

SF. 21. 12

UPLAND FLATS AT WATERMARK
ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into this **1st day of October 2021** ("Effective Date") by and between the 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 **WATERMARK AT CO SPRINGS AKERS CO, LLC** ("Developer"). The County and the Developer may be collectively referred to herein as the Parties.

Recitals

WHEREAS, on June 22, 2021, and pursuant to Resolution No. 21-248, the Board approved the final plat of a subdivision known as Upland Flats by Watermark Filing No. 1 (the "Subdivision"); and

WHEREAS, Developer is required to deposit with the County certain sums as its fair, equitable and proportionate contribution toward the removal of a portion of the existing roadway median and construction of the eastbound turn lane extension on Constitution Avenue between Akers Dr and Marksheffel Dr; 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 time of recording of the final plat, shall deposit, with the El Paso County Treasurer three thousand three hundred and fifty-four dollars and forty-four cents. (\$3,354.44) as its fair, equitable and proportionate contributions toward the removal of a portion of the existing roadway median and construction of the eastbound turn lane extension on Constitution Avenue between Akers Dr and Marksheffel Dr (the "Constitution Ave./Akers Dr. Funds").
3. Escrow Accounts. The El Paso County Treasurer has agreed to accept and escrow the Constitution Ave./Akers Dr. 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.

Chuck Broerman
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El Paso County, CO



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- a. Disbursement of Funds. On or before **October 1, 2041**, the County may request the disbursement of the Constitution Ave./Akers Dr. Funds, including any interest accrued thereon, to be used only for the removal of a portion of the existing roadway median and construction of the eastbound turn lane extension on Constitution Avenue between Akers Dr and Marksheffel Dr. 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.

4. Reimbursement of Funds Not Used. Should the County not use the Constitution Ave./Akers Dr. Funds prior to or on **October 1, 2041**, the El Paso County Treasurer shall return such funds, with any interest accrued thereon, to Developer or its successors or assigns.

5. 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.

6. 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.

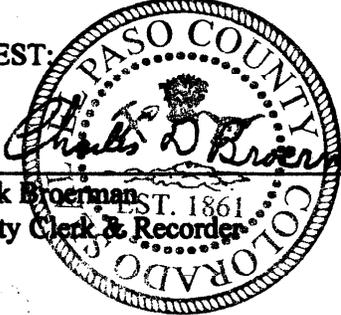
7. General Provisions.

- 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.

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

ATTEST:

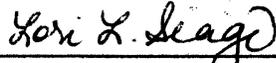


 Chuck Broerman
 County Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
 OF EL PASO COUNTY, COLORADO

By: 
 Stan VanderWerf, Chair

APPROVED AS TO FORM:



 County Attorney's Office

WATERMARK AT CO SPRINGS AKERS CO, LLC

By: 

Name: Paul Thiff

Title: Manager