide to any such mortgagee the same opportunity to cure as is provided to Owner herein. Such action shall not give rise to any liability on the part of the mortgagee, and this Agreement shall not be terminated by the County as to any mortgagee: (a) who has requested notice but the mortgagee is not given notice by the County or (b) if either of the following is true:

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

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

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

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

requesting a notice of proposed amendment, the County shall provide a copy of any proposed amendment to such mortgagee.

11.9 Attorneys' Fees. In the event any party commences litigation for the judicial interpretation, enforcement, termination, cancellation or rescission hereof, or for damages (including liquidated damages) for the breach hereof, then, in addition to any or all other relief awarded in such litigation, the prevailing Party therein shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred.

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

11.11 Term of Agreement. The term of this Agreement shall commence upon the effective date of the resolution adopting and approving this Agreement and shall extend until completion of the Project.

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

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

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

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

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

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

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

11.18 Amendment. No change, addition or deletion is to be made to this Agreement except by a written amendment approved and executed by the Parties. Within ten (10) days after any approved amendment to this Agreement, such approved amendment shall be recorded in the office of the Bernalillo County Clerk. If the County enters into a development agreement with another landowner that provides terms or conditions which, when taken as a whole, are more favorable to that landowner than provided in this Agreement, then the County shall notify Owner and proceed to amend this Agreement, with the concurrence of Owner, to include the more favorable terms or conditions so that this Agreement is, at least, as favorable to Owner as the terms and conditions contained in the development agreement entered into with the other landowner.

11.19 Recordation. This Agreement and any amendment shall be recorded with the Bernalillo County Clerk.

11.20 Status Statements. Any Party (the "**Requesting Party**") may, at any time, and from time to time, deliver written notice to any other Party requesting such other Party (the "**Providing Party**") to provide in writing that, to the knowledge of the Providing Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (d) any other matter reasonably requested (a "**Status Statement**"). A Party receiving a request hereunder shall execute and return such Status Statement within fifteen (15) business days following the receipt thereof. The County Manager (or his or her designee) shall have the right to execute any Status Statement requested by Owner. The County acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees; provided, however, the County shall have no liability for monetary damages to Owner, or any transferee or mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the County.

11.21 Counterparts. This Agreement may be executed in two (2) or more counterparts, including facsimile and/or electronic counterparts, each of which shall be deemed an original, but all of which together constitute one (1) and the same instrument. The signature

pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

[Balance of Page Intentionally Left Blank; Signature Page Follows]

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

COUNTY:

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

By: _____
Its: County Manager

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on the ___ day of _____, 2014, by _____, County Manager of Bernalillo County, a political subdivision of the State of New Mexico,, for and on behalf thereof.

_____
Notary Public

My Commission Expires: _____

Owner:

WESTERN ALBUQUERQUE LAND HOLDINGS LLC, a Delaware limited liability company

By: BARCLAYS CAPITAL REAL ESTATE INC., as Servicing Member

By: _____
Name: _____
Title: _____

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on the ___ day of _____, 2014, by _____, the _____ of Barclays Capital Real Estate Inc., as Serving Agent for Western Albuquerque Land Holdings, LLC, a Delaware limited liability company, for and on behalf thereof.

_____
Notary Public

My Commission Expires: _____

EXHIBIT A

Legal Description of Property

EXHIBIT B

Master Plan

The Level A Master Plan for Santolina prepared for Western Albuquerque Land Holdings, LLC by Garrett Development Corporation, Consensus Planning, Bohannan Huston, Inc. and SEC Planning, LLC dated _____. 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.

EXHIBIT C

SANTOLINA
INFRASTRUCTURE CATEGORIZATION