

**RELEASE, COVENANT NOT TO SUE, AND INDEMNITY AGREEMENT**

This Confidential Release, Covenant Not To Sue, and Indemnity Agreement is made and entered into November 9, 2015 by:

**Plaintiffs** Bruce and Claudia Wade, individually and on behalf of their heirs, agents, and children hereinafter referred to as **Releasors**, and

**Defendants** County of El Dorado, American River Conservancy, Elizabeth Carr, and Alan Ehrgott, hereinafter referred to as **Releasees**, including Releasees' past and present board members, officers, directors, administrators, supervisors, agents, employees, volunteers, insurance carriers, attorneys, and heirs.

- A. Releasors filed a complaint in the El Dorado County Superior Court identified as Wade v County of El Dorado – Case No. PC 20120264. This release applies only to the complaint filed by Releasors and is not intended to, and does not, affect the related cross-complaint filed by the County of El Dorado which remains pending.
- B. In Wade v County of El Dorado – Case No. PC 20120264, Releasors asserted claims against Releasees including, but limited to, claims related to alleged trespass and nuisance.
- C. Releasees deny all claims, however, in an effort to end the ongoing dispute Releasees agree to the following terms with Releasors who warrant and represent they have the capacity to enter into, and have the legal capacity to bind their successors, assigns, and heirs, to the terms within this agreement.

Releasors and Releasees agree as follows:

**1.0 Incorporation of Recitals**

The foregoing Recitals are incorporated herein and by this reference are made a material part of this Agreement.

## **2.0 General Release and Discharge**

**2.1** Releasors, in consideration of the consideration set forth herein, do for themselves individually, and any heirs completely release and forever discharge RELEASEES and each of them, of and from any and all claims and potential claims, demands, obligations, actions, causes of action, injury claims (physical, monetary, property, and/or emotional), rights, damages, costs, expenses, attorney's fees and compensation of any and all nature whatsoever, whether based on tort, contract, statute or regulation, whether state or federal, court decision or any other theory of recovery, which Releasors now have, or which may hereafter accrue or otherwise be acquired, on account of, in any way arising out of the issues and activities complained of in the litigation now pending in the Action referenced above and/or this Agreement, including any and all claims KNOWN or UNKNOWN, ASSERTED or UNASSERTED, vested or contingent, in law or equity, for economic, personal or bodily injuries to Releasors.

This release includes, but is not limited to, any past, present or future claims related to alleged trespass or nuisance including and claims for loss of consortium, love and affection, partial or total loss of enjoyment and/or quality of life, fear of future injury or harm, emotional distress, psychological/psychiatric/cognitive injuries, humiliation, bodily injury, lost income, loss of earning capacity, loss of services, pain and suffering, temporary or permanent disability or disfigurement, any claims or private rights of and any cause of action relating to Releasors property, including any claims for attorney's fees, any expenses, or any future claim of Releasors' representatives, heirs, successors, or estates, or any other claims, both ASSERTED and UNASSERTED, KNOWN or UNKNOWN, in any manner arising out of any acts or omissions by Releasees.

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This release also precludes any future claim against Releasees for the actions of any third party which allegedly effects or impact Releasors or their property, including but not limited to claims for trespass, nuisance, or impact on property rights.

**2.2** Releasors agree to completely release and forever discharge any and all claims against Releasees, including but not limited to any and all claims for independent or vicarious liability, any and all claims for actual, apparent, or ostensible agency, agency by estoppel, or other forms of agency, any and all claims for liability for the conduct of others, including but not limited to respondeat superior and/or any theory based upon a claim of non-delegable duty or any form of third-party liability related to the action or inaction or alleged negligence of Releasees or any other person, corporate entity, nursing personnel, member of the medical staff, or any other health care provider.

**2.3** Releasors agree to completely release and forever discharge any and all claims against Releasees County of El Dorado, Alan Ehrgott, and Elizabeth Carr - in exchange for a mutual waiver of costs and fees and Releasees waiver of any claim for malicious prosecution for the action described herein.

### **3.0 Consideration**

**3.1** In consideration for this Agreement the undersigned Releasors hereby release and forever discharge Releasees, of and from any and all claims, demands, actions, and causes of action, and any liability whatsoever, on account of or in any manner arising out of any acts or omissions on the part of Releasees or in regard to the matters alleged or which could have been alleged in the Action and for all future actions related to the allegations or theories of recovery in the above identified litigation.



3.2 Releasor ARC, through their insurance carrier, shall remit the total sum of Thirty Thousand Dollars (\$30,000.00) to Releasors in a form of payment as directed by their counsel.

3.3 In addition to the consideration identified in paragraph 3.2, in consideration for this agreement Releasee ARC agrees as follows:

1. Releasees ARC and County of El Dorado are aware Releasors (Wades) may install and maintain in good condition a fence on their own property - from the river boundary to the black top road to limit public crossing their private property.
2. Releasee ARC staff shall not direct individuals not identified as the Wade's guests onto the Wade's property.
3. Releasee ARC will have an area painted on the roadway ten feet (10') on either side of the Wade Driveway and will make reasonable efforts to prevent vehicles from blocking the demarked area.
4. Releasees ARC and County of El Dorado are aware Releasors (Wades) shall install and maintain in good condition "no trespassing/private property" signs along fence referenced in No. 1 above
5. Releasee ARC will install signage in an effort to educate the public with regard to private property in the Chili Bar area and deter the general public from driving down the riverfront road and trespassing on Wade property.
6. Releasee ARC has installed an "iron ranger" in the upper ARC parking lot for use in conjunction with existing or future methods of fee collection.

3.4 The Parties intend and agree that the payment set forth in paragraph 3.2 is for any and all past, present, or future claims, potential claims, causes of action, damages, costs, attorney's fees, costs and expenses as set forth above.

#### 4.0 **Risk of Unknown and Unforeseen Damages**

4.1 Releasors expressly waive and assume the risk of any and all claims for damages, whether KNOWN or UNKNOWN, ASSERTED and UNASSERTED, which exist as of this date or which may hereafter be discovered, but of which the Releasors do not know or suspect to exist,

whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect Releasors' decision to enter into this Agreement. Releasors have accepted payment of the sums specified herein as a complete compromise of matters involving any and all disputed issues of law and fact.

**4.2** Releasors expressly waive for all purposes the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This waiver relates to all matters arising out of or in any way connected with the Action, the recitals set forth above, and the matters released and discharged by virtue of this Agreement.

**5.0 Contractual Nature of Release**

It is expressly understood and agreed that the payments agreed to herein are the sole monetary consideration for this release and discharge and that the consideration stated herein is contractual and not a mere recital and that the consideration stated herein is paid to Releasors as compensation for all damages and injuries sustained or alleged to have been sustained by Releasors in relation to the Action and the recitals section of this Agreement including, but not limited to, all medical expenses incurred as a result thereof.

It is further agreed that all agreements and understandings are embodied and expressed herein, that neither this Agreement nor any part hereof shall be construed or used as an admission of liability by Releasees, and that said sum is paid in settlement of the disputed claims for injury, liability for which is expressly denied.

**6.0 Liens and Expenses**

Releasors and their attorney agree as a material condition of this Agreement that satisfaction of any existing or future liens (medical or otherwise) or reimbursement or recovery claims, whether statutory or contractual, for diagnostic, medical, or for any other care and treatment to Releasors, shall be the sole responsibility of Releasors. This includes, but is not limited to, any and all liens, federal or state rights of recovery, claims for reimbursement or conditional payments, recapture liens or claims for balance billing asserted by or on behalf of any hospital, physician, insurance company, health plan, third-party administrator, the VA, Medicare and/or the Centers for Medicare/Medicaid Services (“CMS”), the California Department of Health Care Services (“Medi-Cal”), any other governmental benefit plan or program (whether federal, state, or local), Employment Retirement Income Security Act (ERISA) qualified plan or program or any other claims in relation to the events outlined in the recitals and described in the Agreement.

Releasors and their attorneys specifically affirm and have signed an affidavit confirming, there are no liens in this matter and plaintiff has not and is not anticipates to receive any Medicare benefits related to this action and or the injuries alleged herein. Releasors and their attorney further agree to hold harmless and indemnify Releasees, and each of them, their attorneys and their insurers, against any claim for reimbursement or other recovery made by any third party, including principal, penalties, interest, and for legal fees and costs incurred thereby.

#### **7.0 Indemnification**

As further consideration for payment of the above-described sums, Releasors and their attorneys, agree to protect, indemnify, and hold harmless Releasees against any and all claims by any person or entity relating to easement, access, trespass, or nuisance issues and any and all liens, federal or state rights of recovery, claims for reimbursement or conditional payments, recapture liens or claims for balance billing asserted by or on behalf of any hospital, physician, insurance



company, health plan, third-party administrator, VA, Medicare and/or the Centers for Medicare/Medicaid Services (“CMS”), the California Department of Health Care Services (“Medi-Cal”), any other governmental benefit plan or program (whether federal, state, or local), Employment Retirement Income Security Act (ERISA) qualified plan or program or any other claims in relation to the events outlined in the recitals and described in the Agreement.

#### **8.0 Confidentiality**

It is the desire of all of the Parties to this agreement that the terms of this agreement and all monies paid pursuant to the Agreement are confidential and shall not be publicly disclosed, discussed or described by the Parties and/or their attorneys or insurers or agents except as may be required by law, Order of Court, or other governmental entity with authority to compel disclosure of information. The parties, the attorneys, and the insurers for the parties also agree to keep the amount of the settlement confidential, except as necessary for Releasers’ attorney to negotiate any liens.

This confidentiality provision does not prohibit the parties from discussing the amount of this settlement with their attorneys, accountants, or members of their board of directors. The parties agree any inquiry into the resolution of this matter shall be responded to by stating “the matter was dismissed” with any further inquiry directed to their counsel.

#### **9.0 Attorneys’ Fees**

Each party hereto shall bear all of its respective attorneys’ fees and costs, if any, incurred in connection with the Action, this Agreement and all matters and documents referred to herein and all related matters.

#### **10.0 Dismissal of Claims**

As additional consideration for this Agreement, Releasors and their attorneys agree to file a Dismissal, with Prejudice, as to all causes of action asserted as against Releasees in the complaint filed in El Dorado County Superior Court. It is understood this agreement is not contingent upon nor does it affect any portion of the ongoing cross-action by County of El Dorado against the Wades.

**11.0 Additional Documents and Actions**

All parties agree to cooperate fully, to execute and return promptly any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement. As additional consideration for the Agreement, Releasors agree that, in the event that any legal action is instituted by Releasors, or by, or on behalf of, their representatives, heirs or assigns, as against any of the Releasees, this Agreement may, at the sole election Releasees, be presented in any court of competent jurisdiction as conclusive evidence of the absolute affirmative defenses of payment, release, and/or accord and satisfaction and shall serve as a covenant not to sue for any future act.

**12.0 Warranty of Capacity To Execute Agreement**

Releasors represent and warrant that no other person or entity has any interest in the property, claims, demands, obligations, or causes of action referred to in this Agreement, that Releasors have the sole right and exclusive authority to execute this Agreement and receive the sums as specified herein, and that all persons who could be bound by this Agreement are so bound, including Releasors' executors, administrators, personal representatives, heirs, agents, employees, successors, beneficiaries, estates and assigns. Releasors further warrant that Releasors have not sold, assigned, transferred, conveyed or otherwise disposed of any of the property, claims, demands, obligations or causes of action referred to in this Agreement.



Agreement has been completely explained by said attorneys, and that the terms herein are fully understood and voluntarily accepted by Releasors as a full and final compromise, settlement and discharge of all claims, actions and causes of action as herein stated. Releasors further represent that they have executed this Agreement voluntarily, with full knowledge of its significance, and with the express intention of effecting the legal consequences provided by Section 1541 of the California Civil Code, that is, the extinguishment of all obligations.


**14.0 Governing Law**

This Agreement shall be deemed to be entered into and performed in the County of El Dorado, State of California, and shall be construed and interpreted in accordance with the laws of the State of California.

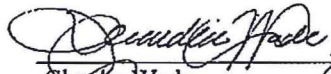
**15.0 Agreement**

The Parties to this Agreement agree that this document embodies and expresses all of the agreements and understandings between the Parties. There are no other representations, warranties, promises, agreements or understandings, either oral or written, relating to the properties or subject matter of this Agreement. This Agreement may be signed in counterparts and copies of signatures shall be deemed to be originals.

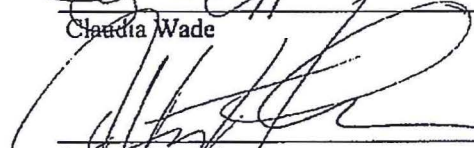
Dated: *Nov, 11 - 2015*

  
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Bruce Wade

Dated: *November 11, 2015*

  
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Claudia Wade

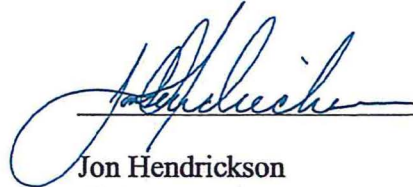
Dated: *11/12/2015*

  
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Jeffrey Hinrichsen,  
Counsel for Bruce and Claudia Wade

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Jeffrey Hinrichsen,  
Counsel for Bruce and Claudia Wade

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Dated: *November 13, 2015*

  
\_\_\_\_\_  
Jon Hendrickson  
Claims Administrator  
On Behalf of County of El Dorado

Dated:

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Alan Ehrgott, Individually and On Behalf of  
American River Conservancy

Dated:

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Elizabeth Carr

Dated:

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Michael LeVangie, Counsel for Defendants  
County of El Dorado, American River  
Conservancy, Alan Ehrgott, and Elizabeth Carr

Jeffrey Hinrichsen,  
Counsel for Bruce and Claudia Wade

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Dated:

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Jon Hendrickson  
Claims Administrator  
On Behalf of County of El Dorado

Dated: *Nov. 16, 2015*

*Alan Ehrgott*  
\_\_\_\_\_  
Alan Ehrgott, Individually and On Behalf of  
American River Conservancy

Dated: *Nov. 13, 2015*

*Elizabeth Carr*  
\_\_\_\_\_  
Elizabeth Carr

Dated:

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Michael LeVangie, Counsel for Defendants  
County of El Dorado, American River  
Conservancy, Alan Ehrgott, and Elizabeth Carr