

MTC191930AM

AFTER RECORDING RETURN TO:

Please Return to
The City of Merrill
P.O. Box 487
Merrill, OR 97633

2018-005435

Klamath County, Oregon

05/01/2018 01:14:01 PM

Fee: \$92.00

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made and entered into this 20th day of December, 2017 (the "Effective Date"), by and between the City of Merrill, an Oregon municipal corporation ("Grantor") and SFP-E, LLC, an Oregon limited liability company ("Grantee").

Recitals

Grantor owns fee title to the parcel of land described in Exhibit A (the "Grantor Tract"). Grantee owns fee title to the tract of land described in Exhibit B (the "Grantee Tract"). Grantee has requested that Grantor establish an easement across the Grantor Tract for the benefit of the Grantee Tract, and Grantor desires to establish such easement.

Grant

Therefore, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor and Grantee agree as follows:

1. Definitions.

- (a) The term "Grantor Owner" shall mean, collectively, the person(s) or entity(ies) that own(s) the Grantor Tract at the time in question.
- (b) The term "Grantee Owner" shall mean, collectively, the person(s) or entity(ies) that own the Grantee Tract at the time in question.
- (c) Other capitalized terms used herein shall be given the meanings assigned to them by this Agreement.

2. Grant of Easements.

(a) Grantor grants to Grantee, for the benefit of the Grantee Tract, a perpetual, exclusive easement (the "Access Easement") 40 feet (6) in width (the "Maximum Width"), over, on, under and across the Grantor Tract for the uses and purposes specified in Section 2(a) below, in approximately the location depicted in Exhibit C. The actual location of the Easement shall at all times be over and across the Road (as described below) wherever

72 ANT

ultimately constructed (the "Access Easement Area"), and such actual location of the Road shall control over the depiction of the same set forth in Exhibit C.

(b) Grantor grants to Grantee, for the benefit of the Grantee Tract, a perpetual, nonexclusive easement (the "Maintenance Easement", and together with the Access Easement, the "Easements") over and across the entirety of the Grantor Tract for the uses and purposes specified in Section 2(b) below.

(c) The grant of the Easements is made subject to all exceptions to title on file or of record in the Official Records of Klamath County, Oregon.

3. Use of Easements.

(a) The Access Easement shall be used solely for the purposes of (i) constructing, maintaining, repairing, replacing, and improving an access road for access to the Grantee Tract from State Route 39 and/or Fourth Street (the "Road"), (ii) providing vehicular and pedestrian ingress, egress and access to and from the Grantee Tract using the Road, including, without limitation, access by emergency vehicles, and (iii) placement of underground or above-ground lines, conduit, systems, and equipment reasonably necessary to provide utility service to the Grantee Tract. Grantee Owner's underground use of the Access Easement shall be limited to the uses described in item (iii) of the foregoing sentence. The Access Easement may be used for such purposes only by (i) Grantee Owner and the tenants, customers, clients, contractors, vendors, invitees, agents, and employees of Grantee Owner, and (ii) utility providers providing services to the Grantee Tract (collectively, the "Users"). No above-ground structures, barriers, fences, buildings or other improvements of any kind shall be installed in or on the Access Easement Area by either Grantor Owner or Grantee Owner other than roadway surfaces and related improvements. Grantor Owner's use of the Access Easement Area shall be limited to access to the Grantor Tract and shall be reasonably coordinated with Grantee Owner to avoid interference with Grantee Owner's use of the Access Easement and its business on the Grantee Tract. For the avoidance of doubt, nothing in this Agreement shall provide Grantor or any Grantor Owner any right of access to or use of the Grantee Tract.

(b) The Maintenance Easement shall be used solely for the purposes of maintaining the Grantor Tract as required by this Section 2(b). Grantee Owner shall maintain the Grantor Tract in substantially the same condition as it exists on the Effective Date or as it may be improved by any Grantee Owner in accordance with this Agreement; provided, however, that Grantee Owner may (but is not obligated to) improve portions of the Grantor Tract with grass, vegetation, gravel, dirt, and/or other ground covering approved by Grantor Owner. Grantee Owner shall not have any responsibility to maintain improvements constructed by Grantor Owner, if any, on the Grantor Tract.

(c) No User of the Access Easement shall park a vehicle in the Access Easement Area or elsewhere on the Grantor Tract other than in connection with construction, maintenance, repair, replacement, or improvement activities allowed under this Agreement.

4. Nature of Easement. The Easements granted herein shall be appurtenant to, and for the benefit of, the Grantee Tract. Any conveyance of fee title to the Grantee Tract shall

include a conveyance of the Easements, regardless of whether the Easements are specifically identified in the instrument of conveyance. Any conveyance of fee title to the Grantor Tract shall be subject to the Easements, regardless of whether the conveyance is specifically made subject to the Easements.

5. Repair; Maintenance.

(a) Grantee Owner shall, at its sole cost and expense, repair any damage to the Access Easement Area, except to the extent such damage is caused by Grantor Owner or its tenants, invitees, agents, and employees, and shall otherwise repair and maintain the Road as necessary to keep the Road in a condition consistent with applicable law. Grantee Owner may maintain, repair, replace, and improve the Road at any time, without notice to or consent of Grantor Owner, provided that the location of the Road is not modified and the Road is not made larger than the Maximum Width as a result of such activities.

(b) Should Grantee Owner fail to correct any deficiency in its compliance with its repair and maintenance obligations under this Agreement (an "Uncured Deficiency") prior to the expiration of thirty (30) days after the effective date of notice of such Uncured Deficiency from Grantor Owner, then Grantor Owner, at its option (without any obligation to do so), may correct the Uncured Deficiency for the account of Grantee Owner, which shall reimburse Grantor Owner for all expenses incurred by Grantor Owner in curing such default within thirty (30) days of receipt of an invoice together with documentation of such expenses.

6. No Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public, for the general public or for any public use or purpose whatsoever.

7. Indemnity; Attorney Fees.

(a) Grantor Owner shall indemnify Grantee Owner from and against all claims, damages, liabilities, losses, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") arising in connection with or related to this Agreement or the Easements that may be asserted against or incurred by any Grantee Owner as a result of any Grantor Owner's negligence or willful misconduct, but only to the extent Claims are caused by Grantor Owner's negligence or willful misconduct.

(b) Grantee Owner shall indemnify, defend, and hold Grantor Owner harmless from and against all Claims that may be asserted against or incurred by any Grantor Owner arising in connection with or related to this Agreement or the Easements as a result of any Grantee Owner's negligence or willful misconduct; provided, however, the foregoing indemnification obligation shall apply only to the extent Claims are caused by Grantee Owner's negligence or willful misconduct.

(c) In the event of any litigation or other proceedings brought to enforce or interpret this Easement, the prevailing party in such proceedings shall be entitled to recover from the other party the reasonable attorney fees and other costs incurred by the prevailing party in the proceedings or any appeal therefrom.

8. **Successors.** This Agreement, and the Easements granted herein, shall be binding upon, and inure to the benefit of, Grantee and Grantor and their respective successors in ownership of the applicable Tract. For the avoidance of doubt, each person or entity having an ownership interest in the Grantor Tract or Grantee Tract shall have the rights and obligations set forth herein only during the period of such person or entity's ownership of the applicable Tract.

9. **Relocation.** The Road may be relocated only with the prior written consent of Grantor and Grantee. The party seeking to relocate the Easement shall bear the costs of the relocation.

10. **Amendment.** This Agreement may only be amended by written instrument executed by the Grantee Owner and Grantor Owner.

11. **No Third Party Beneficiaries.** This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person other than Grantee Owner and Grantor Owner.

12. **Consents.** Whenever the consent or approval of a party is required to be given hereunder, such consent or approval shall be in writing and shall not be unreasonably withheld, delayed or conditioned unless the provision in question expressly stipulates another standard of approval.

13. **Notices.** Any notice required or permitted by this Agreement shall be in writing and given by delivering the same in person to the recipient or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the address of the Grantor Tract or Grantee Tract, as applicable, shown on the current records of the tax assessor for Klamath County, Oregon, with respect to the Tract in question.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

GRANTOR:

City of Merrill,
an Oregon municipal corporation

By: Melody Smith
Name: Melody Smith
Title: City Council President

GRANTEE:

SFP-E, LLC,
an Oregon limited liability company

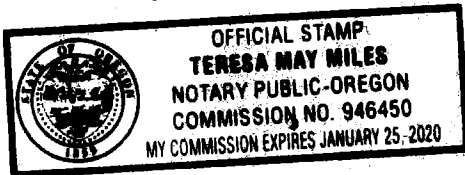
By: Cory J. Parks
Name: Cory J. Parks
Title: Secretary

Exhibits:

- A - Grantor Tract
- B - Grantee Tract
- C - Easement Area

STATE OF OREGON)
)
County of Klamath) ss.

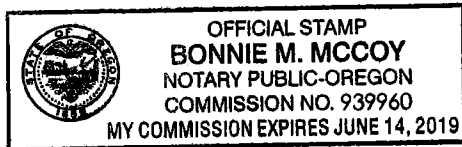
This instrument was acknowledged before me this 20th day of December, 2017, by Melody Smith, as City Council President of the City of Merrill, an Oregon municipal corporation, on behalf of the corporation.



Teresa May Miles
NOTARY PUBLIC FOR OREGON
My Commission Expires: 1-25-2020

STATE OF OREGON)
)
County of Deschutes) ss.

This instrument was acknowledged before me this 28 day of December, 2017, by Corey J. Parks, as Secretary of SFP-E, LLC, an Oregon limited liability company, on behalf of the limited liability company.



Bonnie M. McCoy
NOTARY PUBLIC FOR OREGON
My Commission Expires: 6/14/2019

EXHIBIT A

Grantor Tract

LEGAL DESCRIPTION FOR THE GRANTOR TRACT

A tract of land situate in Section 2, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

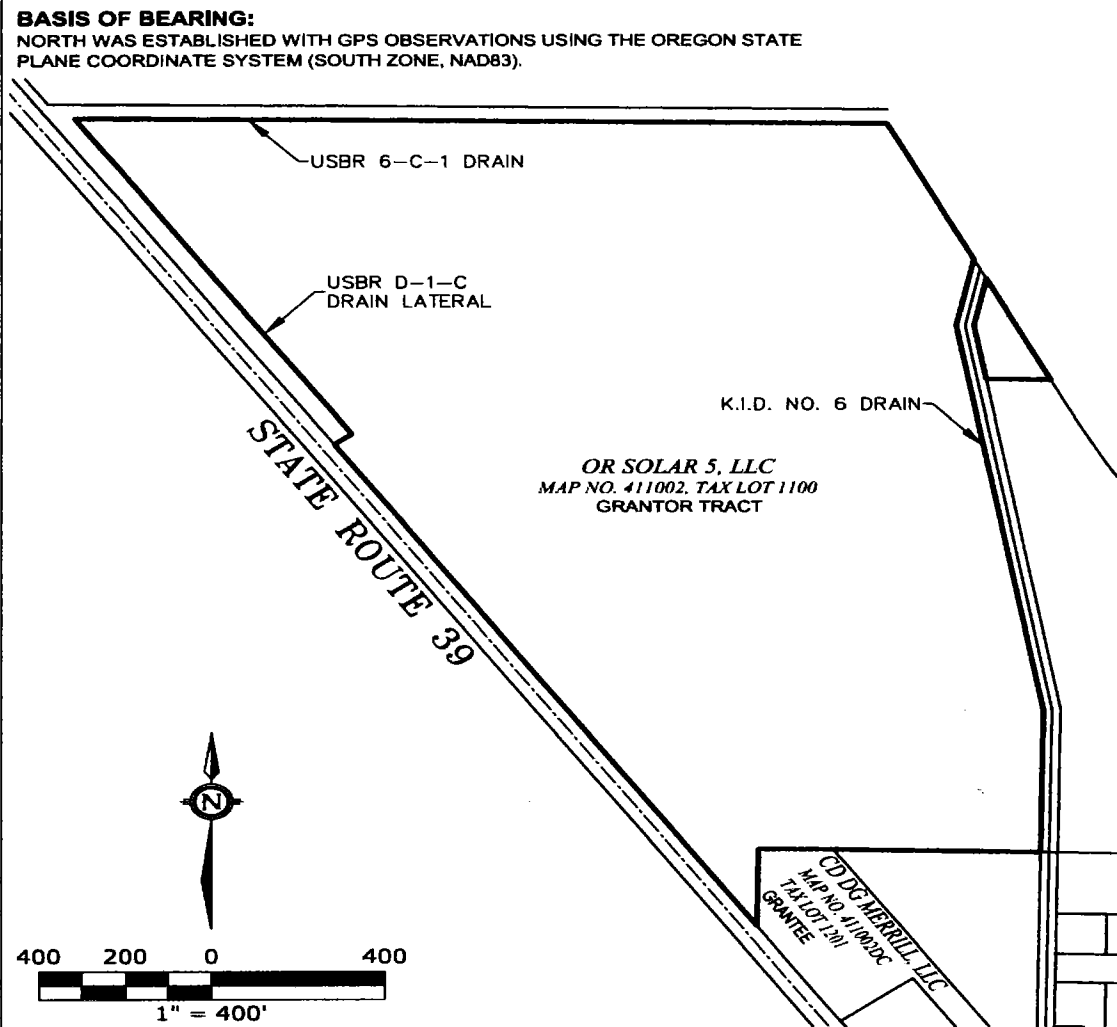
That portion of the N112 of said Section lying Easterly of the Northeasterly boundary of the D-1-C lateral deeded to the United States of America in Deed Volume 111, page 183, Deed Records of Klamath County, Oregon and South of the 6-C-1 Drain deeded to the United States of America in Volume 111, page 183, Deed Records of Klamath County, Oregon; and West of the Westerly right of way line of the Great Northern Railway, recorded October 13, 1932, in Volume 99, page 109, Deed Records of Klamath County, Oregon SAVING AND EXCEPTING therefrom the right of way of the K.I.D. No. 6 Drain recorded January 13, 1915, in Volume 43, page 239, Deed Records of Klamath County, Oregon.

AND ALSO that portion of the S112 of said Section 2 lying Easterly of the Northeasterly right of way of Highway No. 39 and Westerly of the Westerly boundary of the K.I.D. No. 6 Drain, recorded January 13, 1915 in Deed Volume 43, page 239, Deed Records of Klamath County, Oregon, SAVING AND EXCEPTING that portion conveyed to the United States of America for the D-1-C Lateral in Volume 111, page 183, Deed Records of Klamath County, Oregon.

EXCEPTING THEREFROM that portion of Tracts 19,20,35 and 40 and Second Street adjacent thereto of MERRILL TRACTS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, lying Northeasterly of the Dalles-California Highway (State Highway 39).

See attached Exhibit A1 for a depiction of the above legal description.

EXHIBIT A1



P.O. Box 3299
Reno, NV 89505
P. 775.786.5111
F. 775.297.4668
www.usgeomatics.com

EXHIBIT A1

CD DG MERRILL, LLC
GRANTOR TRACT

A PORTION OF THE S 1/2 OF
OF SECTION 2, T.41S., R.10E., W.M.

MERRILL

KLAMATH COUNTY

OREGON

SHEET

1
of
1

EXHIBIT B

Grantee Tract

LEGAL DESCRIPTION FOR THE GRANTEE TRACT

A portion of land situated in the South Half of Section 2, Township 41 South, Range 10 East, Willamette Meridian, in the City of Merrill, Klamath County, Oregon, and being more particularly described as follows:

COMMENCING at a found 5/8-inch rebar with a plastic cap stamped "PLS 87955" at the northwesterly corner of Parcel 2 as shown on Land Partition 19-15, "Land Partition 19-15 for Phyllis Goebel", filed on December 8, 2015, as Document No. 2015-013240, Official Records of Klamath County, Oregon, said northwesterly corner being the **POINT OF BEGINNING**:

THENCE, South 00°51'02" West, a distance of 217.63 feet;

THENCE, South 35°52'55" East, a distance of 329.63 feet along the northeasterly right-of-way of State Route 39 as shown on said Land Partition 19-15;

THENCE, North 54°07'05" East, a distance of 206.00 feet;

THENCE, South 35°52'55" East, a distance of 200.17 feet;

THENCE, South 00°52'12" West, a distance of 95.88 feet;

THENCE, South 89°07'48" East, a distance of 149.76 feet along the northerly right-of-way of Second Street as shown on said Land Partition 19-15;

THENCE, North 35°52'55" West, a distance of 767.24 feet;

THENCE, North 89°07'48" West, a distance of 172.81 feet to the **POINT OF BEGINNING**.

See attached Exhibit B1 for a depiction of the above legal description.

EXHIBIT B1

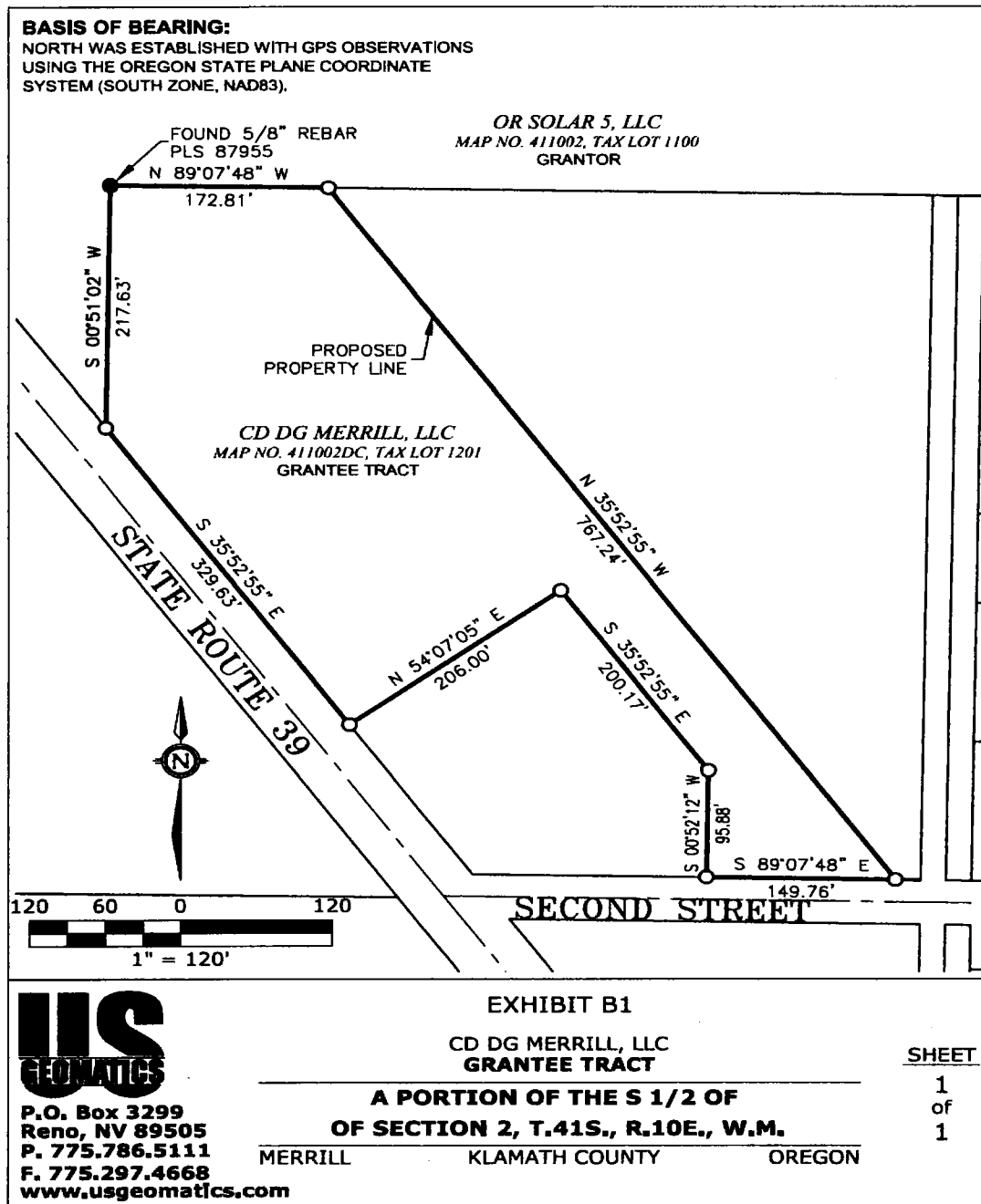


EXHIBIT C

Depiction of Easement Area

LEGAL DESCRIPTION FOR AN ACCESS EASEMENT

A portion of land situated in the South Half of Section 2, Township 41 South, Range 10 East, Willamette Meridian, in the City of Merrill, Klamath County, Oregon, and being more particularly described as follows:

COMMENCING at a found 5/8-inch rebar with a plastic cap stamped "PLS 87955" at the northwesterly corner of Parcel 2 as shown on Land Partition 19-15, "Land Partition 19-15 for Phyllis Goebel", filed on December 8, 2015, as Document No. 2015-013240, Official Records of Klamath County, Oregon;

THENCE, South 00°51'02" West, a distance of 51.57 feet along the westerly boundary of said Parcel 2 to the **POINT OF BEGINNING**;

THENCE, North 28°13'27" West, a distance of 6.24 feet;

THENCE, North 25°50'21" West, a distance of 142.50 feet;

THENCE, a distance of 130.96 feet along the arc of a tangent curve to the left, having a radius of 75.00 feet, through a central angle of 100°02'34";

THENCE, South 54°07'05" West, a distance of 51.15 feet;

THENCE, South 35°52'55" East, a distance of 40.00 feet along the northeasterly right-of-way of State Route 39;

THENCE, North 54°07'05" East, a distance of 45.28 feet;

THENCE, a distance of 48.89 feet along the arc of a tangent curve to the right, having a radius of 28.00 feet, through a central angle of 100°02'34";

THENCE, South 25°50'21" East, a distance of 147.67 feet;

THENCE, a distance of 24.01 feet along the arc of a tangent curve to the left, having a radius of 137.00 feet, through a central angle of 10°02'34";

THENCE, South 35°52'55" East, a distance of 65.19 feet;

THENCE, North 00°51'02" East, a distance of 90.82 feet along the westerly boundary of said Parcel 2 to the **POINT OF BEGINNING**.

See attached Exhibit C1 for a depiction of the above legal description.

EXHIBIT C-1

BASIS OF BEARING:

NORTH WAS ESTABLISHED WITH GPS OBSERVATIONS
USING THE OREGON STATE PLANE COORDINATE
SYSTEM (SOUTH ZONE, NAD83).

TOTAL AREA OF EASEMENT:

16,577 SQUARE FEET ±

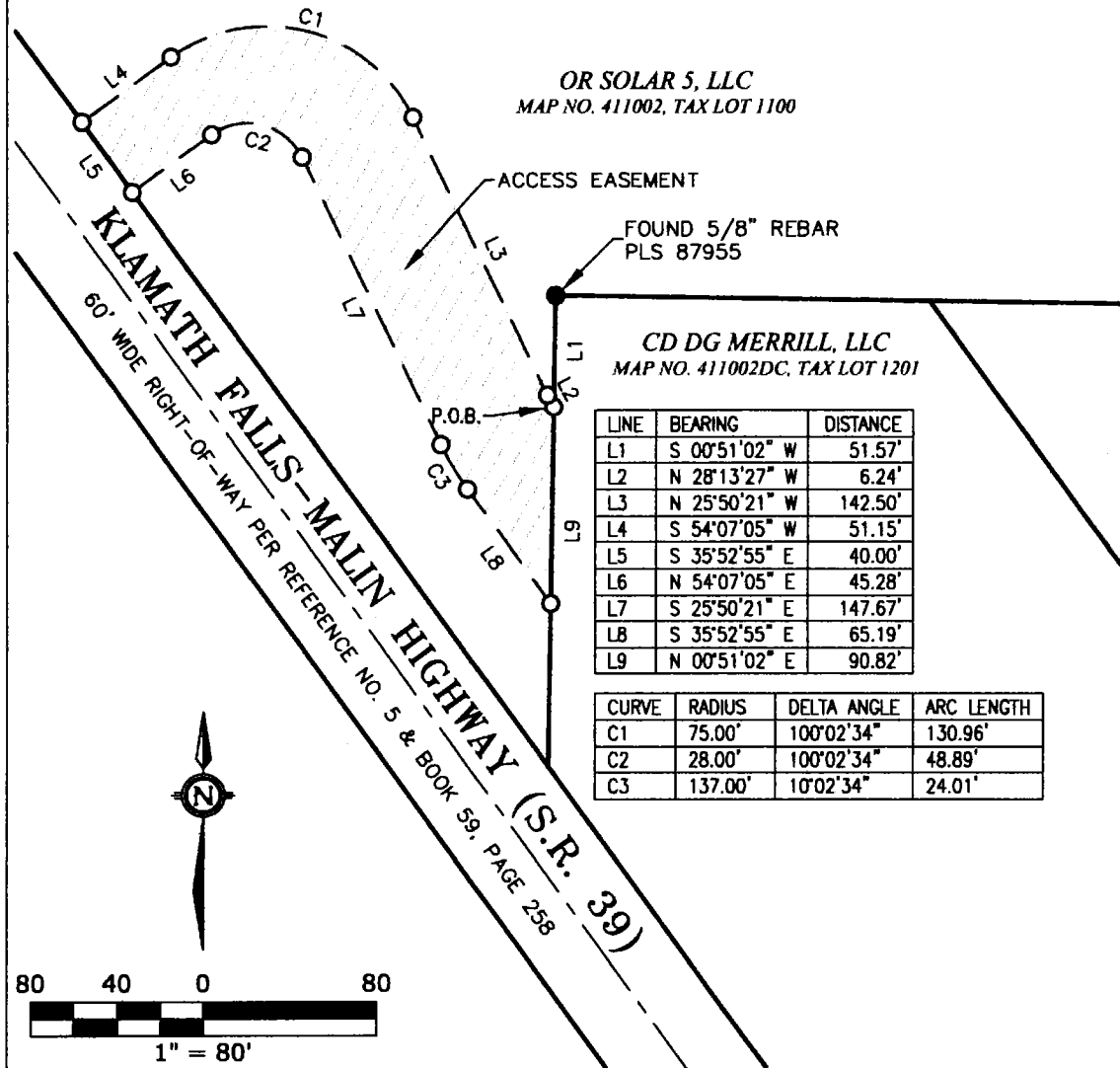


EXHIBIT C1

CD DG MERRILL, LLC
ACCESS EASEMENT

A PORTION OF THE S 1/2 OF
OF SECTION 2, T.41S., R.10E., W.M.

MERRILL **KLAMATH COUNTY** **OREGON**

SHEET

1
of
1



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