

# NON-EXCLUSIVE REVOCABLE EASEMENT AGREEMENT FALCON MARKETPLACE

THIS NON-EXCLUSIVE REVOCABLE EASEMENT AGREEMENT ("Agreement"), is made this 23<sup>RD</sup> day of DECEMBER, 2019, between EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY COLORADO, whose street address is 200 South Cascade Avenue, Colorado Springs, CO 80903 (hereinafter "Grantor"), and LG HI FALCON, LLC, a Colorado limited liability company, whose mailing address is 500 Crescent Court, Suite 220, Dallas, TX 75201 ("Grantee"). The Grantor and the Grantee may be singularly referred to herein as the Party or collectively referred to herein as the Parties.

## RECITALS

WHEREAS, as a condition of approval of the final plat for Falcon Marketplace (the "Subdivision"), Grantee is required to install certain private detention basin/stormwater best management practices (BMPs) in accordance with the El Paso County Land Development Code, the El Paso County Engineering Criteria Manual, and the El Paso County Drainage Criteria Manual Volume 2; and

WHEREAS, Grantor owns certain rights-of-way both adjacent to and to be platted with the Subdivision; and

WHEREAS, Grantee wishes to install and maintain a BMP that will lie both within Lot 11 of the Subdivision and within said rights-of-way in order to comply with County stormwater quality and detention requirements; and

WHEREAS, Grantor, as a convenience to Grantee, consents to allow Grantee to use portions of the County rights-of-way for the purposes of installation, maintenance and repair of a BMP (the "Improvements"); and

WHEREAS, Grantee is required to obtain all necessary permits and pay all fees prior to performing any work in the Grantor's right-of-way.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.
2. Description and Use of the Grantor's Rights-of-Way: Grantor hereby grants to Grantee a non-exclusive revocable easement ("Easement") for the installation, maintenance and repair of the Improvements within portions of Grantor's rights-of way as shown by the shaded area depicted on Exhibit A, attached hereto and incorporated herein by reference (the "Easement

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Area”). If the Improvements include any lighting fixtures or features, other than streetlights, the use of such lighting must immediately cease upon written direction of the County Engineer and may not resume until written permission is granted. The entire Easement Area shall be for the use of Grantee, its employees, agents, servants and invitees for any lawful purposes associated with the maintenance and lawful use of the Improvements. The Improvements shall be owned by Grantee.

3. Nature of Easement: The Easement shall run with and be appurtenant to Lot 11 of the Subdivision, and the rights and obligations under this Agreement shall therefore inure to and be binding upon the successors in title of Lot 11. Notwithstanding the foregoing, the Easement is revocable by Grantor pursuant to the provisions of this Agreement. Grantor retains all rights with respect to its rights-of-way, which shall remain superior to Grantee’s rights with respect to the Easement.

4. Construction of Improvements: Grantee shall not construct the Improvements until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention basin/BMPs and this Agreement has been signed by all Parties and returned to the PCD. Grantee shall complete construction of the Improvements in substantial compliance with the County-approved plans and specifications for the Improvements. Failure to meet these requirements shall be a material breach of this Agreement and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the Improvements shall be substantially completed within one (1) year (defined as 365 days), which one year period will commence to run on the date the approved plat of the Subdivision is recorded in the records of the El Paso County Clerk and Recorder.

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the project and shall have the right to seek reimbursement from the Developer and its successors and assigns for its actual costs and expenses incurred in the process of completing construction. The term actual costs and expenses shall be liberally construed in favor of the County and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

5. Additional License Terms:

a. Utilities. Grantee is responsible to ensure no damage occurs to existing utility and other installations that may be present on the right of way during installation, construction, maintenance or repair of the Improvements. Grantor reserves the right to issue work in the right of permits allowing installation of utilities in the Grantor’s public right of way. Grantee shall not interfere with these installations. If any utility installation damages all or any

portion of the permitted Improvements within the Licensed Area, Grantor shall have no liability to Grantee for such damages.

b. Damage. Grantee is responsible for reimbursing Grantor for the repair of any damage to fences, signs, delineators, guardrails, landscape plantings of Grantor, or any other right of way improvements resulting from Grantee's operations. Grantee shall hold Grantor, its elected officials, appointees, officers, and employees free and harmless from all risk of injury or damage to Grantee, property of Grantee, and Grantee's agents, employees, assigns and successors or others which may result from debris, foreign objects, or chemical contamination resulting from normal maintenance activities performed by Grantor. Grantee is responsible for reimbursing Grantor for the repair and re-survey of any damage and disturbance to any survey monuments resulting from activities within the Easement Area by Grantee.

c. Grantor's Need for Right of Way. Grantor will not replace or relocate any Improvements placed within the public right of way or the Easement Area if Grantor has to remove Improvements, in whole or in part, for any reason including, but not limited to: safety, maintenance, or construction.

d. Work in the Right of Way Permit. Prior to any major construction, maintenance, operation, and/or repair activities within the Easement Area, Grantee shall obtain a Work in the Right of Way Permit from the El Paso County Department of Public Works in accordance with the El Paso County Engineering Criteria Manual. A new Work in the Right-of-Way Permit will be required whenever the previous Work in the Right-of-Way Permit has expired or for each new activity in the then current Work in the Right-of-Way Permit.

e. Maintenance of Improvements. Grantee shall regularly and routinely inspect, clean and maintain the Improvements and otherwise keep the same in good repair, all at its own cost and expense. Grantor retains the right to access, inspect, clean, repair and maintain the Improvements; however, the retention of such right does not expressly or implicitly impose on Grantor a duty to so inspect, clean, repair or maintain the Improvements. Any time Grantor determines, in the sole exercise of its discretion, that the Improvements are not properly cleaned, maintained and/or otherwise kept in good repair, Grantor shall give reasonable notice to Grantee that the Improvements need to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problems. Should the responsible parties fail to correct the specified problems, Grantor may enter upon the Easement Area to so correct the specified problems. Notice shall be effective to the above by Grantor's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on Grantor a duty to so inspect, clean, repair or maintain the Improvements.

f. Reimbursement of Grantor's Costs. Grantee agrees and covenants that it will reimburse Grantor for its costs and expenses incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the Improvements pursuant to the provisions of this Agreement. The term "actual costs and expenses" shall be liberally construed in favor of Grantor and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether Grantor uses its own

personnel, tools, equipment and supplies, etc. to correct the matter. In the event Grantor initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, Grantor shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether Grantor contracts with outside legal counsel or utilizes in-house legal counsel for the same.

g. Maintenance of Right of Way. As part of its normal maintenance, repair and snow removal operations, Grantor may drive across or work adjacent to the Improvements. Though Grantor shall take reasonable care when doing so, Grantor shall not be responsible to Grantee for any damage to the Improvements that may occur in the course of maintenance, repair or snow removal operations. Grantor will not provide snow removal within the Easement Area. Some snow may be left in front of or in the Easement Area during normal snow removal activities.

h. Natural Disasters. Grantor shall not be liable to Grantee in the event of an emergency, such as a fire, flood, or other natural cause which damages the Easement Area or the Improvements. In the event the Easement Area are damaged due to a natural disaster, it shall be the sole responsibility and cost of Grantee to return the Easement Area to its original condition.

6. Termination:

a. Termination by Grantor. Grantor at any time and 1) for any valid public purpose, as determined at Grantor's sole discretion, or 2) upon violation of any term of the Agreement by Grantee, shall be entitled to terminate the Easement on all or part of the Easement Area by giving at least 30 days' prior written notice to Grantee. In addition, the El Paso County Engineer shall have the authority to immediately terminate the Easement on all or part of the Easement Area if he or she determines that the public health, safety or welfare is adversely affected by the Easement. Upon such termination, Grantor may direct Grantee to remove all or a portion of the Improvements from the Easement Area at Grantee's sole expense, and the Grantee shall restore the Easement Area to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

b. Effect of Termination. Upon termination of the Easement on all or part of the Easement Area by Grantor, Grantee shall not be entitled to the payment of any compensation or just compensation under any cause of action at law or in equity for the retaking of the Easement Area or removal or relocation of the Improvements. If the Easement is terminated on only a portion of the Easement Area, Grantor and Grantee shall retain their respective rights and obligations under this Agreement with respect to the remaining portions of the Easement Area, and Grantee shall not have any further rights or obligations with respect to any part of the Easement Area for which the Easement has been terminated.

7. Indemnification/Hold Harmless: Grantee agrees that it will indemnify, defend, and hold Grantor harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to its intentional or negligent acts, errors or omissions or that of its agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning

(including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of the Improvements. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to Grantor pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law.

8. Assignment: Grantee shall not assign or otherwise transfer this Easement or Agreement or any right or obligation hereunder without the prior written consent of Grantor.

9. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party hereto for any breach or other failure to perform this Agreement.

10. Entire Agreement: This Agreement, together with all exhibits attached hereto, constitute the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

11. Binding: Grantee and Grantor hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the successors in title of Lot 11, Falcon Marketplace.

12. Authority: The undersigned hereby acknowledge and represent that they have legal authority to bind the Party for whom they are executing this Agreement.

13. Applicable Law: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

14. Execution: This Agreement, including facsimile copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By:  xb  
Craig Dossey, Executive Director  
Planning and Community Development Department  
Authorized signatory pursuant to LDC

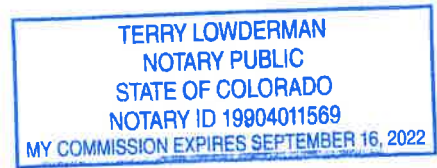
The foregoing instrument was acknowledged before me this 23 day of December, 2019, by Craig Dossey, Executive Director of El Paso County Planning and Community Development Department.

Witness my hand and official seal.

My commission expires: 9-16-2022



Notary Public



**GRANTEE:**  
LG HI FALCON, LLC,  
a Texas limited liability company

By: LG Capital, LLC,  
a Texas limited liability company,  
its manager


By:   
Josh Canafax, authorized signatory

STATE OF TEXAS                    )  
  )     S.S.  
COUNTY OF DALLAS            )

The foregoing instrument was acknowledged before me this 21st day of November, 2019, by Josh Canafax, as authorized signatory of LG Capital, LLC, as manager of LG HI FALCON, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My Commission Expires: 6/17/2020.

  
Notary Public

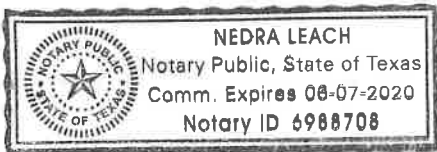
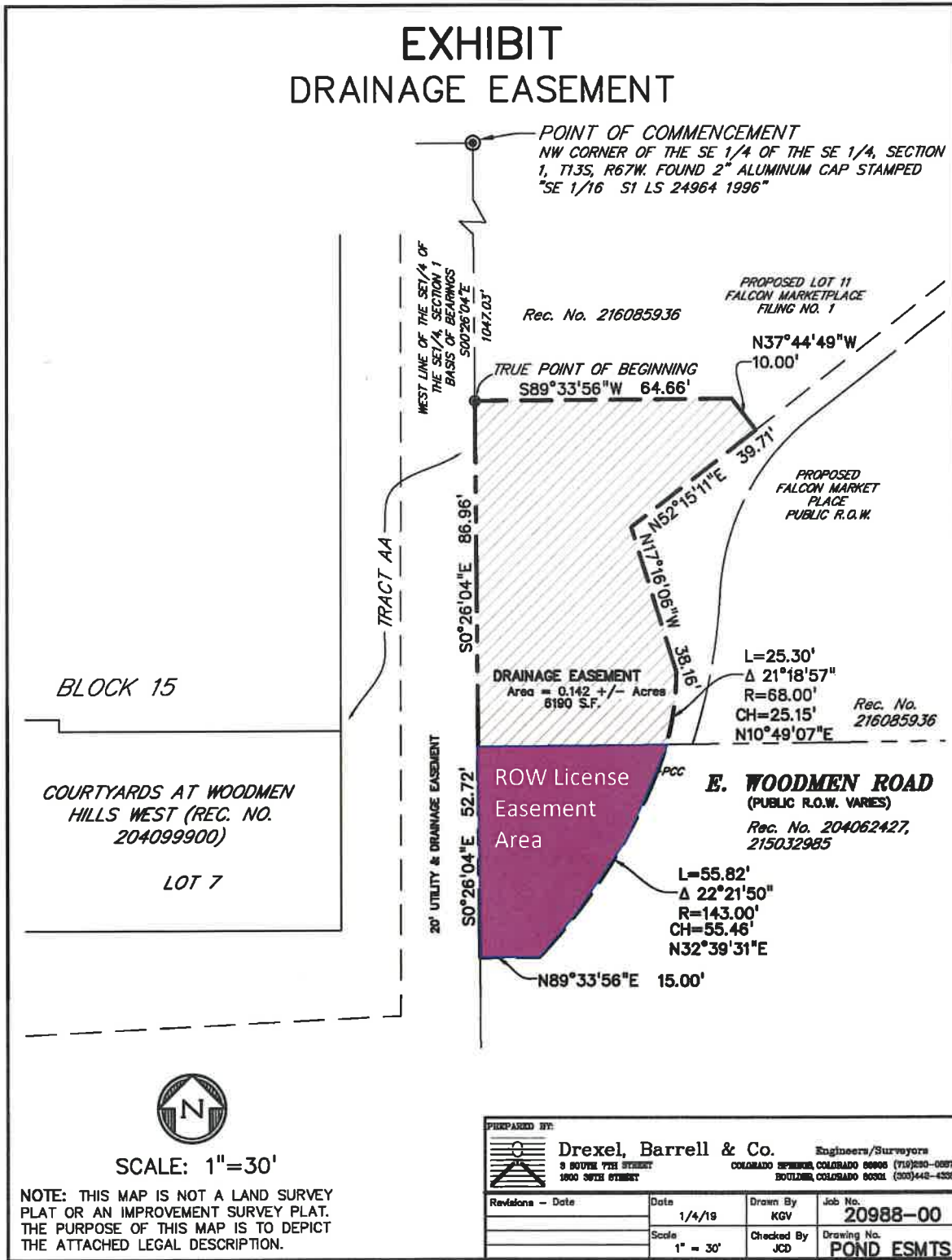


Exhibit A – Easement Area

# EXHIBIT DRAINAGE EASEMENT





**WRITTEN CONSENT OF THE MANAGER  
OF LG CAPITAL, LLC (the "Company")**

The undersigned, being the manager of LG CAPITAL, LLC, a Texas limited liability company (the "Company"), hereby adopts the following resolutions by signing this Written Consent.

**RESOLVED**, that the persons listed on the attached Annex are designated as authorized persons and/or named as officers, directly on behalf of the Company, to take any and all actions, and to execute any and all documents and agreements necessary or advisable in order for the Company to conduct its business in the ordinary course of its operations, such documents to be in such form as such authorized person may approve on the Company's behalf, such approval to be conclusively evidenced by the due execution thereof, and such authorized persons being granted the power and authority to act in the premises as fully and to all intents and purposes as the Company might or could do if a person having the authority to bind the Company was personally present. The persons listed shall only have the authority to take such actions as may be limited by the description adjacent their name on the attached Annex. The authority granted to such listed person shall automatically terminate on the date such person is no longer employed by the Company or an affiliate thereof.

**RESOLVED**, that any and all actions taken by the persons listed on the attached Annex, for and on behalf of the Company, on or prior to the date of this Written Consent be, and the same hereby are, in all respects ratified, confirmed, approved and adopted as acts of the Company.

The undersigned, by signing this Written Consent, waives notice of the time, place and purpose of any special meeting to conduct the business described herein and consents to the transaction of such business and the same shall have the same force and effect as a vote by the undersigned at a properly called and convened special meeting of the Company.

**APPROVED** as of this 20th day of August, 2018.

Leon Capital Partners, LLC, Manager



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Rob Pivnick, General Counsel

**ANNEX**

<u>Individual</u>	<u>Title/Officer</u>	<u>Limitations to Authority</u>
Fernando de Leon	Chief Executive Officer	No limitations; full authority.
Rob Pivnick	General Counsel	No limitations; full authority.
Josh Canafax	Director of Investments	Authority for all investment and financing (including capital, loan, guaranty and entity documentation) related decisions.
Jake Walker	Chief Operating Officer, Managing Director	Authority for all operational aspects, including by way of example, banking, payroll, policies, planning, logistics and procurement, operational policy and implementation, strategy, third party relations, management of support services (e.g., HR, IT, etc.); and Authority for the Company's acquisition, development, asset management and disposition related to real estate deals sourced by such individual only; authority for all aspects related to the Company's self-storage related operations.
Will Tolliver	Managing Director	Authority for the Company's acquisition, development, investment, financing (including capital, loan, guaranty and entity documentation), asset management and disposition of retail properties only.
Jesus Araiza	Managing Director	Authority for the Company's acquisition, development, investment, financing (including capital, loan, guaranty and entity documentation), asset management and disposition of retail properties only.
David Cocanougher	Managing Director	Authority for the Company's acquisition, development, investment, financing (including capital, loan, guaranty and entity documentation), asset management and disposition of MF properties only.
Adam Lentz	Managing Director	Authority for the Company's acquisition, development, investment, financing (including capital, loan, guaranty and entity documentation), asset management and disposition of self-storage properties only.
Aaron Ketchand	Managing Director	Authority for the Company's acquisition, development, investment, financing (including capital, loan, guaranty and entity documentation), asset management and disposition of single family development projects only.
Blake Schroeder	Director of Multifamily Development	Authority for the Company's investment, financing (including capital, loan, guaranty and entity documentation), asset management and disposition of MF properties only.
Matt Wiggins	Senior Director of Finance & Accounting	Authority for all finance and accounting aspects, including by way of example, reporting, tax returns, banking, cash management and reconciliation, financial statements & reporting, financial management and forecasting, budgeting, audits; authority to execute loan documents for all properties and organizational documents for all entities.
Scott Parr	Director of Finance & Accounting	Authority for select finance and accounting aspects, limited to tax returns, banking, cash management and reconciliation, budgeting.
Chance Taylor	Vice President of Asset Management	Authority for asset management of multifamily assets only.
Ryan Griffin	Director of Leasing	Authority for leasing related aspects only.
James Stone	Director, Single Tenant Division	Authority for the Company's acquisition and investment of retail properties only.
Monica Marino	Executive Assistant	Authority for procurement of third party services for the Company.

All individuals detailed above have the authority and duties that are normally associated with the title, if any, adjacent to their name and may conduct business operations of the Company as aforesaid in the name of such title or as "Authorized Signatory."