When Recorded, Return to:

Terry Couchenour, Right of Way Agent
Cochise County Highway & Floodplain Department
Tcouchenour@cochise.az.gov
1415 Melody Lane, Building E
Bisbee, Arizona 85603

RECREATIONAL ACCESS EASEMENT AGREEMENT

THIS RECREATIONAL ACCESS EASEMENT AGREEMENT ("**Agreement**") is made as of _____, 2018 ("**Effective Date**"), by and between El Dorado Benson, LLC, an Arizona limited liability company ("**El Dorado**"), and Cochise County, Arizona, a political subdivision of the State of Arizona ("**County**").

RECITALS

A. El Dorado is the owner of approximately 12,167 acres of land generally located in Cochise County, Arizona (the "**Property**"), which is intended to be developed into a master planned residential community generally known as the Villages at Vigneto ("**Project**").

B. The Property is adjacent to publicly-held lands generally known as the "**Coronado National Forest**" on the West and is also adjacent to State Route 90 on the East.

C. The County desires to obtain an Access Easement (as defined below) over, across and through a portion of the Property to allow public access from State Route 90 to the Northern portion of the Coronado National Forest.

D. El Dorado is willing to grant the Access Easement to the County on the terms and conditions more fully set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, El Dorado and the County agree, as follows:

1. Definitions. For purposes hereof:

"**El Dorado Designee**" means El Dorado or a successor owner of the Property (or any portion thereof) who is designated by El Dorado as the El Dorado Designee in a written instrument recorded in the Official Records. The El Dorado Designee may further assign its rights as El Dorado Designee to another owner of the Property (or any portion thereof) pursuant to a written instrument recorded in the Official Records.

"**Gate System**" means (i) one (1) gate at the entrance of the Easement Area that may be used by either Grantee or El Dorado to temporarily restrict public access to the Easement Area as more fully described below ("**Entrance Gate**"), and (ii) approximately three (3) gates on both fence lines along the Roadway that are intended to permit cattle to cross the Easement Area. The gates may be sixteen foot (16') corral gates commonly known as "Powder River" gates.

"**Good Condition**" means good, clean, orderly, and safe condition and repair.

"**Grantee**" means the County, together with its permitted assignees. The County may assign its rights and obligations under this Agreement to the United States Forest Service or the Arizona Game and Fish Commission or any affiliated agency, pursuant to a written assignment reasonably acceptable to El Dorado. All other assignments by the County are prohibited without the prior written consent of El Dorado, which consent shall not be unreasonably withheld. Upon the assignment by the County of its rights and obligations under this Agreement to a permitted assignee, all references herein to the "Grantee" shall mean and refer to the County or the permitted assignee.

"**Roadway**" means the roadway to be constructed within the Easement Area, including fencing on both sides of the Easement Area and the Gate System. The initial Roadway to be constructed by Grantee ("**Interim Road**") shall consist of a single lane unpaved road intended for high clearance vehicles, except where public safety considerations may dictate more extensive improvements such as bridges, pavement or other materials. Except where existing fencing is acceptable to El Dorado, Grantee shall construct fencing on both sides of the Interim Road. The fencing may be 3-strand barbed wire fencing with a 4th strand at the bottom that does not include barbed wire and allows for wildlife to pass under the fence. Grantee shall also install "No Hunting, No Trespassing" signs on the fencing at intervals, at a maximum, of 200 feet.

"**Official Records**" means of the County Recorder, Cochise County, Arizona.

"**Parking Area**" means the portion of the Easement Area described and depicted on **Exhibit B**.

"**Permitted Uses**" means (i) for the Grantee, the right to inspect, construct, maintain, repair, operate, and police the Roadway and any other governmental purpose, and (ii) for Recreational Users, the right of pedestrian, vehicular, and equestrian recreational ingress and egress over and across the Roadway from State Route 90 to the Northern portion of the Coronado National Forest, and the right to park in the Parking Area (but not overnight parking or camping).

"**Recreational User**" has the meaning given to such term in A.R.S. §33-1551.

2. Grant of Easement.

2.1 Generally. El Dorado hereby grants to Grantee, for the benefit of Grantee and the Recreational Users, a perpetual, non-exclusive recreational access easement in gross ("**Access Easement**") over, across, and through the portion of the Property described and depicted in **Exhibit A** attached hereto ("**Easement Area**"), solely for the Permitted Uses. The

parties agree that parking shall be for day use activities only and that Grantee shall post signage stating that neither overnight parking nor camping is allowed in or near the Parking Area.

2.2 Non-Exclusive. Grantee acknowledges that the Access Easement is non-exclusive and El Dorado retains the right to use the Easement Area for any purpose that does not unreasonably interfere with Access Easement. In addition, El Dorado shall have the right to convey additional easements for access, utility or other purposes through, over, under, upon, in, across and along the Easement Area to the owners of properties located in the vicinity of the Property or to government or quasi-governmental entities and utility service providers; provided however, that no such additional easements shall unreasonably interfere with the Access Easement granted herein.

3. Improvements. Prior to commencing the design of the improvements within the Easement Area (the "**Improvements**"), the parties shall meet to discuss the exact location and configuration of the Roadway (including the fencing and the gates comprising Gate System) and the Parking Area, and any other matters concerning the design and construction of the Improvements. In addition, prior to commencing the design or construction of any Improvements, El Dorado shall have the right to review and approve the plans for any Improvements, including all finishes and materials ("**Plans**"). El Dorado's approval of the Plans shall not be unreasonably withheld, conditioned or delayed. Within ten (10) days after receipt thereof, El Dorado shall either approve the Plans or disapprove of such Plans and advise Grantee in writing of the specific changes required by El Dorado to such Plans. Finally, prior to commencing construction of any Improvements, Grantee shall advise El Dorado in writing whether or not any permits or other governmental approvals ("**Permits**") are required for the construction or maintenance of the Improvements. If any Permits are required, El Dorado shall have the right to review and approve such Permits, which approval shall not be unreasonably withheld. Following the approval of the Plans and any Permits, the Grantee shall cause the Improvements to be constructed in a good and workmanlike manner and in compliance with all Permits and all applicable governmental laws, ordinances, codes, and regulations.

4. Location of Easement. The initial Easement Area as depicted and described on **Exhibit A** is a 400-foot wide corridor to allow flexibility to Grantee with respect to the ultimate location of the Interim Road. Representatives of El Dorado, the United States Forest Service, the Arizona Game and Fish Commission, and the County have previously charted a preliminary route for the Interim Road within the corridor described on **Exhibit A**, which is depicted on **Exhibit B** attached hereto ("**Preliminary Route**"). Grantee agrees that the Interim Road shall be constructed as closely as reasonably possible along the Preliminary Route. Grantee shall not deviate in any material respect from the Preliminary Route without obtaining the prior written consent of El Dorado. Following completion of the Interim Road, the Easement Area shall only include the land area within **Exhibit A** required for the improvements comprising the Interim Road. Promptly following the date the Interim Road is completed, the Grantee will commission a surveyor to create a precise legal description for the Easement Area, which will be a strip of land not to exceed twenty (20) feet on each side of the center-line of the "as built" Interim Road. El Dorado shall have the right to review and approve the legal description, which approval shall not be unreasonably withheld so long as (i) the Easement Area generally follows the Preliminary Route (or any deviations approved by El Dorado), (ii) the Easement Area is no wider than forty-feet (40') in any location, and (iii) the Easement Area is located entirely within the 400-foot wide

corridor described on **Exhibit A**, except that the Parking Area may be up to 100-feet wide, but must be located entirely within the 400-foot wide corridor described on **Exhibit A**. The Parking Area must be located as close as reasonably possible to the boundary with the Coronado National Forest. Upon approval of the legal description, the parties will execute and cause to be recorded an amendment to this Agreement which replaces **Exhibit A** with the new legal description of the Easement Area.

5. Use of Easement.

5.1 Generally. The Access Easement may only be used by Grantee and Recreational Users for the Permitted Uses in compliance with all applicable governmental laws, ordinances, codes, and regulations. Recreational Users may use the Access Easement only after (i) the completion of construction of the Interim Road, including without limitation, fencing along the boundaries of the Interim Road and the gate system, and (ii) the approval by the parties of the new Easement Area and recordation of the amendment to this Agreement replacing **Exhibit A**, as set forth in Section 4 above.

5.2 Temporary Closures. El Dorado may temporarily restrict public access to the Easement Area by closure of the Entrance Gate as reasonably necessary for the relocation of the Easement Area as described below or the construction of any improvements to the Property. In addition, Grantee and El Dorado may each restrict public access to the Easement Area for safety reasons, including without limitation, during the construction and repair of any improvements comprising the Interim Road.

6. Relocation. El Dorado anticipates the potential need for modification to the Easement Area to facilitate the future development and use of the Project. Accordingly, El Dorado reserves the right, at its sole cost and expense, to relocate the Easement Area (or any segment thereof) from time to time to a different location on the Property, provided that such right shall be subject to: (i) El Dorado granting a new easement area over the Property for the Easement Area (or segment thereof) that is being relocated, (ii) if any improvements have been constructed within the relocated Easement Area, El Dorado shall be responsible for causing substantially the same or better improvements to be constructed within the new Easement Area, using materials and design standards which equal or exceed those originally used, and (iii) the relocation shall not diminish or interfere with public access from State Route 90 to the Northern portion of the Coronado National Forest in any material respect. Upon the relocation of the Easement Area, the parties will execute and cause to be recorded an amendment to this Agreement which replaces **Exhibit A** with the new legal description of the Easement Area and all references in this Agreement to "Easement Area" shall mean and refer to the area described in replacement **Exhibit A**. Upon not less than thirty (30) days prior written notice to the Grantee, El Dorado may temporarily close the Easement Area for the purpose of relocating any Roadway improvements to be constructed within the new constructed Easement Area. For clarity, El Dorado shall have the absolute right to relocate the Easement Area in its sole discretion at any time and from time to time, subject only to the provisions of clauses (i) through (iii) above.

7. Maintenance. Once constructed, Grantee, at its sole cost and expense, agrees to maintain all Improvements within the Easement Area in Good Condition and in compliance with

any required Permits and all applicable governmental laws, ordinances, codes, and regulations. Grantee shall not be obligated to maintain any public utilities within the Easement Area (as may be relocated).

8. Termination. The Access Easement shall be in perpetuity, subject to early termination as set forth below.

8.1 This Agreement and the Access Easement shall automatically terminate with respect to any segment of the Easement Area that is replaced with a publicly dedicated roadway which has been improved with roadway improvements accepted by the applicable governmental entity. Upon termination of the Agreement pursuant to the preceding sentence, and upon the request of El Dorado, Grantee shall execute, have acknowledged and deliver for recordation a termination of this Agreement and the Access Easement with respect to the segment of the Easement Area that is replaced with a publicly dedicated roadway, pursuant to a form reasonably requested by El Dorado.

8.2 If, within ten (10) years from the Effective Date of this Agreement, funds are not allocated and readily available for the entire cost of constructing the Interim Road and the Grantee has not commenced grading of the Interim Road, then this Agreement and the Access Easement shall automatically terminate. Upon termination of the Agreement pursuant to the preceding sentence, and upon the request of El Dorado, the Grantee shall execute, have acknowledged and deliver for recordation a termination of this Agreement and the Access Easement, pursuant to a form reasonably requested by El Dorado. Nothing in this Agreement creates an obligation for Grantee to fund the Improvements.

9. Responsibility for Claims. Grantee shall be responsible for the errors, omissions or gross negligence of its officers, agents and employees (the "**Grantee Agents**") pursuant to A.R.S.§§ 41-621 and 33-1551 (for the County or State of Arizona) or as provided by Congress under the Federal Tort Claims Act [28 U.S.C. §§1346(b), 2671-2680, as amended by P.L. 89-506] (for the U. S. Forest Service), including without limitation a breach of the terms of this Agreement by Grantee or any Grantee Agents.

10. Default; Remedies. As used herein, the term "**Default**" shall mean the failure by a party ("**Defaulting Party**") to perform any of its obligations under this Agreement, which failure remains uncured for a period of thirty (30) days following delivery of written notice from the other party (the "**Non-Defaulting Party**"); or, if the alleged default or failure to perform is of a type that cannot be remedied within thirty (30) days, then such longer period as may be reasonable under the circumstances if remedy is commenced by the Defaulting Party within thirty (30) days after delivery of such written notice and is thereafter diligently pursued to completion. Upon a default, the Non-Defaulting Party may exercise any rights and remedies against the Defaulting Party as may be available at law or in equity.

11. Miscellaneous.

11.1 Covenants Running with the Land. The benefits and burdens of this Agreement shall be binding upon the parties and their respective successors and successors-in-title and shall run with the title to the Easement Area only. Notwithstanding the foregoing, El Dorado Designee shall have the sole right and authority to exercise and enforce the rights (including approval rights) and remedies of "El Dorado" under this Agreement and to enforce the obligations of "Grantee" under this Agreement, on behalf of any and all other persons holding fee simple title to any portion of the Property (including the Easement Area), without the approval or consent of any such other persons. In addition, the Grantee shall have the sole right and authority to exercise and enforce the rights and remedies of the "Grantee" under this Agreement and to enforce the obligations of "El Dorado" under this Agreement, and no member of the general public (including without limitation any Recreational User) shall have any right to enforce this Agreement.

11.2 Remedy Limitation. The provisions of this Agreement shall be binding upon the owner from time to time of any portion of the Easement Area only during the period of such owner's ownership of the applicable portion of the Easement Area and upon conveyance by an owner of its ownership interest in any portion of the Easement Area, that owner shall no longer be responsible for performance of this Agreement with respect to the portion of the Easement Area conveyed, but such conveyance shall not release or waive any accrued or pre-existing liability of the conveying owner.

11.3 No Public Dedication or Gift. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public (including without limitation any Recreational User), and this Agreement shall be strictly limited to and for the purposes expressed herein.

11.4 Entire Agreement. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions or agreements.

11.5 Modification. The provisions hereof may be modified, rescinded or amended in whole or in part only by written instrument executed by Grantee and El Dorado Designee and recorded in the Official Records. El Dorado Designee shall have the sole authority to modify, rescind or amend in whole or in part this Agreement on behalf of any other persons holding fee simple title to any portion of the Property (including the Easement Area), without the approval or consent of any such other persons.

11.6 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

11.7 Non-Waiver. No delay or failure by a party to exercise any right under this Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

11.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving any effect to the principles of the conflicts of law.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date set forth above.

EL DORADO:

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc., an Arizona corporation
Its: Administrative Agent

By: _____
Its: Administrative Agent

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 22 day of Feb 2018, by Michael Reinhold, the Administrative Agent of El Dorado Holdings, Inc., an Arizona corporation, the Administrative Agent of El Dorado Benson LLC, an Arizona limited liability company, on behalf thereof.

Notary Public State of Arizona
Maricopa County
Louise A Leland
My Commission Expires 05/10/2020

Notary Seal/Stamp

_____
Notary Public

COUNTY:

Board of Supervisors of Cochise County, Arizona

_____
Ann English, Chair

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2018, by _____, as _____ of _____, a(n) _____, for and on behalf thereof.

_____
Notary Seal/Stamp

_____
Notary Public

Exhibit A

Legal Description and Depiction of Access Easement
[Attached on following page]

DESCRIPTION OF INTERIM EASEMENT
FOR PUBLIC ACCESS

Those portions of Sections 1, Township 18 South, Range 19 East, Gila and Salt River Meridian and Section 6, Township 18 South, Range 20 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

The South 400 feet of the Southwest quarter of said Section 6 except the East 100 feet thereof, and further except any portion lying within State Highway 90;

TOGETHER WITH;

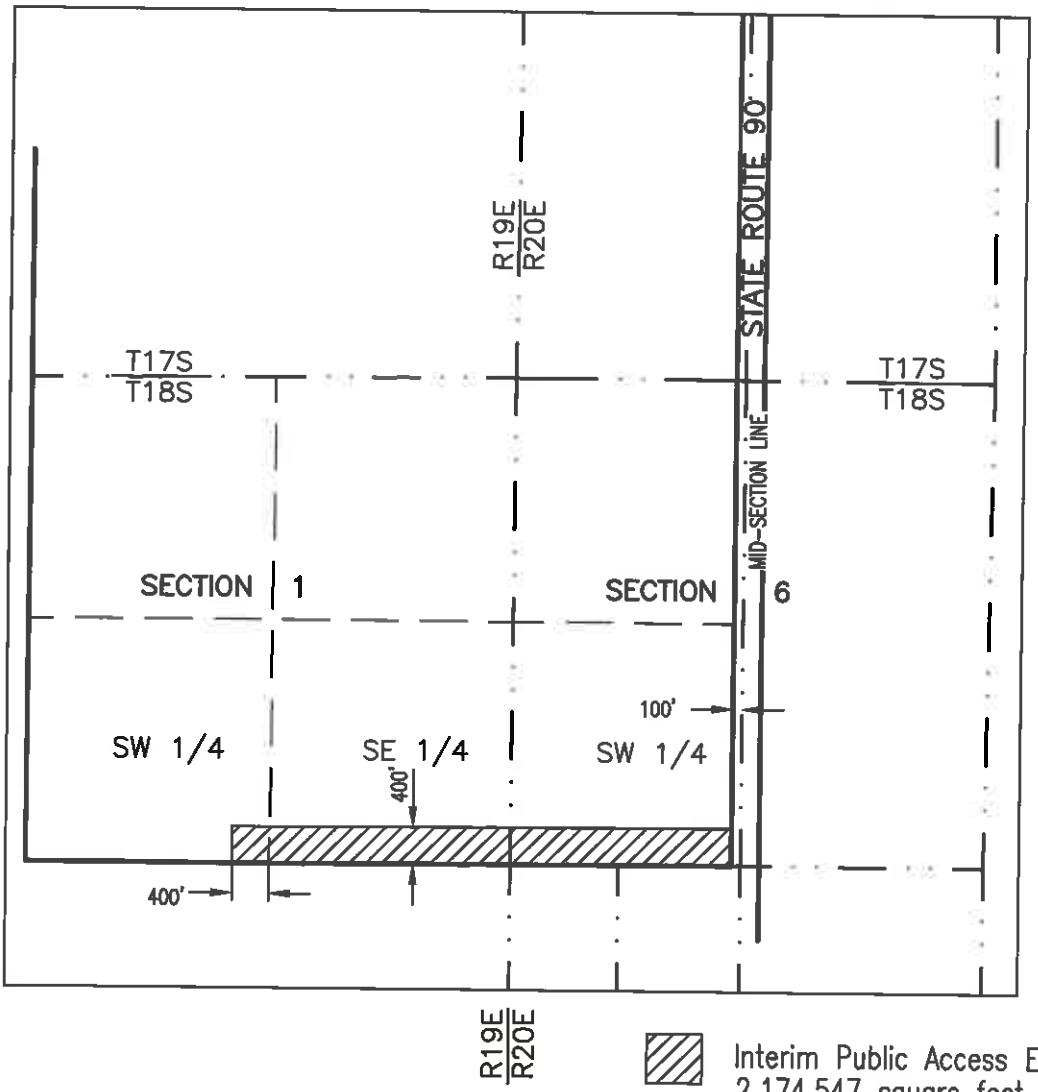
The South 400 feet of the Southeast quarter of said Section 1;

TOGETHER WITH;

The South 400 feet of the East 400 feet of the Southwest quarter of said Section 1.

Total Area is 2,174,547 square feet (49.92 acres), more or less.

EXP. 03/31/18



NOTE: This is an Exhibit Drawing only. Refer to the legal description for complete information.

EXHIBIT DRAWING

Interim Public Access Easement
Portions of Section 1 T18S, R19E (G&SRM)
and Section 6 T18S, R20E (G&SRM)
Cochise County, Arizona

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
31030
MICHAEL D.
OWENS
Date Signed 6/26/18
ARIZONA U.S.A.
EXP. 03/31/18

WestLand Resources
4001 E. Paradise Falls Drive
Tucson, Arizona 85712
(520) 206-9585

M:\Jobs\400's\460.99\SURVEY\ACCESS-EXHIBIT-rev.DWG

Exhibit B

Depiction of Preliminary Route and Parking Area
[Attached on following page]

EXHIBIT B
("Preliminary Route" and "Parking Area")