

2017-001226

Klamath County, Oregon



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02/07/2017 08:53:46 AM

Fee: \$97.00

GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR ACCESS

**GRANTOR: David M. Cowan
Theresa E. Cowan
7647 Libby Rd. NE
Olympia, WA 98506**

**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.

Prepared by: Nelson S. Teague
Return to: Coronal Development Services, LLC
321 East Main Street | Suite 300
Charlottesville, VA 22902

GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR ACCESS

THIS GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR ACCESS (this "Agreement") is made as of the last date executed by a party hereto (the "Effective Date") between **David M. & Theresa E. Cowan** ("Grantor"), and **Bly Solar Center, LLC** ("Grantee").

RECITALS


- A. 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 "Grantor Property").
- B. Grantee desires to construct a solar photovoltaic facility on property in close proximity to the Grantor Property (the "Project").
- C. Grantee has requested, and Grantor has agreed to grant to Grantee, a thirty foot (30') wide non-exclusive easement over the Grantor Property for purposes of providing pedestrian and vehicular access, ingress and egress to the Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby confirmed, Grantor does give, grant and convey to Grantee the easements described below, subject to the terms of this Agreement:

1. Easement

(a) Grant of Access 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, a **non-exclusive** easement for the purposes of providing pedestrian and vehicular access, ingress and egress to the Project ("Access Easement") on, along, over, under and across a thirty (30) foot wide portion of the Grantor Property as more particularly described in Exhibit B. The Access Easement shall run with the land.

(b) Use of Easement. Grantee, and their successors and assigns, shall have the right to permit its respective tenants, employees, agents, licensees and invitees to use the Access Easement in common. No party shall obstruct or interfere unreasonably with the free flow of pedestrian and vehicular traffic over the Access Easement, except to the extent deemed necessary for reasonable repair and maintenance, or as may be necessary from time to time for security purposes, or to prevent a dedication thereof, or the accrual of any rights to the



public therein. Grantee shall have the right to construct, reconstruct, replace, remove, maintain, operate and use from time to time a permanent gravel road on, along, over, and across the Access Easement (collectively, the "Access Road"). Grantor acknowledges that large industrial trucks and equipment may use the Access Road in order to construct and maintain the Project.

(c) Location and Confinement of Access Easement. The final location of the Access Road will depend on the Grantee's final design of the Access Road and other factors, including location of wetlands and other improvements on the Grantor Property but shall be consistent with the descriptions/depictions of the Access Easement on Exhibits B1 and B2

2. Payment. In consideration of the rights granted hereunder, Grantee agrees to make a one-time payment to Grantor in an amount equal to \$100.00.

3. Construction Activities. During any construction of the Access Road, Grantee may use an additional fifty (50) feet of land in total on the Grantor Property to the South of the Access Easement (the "Temporary Construction Area"). Grantee will use commercially reasonable efforts to minimize surface disturbance on the Temporary Construction Area during construction. Grantee shall notify Grantor of the commencement and completion of any construction.

4. Term and Termination. The term of this Agreement shall commence on the Effective Date and continue for thirty-seven (37) years (the "Term"). Notwithstanding the foregoing, upon termination of Lease as reflected by a termination filed by an authorized officer of the Grantee in the Klamath County Public Registry, this Agreement shall expire. Upon expiration of the Term 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, at Grantor's request, 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.

5. Assignment. Grantee may assign this Agreement or its rights with respect to the Access Easement, in whole or in part, (a) with Grantor's written consent which will not be unreasonably withheld and (b) as set forth in Section 9 of this Agreement. This Agreement shall run with the Grantor Property. 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.

6. Costs. All costs associated with the preparation and execution of this Agreement, as well as, any survey performed hereunder shall be borne by Grantee. All costs and expenses incident to the erection, construction, reconstruction, replacement, removal, maintenance, operation and use of the Access Road shall be borne by Grantee.

7. Indemnity. Grantee assumes all risks arising out of its use of the Access Easement, Temporary Construction Area, and Access Road and Grantor shall have no liability to Grantee or others for any existing condition thereon. Grantee shall, at all times, save and hold harmless and indemnify Grantor, its officers, partners, members, 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 arising from its activities under this Agreement to the extent caused by Grantee, its officers, partners, agents, contractors and employees. Grantor shall, at all times, save and hold harmless and indemnify Grantee, its officers, partners, members, 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 Access Easement, to the extent caused by the gross negligence or willful misconduct of Grantor, its officers, partners, agents, contractors and employees.

8. 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 Grantor Property as a result of Grantee's construction, reconstruction, replacement, removal, maintenance, operation and use of the Access Road. Under no circumstances shall Grantee 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 grass, raise livestock, or otherwise use the Access Easement or the Temporary Construction Area.



9. Financing.

(a) Grantee may collaterally assign, mortgage or otherwise encumber its interest in this Agreement to any person (including any trustee or agent on behalf of such institution) investing in or 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 agreement (each, a "Financing Agreement"). Each Financing Party who provides notice to Grantor of its Financing Agreement shall be referred to as "Financier".

(b) So long as any Financing Agreement 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 Financiers.

(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 Financier. Such Financier 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 Financier 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 Financier may reasonably request from time to time.

10. 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:
David & Theresa Cowan
7647 Libby Rd. NE
Olympia, WA 98506

(b) If to Grantee:
Bly Solar Center, LLC
c/o Coronal Development Services, LLC
321 East Main Street – Suite 300
Charlottesville, VA 22902

(c) If to Financier on notice of default or termination: (Address indicated in Financier's notice sent to Grantor under Section 9 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.

11. Warranty of Title. Grantor covenants that it is owner of the Grantor Property in fee simple and has the right to convey this Easement and grant the rights in the Access Easement and the Temporary Construction Area and no further consents are required by any tenants or lenders. The Grantor Property is free from encumbrances, and that Grantor shall warrant and defend said title to said easements or right-of-way against the claims of all persons whatsoever.

12. 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 any of the property described herein, 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 shall be recorded in the Register of Deeds. 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.

[SEPARATE SIGNATURE PAGES AND NOTARY PAGES ATTACHED]

A handwritten signature in cursive script, appearing to read "DME".

TEC

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: *[Signature]*

Name: Sylvester Pierce Wornley

Title: MEMBER

Date: 1/25/17

STATE OF VIRGINIA

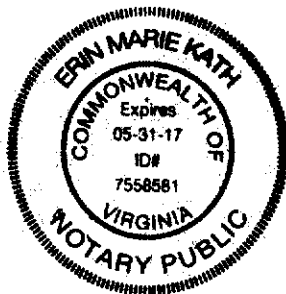
CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this 25 day of January, 2017 by Sylvester Pierce Wornley as the Manager of Bly Solar Center, LLC, an Oregon limited liability company, on behalf of the company.

[Signature]
Notary Public

My commission expires: May 31, 2017

(NOTARY SEAL)



"GRANTOR"

By: 

Name:

Title:

Date: 1/21/17

By: Theresa E Cowan

Name:

Title:

Date: 1-21-17

STATE OF OREGON ~~WA~~

COUNTY OF KLAMATH ~~Thurston~~

The foregoing instrument was acknowledged before me this 21 day of January, 2017 by David & Theresa Cowan


Notary Public
Commission No:

My Commission Expires: 10/19/19

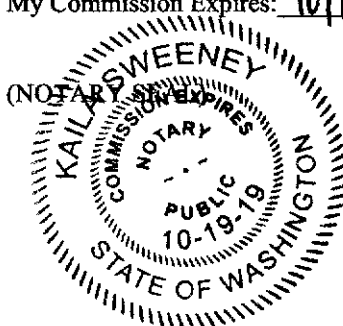


EXHIBIT "A"

Land situated in the N 1/2 of Section 11 Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 11;

Thence South 00°43'05" West 2665.50 feet to the East 1/4 corner of said Section 11;

Thence North 89°37'59" West 5257.61 feet to the West 1/4 corner of said Section 11;

Thence North 00°01'33" East 2670.25 feet to the Northwest corner of said Section 11;

Thence North 89°34'53" West 5289.85 feet to the POINT OF BEGINNING;

Contains 14,069,399 square feet or 322.99 acres, 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

RENEWES: JUN. 30, 2017



TEC

EXHIBIT "B1"

Land situated in the Southeast 1/4 of the Northeast 1/4 of Section 11 Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

COMMENCING at the East 1/4 corner of said Section 11;

Thence along the South line of the Northeast 1/4 of said Section 11, North 89°37'59" West 1050.02 feet to the POINT OF BEGINNING;

Thence North 00°43'05" East 697.47 feet;

Thence North 89°16'55" West 50.00 feet;

Thence South 00°43'05" West 219.00 feet;

Thence North 89°16'55" West 213.94 feet to the West line of the Southeast 1/4 of the Northeast 1/4 of said Section 11;

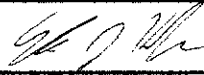
Thence along said West line of the Southeast 1/4 of the Northeast 1/4 of Section 11, South 00°29'43" West 480.08 feet to the Southwest corner of said Southeast 1/4 of the Northeast 1/4 of Section 11;

Thence along the South line of the Northeast 1/4 of Section 11, South 89°37'59" West 262.08 feet to the POINT OF BEGINNING;

Contains 137,001 square feet or 3.15 acres, 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

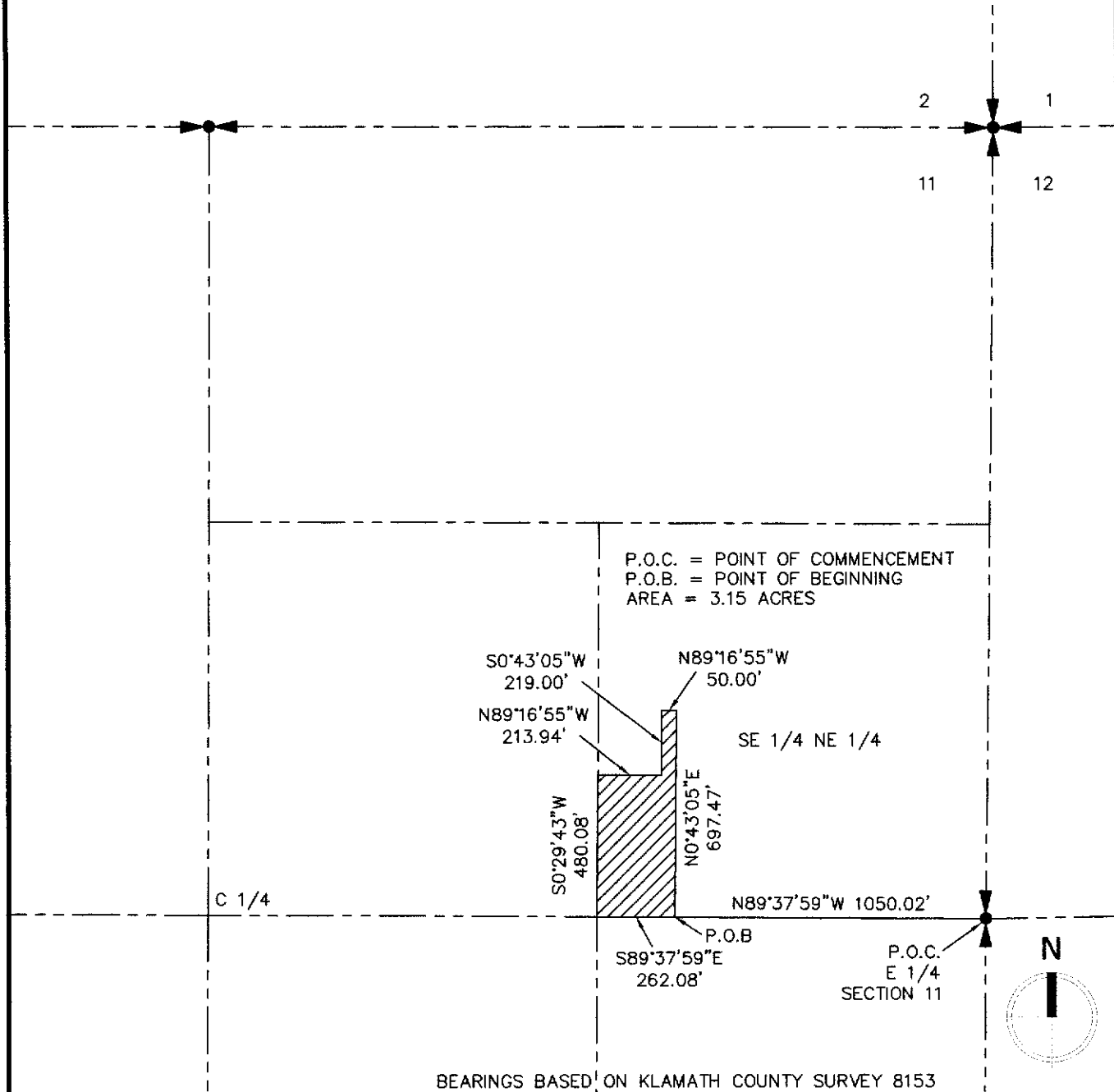
RENEWES: JUN. 30, 2017



TEC

Exhibit "B1"

LOCATED IN THE SE 1/4 OF THE NE 1/4 OF SECTION 11, TOWNSHIP 37 SOUTH, RANGE 14 EAST,
WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON



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

OREGON
DEC. 16, 2009
ERIK J. HUFFMAN
70814

DATE: 10/31/2016

SCALE: 1" = 500'

DRAWN BY: EJH

PROJ: 13838

RENEWS: JUN. 30, 2017

WME TSC

EXHIBIT "B2"

A 30 foot wide strip of land; situated in the NE 1/4 of the SE 1/4 of Section 11 Township 37 South, Range 14 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

COMMENCING at a 5/8" Iron Rod to mark the East 1/4 corner of Section 11;

Thence along the East line of Section 11 South 00°19'19" West 660.14 feet to a 5/8" Iron Rod being the PONT OF BEGINNING;

Thence South 88°54'03" West 545.82 feet to a point;

Thence North 41°45'47" West 908.96 feet to a point on the East - West centerline of Section 11;

Thence along said East - West centerline of Section 11 North 89°37'59" West 40.45 feet to a point;

Thence leaving said East - West centerline of Section 11 South 41°45'47" East 949.88 feet to a point;

Thence North 88°54'03" East 558.83 feet to a point on the East line of Section 11;

Thence along said East line of Section 11 North 00°21'59" East 30.01 feet to the POINT OF BEGINNING.

Contains 44,452 square feet, more or less.

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

The attached exhibit map is a part of this description and shall be attached hereto.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
DEC. 16, 2009
ERIK J. HUFFMAN
70814

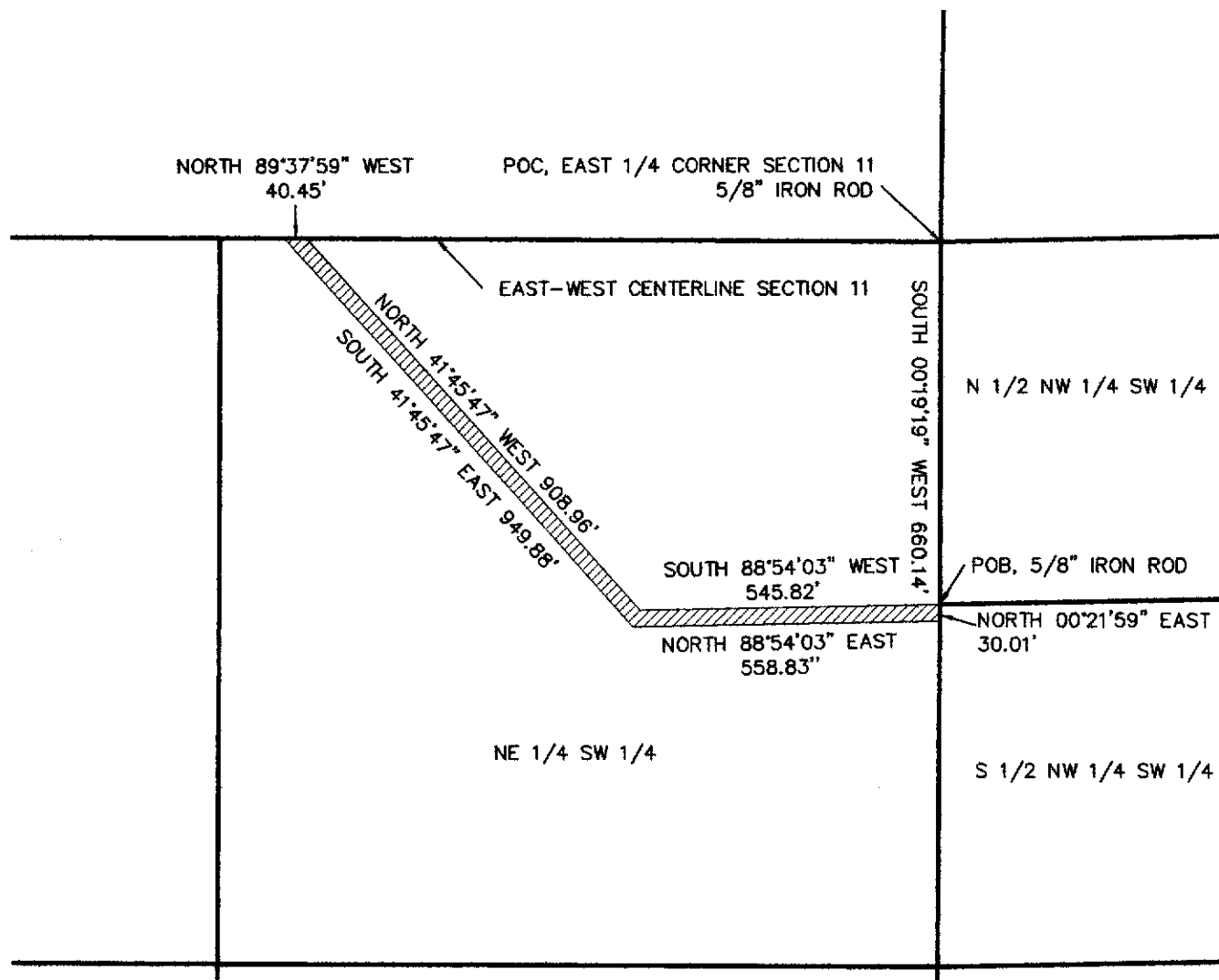
RENEWES: JUN. 30, 2017



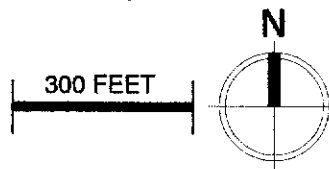
TEC

Exhibit "B2"

NE 1/4 SW 1/4 OF SECTION 11
TOWNSHIP 37 SOUTH, RANGE 14 EAST, W.M. KLAMATH COUNTY, OREGON



POC = POINT OF COMMENCEMENT
POB = POINT OF BEGINNING
AREA = 44,452 SQUARE FEET



CIVIL ENGINEERING
& LAND SURVEYING

549 SW MILL VIEW WAY
SUITE 105
BEND, OREGON 97702
(541) 633-3140
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FOR:
CORONAL DEVELOPMENT
SERVICES, LLC
321 E MAIN ST, STE 300
CHARLOTTESVILLE, VA
22902

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Erik J. Huffman

OREGON
DEC. 16, 2009
ERIK J. HUFFMAN
70814

DATE: 11/12/2015

SCALE: 1" = 300'

DRAWN BY: MPW

PROJ: 13820

RENEWALS: JUN. 30, 2017

Handwritten signature and initials