

FALCON MARKETPLACE LOT 5
ESCROW AGREEMENT

This Falcon Marketplace Escrow Agreement (“Agreement”) is entered into this 13 date of September, 2022 (“Effective Date”), by and between El Paso County, Colorado, a body corporate and politic and a political subdivision of the State of Colorado, (“County”), by and through the Board of County Commissioners of El Paso County, Colorado (“Board”), and KMG RE Falcon LLC, a Colorado limited liability company (“Developer”). The County and the Developer may be collectively referred to herein as the “Parties”.

Recitals

WHEREAS, on December 18, 2019, the final plat of a subdivision known as FALCON MARKETPLACE (the “Subdivision”) was approved administratively pursuant to the Record of Administrative Action recorded at Reception No. 219163004; and

WHEREAS, as a condition of site development plan approval for a lot within the Subdivision, Developer is required to deposit with the County certain sums as its fair, equitable and proportionate contribution toward the construction of an off-site traffic signal at the intersection of Woodmen Road and Meridian Road and Woodmen Road and Golden Sage Road and an off-site traffic signal at the intersection of N Frontage Road and Golden Sage Road; and

WHEREAS, the El Paso County Treasurer has agreed to receive, hold and disburse the funds deposited by Developer in a separate interest-bearing account that is not part of the County’s operating budget.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby incorporate by reference the above-stated Recitals into this Agreement as if fully set forth herein.

2. Deposit of Funds. Developer has deposited, or at the time of site development plan approval shall deposit, with the El Paso County Treasurer Six Thousand, Two Hundred and Twenty Eight Dollars (\$6,228.00) as its fair, equitable and proportionate contributions toward the cost of the design and construction of the traffic signals and any necessary related improvements at the intersections of Woodmen Road and Meridian Road and Woodmen Road and Golden Sage Road and the off-site traffic signal and any necessary related improvements at the intersection of N Frontage Road and Golden Sage Road (the “FALCON MARKETPLACE OFF-SITE Funds”).

3. Escrow Accounts. The El Paso County Treasurer has agreed to accept and escrow the FALCON MARKETPLACE OFF-SITE Funds and to hold these funds in a separate interest-

bearing account that is not part of the County's operating budget. The El Paso County Treasurer shall receive, hold and disburse the funds in accordance with the terms of this Agreement.

4. Disbursement of Funds. On or before September 13, 2042, the County may request the disbursement of the FALCON MARKETPLACE OFF-SITE Funds, including any interest accrued thereon, to be used only for the design and construction of a traffic signal and any necessary related improvements at the intersections of Woodmen Road and Meridian Road and Woodmen road and Golden Sage Road and the off-site traffic signal and any necessary related improvements at the intersection of N Frontage Road and Golden Sage Road. Any such disbursement request shall be signed by the County Engineer on behalf of the Board of County Commissioners of El Paso County, Colorado and shall reference this Agreement. The El Paso County Treasurer has agreed that a request presented in conformity with the terms of this Agreement will be duly honored.

5. Reimbursement of Funds Not Used. Should the County not use the FALCON MARKETPLACE OFF-SITE Funds prior to or on September 13, 2042, the El Paso County Treasurer shall return such funds, with any interest accrued thereon, to Developer or its successors or assigns.

6. Assignment of Funds. If the City of Colorado Springs ("City") annexes or acquires ownership of or responsibility for the intersection of Woodmen Road and Meridian Road, Woodmen Road and Golden Sage Road, or N Frontage Road and Golden Sage Road prior to the disbursement of funds held for that intersection under this Agreement, the County may assign the corresponding FALCON MARKETPLACE OFF-SITE Funds and all rights and obligations of the County and the El Paso County Treasurer to the City without the consent of, but with written notice to, Developer.

7. No Liability of Treasurer. The El Paso County Treasurer shall not be liable in either his/her official or individual capacity for any act he/she may do or omit to do hereunder while acting in good faith and in the exercise of his/her own judgment; and any act done or omitted by him/her pursuant to the advice of his/her own attorneys shall be conclusive evidence of such good faith. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitation of liability provided to the County by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.

8. No Duty of Treasurer to Verify. The El Paso County Treasurer shall be under no duty or obligation to ascertain the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver these instructions or any documents or papers or payments deposited or called for hereunder, and the El Paso County Treasurer assumes no responsibility or liability for the validity or sufficiency of these instructions or any documents or payers or payments deposited or called for hereunder.

9. General Provisions.

- a. This Agreement may be amended by mutual written agreement of all Parties or their respective successors or assigns.

- b. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Venue shall be exclusively in the District or County Court in and for El Paso County, Colorado.
- c. The undersigned hereby acknowledge and represent that they have the legal authority to bind their respective Party to this Agreement.
- d. If any paragraph, section, subsection, clause or phrase of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.
- e. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.
- f. 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 for any breach or other failure to perform this Agreement.
- g. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall all be attached to a single instrument.
- h. A fully executed copy of this Agreement shall be recorded in the records of the El Paso County Clerk and Recorder.

[Signature and acknowledgement pages follow.]

In witness of the foregoing provisions, the Parties have executed this Agreement as of the Effective Date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO



By: _____
Kevin Mastin, Interim Executive Director
Planning and Community Development Department
Authorized Signatory Pursuant to LDC

APPROVED AS TO FORM:



County Attorney's Office

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Kevin Mastin, Interim Executive Director of El Paso County Planning and Community Development Department.

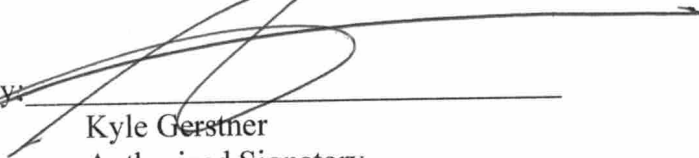
Witness my hand and official seal.

My commission expires: _____

Notary Public

DEVELOPER:

KMG RE Falcon, LLC
a Colorado limited liability company

By: 

Kyle Gerstner
Authorized Signatory

ACKNOWLEDGMENT

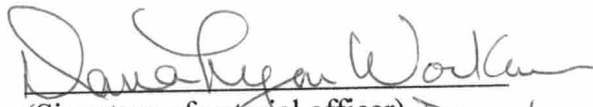
State of ^{FLORIDA} ~~Colorado~~
County of ST. JOHN'S

This instrument was acknowledged before me on AUGUST 23, 2022,
by KYLE M. GERSTNER (name(s) of
person(s)), as Authorized Signatory (type of authority, e.g.,
officer, trustee, etc.) of KMG RE FALCON, LLC

(name of party on behalf of whom instrument was
executed.)

(Seal, if any)




(Signature of notarial officer) DANA LYNN WORKMAN
Title (and Rank) NOTARY PUBLIC