

# RIGHT OF WAY LEASE AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between HUMBOLDT REDWOOD COMPANY, LLC., a Delaware limited liability company, hereinafter called OWNER, and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called COUNTY:

WHEREAS, OWNER represents and warrants that it holds fee title to a logging road, described more particularly hereinafter, and as such has the exclusive right to enter into this Lease Agreement; and

WHEREAS, pursuant to Streets and Highways Code Section 969.5, the Board of Supervisors, by a four-fifths vote, adopted a resolution to lease a privately owned road; and

WHEREAS, COUNTY, pursuant to Streets and Highways Code Section 969.5, desires to lease said logging road for use as a public road by the traveling public;

NOW, THEREFORE, it is mutually agreed as follows:

## 1. **LEASED PREMISES**

OWNER hereby leases to COUNTY, the logging road which is designated in red marking on Exhibit A, attached hereto and incorporated herein by reference. Said road is generally described as originating in the Southwest ¼ of Section 35, T.1N., R.2E., H.B. & M., and proceeding northerly and westerly and terminating in the Southwest ¼ of Section 28, T.1N., R.2E., H.B. & M., at its junction with Shively Road.

## 2. **TERM**

The term of this Lease shall commence on the effective date as shown above and shall terminate June 30, 2037.

## 3. **CONSIDERATION**

COUNTY agrees to pay OWNER rental at the rate of Six Hundred Dollars (\$600.00) annually for the entire Lease term. Rent shall be due without prior notice or demand on October 1<sup>st</sup> of each year during the term of the Lease.

## 4. **USE OF PREMISES**

OWNER agrees that said logging road may be used and maintained by COUNTY as a public road, subject to the provisions of this Lease. Any gates which OWNER has installed across said road shall be open at all times during the lease term, except as provided in Section 6 below. No new gates shall be constructed by OWNER across said road during the lease period. COUNTY shall not limit, hinder, or otherwise interfere with OWNER'S use of the road for any purpose during the lease period.

Special Compliance Provisions. COUNTY shall, at all times, observe and comply with the terms and provisions of (a) that certain Final Environmental Impact Statement/Environmental Impact Report and Habitat Conservation Plan/Sustained Yield Plan for the Headwaters Forest

Project, dated January 1999; (b) any Implementation Agreement with regard to Habitat Conservation Plan(s) for the properties of OWNER by and among the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Department of Fish and Game ("CDFG"), the California Department of Forestry and Fire Protection ("CAL FIRE") and OWNER including those agreements assumed by OWNER in the reorganization of the Pacific Lumber Company, Scotia Pacific Lumber Company and Salmon Creek Corporation dated February 1999; (c) any Habitat Conservation Plan for the properties of OWNER, including that certain Habitat Conservation plan of February 1999 that was assumed by OWNER in the reorganization of Pacific Lumber Company, Scotia Pacific Lumber Company and Salmon Creek Corporation; (d) any Streambed Alteration Agreement with regard to OWNER including that certain Streambed Alteration Agreement with Regard to the Pacific Lumber Company, Habitat Conservation Plan, by and among CDFG and Pacific Lumber and Salmon Creek dated February 1999 that was assumed by OWNER in the reorganization of Pacific Lumber Company and Salmon Creek Corporation, to the extent any of the above documents bind the Premises and other lands of OWNER and are applicable to COUNTY'S activities on the Premises or other lands of OWNER, and copies of which OWNER agrees to provide COUNTY upon request. OWNER acknowledges and agrees that to best of OWNER'S knowledge, as of the Execution Date, the OWNER has not been notified that the COUNTY is in violation of any aforementioned Special Compliance Provision and if during the term of the Lease the OWNER is notified of any violation of such provisions, as it relates to the COUNTY'S occupancy or use of the Premises, the OWNER shall promptly notify the COUNTY of such violation.

**5. LEASE NOT INTENT TO PURCHASE**

It is expressly understood by the parties hereto that this Lease does not in any way indicate any intent of OWNER to sell or of COUNTY to purchase said logging road at any future date and this Lease shall not commit either party in such respect other than as a Lease of the road.

**6. MAINTENANCE**

At such times during the lease period as the Holmes-Larabee Summer Bridge is operational for general vehicular passage, provisions of this Lease shall be suspended and shall become effective again upon the closure of said bridge for general vehicular passage.

COUNTY shall be solely responsible for maintenance and repair of said road at all times the road is being used as a public road. During maintenance and repair work, COUNTY shall comply with all requirements of the OWNER'S HCP, as stated in §4 above. Prior to implementation of repair and maintenance on said road, COUNTY shall consult with OWNER to ensure planned maintenance and repair work is in compliance with the OWNER'S HCP and does not conflict with OWNER'S use of the road. COUNTY shall not be responsible for maintenance and repair of said road whenever public use of the road ceases as provided in this Section above. The Humboldt County Department of Public Works shall have authority to install and maintain on said logging road, such safety devices and measures which said Department deems to be essential. Any compliance with district, county, state, or federal road requirements will be the sole responsibility of COUNTY.

The Humboldt County Department of Public Works shall routinely inspect the road for trash and refuse at least every month throughout the Lease term and shall remove all trash and refuse on or near the road within thirty (30) days from the time of discovery.

**7. OWNERSHIP OF ROAD**

Upon the expiration of the term of this Lease, said logging road shall revert to OWNER with no resulting impairment of OWNER'S right and title to said road which existed prior to execution of this Lease. This Lease shall not be construed as any intent of OWNER to dedicate said road to public use.

**8. HOLD HARMLESS/INDEMNIFICATION**

A. OWNER shall indemnify, defend and hold harmless COUNTY and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with OWNER'S actions, duties and obligations under this Agreement and any amendments hereto.

B. COUNTY shall indemnify, defend and hold harmless OWNER and its officers, officials, employees, and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY'S actions, duties and obligations under this Agreement and any amendments hereto.

Notwithstanding Paragraphs A and B, in the event that OWNER or OWNER and COUNTY are individually or both held to be negligently or willfully responsible, OWNER and COUNTY will bear their proportionate share of liability as determined in any such proceeding. COUNTY shall indemnify OWNER and assist OWNER in defense in the event COUNTY is not named a party in any suit brought by the public concerning any action during the term of this Lease. Each side will bear their own costs and attorney fees.

Acceptance of insurance, if required by this Agreement, does not relieve OWNER from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by OWNER'S operations regardless if any insurance is applicable or not.

**9. COUNTY'S INSURANCE**

Without limiting COUNTY'S indemnification provided herein, COUNTY shall take out and maintain, throughout the period of this Lease, the following policies of insurance placed with insurers with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of COUNTY, its agents, employees, or sub-lessees:

A. Comprehensive/Liability Insurance

Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$2,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

(1) The OWNER, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of COUNTY. The coverage shall contain no special limitations on the scope of protection afforded to OWNER, its officers, agents, and employees.

(2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of the premium) to OWNER by certified mail.

(3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

(4) For claims related to this project, the COUNTY'S insurance is primary coverage to the OWNER, and any insurance or self-insurance programs maintained by OWNER are excess to COUNTY'S insurance and will not be called upon to contribute with it.

(5) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, employees, and agents.

B. By its signature hereunder, COUNTY certifies that COUNTY is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and COUNTY will comply with such provisions in connection with any work performed on the premises. Any persons providing services with or on behalf of COUNTY shall be covered by workers' compensation (or qualified self-insurance).

## **10. TERMINATION**

If COUNTY is required by court order to maintain a ferry at the Holmes-Larabee crossing, this Lease may be terminated by either party giving thirty (30) days written notice of such order and intent to terminate to the other party.

COUNTY and OWNER reserve the right to terminate this Lease on thirty (30) days notice for any cause or reason provided by law, or the happening of one or more of the following:

A. The making by COUNTY or OWNER of any general assignment for the benefit of creditors.

B. The failure of COUNTY or OWNER to remedy any default, breach, or violation of federal/state/county laws or regulations by COUNTY or OWNER or its employees.

C. The violation of any of the provisions of this Lease.

D. Said logging road becomes damaged due to fire, flood, earthquake, or any other natural disaster.

E. Intentionally supplying COUNTY or OWNER with false or misleading information or misrepresenting any material fact on its application or documents or in its statement to or before COUNTY or OWNER, or intentional failure to make full disclosure on its financial statement or other documents.

**11. NOTICE**

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the respective addresses set forth below. Notice shall be deemed communicated five (5) COUNTY working days from time of mailing if mailed as provided herein.

OWNER: Humboldt Redwood Company, LLC.  
P.O. Box 712  
Scotia, CA 95565

COUNTY: County of Humboldt  
Department of Public Works  
1106 Second Street  
Eureka, CA 95501-0531

Each party may at any time change its address for notice by giving written notice of such change to the other party in the manner provided in this Section.

**12. JURISDICTION AND APPLICABLE LAWS**

This Lease shall be construed under the laws of the State of California. Any dispute arising hereunder or relating to this Lease shall be litigated in the State of California and venue shall lie in the County of Humboldt.

**13. LEASE MODIFICATION**

This Lease may be modified only by subsequent agreement signed by COUNTY and OWNER.

**14. OWNER NOT OFFICER, EMPLOYEE, OR AGENT OF COUNTY**

While engaged in carrying out and complying with the terms and conditions of this Lease, OWNER is an independent contractor and not an officer, employee, or agent of COUNTY.

**15. ATTORNEYS' FEES**

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on appeal, if any. As used herein, "the party prevailing" means the

party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

**16. COMPLIANCE WITH LAWS**

COUNTY shall conduct all its operations in accordance with all federal/state/county safety, health, fire, sanitary codes and ordinances, and shall comply with all permits required for said use of logging road.

**17. CONDITIONS**

All the agreements herein contained, whether technically covenants or conditions, shall be deemed conditions for the purpose hereof.

**18. WAIVER OF BREACH**

The waiver by COUNTY or OWNER of any breach of any provision of this Lease shall not constitute a continuing waiver of any subsequent breach of the same or a different provision of this Lease.

**19. BREACH, REMEDY FOR**

In the event of breach of this Lease by COUNTY or OWNER, COUNTY and/or OWNER shall have all rights and remedies provided by law.

**20. SURRENDER OF PREMISES**

Upon termination of this Lease, COUNTY shall surrender the premises to OWNER in as good condition as when it was initially accepted.

**21. BINDING EFFECT**

All provisions of this Lease shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors, and assigns.

**22. INTERPRETATIONS**

As this Lease was jointly prepared by both parties, the language in all parts of this Lease shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

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IN WITNESS WHEREOF, this Lease has been executed by the parties hereto upon the date first written above.

(SEAL)  
ATTEST  
CLERK OF THE BOARD

OWNER:  
HUMBOLDT REDWOOD COMPANY, LLC  
A Delaware Limited Liability Company

BY \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

COUNTY OF HUMBOLDT:

BY \_\_\_\_\_  
VIRGINIA BASS, CHAIR  
BOARD OF SUPERVISORS  
COUNTY OF HUMBOLDT  
STATE OF CALIFORNIA