

**2017-000687**

**Klamath County, Oregon**



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01/24/2017 09:15:10 AM

Fee: \$97.00

**GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR  
TRANSMISSION FACILITIES**

**GRANTOR: Donald R. Wessel  
Sharon Wessel  
PO Box 418  
Bend, OR 97622**

**GRANTEE: Bly Solar Center, LLC  
321 East Main Street, Suite 300  
Charlottesville, VA 22902**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:  
Bly Solar Center, LLC  
c/o Coronal Development Services, LLC  
321 East Main Street, Suite 300  
Charlottesville, VA 22902**

**Prepared by: Nelson S. Teague, Jr.**

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## **GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR TRANSMISSION FACILITIES**

THIS GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR TRANSMISSION FACILITIES (this "Agreement") is made as of the last date executed by a party hereto (the "Effective Date") between **Donald R & Sharon Wessel** ("Grantor"), and **Bly Solar Center, LLC** ("Grantee"). Grantor is the sole owner of certain property located in Klamath County, Oregon, as more particularly described in Exhibit A attached hereto and made part hereof (the "Property").

1. (a) Grant of Transmission Easement. For good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged by Grantor, Grantor hereby grants, conveys and warrants to Grantee and its successors and assigns, an exclusive easement ("Transmission Easement") on, along, over, under and across a seventy-five (75) foot wide portion of the Property (such portion of the Property, the "Easement Area") as more particularly described in Exhibit B (attached hereto and made part hereof), for the right to erect, construct, reconstruct, replace, remove, maintain, operate and use from time to time the following: a single system of above-ground poles, with such wires and cables as from time to time are suspended therefrom for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, guy wires, anchors, crossarms and other appliances, fixtures and facilities for use in connection with said poles, wires and cables on, along, over, under and across the Easement Area (collectively, the "Transmission Facilities").

(b) Confinement of Transmission Easement. The area that will be required by Grantee for the Transmission Facilities consists of (a) a tract of land up to seventy-five (75) feet in width and (b) one (1) expansion of such tract no more than fifty (50) feet in width necessary to permit installation of guy wires needed to enable a transmission line to turn a corner. As the exact location of the Transmission Facilities will depend on the Grantee's final design of the Transmission Facilities, the connection of the Transmission Facilities to facilities on other properties, and other factors, the Easement Area initially consists of a tract up to one hundred and twenty-five (125) feet in width. As the design of Transmission Facilities is finalized by Grantee, Grantee will more specifically describe the property required for the Transmission Facilities (the "Final Transmission Area") and prepare a legal description of the Final Transmission Area. The Final Transmission Area shall (i) be within the Easement Area, (ii) include only the portion of such Easement Area required for the Transmission Facilities as described above, and, (iii) be located as close as reasonably possible to existing railroad corridors, transmission line corridors, and road right of ways (to minimize disturbance to other uses of the Property). When such description is finalized, Grantee will release the Transmission Easement as to the entire Easement Area described on Exhibit B other than the Final Transmission Area by execution, delivery and recordation of a Partial Release, in substantially the same form as Exhibit C attached hereto. From and after recordation of such Partial Release, the Easement Area will be confined to the Final Transmission Area described in Schedule A to such Partial Release, and references herein to the Easement Area shall refer only to such Final Transmission Area.

2. Payment. In consideration of the rights granted hereunder, Grantee agrees to pay Grantor an amount equal to \$25,000.

3. Construction Activities. During any construction of Transmission Facilities, Grantee may use an additional fifty (50) feet of land in total on either or both sides of the Easement Area (the "Temporary Construction Area"). Grantee will use commercially reasonable efforts to minimize surface disturbance on the portion of the Property lying outside of the Easement Area during construction. Grantee shall notify Grantor of the commencement and completion of any construction.

4. Access. Grantee shall also have the right of ingress to and egress from Transmission Facilities (whether located on the Property or elsewhere), over and along the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time, as well as the right to maintain and improve such roads and lanes. Grantee shall also have the right to cut or take down any portion of any fence as reasonably necessary to erect, construct, reconstruct, replace, remove, maintain, operate and use the Transmission Facilities. Prior to cutting any fence, Grantee shall notify Grantor in writing and brace the fence adequately on both sides to prevent slackening of the wires. Grantee shall also have the right (upon prior written consent of Grantor) to trim, cut and remove trees and underbrush anywhere on the Property if any limbs, branches or other parts are within the Easement Area, provided that Grantee shall dispose of all resulting debris offsite. Upon completion of construction, Grantee shall restore the Property, as nearly as is commercially practicable, to the same condition it was in prior to the commencement of construction.

5. Term and Termination. The term of this Agreement shall commence on the Effective Date and continue thirty-five (35) years unless earlier terminated by Grantee upon written notice to Grantor or by Grantor for Grantee's breach any obligation contained in this Agreement and such breach has remained uncured for a period of sixty (60) days after written notice thereof from Grantor to Grantee. Upon the expiration or earlier termination of this Agreement, Grantee shall, at Grantor's request, file a

notice of termination in the real property records of the county in which the Property is located, and restore the surface of the Property, as nearly as is commercially practicable, to the same condition it was in prior to the commencement of construction.

6. Assignment. Grantee may assign this Agreement or its rights with respect to the Transmission Easement, in whole or in part, with Grantor's written consent which will not be unreasonably withheld, conditioned or delayed. This Agreement shall run with the land. This Agreement shall inure to the benefit of, and be binding upon, Grantor and Grantee and their respective transferees, legal representatives, heirs, successors and assigns and all persons claiming under them.

7. Costs. All costs and expenses incident to the erection, construction, reconstruction, replacement, removal, maintenance, operation and use of the Transmission Facilities shall be borne by Grantee.

8. Grantor's Right to Easement Area. Grantor retains the right to use the Property, including the Easement Area, for all purposes not inconsistent with the rights granted to Grantee by this Agreement.

9. Indemnity. Grantee shall, at all times, save and hold harmless and indemnify Grantor, its officers, partners, agents, contractors and employees, from and against all losses, damages, expenses, claims, demands, suits and actions, including, but not limited to, all claims for personal injuries and property damage outside the Easement Area, to the extent caused by the negligence or willful misconduct of Grantee, its officers, partners, agents, contractors and employees. Grantor shall, at all times, save and hold harmless and indemnify Grantee, its officers, partners, agents, contractors and employees, from and against all losses, damages, expenses, claims, demands, suits and actions, including, but not limited to, all claims for personal injuries and property damage within the Easement Area, to the extent caused by the negligence or willful misconduct of Grantor, its officers, partners, agents, contractors and employees.

10. Surface Damage. Grantee shall pay Grantor fair compensation based on market rates, for losses or damage to crops (based on the average crop yield for the general area as determined by the local NRCS office), grass, livestock, fences, and other property or improvements on the Property (whether located in or out of the Transmission Easement) as a result of Grantee's construction, reconstruction, replacement, removal, maintenance, operation and use of the Transmission Facilities. Other than as expressly set forth herein, Grantee shall not be responsible to pay Grantor any losses of income, rent, business opportunities, profits or other losses arising out of Grantor's inability to grow crops or otherwise use the Easement Area or the Temporary Construction Area.

11. Financing. (a) Grantee may collaterally assign, mortgage or otherwise encumber its interest in this Agreement to any institution (including any trustee or agent on behalf of such institution) providing debt or other financing to Grantee or its successors or assigns (each, a "Financing Party") under any mortgage, deed of trust, deed to secure debt or other security instrument by which Grantee's interest under this Agreement is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation to a Financing Party (each, a "Mortgage"). Each Financing Party who provides notice to Grantor of its Mortgage shall be referred to as "Mortgagee".

(b) So long as any Mortgage remains in effect, this Agreement shall not be modified, and Grantor shall not accept a surrender of the Easement Area or a termination or release of this Agreement, without the prior consent of all Mortgagees.

(c) Grantor, upon providing Grantee any notice of default under, or termination of, this Agreement, shall at the same time provide a copy of such notice to each Mortgagee. Such Mortgagee shall have the same period, after the giving of such notice, for remedying any default or causing the same to be remedied (but shall have no obligation to remedy or cause the remedy of any default), as is given Grantee after the giving of such notice to Grantee to remedy the default specified in any such notice. Grantor shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by Grantee.

(d) Grantor shall execute estoppel certificates (certifying as to such matters as Grantee may reasonably request, including, without limitation, that no default then exists under this Agreement to Grantor's knowledge, if such be the case), consents to assignment and/or non-disturbance agreements as Grantee or any Mortgagee may reasonably request from time to time.

(e) If this Agreement is terminated as a result of any default or the bankruptcy, insolvency or appointment of a receiver in bankruptcy for Grantee, Grantor shall give prompt notice to the Mortgagees. Grantor shall, upon written request of the first priority Mortgagee, made within forty (40) days after notice to such Mortgagee, enter into a new easement agreement with such Mortgagee, or its designee, within twenty (20) days after the receipt of such request. Such new easement agreement shall be effective as of the date of the termination of this Agreement by reason of default by Grantee, and shall be for a term equal to the remainder of the term of this Agreement and upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new easement agreement, the Mortgagee shall agree in writing to perform or cause to be performed all of the covenants and agreements set forth in this Agreement to be performed by Grantee to the extent that Grantee failed to perform the same prior to the execution and delivery of the new easement agreement.

12. Grant to Utility. Grantee shall have the right to grant to any utility the right to construct, operate and maintain the Transmission Facilities in the Easement Area pursuant to any standard form of easement or other agreement used by such utility.

13. Notices. All notices, requests and communications ("Notice") under this Agreement shall be given in writing by first class certified mail, postage prepaid, return receipt requested, to the individuals and addresses indicated below:

(a) If to Grantor:

Sharon & Donald Wessel  
PO Box 418  
Bend, OR 97622

(b) If to Grantee:

Bly Solar Center, LLC  
321 East Main Street, Suite 300  
Charlottesville, VA 22902

(c) If to Mortgagee on notice of default or termination: (Address indicated in Mortgagee's notice sent to Grantor under Section 11 hereof.

Any Notice provided for herein shall be deemed to be received five (5) business days after the date on which it is mailed. Any party may, by proper written notice hereunder to the other party, change the individual address to which such Notice shall thereafter be sent.

14. Miscellaneous. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. This Agreement, when executed, approved and delivered, together with all exhibits attached hereto, shall constitute the entire agreement between the parties and there are no other representations or agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended or modified except by a written agreement signed by the parties hereto. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. In the event of any inaccuracy in the description of the Property or Easement Area in Exhibit A or Exhibit B, respectively, or in the description of the parties in whom title to the Property is vested, Grantor and Grantee shall amend this Agreement to correct such inaccuracy in order to accomplish the intent of Grantor and Grantee. Grantor and Grantee agree that this Agreement (without the Fee Schedule) shall be recorded in the County Records. If any terms or provisions of this Agreement are deemed to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed and delivered by their duly authorized representatives on the date set forth below the respective signatures of Grantor and Grantee.

**"GRANTEE"**

By: Nelson S. Teague, Jr.  
Name: Nelson S. Teague, Jr.  
Title: Manager  
Date: 01/18/17

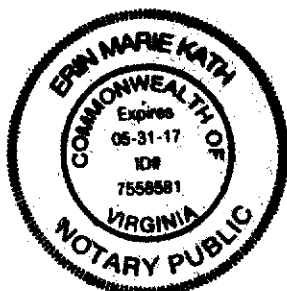
STATE OF Virginia

CITY OF Charlottesville

The foregoing instrument was acknowledged before me this 18 day of January 2017 by Nelson S. Teague Jr as the Manager, a Oregon limited liability company.

[Signature]  
Notary Public

(SEAL)



"GRANTOR"

By: Sharon Wessel  
Name: Donald & Sharon Wessel  
Title: Owners  
Date: 1-11-17

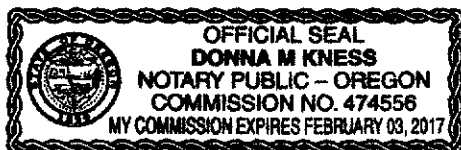
STATE OF OREGON

COUNTY OF KLAMATH

The foregoing instrument was acknowledged before me this 11 day of January, 2017 by  
Sharon Wessel

Notary Public: Donna M. Kness  
Commission No: 474556  
Commission Expires: 2/3/17

(SEAL)



**"GRANTOR"**

By: Donald R. Wessel P.O.A.

Name: Donald & Sharon Wessel

Title: Owners

Date: 1-11-17

STATE OF OREGON

COUNTY OF KLAMATH

The foregoing instrument was acknowledged before me this 11 day of January, 2017 by  
Donald R. Wessel

Notary Public: Donna M. Kness  
Commission No: 474556  
Commission Expires: 2/3/17

(SEAL)



Exhibit A

**THE PROPERTY**

**All of that certain real property in the County of Klamath, State of Oregon, described as follows:**

**Beginning at the section corner of Sections 1, 2, 11 & 12, Township 37 South, Range 14 East, Willamette Meridian, thence North along the section line between Sections 1 & 2 to the intersection of the section line and the Southerly right of way line of State Highway 140; thence East 66°45' South along the Southerly right of way line of State Highway 140 to its intersection with the Westerly right of way line of U.S. Forest Service Road 375; thence South 06°54' East along the Westerly right of way line of U.S. Forest Service Road 375 to its intersection with the section line between Sections 1 & 12; thence Westerly along the section line between Sections 1 & 12 to the point of beginning.**



EXHIBIT "B"

A strip of land variable in width; situated in the NW 1/4 of the SW 1/4 of Section 1 Township 37 South, Range 14 East, Willamette meridian, Klamath County, Oregon, located over a portion of Tax Lot ID 37 14 01 00 01300, more particularly described as follows:

COMMENCING at a property corner being the intersection of the southerly right of way of the Klamath Falls – Lakeview Highway, Oregon Highway No. 140, and the westerly right of way of Fish Hole Creek Road, US Forest Service Road No. 375, said point being a 5/8" iron rod with orange plastic cap set in County Survey 8153 by Erik Huffman, October 2015;

Thence along said westerly right of way of Fish Hole Creek Road, South 06°49'41" East 274.82 feet to the POINT OF BEGINNING;

Thence leaving said westerly right of way of Fish Hole Creek Road, South 89°57'31" West 331.35 feet;

Thence South 44°45'37" West, 143.02 feet;

Thence North 89°19'15" West, 529.72 feet to a point on the west line of said Section 1;

Thence, along the west line of said Section 1, South 00°10'50" West, 75.00 feet;

Thence, leaving said west line of Section 1, South 89°19'15" East, 615.91 feet;

Thence North 29°42'07" East, 118.13 feet;

Thence North 89°57'31" East, 296.56 feet to a point on said westerly right of way of Fish Hole Creek Road;

Thence along said westerly right of way of Fish Hole Creek Road, North 06°49'41" West, 75.53 feet to the POINT OF BEGINNING.

Contains 79,139 square feet, more or less.

Bearings are based upon County Survey 8153, Klamath County Survey Records.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

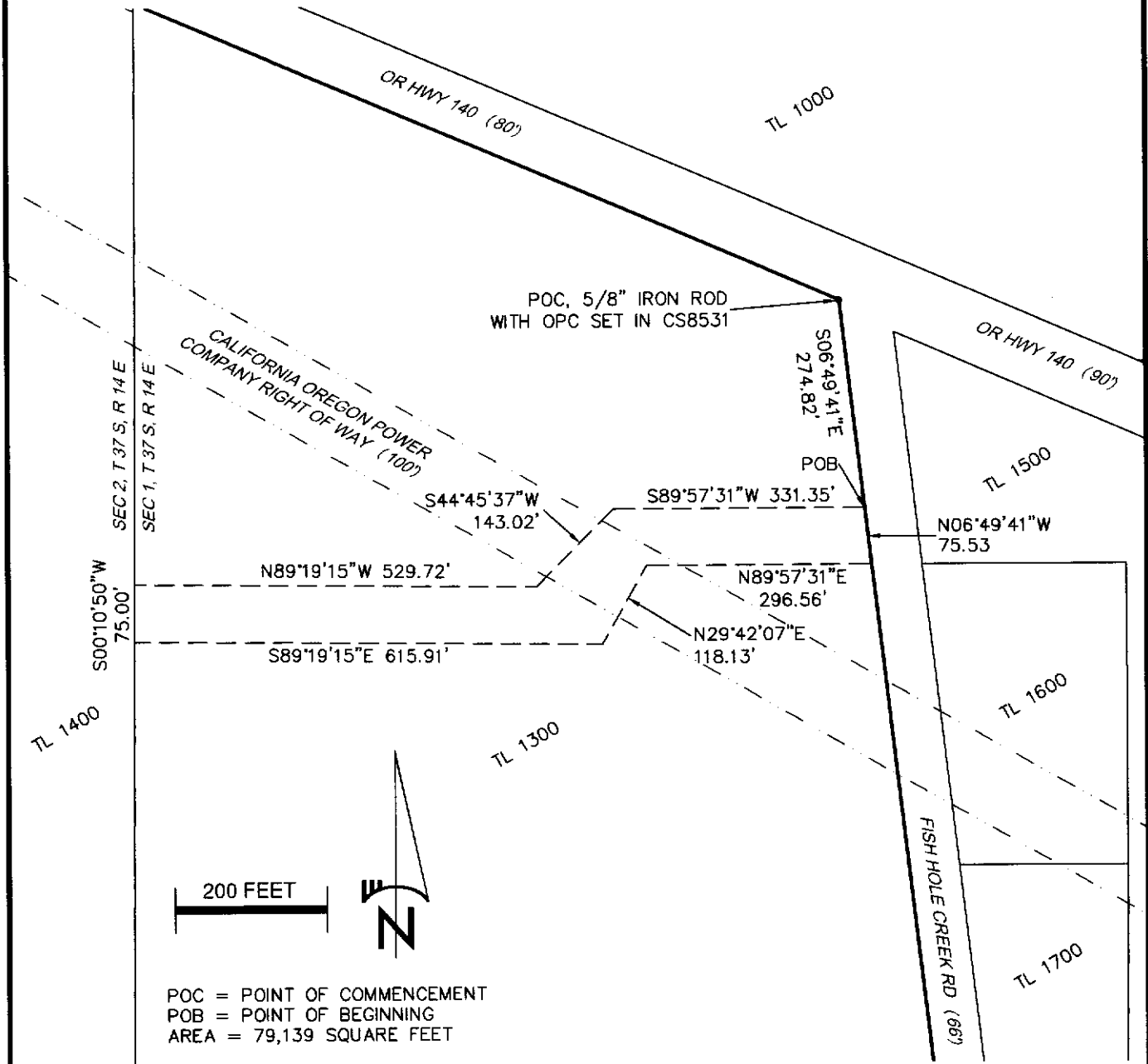


OREGON  
DEC. 16, 2009  
ERIK J. HUFFMAN  
70814

RENEWS: JUN. 30, 2017

# EXHIBIT "B"

LOCATED IN THE NW 1/4 OF THE SW 1/4 OF SECTION 1, TOWNSHIP 37 SOUTH, RANGE 14 EAST,  
W.M. KLAMATH COUNTY, OREGON - TAX LOT ID 37 14 01 00 01300



CIVIL ENGINEERING  
& LAND SURVEYING

549 SW MILL VIEW WAY  
SUITE 105  
BEND, OREGON 97702  
(541) 633-3140  
www.beconeng.com

FOR:  
CORONAL DEVELOPMENT  
SERVICES, LLC  
321 E MAIN ST, STE 300  
CHARLOTTESVILLE, VA  
22902

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*

OREGON  
DEC. 16, 2009  
ERIK J. HUFFMAN  
70814

DATE: 11/03/2016

SCALE: 1" = 200'

DRAWN BY: EJH

PROJ: 13838

RENEWS: JUN. 30, 2017

**Exhibit C**

**PARTIAL RELEASE OF EASEMENT**

This Partial Release of Easement ("Partial Release") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, LLC, an Oregon limited liability company ("\_\_\_\_"), with reference to the following:

(i) Pursuant to a Grant of Easement and Easement Agreement For Transmission Facilities dated \_\_\_\_\_, 20\_\_ (the "Easement Agreement"), \_\_\_\_\_ acquired a certain easement defined therein as the "Transmission Easement" over and across certain real property in Deschutes County, Oregon defined therein as the "Easement Area". The Easement Agreement was filed in the office of the County Clerk of Klamath County, Oregon and recorded in Book \_\_\_\_ beginning at page \_\_\_\_.

(ii) The Easement Area, as described in the Easement Agreement, consists of a tract approximately one hundred and twenty-five (125) feet in width. Pursuant to Section 1(b) of the Easement Agreement, \_\_\_\_\_ agreed that it would more precisely identify the property required for the Transmission Easement and release the Transmission Easement as to all portions of the Easement Area not so identified.

(iii) \_\_\_\_\_ has identified the portion of the Easement Area required for the Transmission Easement and such portion of the Easement Area is more particularly described in Schedule A attached hereto. The portion of the Easement Area described in Schedule A shall be referred to herein as the "Final Transmission Area".

(iv) \_\_\_\_\_ is executing this Partial Release to release the Transmission Easement as to all the Easement Area other than the Final Transmission Area.

NOW THEREFORE in consideration of the foregoing and other fair and valuable considerations, the receipt and adequacy of which are hereby acknowledged, \_\_\_\_\_ hereby releases the Transmission Easement as to the Easement Area other than the Final Transmission Area. This Partial Release shall not affect the Transmission Easement as it pertains to the Final Transmission Area and, as to such area, the Transmission Easement shall remain in full force and effect.

Executed and delivered as of the day and year first above written.

\_\_\_\_\_, LLC, a \_\_\_\_\_  
limited liability company

By: \_\_\_\_\_  
Manager

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as Manager of \_\_\_\_\_, LLC, a \_\_\_\_\_ limited liability company.

(Seal)

\_\_\_\_\_  
Notary Public

**SCHEDULE A**  
**FINAL TRANSMISSION AREA**

(to be attached)