

## **EASEMENT CONVEYANCE AGREEMENT FOR RECREATIONAL ACCESS**

This **EASEMENT CONVEYANCE AGREEMENT FOR RECREATIONAL ACCESS** (“**Agreement**”) is entered into 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**”). El Dorado and the County are individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

### **RECITALS:**

**WHEREAS**, the County is authorized to enter into this Agreement pursuant to A.R.S. § 11-251 and Cochise County Ordinance 013-94(3);

**WHEREAS**, the County Engineer has determined that this Agreement, including the grant of the recreational access easement contemplated hereby, is essential to the public transportation network as required by Cochise County Ordinance 013-94(3)(b) because, among other reasons, there is presently no unobstructed vehicular public access to the northern portion of the Whetstone Mountain Range from State Route 90;

**WHEREAS**, El Dorado is the owner of real property generally located in Cochise County, Arizona, and more particularly legally described in Exhibit 1 attached hereto (the “**Property**”);

**WHEREAS**, El Dorado is willing to sell and grant to the County, and the County is willing to purchase and accept from El Dorado, a perpetual non-exclusive recreational access easement in gross (“**Access Easement**”) over and across a portion of the Property, at the location and on the terms and conditions more fully set forth in the Recreational Access Easement Agreement attached hereto as Exhibit 2.

**WHEREAS**, the Parties acknowledge and agree that the public benefit received by the grant of the Access Easement equals or exceeds the consideration paid to El Dorado for the Access Easement.

**NOW, THEREFORE**, the Parties agree to implement this Agreement upon and under the following terms and conditions:

### **AGREEMENT:**

**A. The County agrees, warrants and represents:**

1. The County shall pay to El Dorado for the purchase of the Access Easement the sum of \$10.00 (the “**Payment**”). Payment shall be payable in one installment to El Dorado and shall be made in readily available funds after receipt by the County of the Access Easement duly executed and acknowledged by an authorized representative of El Dorado in the form Recreational Access Easement Agreement attached hereto as Exhibit 2. El

Dorado shall present an invoice to the County in the amount of \$10.00 for the Access Easement at the time of Closing (as defined below). Payment will follow in a timely manner, according to County procurement protocols.

**B. El Dorado agrees, warrants and represents:**

1. El Dorado agrees to convey to the County, and the County agrees to accept, the Access Easement.
2. In addition to the Payment detailed herein, and other valuable consideration, El Dorado has benefitted, and acknowledges and accepts as further consideration for this Agreement and the Access Easement, certain survey and related technical work completed or paid for by the County related to this Agreement and the Access Easement.
3. El Dorado acknowledges that the County may further transfer or assign the County's rights and obligations under this Agreement to another state or federal agency. El Dorado agrees that it shall reasonably cooperate with the County and execute such further documentation as is reasonably necessary to effectuate the contemplated transfer or assignment of the County's rights and obligations under this Agreement; provided however, in no event shall El Dorado be obligated to incur any additional obligation or potential liability in connection with such cooperation.
4. El Dorado has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, and/or with respect to the Property or the Easement Area (as defined in the Recreational Access Easement Agreement). County is acquiring the Recreational Access Easement on an "AS-IS", "WHERE-IS", and "WITH ALL FAULTS" basis, without any warranties, and the County accepts and agrees to bear all risks with respect to all attributes and conditions, latent or otherwise, of the Access Easement. The provisions of this Section shall survive the Closing and shall not merge with the Access Easement.

**C. The Parties mutually agree, warrant and represent:**

1. The Recitals detailed above are accurate and incorporated herein.
2. The date set for the grant and conveyance of the Access Easement and the performance of all conditions relating thereto ("Closing") shall occur on or before the tenth (10<sup>th</sup>) day following the Effective Date (as defined below). On or before the Closing, County and El Dorado shall each execute, have acknowledged and cause to be recorded the Access Easement.
3. The Parties acknowledge that the County may further transfer or assign the County's rights and obligations under this Agreement to another state or federal public agency before the expense of any improvements contemplated herein are undertaken. Any other

assignments shall be subject to the prior written consent of El Dorado, which consent may be withheld in El Dorado's sole discretion.

4. All written notices concerning this Agreement shall be delivered in person or sent by certified mail, return receipt requested, to the Parties as follows:
  - a. For the County:

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

Michael T. Reinbold  
Authorized Agent of El Dorado Benson, LLC  
El Dorado Holdings, Inc.  
mreinbold@eldoradoholdings.net  
8501 N. Scottsdale Road  
Suite 120  
Scottsdale, Arizona 85253
5. The County's Highway & Floodplain Department staff, including Terry Couchenour, shall be the local County representative regarding this Agreement.
6. Amendments to this Agreement, including assignments or other transfers of rights or obligations under this Agreement by either party, shall be made in writing, signed and dated by the Parties, prior to any changes being performed. The Parties are not obligated to fund any changes not approved in advance.
7. In accordance with A.R.S. §35-214, all books, accounts, reports, files, electronic data, and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement.
8. In carrying out the terms of this Agreement, the Parties agree to comply with State Executive Order 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
9. In accordance with A.R.S. §12-1518, the Parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review except as may be required by other applicable statutes.
10. This Agreement is subject to termination pursuant to A.R.S §38-511.

11. This Agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, or individuals.
12. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter herein and accurately sets forth the rights, duties, and obligations of each Party. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
13. Anything in this Agreement to the contrary notwithstanding, if at the time and place set for Closing, the condition of El Dorado's title to the Property is unacceptable to the County, then the County may in its sole discretion elect to terminate this Agreement without recourse by El Dorado against the State or the County. In such an event, neither Party shall incur any further obligation or liability to the other Party under this Agreement.
14. In the event that any provision of this Agreement or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.
15. All payments received by El Dorado through this Agreement may be subject to federal and local income tax. Any questions regarding the tax status of payments should be directed to El Dorado's personal tax accountant.
16. This Agreement is subject to and governed by the laws of the State of Arizona.

[Balance of Page Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement with an "Effective Date" as of the last signature date below, and each person signing this Agreement warrants that he/she has the capacity and authority to execute this Agreement.

**APPROVED:**

El Dorado Benson, LLC



Michael T. Reinbold, Authorized Agent

2/22, 2018  
DATE

**APPROVED:**

Board of Supervisors of Cochise County, Arizona

  
Ann English, Chair

2-27-, 2018  
DATE

**Exhibit 1 (Legal Description of Property)**

**[Attached on following page]**

PARCEL I: (Tax # 124-01-014C/ with other property)

Section 36, Township 17 South, Range 19 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona;

EXCEPT any portion of the property conveyed in Instrument recorded in 2013-22380 described as follows:

COMMENCING at a 2 inch brass disk at the Southwest corner of said Section 36;

Thence North 00° 04' 52" East, a distance of 2,462.57 feet upon the West line of said Section 36 to the POINT OF BEGINNING from which a 2 inch open pipe at the Northwest corner of said Section 36 bears North 00° 04' 52" East, a distance of 2,794.12 feet;

Thence North 61° 44' 23" East, a distance of 2,131.60 feet;

Thence South 89° 52' 03" East, a distance of 771.87 feet;

Thence North 51° 12' 56" East, a distance of 2,891.21 feet to the North line of the Northeast quarter of said Section 36;

Thence South 89° 43' 08" West, a distance of 2,249.58 feet upon said North line to a 2 inch open pipe at the North quarter corner of said Section 36;

Thence South 89° 42' 40" West, a distance of 2,649.64 feet upon the North line of the Northwest quarter of said Section 36 to said 2 inch open iron pipe at the Northwest corner of said Section 36;

Thence South 00° 04' 52" West, a distance of 2,794.12 feet upon the West line of said Section 36 to the Point of Beginning;

EXCEPT reservations contained in Document recorded in 8902-002244 and corrected in Instrument No. 9004-07528, 9004-07529 and 9512-30137, records of Cochise County, Arizona;

PARCEL II: (tax parcels 124-12-001T, -001S, -013 (portion), and portion of - 014B )

Lots 1, 2, 3 and 4;

The East half of the West half; and

The East half of Section 31; and

All of Section 32;

All in Township 17 South, Range 20 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona;

EXCEPT any portion lying within Canyons at Whetstone Ranch recorded in Book 15 of Maps at page 23;

AND EXCEPT any portion lying within State Route 90 as it now exists;

AND EXCEPT from the above referenced Section 32 any portion of the well site conveyed to in Deed recorded January 09, 2002, Instrument No. 0201-00746.

EXCEPT reservations contained in Document recorded in 8902-002244 and corrected in Instrument No. 9004-07528, 9004-07529 and 9512-30137, records of Cochise County, Arizona;

PARCEL III: (tax parcel 124-12-013 (portion) and - 014A and portion of -14B)

Section 33, Township 17 South, Range 20 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona;

EXCEPT That portion of Section 33, Township 17 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, as shown on the Record of Survey recorded in Book 16 of Surveys, page 97, records of Cochise County, Arizona, described as follows:

COMMENCING at a 2" aluminum cap stamped "LS 14181" at the Northeast corner of said Section 33, as shown on said Record of Survey;

thence South 00°54'21" West 2510.57 feet upon the East line of said Section 33 to the POINT OF BEGINNING;

thence continue South 00°54'21" West 2731.55 feet upon said East line to a 2" aluminum cap marked "LS 17479" at the Southeast corner of said Section 33;

EXCEPT from Section 7 any portion lying within State Highway 90 as set forth in Final Order of Condemnation recorded August 21, 2000, Instrument No. 0008-23275;

EXCEPT reservations contained in Document recorded in 8902-002244 and corrected in Instrument No. 9004-07528, 9001-00683, 9004-07529 and 9512-30137, records of Cochise County, Arizona;

PARCEL VIII: (tax parcels 124-40-022, 001Y, 001Z and portion of -024A)

Lots 3 and 4;  
The East half of the Southwest quarter; and  
The East Half of Section 18;

The Northwest quarter; and  
The East half of Section 19;

ALL being within Township 18 South, Range 20 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona;

EXCEPT from Sections 18 and 19, any portion lying within State Highway 90 as set forth in Final Order of Condemnation recorded August 21, 2000, Instrument No. 0008-23275;

EXCEPT all reservations contained in Documents recorded in Document Nos. 9001-00683, 9004-07528, 9004-07529 and Document No. 9512-30137, records of Cochise County, Arizona.

PARCEL IX: (tax parcels 124-40-013 and -014)

The South half of the South half of Section 20, Township 18 South, Range 20 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona;

EXCEPT all reservations contained in Documents recorded in Document Nos. 9001-00683, 9004-07528, 9004-07529 and Document No. 9512-30137, records of Cochise County, Arizona.

PARCEL X: (Portion of tax parcel 124-12-012D)

That portion of Section 29, Township 17 South, Range 20 East, Gila and Salt River Base and Meridian, Cochise County, Arizona, records of Cochise County, Arizona, lying North of the following described property:

That certain property which was set forth as Parcel IV and Parcel V on Trustee's Deed recorded December 26, 2012 at Document No. 2012-29048, being contained in that parcel, more particularly described as follows:

Those portions of Sections 29, 30 and 32, Township 17 South, Range 20 East, Gila and Salt River Base and Meridian, Cochise County, Arizona, described as follows:

BEGINNING at the most Southerly corner of COTTONWOOD HIGHLANDS, a subdivision recorded in Book 15 of Maps, page 25, records of Cochise County, Arizona, said corner being on the North right of way line of Kartchner Trail, as shown on the plat of said subdivision;

thence the following 7 courses upon the boundary of said subdivision;

- 1) North 21° 04' 11" West, 41.03 feet;
  - 2) North 54° 28' 47" East, 761.10 feet upon said boundary;
  - 3) North 24° 42' 22" West, 211.59 feet;
  - 4) North 60° 00' 00" East, 1596.14 feet;
  - 5) North 00° 05' 20" West, 694.84 feet;
  - 6) North 76° 00' 00" East 525.85 feet;
  - 7) South 52° 50' 34" East, 334.94 feet;
- thence departing said boundary line South 67° 00' 00" East, 417.00 feet;  
thence North 60° 40' 29" East 1992.07 feet;

PARCEL XII: ( tax parcel 124-77-346)

Lot 140, COTTONWOOD HIGHLANDS, according do Book 15 of Maps, page 25, records of Cochise County, Arizona;

EXCEPT all reservations contained in Document recorded in Document No '8712-31763, records of Cochise County, Arizona.

PARCEL I: (tax parcel 124-18-008D)

Those portions of the East half of Section 23 and the Southwest quarter of Section 24, Township 17 south, Range 20 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona, described as follows:

BEGINNING at a ½ inch rebar with tag LS 23972, at the Southeast corner of said Section 23;

Thence South 89° 35' 46" West 1418.37 feet upon the South line of the Southeast quarter of said Section 23, to the Northeast line of that railroad and transportation easement dedicated in Docket 701 at page 420 and in Docket 701 at page 419, records of Cochise County, Arizona;

Thence North 40° 31' 04" West 1909.42 feet upon said Northeast line to the West line of said East half of Section 23;

Thence North 00° 57' 08" West 1849.13 feet upon said West line to an aluminum capped pipe marked "RLS 13012";

Thence North 89° 24' 10" East 955.78 feet to a 2 inch aluminum capped pipe marked "WC LS 13012 350", being a witness corner to the next described angle point;

Thence continue North 89° 24' 10" East 350.00 feet to said angle point;

Thence South 08° 00' 00" East, 426.00 feet;

Thence South 32° 00' 00" East, 281.71 feet;

Thence South 42° 43' 49" East, 590.00 feet;

Thence South 24° 33' 47" East, 358.79 feet;

Thence North 89° 25' 30" East, 111.75 feet;

Thence South 22° 31' 04" East, 351.91 feet;

Thence South 32° 08' 15" East, 257.87 feet;

Thence South 27° 54' 51" East, 190.04 feet;

Thence North 89° 38' 52" East, 7.76 feet to a 1 inch aluminum capped pipe marked "250 W.C. RLS 13012";

Thence continue North 89° 38' 52" East, 123.13 feet to the East line of said Southeast quarter of Section 23;

Thence South 01° 05' 13" East, 790.18 feet upon said East line;

Thence South 28° 09' 49" East, 125.89 feet;

Thence South 35° 59' 30" East, 213.26 feet;

Thence South 72° 45' 05" East, 103.32 feet;

Thence South 71° 03' 02" East, 206.18 feet to the South line of said Southwest quarter of Section 24;

Thence South 89° 38' 21" West 471.15 feet upon said South line to the Point of Beginning;

EXCEPT an undivided one-half interest in all minerals as reserved in Docket 218 at page 358.

PARCEL II:

An easement for ingress and egress as created in instrument recorded in Docket No. 0411-38559, records of Cochise County, Arizona, over the following described property;

The North 66.00 feet of the South 183.00 feet of the Southeast quarter of the Southeast quarter of Section 15, Township 17 South, Range 20 East of the Gila and Salt River Base & Meridian, Cochise County, Arizona;

EXCEPTING THEREFROM that portion thereof lying Easterly of the Northeasterly right of way line of the

said Section 23, being the termination of the Southwesterly line of said strip, and shortening and extending the Northeasterly line of said strip so as to commence on the North line of said Section 22, and Terminate on the Southerly line of the Northerly 186.000 feet of the South half of the Northwest Quarter of said Section 23.

Exhibit 2 (Recreational Access Easement Agreement)

[Attached on following page]

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 4<sup>th</sup> 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-foot (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: \_\_\_\_\_

STATE OF ARIZONA )

) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2018, by \_\_\_\_\_, the \_\_\_\_\_ 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 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;

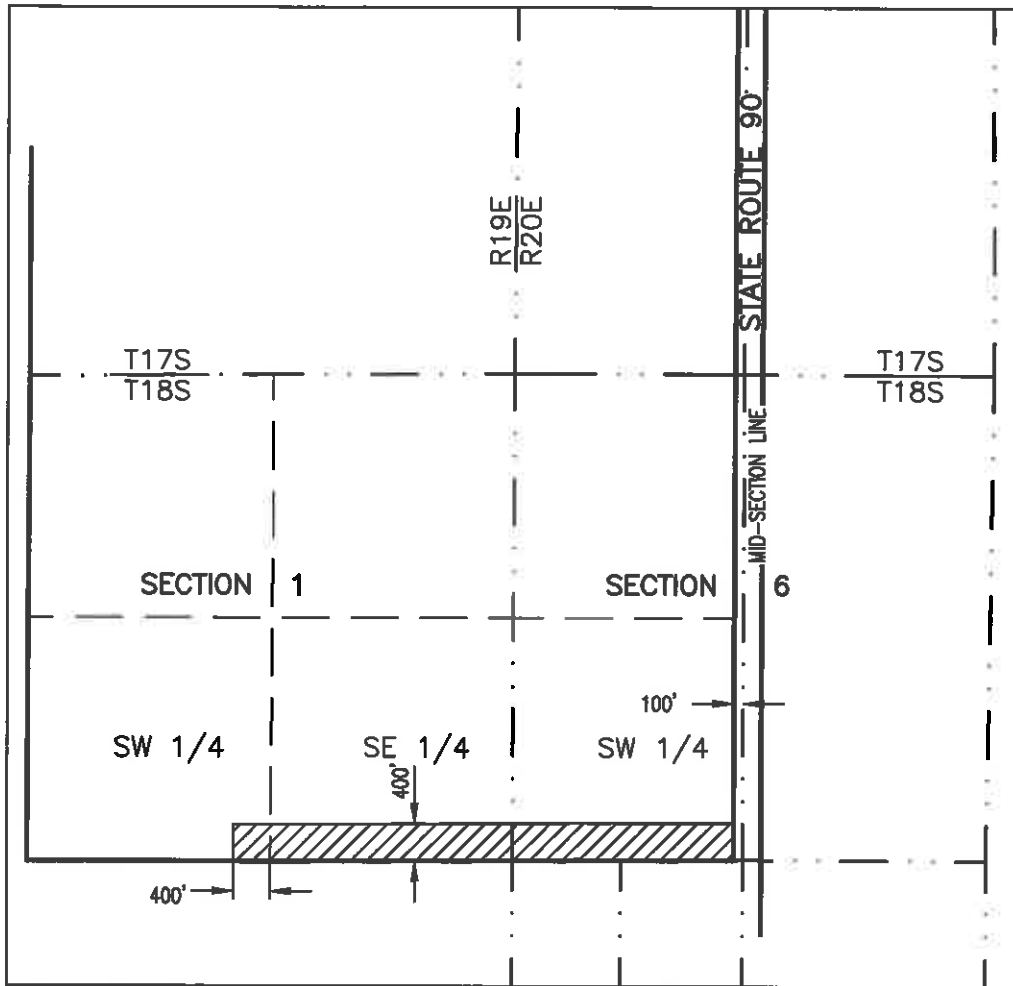
The South 400 feet of the East 400 feet of the Southwest quarter of said Section 1.

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



EXP. 03/31/18

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



R19E  
R20E



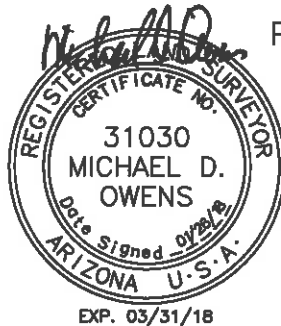
Interim Public Access Easement  
2,174,547 square feet  
(49.92 acres, more or less)

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

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

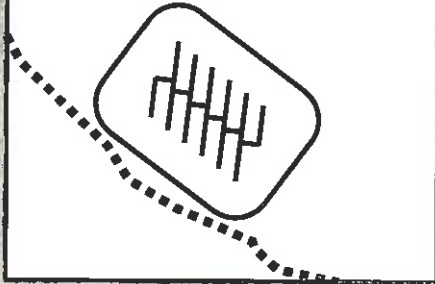


**Exhibit B**

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

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

**Parking Area Enlargement**  
Approximately 80' x 100'  
(10) 9' x 19' parking spaces



General location  
of dirt surfaced  
Parking Area

Preliminary Route

400' Initial Easement Area

Coronado National Forest

STATE ROUTE 90



Not to Scale