

**SANTOLINA LEVEL B.I
DEVELOPMENT AGREEMENT
(Bernalillo County)**

This SANTOLINA LEVEL B.I DEVELOPMENT AGREEMENT (“**Level B.I Agreement**”) is entered into as of the ____ day of _____, 2018 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. Long range development in Bernalillo County is guided by the Albuquerque/Bernalillo Comprehensive Plan (“**Comprehensive Plan**”).

B. The County has adopted the Planned Communities Criteria of the Comprehensive Plan and the associated Addendum to the Planned Communities Criteria as evidenced by Notice of Decision Board of County Commissioners dated May 24, 2012; File No. SPR-20120002 (“**PCC**”). The PCC 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 second is the Level B Village Master Plan; and the third is the Level C Subdivision or Site Development Plan. Separate development agreements are required for each planning level, as described in the PCC.

C. Owner is the owner of an approximately 13,851 acre parcel of land located in Bernalillo County, generally bounded by Interstate 40 on the north; 118th Street and the escarpment open space on the east; the Pajarito Mesa on the south; and the escarpment area adjacent to the Rio Puerco Valley on the west (“**Level A Property**”).

D. At a public hearing held on June 16, 2015, the Board of County Commissioners of the County (“**County Commission**”) approved (i) the Level “A” Community Master Plan for the Level A Property (“**Level A Plan**” or “**Master Plan**”), as evidenced by Notification of Decision Board of County Commissioners dated June 19, 2015; File No. SPR-20130004, and (ii) Planned Community Zoning Ordinance 2015-20 for the Level A Property (“**PC Zoning**”), as evidenced by Notice of Decision Board of County Commissioners dated June 18, 2015; File No. SPR-20130009. On June 24, 2015, the County Commission approved the Santolina Level A Development Agreement by and between the Parties, which was recorded against the Level A Property in the official records of the Bernalillo County Clerk at Document Number 2015-07312 (the “**Level A Agreement**”). On August 15, 2017 the County Commission approved the request to modify conditions of approval 8, 9, and 11 of the adopted Santolina Planned Communities Level A Master Plan, as evidenced by Notification of Decision Board of County Commissioners dated August 16, 2017; File No. SPR2017-0003 and COA2017-003/SPR2017-003, (“**Level A Conditions 8, 9, and 11 Modification**”).

E. As provided for in the PCC, Owner has caused to be prepared a Level B Village Master Plan (“**Level B.I Plan**”) covering an approximately 4,243 acre portion of the Level A

Property, which is legally described on **Exhibit A** attached hereto (“**Level B.I Property**”). A copy of the Level B.I Plan is available for review as indicated in **Exhibit B**. The development of the Level B.I Property as provided in the Level B.I Plan is referred to herein as the “**Level B.I Project**”.

F. The PCC requires the Owner to present to the County, in conjunction with the Level B.I Plan, a Level B development agreement to: (i) follow through with more detailed infrastructure/service agreement covering phasing of the village master plan and its public services/facilities, and designation of financial, operations, and management responsibility over time; (ii) specify measures to mitigate negative consequences of the village's development; (iii) augment Level A development agreements expressing items mutually agreed to by the County and the planned community developer and committing to their permanency unless re-negotiated; any limitations on development established at Level A cannot be increased at Level B; (iv) provide a legal recordable instrument; (v) identify more specifically any public incentives to the developer, or public/private partnerships, including provisions for affordable housing; and (vi) identify more specifically any public incentives or agreements between the local government and developer for the appropriate protection and maintenance of the open space system. This Level B.I Agreement, pursuant to which the provisions of the Level B.I Plan will be implemented, constitutes compliance with the PCC Level B development agreement requirements.

G. At a public hearing held on August 23, 2016, the County Commission approved by Administrative Resolution No. 2016-60 the formation of the Santolina Public Improvement Districts 1 through 40 for the Master Plan (“**Santolina PID**”), as further described within the fully executed MASTER PID INFRASTRUCTURE DEVELOPMENT AND ACQUISITION AGREEMENT BY AND BETWEEN BERNALILLO COUNTY, NEW MEXICO SANTOLINA PUBLIC IMPROVEMENT DISTRICTS ONE THROUGH FORTY AND WESTERN ALBUQUERQUE LAND HOLDINGS LLC dated August 23, 2016.

H. At a public hearing held on November 15, 2016, the County Commission approved by Administrative Resolution No. 2016-83 the formation of the Santolina Tax Increment Development Districts 1 through 20 and the dedication of certain gross receipts tax increment and property tax increment for the Master Plan (“**Santolina TIDD**”), as further described within the fully executed MASTER TIDD INFRASTRUCTURE DEVELOPMENT AND ACQUISITION AGREEMENT BY AND BETWEEN BERNALILLO COUNTY, NEW MEXICO SANTOLINA PUBLIC IMPROVEMENT DISTRICTS ONE THROUGH TWENTY AND WESTERN ALBUQUERQUE LAND HOLDINGS LLC dated November 15, 2016.

I. The project and system public infrastructure funding strategy is set forth at Section 8.5 (pp. 129, 130 and 131) of the Level B.I Plan, which identifies and discusses multiple potential funding sources including charges for services, direct funding, federal grants, general obligation bonds, gross revenue tax revenue bonds, impact fees, intergovernmental revenues, loans, open space mill levy, public improvement districts, special assessment districts, state capital outlay appropriations, tax increment development districts, utility expansion charges and water supply charges.

J. At a public hearing held on June 27, 2006, the County Commission approved a Franchise Agreement between the County and Albuquerque Bernalillo County Water Utility

Authority (“**Authority**”) allowing the Authority to place its water and wastewater lines in County right-of-way (“**Franchise Agreement**”).

K. At a public hearing held on August 30, 2017, the County Commission approved the Level B.I Plan as evidenced by Notification of Decision Board of County Commissioners dated September 1, 2017; File No. SPR-2016-0001.

L. The Level A Plan, the PC Zoning, the Level A Agreement, the Level A Conditions 8, 9, and 11 Modification, the Santolina PID, the Santolina TIDD, and the Level B.I Plan are collectively referred to herein as the “**Santolina Approvals**”.

M. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Level A Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, including the County’s approval of the Santolina Approvals and the associated documents and submittals associated with the Santolina Approvals, the Parties agree as follows:

AGREEMENT:

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

2. Infrastructure/Service Agreements.

2.1 Capital Improvements. The infrastructure improvements to and/or serving the Level B.I Property, or any phase thereof, are referred to herein as the “**Level B.I Improvements**”. The Parties acknowledge and agree that the Level B.I Property will be developed in multiple phases (each, as “**Phase**”) and there are numerous variables, some of which are unknown at this time, including without limitation the sequencing, location, size, configuration, use and intensity of each Phase, that will impact the extent of Level B.I Improvements required to serve each Phase. Therefore, as more fully set forth below, the identification of each Phase and the Level B.I Improvements required for each Phase shall be determined during the Level C review and approval process pursuant to the PCC and procedures that are uniformly and non-discriminatorily applied by the County throughout the County. Furthermore, the obligation of the Owner to construct and/or pay for the Level B.I Improvements for each Phase shall be determined pursuant to the Santolina Approvals and the County approval process for site plans and platting actions, as set forth in the Bernalillo County Subdivision and Land Development Standards Ordinance, as may be amended (the “**Level C Process**”). If there is a conflict between the Level C Process and the Santolina Approvals then the Santolina Approvals shall control.

2.1.1 Transportation and Roadway Infrastructure. The County approved the Santolina Level B.I Master Plan Transportation Master Plan prepared by Bohannon Huston dated September 30, 2016 (the “**Level B.I Transportation Plan**”). The Level B.I Plan at Chapter 4, “Transportation,” references and summarizes the Level B.I Transportation Plan and provides more detail than the Level A Plan on transportation and roadway phasing and infrastructure, including specified infrastructure projected to be in place by 2025 and 2040. The

County Commission did condition its approval of the Level B.I Plan by requiring that the applicant provide the County Public Works Division a list of 2025 and 2040 transportation projects identifying potential Level B.I improvements to be built in the future and the share of private, local and regional public funding currently available for such Level B.I improvements for each project (the “**2025/2040 Transportation Projects List**”) within 30 days of BCC approval. Owner complied with the County Commission condition with the Bohannon-Huston submittal to Bernalillo County Public Works, dated September 26, 2017 regarding 2025 and 2040 Transportation Projects Based on Santolina Development Scenario. However, the Parties recognize and agree that there are numerous variables which will impact the extent of the Roadway Infrastructure required to serve each Phase of the Level B.I Property which are unknown at this time. These include: (i) the location, size, configuration, and intensity of the Phase, (ii) the proposed land uses within the Phase, (iii) the housing/employment balance, (iv) availability and use of public transportation, (v) the availability and use of other or alternate modes of transportation, including walking, bicycling, and (vi) the implementation of a transportation plans and technology that incorporate ride sharing, carpooling, varying work hours, and auto sharing. Therefore, the final identification of Roadway Infrastructure for each Phase, considering both the Level B.I Transportation Plan and the 2025/2040 Transportation Projects List, as updated and approved by the County, shall be determined at the Level C Process for each such Phase.

Bernalillo County Public Works Division will use the 2025/2040 Transportation Projects List, as updated and approved by the County, to:

- a. Identify system level transportation projects and costs to serve Santolina for the regional, long range Metropolitan Transportation Plan (MTP).
- b. Identify the federal and local funding share needed to build system level improvements in the short range Transportation Improvement Program (TIP) related to Santolina.
- c. Identify and track Santolina share funding to build system level and off-site impact improvements required in Level C Traffic Impact Analysis for individual developments.
- d. Monitor Level C cumulative development and related transportation improvements as called for in the Level B.I Sequencing Plan in the Master Plan. An unmitigated “significant deviation” in traffic volumes resulting from the Level B.I Sequencing Plan will require a Level B.I Transportation Plan amendment. A mitigated “significant deviation” in traffic volumes resulting from the Level B.I Sequencing Plan may not require an amendment to the Level B.I Transportation Plan. A Level B.I Transportation Plan amendment may be approved by the County Manager or the Deputy County Manager for Public Works or their appointees. A “significant deviation” is defined as roadway traffic volumes increasing by more than 20% from the level of service (LOS) forecast in the then current Level B.I Transportation Plan.

2.1.2 Water and Wastewater Infrastructure. In July 2014 the Authority provided a letter of serviceability to the County indicating its capability and capacity to service

the Level A Property. It is anticipated that the Authority will be the water and wastewater service provider for the Level A Property. Owner's responsibility for water and wastewater infrastructure shall be identified in a separate development agreement entered into by and between Owner and the Authority. As set forth in the Level A Agreement, at Section 6.2.5, all matters concerning the water and sewer infrastructure improvements for the Santolina Project are to be addressed solely between Owner and the Authority and therefore are not addressed in this Level B.I Agreement. Nevertheless, Owner agrees to provide a copy of the fully-executed Owner-Authority development agreement to the Bernalillo County Planning and Development Services Department, Attn: Director (the "**Planning and Development Services Department**").

Additionally, in order to keep the County informed, prior to County Commission approval of the Level B.I Plan, Owner submitted the Santolina Level B Water & Sanitary Sewer Master Plan prepared by Bohannon Huston dated January 25, 2016 to the County for its review and reference. The Level B.I Plan, at Chapter 6, "Utility Infrastructure and Services," discusses the Level B.I Plan projected water and wastewater services, phasing and infrastructure, including specified infrastructure projected to be in place at 2025 and at full build out.

Upon approval of the Authority development agreement, information concerning major water and wastewater infrastructure, as identified in the development agreement and/or supporting documents, shall be provided to the County. The Owner will provide information and plans necessary for all approvals associated with each Phase during the Level C Process.

The County, without impairment to the County, agrees to cooperate with Owner in its efforts to obtain water and wastewater service to the Level A Property (i) at the Authority's current level of service, (ii) at service levels that are proportionate to the Phase that will be served, and (iii) pursuant to processes and procedures uniformly and non-discriminatorily applied by the Authority throughout its service area.

2.1.3 Stormwater Infrastructure. The County approved the Santolina Level B.I Master Plan Drainage (Stormwater) Master Plan and Terrain Management Plan prepared by Bohannon Huston dated September 14, 2016 (the "**Level B.I Stormwater Plan**"). The Parties recognize and agree that there are numerous variables which will impact the extent of the stormwater infrastructure required to serve each Phase of the Phase B.I Property, some of which are unknown at this time, including without limitation the location, size, configuration, and intensity of the Phase and the proposed land uses within the Phase. Owner's responsibility for publically accepted major stormwater infrastructure generally consisting of major drainage channels and ponds (or dams) shall be identified in separate agreements entered into by and between Owner and the appropriate governmental entity during the Level C Process. Owner agrees to provide a copy of fully-executed Owner-governmental stormwater agreements to the Planning and Development Services Department. The Level B.I Plan at Chapter 5, "Environment and Open Space," discusses the Level B.I Plan projected stormwater phasing and infrastructure, including specified infrastructure projected to be in place at 2025 and at full build out. The Level B.I Plan at Section 5.5.1 acknowledges that the County will own and operate much of the public infrastructure serving the Level B.I Property. Therefore, provided that Owner complies with the Level C Process, the County agrees to accept the conveyance of public

stormwater infrastructure improvements. Final determination of stormwater infrastructure for each Phase, considering the Level B.I Plan, the Level B.I Stormwater Plan and any publicly approved drainage master plan, shall occur during the Level C process for each Phase.

2.1.4 Recreation Facilities. The Level B.I Plan identifies parks, open space and recreational facilities in Chapter 2, “Land Use,” which complies with the Parks, Recreation and Open Space Facilities Master Plan for 2015-2030 (“**PROS Plan**”) Level of Service for parks, open space, community centers, aquatics facilities and fully-inclusive playgrounds (each a “**Recreation Facility**,” and collectively, “**Recreation Facilities**”), and sets forth the phasing of the Recreation Facilities, other than open space, in Table 10 at Section 8.2 of Chapter 8, “Approval Process” (“**Table 10**”). Pursuant to the terms of the Level A Agreement, Recreation Facilities that are required to meet the County’s standard level of service needs solely to serve Santolina and serve only Santolina will be “Project Infrastructure.” Applicable open space level of service requirements are set forth at Section 2.2.7 in Tables 6, 7 and 8 of Chapter 2, “Land Use.”

Property in the Land Use Plan identified as “Open Space (Escarpment)” that is in excess of the quantity required to serve the population of the Level B.I Plan (currently estimated at 464 acres based on a projected population of 23,178 and a level of service of 20 acres per 1,000 people) shall be considered System Infrastructure. Pursuant to the terms of the Level A Agreement, property in the Land Use Plan identified as “Parks and Internal Open Space” that are required to meet the County’s standard level of service needs solely to serve Santolina and only Santolina will be “Project Infrastructure.” As set forth in Section 6.2.4 of the Level A Agreement, Owner agrees to dedicate to the County the Owner’s proportionate share of the “Open Space (Escarpment)”.

The County acknowledges that the Open Space (Escarpment) and Parks and Internal Open Space will be dedicated over time to the County as the Phase adjacent to the portion of the Open Space (Escarpment) to be dedicated is developed, and as the Phase within which the Parks and Internal Open Space is located is developed. Project Recreation Facilities will be dedicated when the thresholds set forth in Table 10 have been met, which shall fully satisfy Owner’s financial obligations for all Recreation Facilities. The County agrees to accept Recreation Facilities, which must meet the industry practices and standards customarily acceptable to and uniformly applied by Bernalillo County, and thereafter operate and maintain those portions of the Recreation Facilities that are dedicated to the County, at its sole cost and expense. The dedication of the Open Space (Escarpment) shall be subject to: (i) a restrictive covenant, which limits the use of the Open Space (Escarpment) to passive and limited active open space and recreational uses, and (ii) the reservation of reasonable rights necessary for the development of the Santolina Project, including but not limited to roadway, utility and drainage easements, and (iii) a covenant running with the land and a reversionary right whereby any dedicated land shall revert to Owner, its successors or assigns, if the dedicated land is ever used for something other than for public open space, park and recreation purposes.

2.1.5 Fire Protection. Owner agrees to dedicate to the County the fire station sites identified in Section 7.3 at Chapter 7, “Government and Public Services,” of the Level B.I Plan. The Parties further agree that Owner shall not be required to design, construct or operate any fire stations. Instead, Owner shall contribute the Level B.I Property’s proportionate

share of any fire stations by payment to the County of a fire station impact fee, subject to the terms of **Section 9** below and the County shall be solely responsible for the timely construction and operation of such fire stations.

2.1.6 Police/Sheriff Protection. Owner agrees to dedicate to the County the police/sheriff station sites identified in Section 7.2 at Chapter 7, “Government and Public Services,” of the Level B.I Plan. The Parties further agree that Owner shall not be required to design, construct or operate any police/sheriff stations. Instead, Owner shall contribute the Level B.I Property’s proportionate share of any police/sheriff stations by payment to the County of any police/sheriff station impact fee, subject to the terms of **Section 9** below, or as otherwise agreed between the Parties, and the County shall be solely responsible for the timely construction and operation of such police/sheriff stations.

2.1.7 School Facilities. Owner agrees to reserve for the Albuquerque Public School system (“APS”) and Central New Mexico Community College (“CNM”) the land identified in Section 7.6 at Chapter 7, “Government and Public Services,” of the Level B.I Plan and the Level B.I Land Use Plan for a period of five (5) years following the County Commission approval date of the Level B.I Plan. If APS or CNM, as applicable, has not commenced construction of school facility on the land reserved for APS or CNM, as applicable, within such 5-year period, then Owner shall have no further obligation to reserve such land for school purposes. All matters concerning the dedication, construction and operation of school facilities, except for offsite infrastructure needed to serve each facility, shall be addressed solely between Owner and APS or CNM, as applicable, pursuant to a separate agreement. Notwithstanding the first sentence of this Section 2.1.7, if Owner and/or APS and/or CNM agree pursuant to a separate agreement to eliminate, relocate, increase or decrease the size of the land identified in Section 7.6 of the Level B.I Plan then the above five (5) year reservation period for the land identified in Section 7.6 of the Level B.I Plan shall immediately terminate and Owner is free to repurpose the land for other appropriate uses. Owner agrees to provide a copy of the fully-executed Owner-APS and/or CNM, as appropriate, agreement pertaining to school land location revisions to the Planning and Development Services Department.

2.2 Timing of Capital Improvements. Owner’s obligation to construct, and/or guarantee the construction of the Level B.I Improvements shall be implemented during the Level C Process.

2.3 Completion of Level B.I Improvements. The installation and construction of the portion and/or phase of the public Level B.I Improvements necessary for the development of a Level C Plan (“**Level C Improvements**”) shall be determined pursuant to the Level C Process. Following County Commission approval of the Level B.I Agreement, a form of development agreement that will be used for each Level C Plan within the Level B.I Plan area (the “**Level C Development Agreement**”), as required by the PCC, shall be prepared and mutually approved by Owner and County staff. Owner and County staff shall use good faith, diligent efforts to agree upon the form of the Level C Development Agreement as soon as reasonably possible after County Commission approval of the Level B.I Agreement in a fashion consistent with the Santolina Approvals, Level B.I Agreement and Level C Process. The Level C Development Agreement shall incorporate necessary and appropriate modifications to ensure compliance with PCC requirements. The obligation of the Owner to construct and/or pay for the

Level C Improvements shall be determined pursuant to the Santolina Approvals, and set forth in each Level C Development Agreement. It is intended, at a minimum, that the form Level C Development Agreement will (a) comply with PCC requirements, (b) provide that either the County Manager, the Deputy County Manager for Public Works, the Director of Planning and Development Services, or their equivalent, has authority to approve and execute the Level C Development Agreement and, (c) include assurance to the County for the installation of the Level C Improvements, unless otherwise financially guaranteed or otherwise assured to the written satisfaction of the receiving agency, in such form and estimated dollar amount, not to exceed 125% of engineer estimated amount, to assure that the installation of the Level C Improvements are completed. The Owner and/or developer, with approval of the County, may utilize any one or combination of the following methods of assurance:

1. A performance bond
2. A letter of credit;
3. A letter of financial assurance from a lender;
4. A dual beneficiary letter of credit;
5. Cash or certified check;
6. An agreement to withhold vertical building permits;
7. A municipal lien against the land to be developed;
8. A municipal lien against a substitute portion of land valued at an amount equal to the Level C Improvements to be owned, operated and maintained by the County;
9. Such other assurance mechanism as may be approved by the County.

3. Negative Consequences; Mitigation Measures. There are no unusual negative consequences arising from the development of the Level B.I Project currently identified. However, in the event that specific negative impacts are identified through the Level C approval process, Owner commits to take reasonable action to mitigate negative impacts resulting from the development of the Level B.I Property.

4. Legally Recording Instrument. This Level B.I Agreement shall be recorded in the official records of the Bernalillo County Clerk.

5. Augmentation of Level A Agreements. Except as otherwise provided in this Level B.I Agreement, the County and Owner have not agreed to supplement their agreements contained in the Level A Agreement.

6. Public Incentives to the Developer. Except for the Santolina PID and Santolina TIDD, as of the date of execution of this Level B.I Agreement the County has not offered any additional or new public incentives to the Owner and the County and the Owner have not agreed

upon any additional or new public/private partnerships relating to the Level B.I Project. County incentives benefitting the Level B.I Property, if any, will be granted in accordance with the County's then current economic development financing policies and procedures and pursuant to separate agreements between Owner and the County. Owner shall file, or cause to be filed, a copy of any economic development incentive application for the benefit of a project located on Level B.I Property with the Treasurer of the Santolina TIDD and Santolina PID. Nothing in this Level B.I Agreement shall be construed to (i) commit the current Commission or future Commissions to provide additional or new public funding or financing mechanisms and/or (ii) reduce, restrict or impair the Owner's implementation, rights and benefits of the Santolina PID and Santolina TIDD and/or (iii) impair, reduce or restrict Owner from requesting any incentives pursuant to the Bernalillo County Economic Development Financing Policy & Procedures or any other policies of the County or any other institution or agency.

7. Public Incentives or Agreements Relating to the Open Space System. Except for the agreements contained in the Level A Agreement and Section 2.1.4 of this Level B.I Agreement, the County has not offered any public incentives to the Owner regarding open space system within the Level B.I Project, and the Owner and the County have not entered into any agreements regarding the open space system within the Level B.I Project.

8. No Net Expense.

8.1 The Test. The "no net expense" policy contained in the Comprehensive Plan and set forth at Section 7.1 in the Level A Agreement provides: "Planned communities shall not be a net expense to the County. The "no net expense" policy is a mutual commitment to achieve the goal of a responsible balance of infrastructure costs, including construction, operation and maintenance, shared between the public and private sectors. The "no net expense" test is satisfied if the County's on-site public expenditures and off-site public expenditures reasonably allocated to the Project have been, or will be, off-set by revenues and/or economic and fiscal benefits (direct, indirect and induced) from the Project."

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

8.2.1 Level A. Section 7.2.1 of the Level A Agreement provides that the Impact Study (as defined therein) concludes that the County will receive significant positive fiscal and economic impacts as a result of the development of the Project.

The report on the economic and fiscal impact on the County of the Santolina TIDDs located within the Santolina Level A Community Master Plan area (the "**Level A Report**") also concludes that the County will receive significant net positive fiscal and economic impacts as a result of the development of the Project with TIDDs in place. Therefore, the Level A Project fully satisfies the "no net expense" policy.

8.2.2 Level B. The report on the economic and fiscal impact on the County of the Santolina TIDDs located only within the Santolina Level B.I Village Master Planned area (the "**Level B.I Report**") concludes that the County will receive significant net positive fiscal and economic impacts as a result of the development of the Level B.I Project with TIDDs in place. Therefore, the Level B.I Project fully satisfies the "no net expense" policy.

8.2.3 The “no net expense” test will be calculated on a cumulative basis.

9. Impact Fees. As provided in the Level A Agreement, the County and Owner will comply with the New Mexico Development Fees Act at 1978 NMSA, §§ 5-8-1, et seq. (the “**Act**”) and the Bernalillo County Impact Fees Ordinance at Chapter 46-1, et seq. (the “**Ordinance**”).

10. Prohibition Against Double Payment. 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 the Santolina Approvals, 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.

11. Parties’ Rights.

11.1 Property Rights. Owner shall have the right to develop and complete the Level B.I Project as provided in the Santolina Approvals, as further refined by this Level B.I Agreement.

11.2 Master Plan. Owner shall have the right to develop the Level B.I Project and engage in land uses in the manner and to the extent set forth in and pursuant to the applicable provisions of Santolina Approvals, as further refined by this Level B.I Agreement.

11.3 Timing of Development. In recognition of the size of the Level B.I 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 Level B.I Project in such order and at such rate and time as the market dictates, subject to the conditions of this Level B.I Agreement, the Level B.I Plan, and Level C Plans approved in the future.

11.4 Compliance with County Regulations; Conflicts. The establishment of the rights under this Level B.I Agreement shall not preclude the application of County ordinances, rules, regulations and procedures of general applicability (“**County Regulations**”), except to the extent that such County Regulations conflict with the provisions of this Level B.I Agreement; provided that nothing in this Level B.I Agreement shall be construed to prohibit a future County Commission from regulating for the health, safety and welfare of County residents. The Owner does not waive its right to oppose adoption of any such proposed ordinances or regulations that are not already in existence.

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

12. 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 Level B.I Agreement challenging the validity of any provision of any of the approvals including this Level B.I Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals, without prejudice to the rights of the Parties vis-à-vis each other. Each Party shall select its own legal counsel and retain such counsel at its own expense.

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

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

If to Owner: Western Albuquerque Land Holdings Inc.
 c/o Garrett Development Corporation
 Attn: Jeff Garrett
 6900 East Camelback Road, Suite 607
 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 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

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

14. Miscellaneous General Provisions.

14.1 Enforced Delay. Whether stated or not, all periods of time in this Level B.I 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 Level B.I 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 Level B.I 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 (other than the County); (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**").

14.2 Limited Severability. In the event that any provision of this Level B.I 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 Level B.I Agreement and this Level B.I Agreement shall otherwise remain in full force and effect; provided that this Level B.I 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 Level B.I Agreement as and if reformed in accordance with this Section.

14.3 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 Level B.I Agreement.

14.4 Construction. Each reference in this Level B.I Agreement to any of the rights approved hereunder shall be deemed to refer to the rights as they may be amended from time to time pursuant to the provisions of this Level B.I Agreement, whether or not the particular reference refers to such possible amendment. This Level B.I 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 Level B.I Agreement.

14.5 Successors and Assigns. The provisions of this Level B.I 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 Level B.I 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 Level B.I Agreement, provided that: (i) Owner agrees in writing to assign all of its obligations under this Level B.I 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 Level B.I 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 Owner and the obligations being assigned to and assumed by the assignee. Thereafter, such lot shall be released from and no longer be subject to or burdened by the provisions of this Level B.I Agreement. A default by a subsequent owner of a portion of the Level B.I Property shall not be deemed a default by Owner or any other subsequent owner of a different portion of the Level B.I Property, and the County may not withhold or condition its performance under this Level B.I Agreement, or exercise any remedy, as to Owner or any subsequent owner of a portion of the Level B.I Property who is not in default of this Level B.I Agreement. With the exception of Owner and the County, no subsequent owner of a portion of the Level B.I Property may enforce this Level B.I Agreement as against any other owner of a portion of the Level B.I Property.

14.6 Secured Lender's Rights, Including Right to Cure. A secured lender or mortgagee is any lender whose loan is secured by property within the boundaries of the Level B.I Property. Any mortgagee that wishes to receive notices of default from the County pursuant to this Level B.I Agreement may provide written notice to the County requesting such notice. The County shall notify any such mortgagee requesting notice of default under this Level B.I 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 Level B.I Agreement shall not be terminated by the County as to any mortgagee: (i) who has

requested notice but the mortgagee is not given notice by the County or (ii) 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 Level B.I 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 Level B.I Agreement allocable to that part of the Level B.I 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 Level B.I 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 Level B.I 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 Level B.I 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 Level B.I Property or a portion thereof. If such mortgagee should require, as a condition to such financing, any modification of this Level B.I Agreement to protect its security interest in the Level B.I 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, (ii) increase the County's obligations hereunder, or (iii) otherwise impair the County's position.

This Level B.I 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.

14.7 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other Parties through this Level B.I 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 Level B.I Agreement.

14.8 Term of Agreement. The term of this Level B.I Agreement shall commence upon the execution date of this Level B.I Agreement and shall extend until completion of the Level B.I Project, except that this Level B.I 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 Improved Property (as defined below) within the Level B.I Property. As used herein, the term “Improved Property” shall mean each of the following: (i) any residential or commercial lot which has been finally subdivided with a completed structure thereon for which a certificate of occupancy or equivalent has been issued, (ii) any improved common areas upon the conveyance to a homeowners association, and (iii) any right of way, parcel or tract upon the conveyance of such right of way, parcel, or tract to the County or any other governmental authority. Notwithstanding the immediately previous provision or anything to the contrary within this Level B.I Agreement, the Improved Property shall be used for all calculations associated with No Net Expense and Job Count requirements.

14.9 No Waiver of Rights. Neither the County nor Owner shall be under any obligation to exercise at any time any right granted to a Party. Failure by a Party to insist upon the strict performance of any of the provisions of this Level B.I 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 Level B.I Agreement thereafter. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

14.10 Governing Law, Interpretation and Conflict Resolution. This Level B.I Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of New Mexico. This Level B.I 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 Level B.I Agreement, all Parties having been represented by the counsel in the negotiation and preparation of this Level B.I Agreement. As between the body of this Level B.I Agreement and the Level B.I Plan or any document, finding, condition or submittal associated with or pertaining to the Level B.I Plan, the more specific provision shall control. This Level B.I Agreement is intended to supplement the Level A Agreement and the two should be read to complement each other to the extent reasonably possible. As between this Level B.I Agreement and the Level A Agreement, the terms of the more specific provision shall control, provided that the more specific provision is consistent with the more general provision and does not conflict with the Level A Agreement, which remains the controlling document.

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

14.12 Day. Day shall mean a calendar day. However, if the last day of any time period stated in this Level B.I Agreement or the date on which any obligation to be performed under this Level B.I Agreement shall fall on a Saturday, Sunday or other 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.

14.13 Time of Essence. Time is of the essence in implementing the terms of this Level B.I Agreement.

14.14 Entire Agreement. This Level B.I 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 Level B.I Agreement.

14.15 Amendment. The Agreement may be amended or modified from time to time by mutual consent of the parties following the same legal formalities followed in the approval of this Level B.I Agreement and approval of an adopting resolution in the same manner as the original Agreement is approved. Amendment or modification of the Level B.I Plan by Owner shall comply with the procedural and substantive provisions of state statutes, and County plans and ordinances in effect on the date of application for such amendment or modification. If the County enters into a development agreement in the future for a project containing at least 500 acres with another landowner outside of the Santolina Project that provides terms or conditions which, when taken as a whole, are more favorable to that landowner than provided in this Level B.I Agreement, then the County and the Owner may amend this Level B.I Agreement to include the more favorable terms or conditions so that this Level B.I Agreement, on a go forward basis is, at least, as favorable to Owner as the terms and conditions contained in the development agreement entered into with the other landowner. Nothing in this section shall be construed to mean that the County shall be obligated to extend more favorable terms to the owner should the County enter into a development agreement with another landowner where terms or conditions are deemed more favorable than those contained within this Level B.I Agreement.

14.16 Counterparts. This Level B.I 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.

14.17 Findings and Conditions. If and to the extent any findings and conditions adopted in conjunction with the Level B.I Master Plan approval are specifically addressed in this Level B.I Agreement, the more specific language shall control.

[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: _____
Julie Morgas Baca, County Manager

BOARD OF COUNTY COMMISSIONERS

Steven Michael Quezada, Chair

Lonnie C. Talbert, Vice Chair

Debbie O'Malley, Member

Maggie Hart Stebbins, Member

James E. Smith, Member

ATTEST:

Linda Stover, County Clerk

APPROVED AS TO FORM:

County Legal

EXHIBIT A

Description of Level B.I Property

The Santolina Level B.I plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, Dennis Chavez Blvd. on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 6, 11, & 12, T9N, R1E and sections 6, & 7, T9N, R2E, sections 25, 26, 31, 32, 33, 34, 35, & 36, T10N, R1E, section 31, T9N, R2E, T9N, R2E and section 31, T10N, R2E N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 4,243 acres, zoned PC (Planned Communities Zone),

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

EXHIBIT A-1

Legal Description of Level B.I Property

EXHIBIT B

Level B.I Plan

The Santolina Level B.I Plan prepared for Western Albuquerque Land Holdings, LLC by Garrett Development Corporation, Bohannon Huston, Inc., Consensus Planning, and SEC Planning, LLC was approved by the Bernalillo County Commission on August 30, 2017, and is so dated. A copy of the Level B.I Plan is available for review at the office of the Bernalillo County Planning and Development Services Department currently located at 111 Union Square SE, Suite 100, Albuquerque, New Mexico, or at the offices of the County or Owner at the Albuquerque, New Mexico, addresses set forth in Section 13 of this Santolina Level B.I Development Agreement.

