

2023-011096

Klamath County, Oregon



00323583202300110960160160

RECORDING REQUESTED BY:

12/29/2023 11:43:59 AM

Fee: \$157.00

Midstate Electric Cooperative, Inc.

When Recorded Mail Document:

Attention:

Midstate Electric Cooperative, Inc.

P.O. Box 127

LaPine, Oregon 97739

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF UTILITY EASEMENT

This UTILITY EASEMENT AGREEMENT ("Agreement") is made by and between Green Diamond Resource Company, a Washington corporation, having a mailing address of 1301 Fifth Avenue, 27th Floor, Seattle, WA 98101 ("Grantor") and Midstate Electric Cooperative, Inc., an Oregon Cooperative Corporation, having a mailing address of P.O. Box 127, La Pine, Oregon 97739 ("Grantee"). Grantor and Grantee collectively are the "Parties".

WITNESSETH

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Klamath, State of Oregon more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Grantee is desirous of acquiring certain rights and privileges over, under, above and across specific portions of the Property,

WHEREAS, Grantor is desirous of granting such rights and privileges in accordance with the terms and conditions herewith.

NOW, THEREFORE, Grantor and Grantee hereby agree as follows:

1. GRANT AND AUTHORIZED USE.

- (a) Grantor conveys and grants to Grantee, subject to the terms and conditions herein, a non-exclusive easement with a width of twenty (20) feet and a length of approximately 650 feet over a portion of the Property: SW $\frac{1}{4}$ of Section 33, Township 27 South, Range 08 East, W.M. more particularly shown in Exhibit B to this Agreement (the "Easement Area"). Grantee shall have a right to use the Easement Area to install, operate, inspect, and maintain an electrical transmission and/or distribution line or system (the "Facilities"), to be placed not less than 36 inches under the Property; to inspect and make such repairs, changes, alterations, improvements, removals

from, or substitutions and addition to its Facilities as Grantee may from time to time deem advisable, including, by way of example and not by way of limitation, the right (i) to increase or decrease the number of conduits, wires, cables, transformers, connection boxes, transformer enclosures, attachments, equipment, accessories and appurtenances thereto described in connection therewith, hereinafter referred to as the "Facilities,"; (ii) to cut and trim and control the growth by machinery or otherwise of trees and shrubbery located within the easement, or that may otherwise interfere with or threaten to endanger the operation and maintenance of said line or system (including any control of the growth of other vegetation in the right-of-way which may incidentally or necessarily result from the means of control employed); and (iii) to keep the easement clear of all buildings, structures or other obstructions (the "Authorized Use").. Within forty-five (45) days after execution of this Agreement, Grantee shall provide Grantor with a plan listing the equipment and showing the specifications for the Facilities.

- (b) Grantor agrees that all Facilities installed under the Property shall remain the property of Grantee, removable at the option of Grantee.

2. TYPE OF EASEMENT AND TERM.

This grant of easement is made in gross to Grantee for so long as the Easement Area is used within the scope of Authorized Use. This Agreement and the rights herein granted may not be assigned without a written, executed, and recorded amendment consenting to such an assignment.

3. COVENANTS AND WARRANTY.

- (a) Grantee covenants and warrants to Grantor that it is duly organized, validly existing, and in good standing and has the right, power, and authority to enter into this Agreement and bind itself hereto through the signatory for Grantee below.

- (b) The privileges granted herein to Grantee are given expressly subject to existing encumbrances and other matters of record affecting the privileges in any manner whatsoever. Grantor does not warrant that it has authority to permit the Authorized Use on behalf of any third party and Grantee shall secure all other permits, privileges or rights required for the Authorized Use. Grantor does not warrant title to the Property and shall not be liable for defects thereto or failure thereof.

- (c) Grantor makes no representations as to the present or future conditions on the Easement Area or Access Area and its fitness for the Authorized Use under this Agreement. Grantee accepts this Agreement subject to all danger or injury to persons and damages or destruction to property while Grantee is on or about the Easement Area or Access Area. In this regard, Grantee assumes all risk of injury or death to individuals who are on the Easement Area or Access Area pursuant to this Agreement and all risk of damage to property upon or in proximity to the Easement Area or Access Area with Grantee's knowledge or consent, without regard to whether such injury or damage is

occasioned by known or unknown, hidden or disclosed defects in the Easement Area or Access Area or by the negligence of Grantor or any person in the employ or service of Grantor.

4. RESERVATIONS AND NON-INTERFERENCE.

(a) Grantor reserves the right to use the Easement Area for the benefit of adjacent lands, including the right to cross and re-cross and construct intersecting roads, and installation of overhead and/or underground utilities, for itself, its agents, employees, contractors, licensees, grantees, successors, and assigns.

(b) Grantee shall not use the Easement Area or Access Area in any way that materially interferes with Grantor's use of the Property or so as to create a public or private nuisance. Grantee further agrees that Grantee and its employees, contractors, subcontractors, agents or invitees will not object to any lawfully conducted timber harvesting, management activities and/or development of property carried out by Grantor or its agents, Grantees, Grantees, contractors, successors or assigns.

(c) Prior to installing the Facilities, Grantee shall provide Grantor with a plan showing the location and specifications for the Facilities and Grantor shall review the Facilities plan to ensure compliance with the limitations in this Agreement and to ensure that it does not interfere with Grantor's use of the Property. If Grantor finds that the proposed Facilities will interfere with Grantor's use of the Property, Grantor will provide Grantee with notice and an alternative location, alignment or specification within thirty (30) days of receiving Grantee's proposed Facilities plan. Grantee shall not proceed with any installation of Facilities in the Easement Area until Grantor approves in writing Grantee's plan.

(d) Grantee shall not install any Facilities by attaching them to trees on the Property. Grantor retains ownership of all merchantable and pre-merchantable timber on the Property. For purposes of this Agreement, "merchantable timber" means stands of timber which, in Grantor's judgment, have a higher value for current harvest than their present value for possible future harvest. If timber must be removed to accommodate Grantee's operations, Grantee shall provide Grantor with three (3) months advance notice. Within sixty (60) days of receiving such notice, Grantor shall notify Grantee whether Grantor considers the timber merchantable or pre-merchantable. If Grantor considers the timber merchantable, Grantor shall harvest the timber within twelve (12) months of receiving Grantee's notice. Grantee may request an alternative harvest plan and Grantor shall consider any such request in good faith but has no obligation to grant Grantee's request. If Grantor determines that the timber is pre-merchantable, Grantee shall purchase it at Grantor's estimate of its present value, based on the value the timber is expected to have at the time it most likely would be harvested in the ordinary course of Grantor's timber management program, discounted from that time to the present at generally prevailing interest rates for long term borrowings of companies with Grantor's credit rating. After paying for pre-merchantable timber, Grantee may destroy or salvage it but must do so with reasonable care to avoid damage to adjoining timber stands not being purchased.

(e) Grantee shall, at its expense, mark the location of any underground lines.

(f) *(Check if applicable)* [X] Grantee agrees to lay lines at a depth (in no event less than 36 inches below ground surface) sufficient to avoid interference with Grantor's use of the Property.

5. MAINTENANCE AND ADDITIONAL CONDITIONS OF USE.

(a) Grantee agrees to comply with all applicable governmental laws, rules, statutes, regulations, and permits relating to its use of the Easement Area and Access Area, and to do so at Grantee's cost. Grantee's agreement to comply shall include any programmatic or generally applicable local, state or federal government regulatory permits held by Grantor and applicable to the Easement Area and Access Area, including, without limitation, incidental take permits held by Grantor. Grantor reserves the right to require Grantee to take affirmative steps to review and comply with permits noticed by Grantor and to promptly comply when Grantor requests specific action on a requirement applicable to Grantee's use of the Property.

(b) Grantee shall promptly report to Grantor any violations of any laws, regulations, or permits relating to the Authorized Use of which Grantee has knowledge and shall promptly send to Grantor a copy of any notice of violation received by Grantee that relates to the Authorized Use. A copy of all citations or other written documents Grantee receives from any agency shall accompany the notice of violation. Grantee shall provide Grantor with copies of all correspondence to and from government agencies relating to any permits or regulations affecting (or claimed by any persons to affect) operations under this Agreement. Grantee shall promptly notify Grantor of any litigation or agency enforcement action arising in connection with this Agreement, including environmental actions, tax disputes, and bankruptcy proceedings of Grantee or its contractors.

(c) Grantee shall take reasonable care to prevent wildfires from igniting on or spreading onto the Easement Area or Access Area. If a wildfire should occur on or near the Easement Area or Access Area, Grantee shall immediately notify Grantor and appropriate government agencies and shall make any on-site equipment available to help suppress or contain the fire. Grantee shall comply with all fire prevention and suppression measures that Grantor may specify from time to time relating to Grantee's use of the Property. Grantee shall comply with all applicable state fire safety standards including requirements (if any) to maintain special equipment in vehicles. Grantee shall reimburse Grantor for all damages (including loss or damage to timber, and fire suppression costs) resulting from wildfires caused by Grantee's operations, contractors, or personnel, even if not attributable to negligence by Grantee or its agents.

(d) In the event of dangerous fire weather, possible damage to roads, or potential or actual interference with Grantor's operations, Grantor shall notify Grantee's representative and Grantee shall immediately suspend the Authorized Use or take steps to remedy the situation as Grantor may direct.

(e) Grantee agrees to cease using vehicles on Grantor's roads during periods when weather conditions make driving hazardous or may have a detrimental impact to the environment including, but not limited to, the occurrence of rain in sufficient quantity and duration that driving would result in rutting and deformation of the road surface, degradation of water bars, or tracking of mud onto public roadways. Vehicles used on unsurfaced (dirt) roads shall also be limited to All Terrain Vehicles (ATVs). If any water bars are traversed, Grantee shall maintain and, if necessary, repair all damages caused by traveling across such water bars.

(f) Grantee shall obey all posted traffic and speed regulations on Grantor's roads.

(g) If any portion of the Easement Area or Access Area requires access through a locked gate owned or maintained by Grantor, Grantor shall issue copies of key(s) needed to open gates for the access provided herein. Grantee shall not copy the key(s) provided by Grantor unless permitted to do so in writing by Grantor. Grantee shall return any key(s) that has been so issued in the event of termination of this Agreement. Grantee shall pay a fifty-dollar (\$50) fee per key for any key(s) that is not so returned. Grantee shall keep road gates closed and locked unless otherwise instructed by a Grantor representative.

(h) At its own cost, Grantee will keep and maintain the Easement Area and Access Area in good condition, reasonable wear and tear and damage from the elements excepted.

(i) Grantee shall repair all damage to and deterioration of Grantor's roads in the Access Area when such damage or deterioration is caused by Grantee's use of access rights granted herein. In the event that Grantee is the primary user of the road(s) Grantee shall maintain the road(s), at its sole cost and expense, on an ongoing basis during all periods of road use, including: periodic spot rocking and grading to prevent damage to subgrades; ditching and culvert maintenance to prevent water damage to the roads and creeks; and maintenance of all erosion control devices in good working order.

(j) Grantee shall obtain prior written permission from Grantor's authorized representative before gating, obstructing, or storing equipment on the Easement Area, and before causing or allowing any dirt, mud or other materials to be placed on or graded over any roads owned by Grantor. Grantee shall at no time be allowed to, or allow others to, dump or deposit any waste, debris, fill, soil, or other material from outside the Easement Area upon any portion of the Easement Area.

6. INDEMNIFICATION.

(a) Grantee shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Grantor and its agents, contractors, successors, or assigns from and against any and all liability for damages, costs, losses, and expenses resulting from, arising out of or in any way connected with the occupation or use of the Facilities or Property by Grantee or anyone else entering the Property at Grantee's direction or invitation, or the failure on the part of Grantee to perform fully its promises contained herein. This

indemnity obligation shall apply whether such liability is caused by or contributed to by Grantor or any other party indemnified herein, unless caused by the sole active negligence or willful misconduct of Grantor.

(b) In any and all claims against Grantor by any employee of Grantee, any contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, Grantee's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damage, compensation, or benefits payable by or for Grantee or any contractor under any industrial insurance act, workers' compensation act, disability benefit act, or other employee benefit act, and Grantee hereby expressly waives any immunity it may have under such acts to the extent necessary or permitted under the law to assure the validity and enforceability by Grantor of Grantee's aforesaid indemnification obligation.

(c) Notwithstanding anything to the contrary in this Agreement, the Parties hereby waive any claims that each may have against the other with respect to business interruption, consequential, incidental, or special damages. This waiver does not include claims for property damage.

7. **ENVIRONMENTAL.** In the event of a spill or release of Hazardous Materials, Grantee shall promptly comply with all federal, state and local spill notification and response requirements and shall notify Grantor of the spill event. Grantee shall be responsible for the response and restoration costs of any release of Hazardous Materials in connection with the Agreement, and shall indemnify, defend and hold harmless Grantor from any liability arising from claims or damages in connection with such release. "Hazardous Materials" shall mean any pollutant, contaminant, chemical or hazardous, toxic, or dangerous waste, substance, chemical or material, or any other substance or material regulated or controlled pursuant to any environmental laws now or at any time hereafter in effect.

8. **TAXES.** Grantee shall promptly pay or reimburse Grantor for any taxes or tax increases levied as a result of this Agreement or relating to Grantee's use or improvements constructed pursuant to this Agreement.

9. **LIENS.** Grantee shall keep the Easement Area free from any liens or encumbrances arising out of any work performed by Grantee, materials furnished to Grantee, or obligations incurred by Grantee. Grantor shall have the right to pay and discharge any lien imposed against the Property due to Grantee's breach of the aforesaid covenant. Grantee shall reimburse Grantor for the amount so paid, including the reasonable expenses of Grantor in connection therewith, within thirty (30) days of receiving notice from Grantor of any such payment with interest thereon at the rate of seven (7) percent per annum from the date of payment thereof by Grantor until the repayment thereof by Grantee. If Grantor exercises the option to make such payments, it shall not be obligatory on Grantor to inquire into the validity of any such lien unless Grantee shall have given notice to Grantor that said lien was being challenged and shall have furnished to Grantor the bond of a surety company or other security satisfactory to Grantor, in an amount satisfactory to Grantor, securing Grantor against the payment of the lien so contested and against any loss, damage, or penalty arising from Grantee's

failure to pay it.

10. INSURANCE. All liability policies will be purchased at Grantee's, expense. Policies of insurance will be issued in a form and by an insurance company with Best's Key Rating Guide or A- or better with a financial size rating of at least VIII, or as deemed acceptable by Grantor and with minimum limits as indicated below:

(a) Workers' Compensation (Statutory amount) and Employer's Liability of \$1,000,000, if applicable and required by law.

(b) Commercial General Comprehensive Liability/Grantee's Liability insurance with minimum limits of \$1,000,000 each occurrence; \$2,000,000 in the aggregate for Bodily Injury, Property Damage, Personal Injury and Advertising Injury, Contractual Liability, Products and Completed Operation. The policy shall provide Cross Liability/Separation of Insureds and Pollution arising out of heat, smoke or fumes from hostile fires. Additionally, the policy shall not exclude X, C or U (Explosion, Collapse, or Underground). Except with respect to the Limits of Insurance, and any rights to duties specifically assigned in this policy to the first Names Insured; Grantee's insurance shall apply as if each Named Insured were the only Named Insured; and separately to each insured against whom claim is made or suit is brought. The aggregate limit required under this Agreement shall be on a per project basis.

(c) Business Automobile Liability insurance covering owned, non-owned, hired, leased and other vehicles ("any auto"), with a combined single limit of \$1,000,000 for Bodily Injury, Death, and Property Damage per occurrence.

(d) The policies specified in (b) and (c) above shall include an endorsement which shall name GREEN DIAMOND RESOURCE COMPANY and if different, the landowner as an additional insured on a primary basis for the duration of the Agreement term. The additional insured endorsement must be ISO CG 20 210 10 01 (as amended from time to time or other form with like wording). Additional insured status gives the additional insured rights of indemnity under the policies that are independent of the contractual requirement to indemnify.

(e) Grantee shall provide Grantor with (30)-days written notice prior to cancellation or other material modification in the policy affecting the requirements in this Agreement. No such cancellation or modification shall affect Grantee's obligation to maintain the insurance coverage required by this Agreement.

(f) All liability coverage must be on an "occurrence" basis as opposed to "claims made."

(g) Grantee hereby waives any subrogation claims against Grantor by its insurers under the policies specified in subsections (a), (b) and (c) above, for damages arising from any peril insured against under such policies. If necessary, the policies specified in (a), (b) and (c) above shall include an endorsement allowing this waiver of subrogation claims.

(h) All insurance shall be in a form sufficient to protect Grantee and Grantee's

contractors to the extent they are involved in the Agreement and Grantor against the claims of third persons, and to cover claims by Grantor against Grantee for which the Grantee has assumed liability under this Agreement.

(i) Prior to commencement of operations, Grantee shall furnish Grantor a certificate(s) of insurance, dated and signed by a stated, authorized agent for the insuring company or companies, in a form acceptable to Grantor and containing a representation that coverage of the types listed above is provided with the required limits. Grantor reserves the right to require a certified copy of the policy(ies) or to examine the actual policy(ies). Said certificates shall be sent to Attn: Grantor at COI@greendiamond.com.

(j) With respect to the requirements under 10. Insurance, Grantee shall be responsible for payment of any and all deductibles or self-insured retentions under its insurance policies.

11. TERMINATION OR ABANDONMENT. All rights of Grantee hereunder shall terminate (1) immediately upon insolvency, adjudication of bankruptcy or appointment of a receiver for the property of Grantee, or (2) ninety (90) days after notice of default given by Grantor to Grantee, if the default has not been remedied within such time, or (3) upon Grantee's use of the Easement Area for any purposes other than the Authorized Use. Termination of this Agreement shall not prejudice Grantor's right to collect damages accrued theretofore or thereafter accruing, on account of Grantee's breach of any term hereof; and any failure to exercise the right to terminate this Agreement in case of default shall not constitute a waiver of Grantee's obligation to perform strictly in accordance with the term hereof. Upon termination the easement conveyed in this Agreement shall revert to and merge with the interests of Grantor, its successors or assigns. In the event Grantee or its successors and assigns cease to use the easement conveyed in this Agreement for a period of three (3) successive years, this Agreement and all of Grantee's rights hereunder shall automatically terminate and revert to and merge with the interests of Grantor, its successors or assigns. Upon abandonment or other termination, Grantee shall remove the improvements constructed on the Easement Area unless Grantor agrees in writing that Grantee may instead abandon the improvements in place, and Grantee shall repair any damage to the Easement Area caused by such removal or abandonment. Upon such abandonment or termination, Grantee agrees to execute and deliver such documents as may be required to extinguish of record such easement.

12. REMOVAL/RESTORATION.

(a) Grantee agrees that within a reasonable time following the completion of its initial Facilities construction and installation work it shall restore the Easement Area as well as the Temporary Construction Area, to their original contour and conditions. Grantee agrees to compensate Grantor adequately for damages that directly or indirectly result from its work, including loss of business, timber, growing crops, pasture and livestock. Any other recognizable damages to other real or personal property that resulted from its work shall be repaired by Grantee, or Grantor shall be compensated for such repairs.

(b) In the event of termination of this Agreement Grantee shall, at Grantee's cost, restore the Easement Area to the conditions that existed before the Agreement. Grantee shall repair all damage and deterioration of the road or road segments caused by its use, and remove all debris from road surfaces and drainage structures. During the term of this Agreement all portions of the Facilities brought onto the Property by Grantee will be and remain Grantee's personal property and, at Grantee's option, may be removed by Grantee at any time. In the event of any termination of this Agreement, Grantor may, by written notice to Grantee within fifteen (15) days of the termination, elect to retain as Grantor's own property all Facilities fixtures. If Grantor does not elect to retain Facilities fixtures with a written notice to Grantee, Grantee shall remove all such Facilities fixtures and improvements within one hundred twenty (120) days of the termination of this Agreement, and Grantor will allow use of the Temporary Construction Area for the purposes of removal, subject to Grantee's restoration obligations in subparagraph (a) of this Paragraph.

13. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Grantee and a breach of this Agreement: (1) Grantee becomes insolvent, or makes any transfer in fraud of creditors, or makes an assignment for the benefit of creditors; (2) Grantee files a petition under any section or chapter of any applicable federal or state bankruptcy or insolvency law, or is adjudged bankrupt or insolvent in proceedings filed against Grantee; (3) a receiver or trustee is appointed for all or substantially all of the assets of Grantee; (4) Grantee does or permits to be done anything that creates a lien upon the Property and the lien is not removed or bonded around within thirty (30) days after written notice thereof from Grantor to Grantee; or (5) Grantee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Grantor specifying the failure; provided that no such failure will be deemed to exist if Grantee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence, and delay in curing a default will be excused if due to causes beyond the reasonable control of Grantee. If Grantee remains in default beyond any applicable cure period, Grantor will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Grantor and a breach of this Agreement: Grantor's failure to perform any term or condition under this Agreement within thirty (30) days after receipt of written notice from Grantee specifying the failure; provided that no such failure will be deemed to exist if Grantor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence, and delay in curing a default will be excused if due to causes beyond the reasonable control of Grantor. If Grantor remains in default beyond any applicable cure period, Grantee will have the right to exercise any and all rights available to it under law and equity.

14. NOTICES. All notices, requests, demands and communications hereunder will be given by first-class certified or registered mail, return receipt requested, or by a

nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed as follows:

As to Grantee:

Name: Midstate Electric Cooperative, Inc.
Address: P.O. Box 127
La Pine, Oregon 97739
Phone: 541-536-2126

with a copy to:

as to Grantor:

Green Diamond Resource Company
Attn: Property Manager
6400 OR-66
Klamath Falls, OR 97601
Phone: 541-884-2240

with a copy to:

Green Diamond Resource Company
Attn: Legal Department
1301 Fifth Avenue, Suite 2700
Seattle WA 98101-2613
Phone: 206-224-5830

Either Party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

15. INTERPRETATION.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to the conflicts of law principles of such state.

(b) A Party's waiver of any right hereunder or of the other Party's breach or failure to perform shall not be deemed a waiver of any other right hereunder or of any other breach or failure by the other Party, whether of a similar nature or otherwise.

(c) If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though said

unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either Party on ten (10) days' prior written notice to the other Party hereto.

(d) Terms and conditions of this Agreement which, by their sense and context, survive the termination, cancellation, or expiration of this Agreement, including, but not limited to, Grantee's obligations under Paragraphs 6, 7, 10 and 16, shall so survive.

(e) This Agreement constitutes the entire agreement of the Parties with respect to the matters described herein and supersedes all prior written or oral negotiations or agreements with respect thereto. Each Party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by both parties, and the amended Agreement remains subject to the enforcement provisions of this Agreement.

(f) This Agreement shall bind and inure to the benefit of the successors, personal representatives, and permitted assignees of the respective Parties.

(g) Each of the Parties hereto has been or has had the opportunity to be represented, to the extent desired, by legal counsel of its choice in respect to this transaction. No provision of this Agreement shall be construed against one party as the drafter of the Agreement for that provision.

(h) Unless otherwise specified, the following rules of construction and interpretation apply: (1) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (2) use of the term "including" will be interpreted to mean "including but not limited to"; (3) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (4) use of the terms "termination" or "expiration" are interchangeable; and (5) reference to a default will take into consideration any applicable notice, grace and cure periods.

16. ENFORCEMENT.

(a) If an action is instituted to enforce any of the terms, covenants, conditions or agreements contained in this Agreement or if an action is commenced because of any breach hereof, then the prevailing party in such action shall be entitled to all of its costs and reasonable attorneys' fees as fixed by the trial and appellate courts in said action.

(b) Grantee and Grantor hereby expressly and irrevocably waive all right to a trial by jury in any action, proceeding, claim, counterclaim or other litigation arising out of or relating to the Agreement or any of the activities or events referenced in this Agreement.

17. EXECUTION.

(a) Unless otherwise provided herein, this Agreement shall be effective on the last date of execution by the undersigned Parties. This Agreement shall not be binding upon either Party until signed and acknowledged by each Party.

(b) Each of the undersigned represents that they have sufficient authority to execute this binding Agreement on behalf of the Party they represent.

(c) The true consideration for the grant of this easement is TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) and other good and valuable consideration.

(d) This INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS, BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORD 30.930.

[SIGNATURES ON ATTACHED PAGES]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as below subscribed.

"Grantor"

**Green Diamond Resource Company,
a Washington corporation**

By: [Signature]
Print Name: Douglas S. Reed
Its: President
Date: Oct. 2, 2023

WITNESS THE HAND OF SAID GRANTOR

On this 2nd day of October, 2023.

Douglas S. Reed, President of
Green Diamond Resource Company Grantor

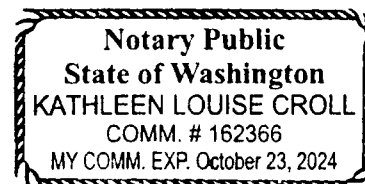
STATE OF WASHINGTON; County of King) ss.

The foregoing instrument was acknowledged before me this 2nd day of October, 2023, by: Douglas S. Reed

By Kathleen Louise Croll.

Notary Public for Washington

My Commission expires: Oct. 23, 2024.



"Grantee"

Midstate Electric Cooperative, Inc.,
an Oregon cooperative corporation

By: Thomas W. Weller
Print Name: Thomas W. Weller
Its: Engineering Manager
Date: 9/18/2023

WITNESS THE HAND OF SAID GRANTEE(S)
On this 18th day of September, 2023.

Midstate Electric Cooperative, Inc. Grantee

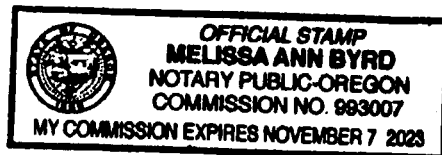
STATE OF OREGON; County of Deschutes) ss.

The foregoing instrument was acknowledged before me this 18th day of
September, 2023,

By Thomas Weller

Notary Public for Oregon

My Commission expires: November 7, 2023



**EXHIBIT A
PROPERTY**

Property Description

**In the SW ¼ of Section 33, Township 27 S., Range 08 E.,
Of the Willamette Meridian, Klamath County, State of Oregon.
Map / Tax Lot or Assessor's Parcel No: 2708-00000-00800**

EXHIBIT B
EASEMENT AREA

