

RIGHT-OF-WAY ENCROACHMENT LICENSE AGREEMENT

This Right-of-Way Encroachment License Agreement (hereinafter the "Agreement") is made and entered into at Cochise County, Arizona this _____ day of _____ 20123, by and between Cochise County and the Kings Ranch , AZ LLC, (hereinafter the "Licensee").

Recitals

WHEREAS, Licensee is the record titleholder and responsible for the maintenance of certain real property located within Cochise County, Arizona legally described on Exhibit A, attached hereto and incorporated herein by this reference, said property being commonly known as Kings Ranch at Coronado (hereinafter referred to as "Licensee's Property"); and

WHEREAS, Cochise County is the owner of the public rights-of- way within or adjacent to the area identified as the Licensee's Property as described in Exhibit A, attached hereto and incorporated herein by this reference; and,

WHEREAS, Licensee desires to utilize a portion of the County Right-of-Way for the installation of erosion control and storm water Best Management Practices (BMPs); and to maintain the shoulders of the Right-of-Way between the pavement edge and the property boundary. The portion of the County Right-of-Way to be used by Licensee is depicted on Exhibit B, which is attached to and incorporated into this Agreement by this reference (hereinafter the "Encroachment Area"); and,

WHEREAS, Cochise County has agreed to grant to Licensee a temporary and non-exclusive personal privilege to use the Encroachment Area described above, all in accordance with and subject to the terms, conditions, and limitations of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration received by each party, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. *Incorporation of Recitals.* The foregoing recitals are hereby incorporated into this Agreement in their entirety.
2. *Grant of License.* Cochise County hereby grants to Licensee a temporary and non-exclusive personal privilege and permission to enter upon the County Right-of-Way and to use the Encroachment Area described above (hereinafter the "License"), subject, however, to the terms, conditions, and limitations of this Agreement. The License herein granted shall be subject to all existing utility easements, if any, located within the County Right-of-Way, or any other easements, conditions, or restrictions of record.

3. *Advance notice and approval.* The Licensee shall give Cochise County notice of and obtain prior written approval from Cochise County before taking any action to divert drainage or install any material, including piping, culverts, or other erosion control in the Encroachment area.
4. *Term.* This Agreement and the License granted to Licensee hereunder shall commence as of the date of that this Agreement is executed by all parties hereto and shall continue until terminated in accordance with the terms of this Agreement.
5. *Consideration.* The consideration to be paid by the Licensee to Cochise County for the privilege granted by this Agreement shall be Fifteen Dollars (\$15.00), the receipt of which is hereby acknowledged by the County.
6. *No Interest in Land.* Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the County Right-of-Way. The County retains legal possession of the full boundaries of its right-of-way and this Agreement merely grants to Licensee the personal privilege to use the Encroachment Area described above throughout the term of this Agreement. Any improvements made thereto pursuant to this License shall remain the exclusive property of Cochise County.
7. *No vested Right.* Notwithstanding any expenditure of money, time, and/or labor by Licensee on or within the Encroachment Area, this Agreement shall in no event be construed to create an assignment coupled with an interest or any vested rights in favor of Licensee. Licensee shall expend any time, money or labor on or in the Encroachment Area at Licensee's own risk and peril.
8. *Limited Scope of License.* Licensee shall not have the right to expand the Encroachment Area or alter or change Licensee's use of the Encroachment area without the County's prior written consent.
9. *Non-Transferability of License.* The License granted to Licensee by this Agreement is a mere personal privilege granted by Cochise County to Licensee, and is neither transferable nor assignable by Licensee without the County's prior written consent.
10. *Termination.*
 - a. Subject to the terms of Subparagraph b, below, this Agreement and the License herein granted to the Licensee will stay in effect for a minimum of five (5) years from the date of this Agreement for the initial phase of construction that has been completed to date. Thereafter this License shall, for each future phase of construction, begin upon completion of that phase and extend for five (5) years thereafter within the confines of that phase, provided that in no case shall this Agreement extend for a total period exceeding twenty-five (25) years from the original date of this Agreement.

b. Notwithstanding the terms of Subparagraph a, above, either party may terminate this Agreement for any reason, without cause, effective on any anniversary of this Agreement, on at least six (6) months written notice to the other party.

11. *Insurance.* Licensee shall maintain at all times during the term of this Agreement, at Licensee's sole cost, a policy or policies of comprehensive general liability coverage on the occurrence basis from an insurance company authorized to do business in the State of Arizona will provide not less than \$1,000,000.00 coverage for Public Liability and Property Damage. Such policy or policies shall provide that the coverage afforded thereunder shall not be cancelled, terminated, or materially changed until at least thirty (30) days written notice has been given to Cochise County. Licensee shall name Cochise County as co-insured and shall furnish the County with duplicate policies or certificates evidencing insurance in force as required herein prior to utilizing the Encroachment Area.
12. *Construction and Maintenance.* Licensee agrees that the improvements described herein shall be erected and maintained at all times in a safe, neat, slightly and good physical condition and in accordance with all requirements of the Cochise County regulations.
13. *Compliance with Law.* Licensee shall adhere to and comply with all ordinances, laws, rules and regulations that may pertain to or apply to the Encroachment Area and the Licensee's use thereof. Licensee agrees and warrants that it has procured or shall procure any licenses, permits, or like permission required by law, if any, to conduct or engage in the use of the Encroachment Area described herein, that Licensee will procure all additional licenses, permits or like permission hereinafter required by during the term of this Agreement, and that Licensee will keep the same in full force and effect during the term of this Agreement. Licensee shall perform under this Agreement in accordance with all applicable legal requirements.
14. *Indemnification.* To the fullest extent permitted by law, Licensee agrees to indemnify, defend and save the County, its officers, agents, servants, employees, boards and commissions harmless from and against:
 - a. *Damage to Licensee's Property.* Any and all claims, loss or damage (including reasonable attorney's fees) to the Licensee's encroaching improvements or any property belonging to or rented by Licensee, its officers, servants, agents or employees, which may be stolen, destroyed, or in any way damaged, by any cause whatsoever.
 - b. *Damage to Others.* Any claims, suits, judgments, costs, attorney's fees, loss, liability, damage or other relief, including but not limited to Workers' Compensation claims, to any person or property in any way resulting from or arising out of the existence of this Agreement and/or the existence, maintenance, use or location of Licensee's encroaching improvements with the County Right-of-Way.

- c. *Mechanics Lien.* Any loss, liability, claim or suit arising from the foreclosure, or attempted foreclosure, of a mechanic's or materialmen's lien for goods delivered to Licensee or work performed by or for Licensee upon or at the Encroachment Area or Licensee's property. Such indemnification shall include the County's reasonable attorney's fees incurred in connection with any such loss, claim or suit.
15. *Breach and Limitation on Damages.* If either party violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and the other party shall have the right to seek such administrative, contractual or legal remedies as may be suitable for such violation or breach; provided, however, that in no event shall the County be liable to Licensee for monetary damages of any kind relating to or arising from any breach of this Agreement, and that no action of any kind shall be commenced by Licensee against the County for monetary damages of any kind relating to or arising from any breach of this Agreement, and that no action of any kind shall be commenced by Licensee against the County for monetary damages. In the event any legal action is brought by the County for the enforcement of any of the obligations of Licensee related to or arising from this Agreement and the County is the prevailing party in such action, the County shall be entitled to recover from Licensee reasonable interest and attorney's fees.
16. *No Joint Venture or Partnership.* This Agreement shall not be construed so as to create a joint venture, partnership, employment, or other agency relationship between the parties hereto.
17. *No Personal Liability.* No official, director, officer, agent or employee of the County shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of their execution, approval or attempted execution of this Agreement.
18. *Joint and Collective Work Product.* This Agreement is and shall be deemed and construed to be a joint and collective work product of Cochise County and the Licensee, and as such, this Agreement shall not be construed against any other party as the otherwise purported drafter of the same by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in terms or provisions contained herein.
19. *Severability.* The terms of this Agreement shall be severable. In the event any of the terms or provisions of this Agreement are deemed to be void or otherwise unenforceable, for any reason, the remainder of this Agreement shall remain in full force and effect.
20. *Governing Law.* This Agreement shall be subject to and governed by the laws of the State of Arizona. Venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this License agreement shall be in the Superior Court of Arizona in and for Cochise County.

21. *Reference in Agreement.* All references in this Agreement to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice versa. If either reference shall be declared invalid, such decision shall not affect the validity of any remaining portion that shall remain in full force and effect.
22. *Binding Agreement on Parties.* This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns.
23. *Assignment.* This Agreement and the obligations herein may not be assigned without the express written consent of each of the parties hereto. The License granted herein is personal to Licensee. Any attempt to assign this License will automatically terminate the license privileges granted to Licensee hereunder.
24. *Entire Agreement.* This Agreement and its exhibits constitute the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.
25. *Conflict of Interest*

This Agreement is subject to cancellation pursuant to A.R.S. 38-511, the provisions of which are incorporated herewith by reference.

26. *Modification.* This Agreement may be changed, modified or amended only by a duly authorized written instrument executed by the parties hereto. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in or writing herein or in a duly authorized and executed amendment hereof.
27. *Notice*

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or deposited in the United States Mails, certified mail, return receipt requested, postage prepaid,

If to Licensor: Karen Riggs, Director
Cochise County Community Development Department
1415 Melody Lane, Building F
Bisbee, AZ 85603

If to Licensee: Karol George, Manager
Kings Ranch, AZ LLC
1601 Paseo San Luis
Suite 202
Sierra Vista, AZ 85635

28. *Authority of Cochise County.* This Agreement is authorized pursuant to A.R.S. §§ 11-251(4),(29) and (36) and A.R.S. § 11-821.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as follows.

Kings Ranch, AZ, LLC:

By: _____
Karol George, Manager

_____ Date

COCHISE COUNTY

By: _____
Ann English, Chair of the
Board of Supervisors

_____ Date

ATTEST:

Katie Howard, Clerk of the
Board of Supervisors