

**LEASE AGREEMENT
1671 CHILI BAR CT – UPPER PARKING AREA**

This Lease Agreement (“Lease”) dated this day of Feb 1st, 2023 is made by and between El Dorado County, a political subdivision of the State of California, (“County”) and the American River Conservancy, a non-profit California public benefit corporation (“ARC”). County and ARC are sometimes individually referred to herein as “Party” and collectively as “Parties”.

RECITALS

- A. County owns that certain real property commonly known as 1671 Chili Bar Ct. Placerville, California (APN 089-180-039) (“Property”).
- B. ARC desires to lease a portion of the Property, described as parking area and depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (“Parking Area”).
- C. Lease of the Parking Area to ARC serves a public purpose in promoting public access to the river and recreational use.
- D. Pursuant to Government Code Section 25536(a), subject to a 4/5 vote by the County Board of Supervisors, County may lease all or any part of County-owned property for vehicle parking purposes without a competitive bidding procedure.
- E. It is the intent of the Parties hereto that use of the Parking Area shall be in conformity with all applicable federal, state, and local laws.

NOW THEREFORE, the Parties agree as follows:

- 1. **Lease.** County hereby leases to ARC and ARC hereby leases from County the Parking Area. The Parking Area consists of approximately 12,000 square feet.
- 2. **Term.** The initial term of this Lease shall commence upon full execution of this Lease and expires two (2) calendar year(s) thereafter. The term of the Lease may be extended by mutual agreement of the Parties for three (3) one-year terms, on the same terms and conditions as provided herein. In no event shall the total term (initial and extended) exceed five (5) years.

Either Party may terminate this Lease for convenience upon ninety (90) days advanced written notice to the other Party.

3. **Use.** The Parking Area is leased herein for the sole purpose of operating a vehicle parking area and uses normally incidental thereto. ARC may charge parking fees for use of the Parking Area provided the fees are reflective of charges levied at similar or like facilities. ARC shall not use or permit the use of the Parking Area that will:

- a. Increase the existing rates or cause cancelation of any fire, casualty, liability or other insurance policy insuring the improvements or its contents;
- b. Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Parking Area; or
- c. Constitute commission of a waste on the Parking Area.

4. **Maintenance and Repair; Utilities.** ARC, at its sole cost and expense, shall maintain and keep the Parking Area, including the existing fee collection kiosk and any alterations constructed pursuant to Section 5 below, such as restrooms in the Parking Area, in good order, repair and safe condition throughout the term of this Lease. At the expiration or termination of the Lease, ARC shall surrender the Parking Area to County in as good condition and repair as it is in on the date of this Lease, reasonable wear and tear excepted. ARC shall be responsible for payment of all charges for refuse collection, water, sewer, gas, electricity and other utilities supplied to and used in the Parking Area.

5. **Alterations.** County reserves the right to construct restrooms on the Parking Area. Except for the existing fee collection kiosk on the Parking Area, no alterations, other structures, or improvements shall be constructed or maintained on the Parking Area without the prior written consent and approval of the County. Should County consent to the construction of alterations to the Parking Area by ARC, subsequent to execution of this Lease, said alterations shall be made at the sole cost and expense of ARC by a contractor or other person selected by ARC and approved in writing by County before work commences. Any and all alterations which become fixtures under California law, with the exception of alterations readily removable without significant damage to Parking Area, shall become the realty and belong to the County and remain on the Parking Area upon the expiration or sooner termination of this Lease.

6. **As-Is Condition.** ARC agrees that it is leasing the Parking Area on an "as-is" basis without any representation or warranty made by County as to the condition of the Parking Area. ARC acknowledges that County has not made any representations or warranties that the Parking Area comply with applicable laws, including the American Disabilities Act (ADA) or any laws relating to hazardous substances or materials. Pursuant to California Civil Code Section 1938, the Parking Area has not undergone inspection by a Certified Access Specialist.

7. **Taxes and Possessory Interest.** ARC shall be responsible for payment of all taxes, assessments, fees, and other charges, including, but not limited to, possessory interest taxes that are levied and/or assessed against ARC's personal property or improvements installed or located in or on the Parking or on ARC's interest in the Parking Area and that become payable during the term of this Lease. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, ARC acknowledges that ARC's interest in the Parking Area which is created by this Lease may be assessed a possessory interest tax. Upon termination of this Lease, the responsibility to pay all taxes, assessments, fees, and other aforementioned charges in this Section 7 will revert to the County.

8. **Insurance.**

8.1 ARC shall provide proof of a policy of insurance issued by an insurance company that is acceptable and satisfactory to County's Risk Management Division and documentation evidencing that ARC maintains insurance that meets the following requirements:

- a. Full Workers' Compensation and Employers' Liability Insurance covering all employees of ARC as required by law in the State of California.
- b. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- c. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by ARC in performance of the Lease.
- d. Property insurance on real property covered by this Lease under a standard "All Risk" policy. The policy shall insure for not less than ninety percent (90%) of the replacement value of the Parking Area.

8.2 ARC will maintain the insurance required herein in effect at all times during the term of this Lease. In the event said insurance coverage expires at any time or times during the term of this Lease, ARC agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Lease, or for a period of not less than one (1) year.

8.3 The certificate of insurance must include the following provisions stating that:

- a. The insurer will not cancel the insured's coverage without prior written notice to County; and

- b. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

8.4. ARC's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of ARC's insurance and shall not contribute with it.

8.5. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or ARC shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

9. **Indemnity.** To the fullest extent permitted by law, ARC shall hold harmless, indemnify and fully defend County, its employees, agents, contractors and its successors and assigns of each of them from and against any and all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, suits, judgments, or expenses of any kind, including without limitation, reasonable attorneys' fees (collectively "Claims"), arising from or in any way connected ARC's use of the Parking Area or in the exercise of ARC's rights and obligations hereunder, including Claims arising from or in any way connected with any negligent acts, errors or omissions, or willful misconduct ARC's officers, employees, agents, invitees, contractors, and subcontractors. This duty of ARC to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code Section 2778. Notwithstanding the foregoing, ARC shall not be obligated to indemnify County against any liability or expense to the extent it is ultimately determined that the same was caused by the sole negligence or willful misconduct of County, its agents, contractors or employees.

10. **Assignment.** ARC shall not assign, sub-lease, encumber, or otherwise transfer its rights and interest under this Lease without the express written consent of County. This Lease shall be binding on and shall inure to the benefit of the administrators, successors, and assigns of the Parties hereto.

11. **Hazardous Materials.** ARC will comply with all statutes, ordinances, and requirements of local, state, and federal laws now in force or which may later be in force regarding use of the Parking Area, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. If any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Parking Area of any Hazardous Material introduced on or about Parking Area by ARC or any agent of ARC, or resulting from actions of ARC or ARC's agents, then ARC, at its

sole cost and expense, shall be responsible for the cleanup of Hazardous Material or contamination to the reasonable satisfaction of County and otherwise to the satisfaction of any governmental body having jurisdiction thereof. ARC shall defend, release, indemnify and hold harmless County, its officers, employees, and agents, from and against all liability, cost and expense (including without limitation any fines, penalties, judgments, litigation costs, and reasonable attorneys' fees) incurred by ARC resulting from the discharge, leakage, spillage, emission or pollution upon or from the Parking Area of any Hazardous Material.

For the purpose of this Section, Hazardous Materials shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes," or "restricted hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, et seq; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, et seq; the Federal Water Pollution Control Act, 33 U.S.C. sections 1317, et seq; sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time.

12. **Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to either Party hereto by the other Party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the Party or any managing employee of such Party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

County: County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, CA 95667

Attn.: Don Ashton
Chief Administrative Officer

ARC: American River Conservancy
PO Box 562
Coloma, CA 95613

Attn.: Elena DeLacy
Executive Director

Either Party may change its address for purposes of this paragraph by giving written notice of the change to the other Party in the manner provided in this paragraph.

13. **Severability.** If any provision of this Lease is adjudicated to be invalid, void, or unenforceable, the remaining terms and provisions of this Lease shall remain in full force and effect unless such invalid provision materially affects the rights of ARC or County hereunder.

14. **Waiver.** The waiver by any Party of any term, covenant, agreement or condition herein contained shall be effective only if in writing and shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained, nor shall any custom or practice which may develop between the Parties in the administration of this Lease be construed to waive or to lessen the right of any Party to insist upon the performance by the other Party in strict accordance with all of the terms, covenants, agreements and conditions of this Lease.

15. **Entire Agreement.** This Lease sets forth the entire agreement of the Parties and supersedes all prior discussions, negotiations, understandings, or agreements with respect to the Parking Area.

16. **Amendments.** This Lease may not be modified or amended except pursuant to a written instrument duly executed by the Parties hereto.

17. **Successors.** The covenants, terms, conditions and restrictions of this Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

18. **Governing Law.** This Lease shall be governed by and construed pursuant to the laws of the State of California. Any dispute resolution action arising out of this Lease agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

19. **County Contract Administrator.** The County officer or employee with the responsibility for administering this Lease is Don Ashton, Chief Administrative Officer, or successor.

20. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and on the same instrument.

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IN WITNESS WHEREOF, the Parties hereto have executed this Lease on the dates indicated below.

-- COUNTY OF EL DORADO --

By: Wendy Thomas
Wendy Thomas, Chair
Board of Supervisors

Dated: 2/21/23

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: Kyra Schaeffner
Deputy Clerk

Dated: 2/21/23

-- AMERICAN RIVER CONSERVANCY --

By: Elena DeLacy
Elena DeLacy, Executive Director

Dated: Feb. 1, 2023

EXHIBIT A

