

Recording requested by

2024-008922

Klamath County, Oregon

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Fee: \$137.00

When recorded return to:

Cloudbreak Energy Oregon, LLC

4845 Pearl East Circle STE 118 #53242

Boulder, CO 80301

THIS SPACE FOR RECORDERS USE ONLY

MEMORANDUM OF LEASE AND EASEMENT OPTION AGREEMENT

THIS MEMORANDUM OF LEASE AND EASEMENT OPTION AGREEMENT (“**Memorandum**”) is entered into as of October 7, 2024 by and between Ross T. Fleming and Anna M. Fleming (together, “**Owner**”), and Cloudbreak Energy Oregon, LLC, a Delaware limited liability company, and its successors and assigns (“**Operator**”).

RECITALS

A. Owner and Operator have entered into that certain Lease and Easement Option Agreement (the “**Agreement**”), dated October 7, 2024 (the “**Effective Date**”), whereby Owner has granted Operator the right to conduct due diligence on the Owner’s Property and an option to lease and develop a portion of the Owner’s Property (the “**Option**”), together with easement rights on, over, under, across, and through said Owner’s Property, in the County of Klamath, State of Oregon, and being more particularly described in Schedule A attached hereto and made a part hereof (the “**Owner’s Property**”).

B. The Agreement relates to the solar-powered electrical power generation and transmission project to be located in Klamath County, Oregon (“**Project**”), to be located on all or a portion of the Owner’s Property. Upon Operator’s exercise of the Option, the Project shall include (i) the lease of Leased Premises under those terms described in Section 4 of the Agreement (“**Lease**”), (ii) the easements and rights described in Section 5 of the Agreement (collectively, such easements and rights are “**Easements**”), and (iii) the Improvements described in Section 7 in the Agreement to be constructed on the Leased Premises (“**Improvements**”) ((i) – (iii), collectively, “**Operator Property**”).

C. This Memorandum is being executed and recorded to evidence the Agreement and shall not be construed to limit, amend or modify the provisions of the Agreement in any respect.

MEMORANDUM

1. OWNER. The name of the Owners are Ross T. Fleming and Anna M. Fleming, with an address of 5351 Lombardy Lane, Klamath Falls, Oregon 97603.

2. OPERATOR. The name of the Operator is Cloudbreak Energy Oregon, LLC, a Delaware limited liability company, having an address of 4845 Pearl East Circle, Suite 118 #53242, Boulder, Colorado 80301, and its successors and assigns.

3. LEGAL DESCRIPTION. The specific legal description of the Owner's Property is described on Schedule A and is incorporated herein by this reference. The portion of the Owner's Property Operator choses to lease pursuant to the Option is the "**Leased Premises**".

4. OPTION. Owner has granted and hereby grants to Operator the exclusive Option to choose to enter into the Lease and receive the Easements in accordance with the terms and conditions of the Agreement. Operator shall be entitled to lease all or a portion or portions of the Owner's Property according to the terms of the Lease and receive the Easements in their entirety or in part, as Operator deems appropriate in its sole discretion.

5. OPTION TERM. Owner has granted Operator the right to conduct due diligence on the Owner's Property to determine if the Operator would like to enter into a lease. The initial term of the Agreement is a period which commenced on October 7, 2024 and ends on October 7, 2029. The term of the Option may be extended, at Operator's discretion, for one (1) calendar year, as provided in the Agreement.

6. LEASE TERM. In the event the Option is exercised under the Agreement, the term of the lease will commence on the Commencement Date (as defined in the Agreement) and shall expire on the twentieth (20th) anniversary of the earlier of (i) the Commercial Operation Date (as defined in the Agreement) or (ii) seven hundred twenty (720) days after the Commencement Date.

7. EXTENTION TERMS. Operator has the option to extend the term of the lease for three (3) additional extension terms of five (5) years each on the terms and conditions more particularly set forth in the Agreement. The term of the Agreement ("**Term**") commences on the Effective Date and expires according to the terms of the Agreement.

8. USE OF OWNER'S PROPERTY. During the Option Term, Operator and its employees, agents, contractors, subcontractors, licensees, permittees, and invitees (collectively, "**Operator Parties**") shall have the right of ingress and egress on, over, across, and through the Owner's Property and a right to enter upon the Owner's Property with advance notice to the Owner for the purposes of (i) surveying the Owner's Property, and (ii) performing any other tests and studies as Operator may desire to determine the feasibility of installing the Project, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests; provided that such activities do not unreasonably interfere with Owner's use of or materially alter the Owner's Property.

9. LEASE. As of the Commencement Date, Owner leases to Operator, and Operator leases from Owner, the Leased Premises in accordance with the terms and conditions of the Agreement. During the Agreement's Term, Operator shall have the exclusive right (i) to use and possess the Leased Premises and Built Easements Area in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Leased Premises, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on, over, across, and through the Leased Premises; and (iv) to undertake such other activities on the Leased Premises that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements, development and operation of communications systems, and site tours of the Project for visitors and other interested parties.

10. PERMITTED USES. Operator leases the Leased Premises for the following permitted uses: to install, erect, construct, reconstruct, operate, use, maintain, repair, replace, relocate and remove (all of the foregoing, individually and collectively, are to "**Build**") all or any part or component of the Improvements to be or already located on, over, or under Leased Premises. Operator may exercise its right

to use all or any part of the Leased Premises and Easements as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator and Operator Parties, and using such vehicles as Operator deems necessary or advisable, including, but not limited to, passenger vehicles, trucks, tractor-trailers, and other commercial vehicles (collective, all of the foregoing are “**Vehicles**”).

11. QUIET ENJOYMENT. Owner agrees that Operator shall quietly and peaceably hold, possess and enjoy the Leased Premises and Easements pursuant to the terms of the Agreement. Owner shall defend title to the Leased Premises and the Easements, and the use and occupancy of the same, against the claims of all others, except those claiming by or through Operator.

12. MINERAL RIGHTS. “**Minerals**” shall mean oil, gas, and other hydrocarbons and non-hydrocarbons, coal, asphalt and coalbed gas, uranium, thorium, bauxite, iron ore, copper, silver, gold and other types of metallic ores and metallic minerals, granite, limestone, dolomite, sandstone, silica sand, sand, gravel, sand clay gravel, sand and gravel mix, fill sand, flume sand, common and specialty clays and shales and other minerals. Owner will not be entitled to use, or authorize the use any part of the surface of the Leased Premises and Built Easements Area for the purpose of exploring, drilling, or mining for Minerals, without the prior written consent of Operator.

13. GRANT OF EASEMENTS. As of the Commencement Date, Owner shall grant to Operator, and Operator shall accept from Owner, the following easements and related rights on, over, under, across, and through portions of the Owner’s Property in accordance with the terms and conditions of the Agreement. All Easements granted under the Agreement shall automatically terminate upon six (6) months following expiration of the Term or earlier termination of the Agreement. Prior to the exercise of the Option, Operator will pre-identify easement locations and these locations shall be subject to approval by Owner, which approval may not be unreasonably withheld, conditioned, or delayed.

a. Solar Easement. An irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of solar energy resources and to ensure adequate exposure of the Solar Panels (defined in Section 7.1.1) to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any Solar Panel is or may be located at any time, from time to time and for a distance from each such location to the boundaries of the Owner’s Property, together vertically through all space located above the surface of the Owner’s Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Owner’s Property through each such location to each point and on and along such line to the opposite exterior boundary of the Owner’s Property. Owner will not interfere with, and will not permit or suffer any third party (other than Operator and Operator Parties) to (i) interfere with the free, unobstructed and open access to the sun, solar speed or solar direction on, over, across, and through the Owner’s Property (ii) cause a decrease in the output or efficiency of any Solar Panel or (iii) interfere with Operator’s operation of the Project or exercise of any rights granted in this Agreement. For the avoidance of doubt, Owner is granting to Operator a “solar energy easement” as defined in ORS 105.885(2), and to the extent applicable, the terms of this Section 13.a. are intended to comply with the requirements set forth in ORS 105.895. Operator’s rights herein include an easement right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation now or hereafter existing on the Owner’s Property which obstruct receipt of or access to sunlight to the Project.

b. Effects Easement. Owner grants to Operator an exclusive easement on, over, under, across, and through Owner’s Property for Operator to cause visual, view, light, flicker, noise,

shadow, vibration, electromagnetic, electrical, and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property. Owner hereby accepts such interference and effects attributable to the Project and waives any right that Owner may have to object to such interference and effects (and Owner releases Operator from any claims Owner may have with respect to such interference and effects, including without limitation any claim for nuisance).

c. Construction Easement. A non-exclusive easement on, over, under, across, and through the specified portions of Owner's Property for the reasonable, temporary storage of and movement of materials, Vehicles, and other items related to the installation, erection, construction, operation, use, maintenance, repair, replacement, removal and deconstruction of the Project.

d. Transmission and Interconnection Easement. A non-exclusive easement and right to Build any and all of the following from time to time, on, over, under, across, and through the specified portions of Owner's Property, in connection with the Project:

i. a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables; and

ii. facilities consisting of one or more Electrical Upgrades for electrical collection, to step up the voltage, interconnect to transmission line or lines or distribution line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Solar Panels, regardless where located.

e. Access Easement. A thirty-foot (30') wide non-exclusive access easement for unobstructed vehicular (for all Vehicles) and pedestrian access and ingress to and egress from the Project, Leased Premises, and at least one (1) public roadway (which shall be identified and mutually agreed to by Owner and Operator), and to Build Roadway Improvements on a mutually agreed upon portion of the Owner's Property (the "**Access Easement**"). In the event either Party installs a fence that may impede the Access Easement, a gate that is at least fifteen feet (15') wide must be put in place to allow for full use of the easement and any key or access code related to a gate across the easement must be provided to all Parties.

f. Self Help. A right to and easement on, over, under, across, and through the Owner's Property to prevent and to remedy any Interference, including but not limited to the right to remove any structures or objects and the right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Owner's Property which, in Operator's sole opinion, might cause Interference or endanger the Project. Operator shall notify Owner before making any such removals and shall charge Owner for the cost of the same. Owner shall pay Operator within thirty (30) days of receiving an invoice for the costs contemplated in this Section.

g. Built Easements Area. The land underlying the Easements described in Section 13(c), 13(d), and 13(e), is known as the "**Built Easements Area**" the location of which will be approximately depicted on Exhibit C. The Built Easements Area may be altered in accordance with the terms of the Agreement.

h. Easements are "appurtenant" and "in gross". To the extent permitted and/or not prohibited Applicable Laws, the Easements are appurtenant to the Leased Premises and Operator's leasehold interest, with the Leased Premises and such leasehold interest as the dominant estate, and the specified portions of the Owner's Property as the servient estate, and to the extent prohibited and/or not so permitted, the Easements are easements "in gross," which means, among other things, that they are interests personal to and for the benefit of Operator, and its successors and assigns, as owner of the rights created by the Easements. In any event, the Easements are expressly assignable in conformance with Section 14 of the Agreement.

14. INTERFERENCE. Neither Owner's activities nor the exercise of any rights or interests given or granted by Owner on the Owner's Property, shall, currently or prospectively, interfere with, impair or materially increase the cost of (i) the construction, installation, maintenance or operation of any Improvements, (ii) vehicular or pedestrian access to, or the transmission of energy from, any Improvements, (iii) any operations of Operator on the Leased Premises or Easements or with respect to any Improvements or (iv) the free enjoyment and exercise of any other rights or benefits given to or permitted Operator hereunder. Without limiting the generality of the foregoing, Owner shall not interfere with or impair the lateral or subjacent support for the Improvements, or engage in any other activity on the Owner's Property that will interfere with the development, permitting, construction, operation or maintenance of the Improvements.

15. IMPROVEMENTS. Operator shall have the right, at its sole cost and expense, to Build all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of portions of the Project on the Leased Premises and Built Easements Area (collectively, "**Work**"). The main Improvements include, but are not limited to:

a. **"Battery Facilities,"** which shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

b. **"Collection Facilities,"** which shall mean all improvements and equipment whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes, and interconnection facilities.

c. **"Roadway Improvements,"** which shall mean all improvements that may be necessary to Build any new and existing roadways and other means of ingress and egress on, over, under, across, and through and along the Owner's Property, including, without limitation, paving or surfacing of the roadways with asphalt, gravel or other roadway materials, installation of road signs and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities.

d. **"Solar Panels,"** which shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, photovoltaic panels, foundations, support structures, braces, and related equipment.

e. **"Electrical Upgrades,"** which shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, all structures, equipment, enclosures, fencing, security

devices, and other electrical and communications equipment necessary to condition and increase the voltage of electricity generated by the Project to make it suitable for transmission on, and to deliver it to, Collection Facilities connected to an electric power grid or other system.

f. **“Telecommunication Facilities,”** which shall mean all improvements and equipment whose purpose is to provide telecommunication services solely relating to the Project or any of Operator’s solar powered projects, including telephone, closed-circuit television, microwave, internet, computer data and other telecommunication services.

g. Ownership of Improvements. Except as otherwise stated in the Agreement, all Improvements shall remain the personal property of Operator and not be or be deemed to be a fixture upon the Owner’s Property, and Owner shall have no right, title or interest therein. Owner expressly waives any consensual, statutory and common law liens on the Improvements to which Owner, or any third party claiming by or through Owner, might otherwise be entitled.

16. RIGHT TO MORTGAGE. Operator may, upon written notice to Owner, but without requiring Owner’s consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security and other lien interests in all or any part of its interest in the Agreement or the Project. These various security interests in all or a part of the Agreement and the Project are collectively referred to as an **“Operator Mortgage”** and holder of each such security or other lien interest, an **“Operator Mortgagee”**. The Agreement provides rights to Operator Mortgagee.

17. ASSIGNMENT AND SUBLEASE. Operator shall have the right, to assign or sublease all or any part of the Agreement and the Operator Property, to one or more persons or entities (collectively **“Assignee”**). Each Assignee shall use the Project only for the uses permitted under the Agreement.

18. TERMINATION. Operator, at its sole option, shall have the right to terminate the Agreement and this Memorandum at any time and from time to time, with respect to all or any portion of the Project (such portion is a **“Partial Termination”**), during the Term by giving notice to Owner of such termination.

19. NOTICE. All notices given or permitted to be given hereunder shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party. Notice is considered and deemed to be given, received, sent, and otherwise delivered only when in writing and (i) delivered in person to or refused by the recipient named below, (ii) sent by electronic mail delivery to the recipient, provided the delivery thereof is acknowledged by the receiving party (or, if such notice is not related to a default of the other Party, if such delivery is not acknowledged by the receiving party, but the sender’s email program evidences that such email was sent, and the sender does not receive any indication that such email did not get delivered properly to the receiving party), or (iii) on the next business day after the proper and timely delivery, with delivery charges prepaid, to a national, reputable overnight courier or delivery service addressed by name and address to the Party or person intended as follows:

Notice to Owner:

Ross T. Fleming and Anna M. Fleming
5351 Lombardy Lane
Klamath Falls, OR 97603
flemingfarmsaf@gmail.com
(541) 891-7734

Notice to Operator: Cloudbreak Energy Oregon, LLC
4845 Pearl East Circle
Suite 118 #53242
Boulder, CO 80301
Attn: Zachary Brammer and Bobby Dishell
zach@cloudbreakenergy.com; bobby@cloudbreakenergy.com;
legal@cloudbreakenergy.com
(970) 580-5652

Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a Party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

20. MISCELLANEOUS PROVISIONS.

a. Successors and Assigns. The terms and provisions of this Memorandum shall run with the Owner's Property and be binding on and inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties. In accordance with the Agreement, Operator may authorize other persons or entities to use the Project for the purposes stated in the Agreement in its reasonable discretion without Owner's consent.

b. Legal Matters. Should any action be brought arising out of this Memorandum, the primarily prevailing Party shall be entitled to reasonable attorneys' fees and costs and expenses, and any judgment or decree rendered in any such actions or proceedings which shall include an award thereof. All legal expenses or attorneys' fees described in this Memorandum include those fees and costs, whether or not incurred in connection with collection, mediation, arbitration, and litigation, and if incurred in connection with litigation, including such fees, expenses, and costs as are incurred at trial and on appeal or discretionary review. This Memorandum shall be governed by and interpreted in accordance with the then existing laws of the State of Oregon, without regard to any choice of law provisions, and the County or City in which the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Memorandum, to be heard in any state or federal court having jurisdiction in or with respect to such County or City. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Memorandum shall be to the court of competent jurisdiction.** Unless otherwise expressly provided for in the Agreement, no Party will be liable to the other Party for indirect, exemplary, incidental, special, punitive or consequential damages, including, without limitation, lost profits, whether for breach of contract, in tort, at law or otherwise, howsoever caused. The agreements contained herein are not intended, nor shall the same be deemed or construed, to create a partnership between Owner and Operator or to make them joint ventures.

c. Severability. If any term or provision of this Memorandum, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Memorandum or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

d. Counterparts. This Memorandum may be executed in any number of counterparts, which together shall constitute one and the same instrument.

21. OTHER TERMS. In addition to those terms referenced herein, the Agreement contains numerous other terms, covenants and conditions, and notice is hereby given that reference should be made to the Agreement directly with respect to the details of such terms, covenants, and conditions. In the event of a conflict between the provisions of this instrument and the Agreement, the provisions of the Agreement shall control. The exhibits, schedules, recitals, and Agreement are incorporated herein by this reference.

22. AGREEMENT TO COOPERATE. At the request of Owner after expiration of the termination of the Agreement, Operator shall reasonably cooperate with Owner in all respects with obtaining the removal of the Memorandum from title, including without limitation executing a termination of Memorandum in form reasonably required by Owner.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first written above.

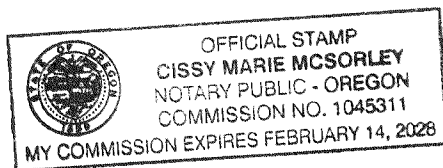
OWNER

Ross T Fleming
Ross T. Fleming

State of OREGON)
County of Blaine) ss.

On this 01 day of October, 2024, before me
Cissy Marie McSorley, a Notary Public in
and for said state, personally appeared
Ross T Fleming known or identified to me to
be the person whose name is subscribed to the within
Instrument and acknowledged to me that he executed
same.

IN WITNESS WHEREOF, I have hereunto set my hand
affixed my official seal the day and year in this certificate
first above written.



Cissy Marie McSorley
Notary Public for Oregon
My Commission Expires: 02-14-2028

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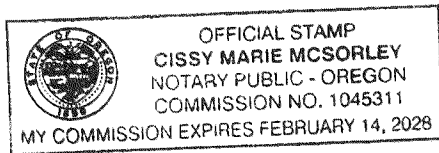
OWNER

Anna M Fleming
Anna M. Fleming

State of OREGON)
County of Clatsop)ss.

On this 01 day of October, 2024, before me
Cissy Marie M. Sallie, a Notary Public in
and for said state, personally appeared
Anna M Fleming known or identified to me to
be the person whose name is subscribed to the within
Instrument and acknowledged to me that she executed
same.


IN WITNESS WHEREOF, I have hereunto set my hand
affixed my official seal the day and year in this certificate
first above written.



Cissy Marie M. Sallie
Notary Public for Oregon
My Commission Expires: 02-14-2028

[Remainder of page intentionally blank. Signatures continue on following page.]

Cloudbreak Energy Oregon, LLC,
a Delaware limited liability company

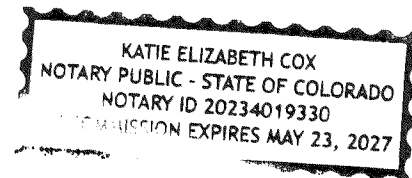
By: 
Name: James C. O'Connell
Title: President & CEO

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

Witness my hand and official seal

My commission expires: May 23, 2027


Notary Public



SCHEDULE A to EXHIBIT E

OWNER'S PROPERTY

A portion of the following real property located in the County of Klamath, State of Oregon:

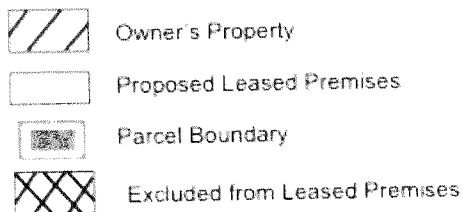
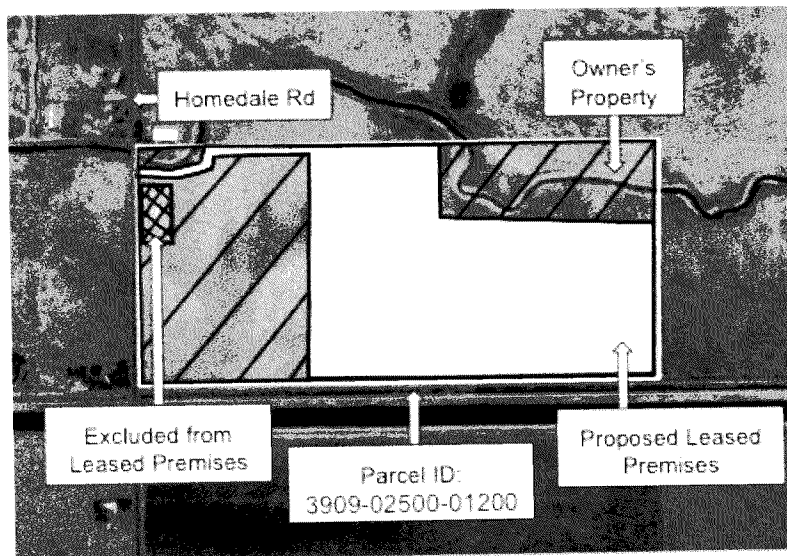
Parcel number: 3909-02500-01200

Legal:

The following described real property situated in Klamath County, Oregon:

PARCEL 1: That portion of S½SW¼, in Section 25, Township 39 South, Range 9 E.W.M. EXCEPTING HOWEVER, from the effect of this conveyance, the South 126.7 feet thereof; Containing after making the aforesaid exception, 72.3 acres, and SAVING and EXCEPTING any portion lying in Homedale Road.

Depiction:



SCHEDULE B to EXHIBIT E

Built Easements Area