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*Space above this line for Recorder's use.*

***After recording, return to:***

**Grantee**

Oregon DEQ  
165 E. 7<sup>th</sup> Ave., Suite 100  
Eugene, OR 97401  
Attention: Donald Hanson

**Grantor**

Eugene Water & Electric Board  
4200 Roosevelt Blvd.  
Eugene, OR 97402  
Attention: Jared Rubin

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes (“EES”) is made on August 3, 2020 between the Eugene Water & Electric Board (“EWEB” or “Grantor”) and the State of Oregon, acting by and through the Oregon Department of Environmental Quality (“DEQ” or “Grantee”).

**RECITALS**

A. Grantor EWEB is the owner of certain real property located at the 700 block of East 8<sup>th</sup> Avenue, Eugene, Oregon in Lane County (the “Property”), consisting of Tax Lot 1501, the approximately 8,520 square feet of land within the cul-de-sac at the northeastern terminus of East 8<sup>th</sup> Avenue, and the land within the following two tax parcels: (1) Tax Lot 1500, Section 32, Township 17 South, Range 3 West; and (2) Tax Lot 1600, Section 32, Township 17 South, Range 3 West. The legal descriptions of Tax Lots 1500, 1600, and 1501 are set forth in Exhibit A to this EES. The Property is depicted in Exhibit B to this EES. The Property is referenced under the name Eugene Manufactured Gas Plant (Former), ECSI #1723 in the files of DEQ’s Environmental Cleanup Program at its Western Region office located 165 E. 7<sup>th</sup> Avenue, Suite 100, Eugene Oregon, and telephone 541-686-7838. Interested parties may contact the Western Region office to review a detailed description of the risks from contamination remaining at the Property and described in Focused Feasibility Study, Former Manufactured Gas Plant Site, Eugene, Oregon dated April 2006, by Swanson Hydrology & Geomorphology and Windward LLC.

B. On January 5, 2015, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for Tax Lots 1500 and 1600, referenced as the “EWEB-owned Portion,” in a Record of Decision. On January 21, 2015, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for Tax Lot 1501, referenced as “the Cul-de-Sac Portion,” in a separate Record of Decision. The remedial actions required, among other things: excavation and disposal of high concentration

residuals/waste at the first gas plant structure and the small relief holder; assessment and removal of waste residuals from the vaults at the large gas holder; capping contaminated soils with asphalt; stabilization of the bank of the Willamette River to prevent exposure and prevent migration of contaminants in soil; recording of this EES; restricting groundwater use; restricting residential use; restricting the construction of any buildings meant for human occupancy; maintenance of the cap; and implementation of a Site Management Plan.

C. EWEB and DEQ are parties to a Consent Judgment that was entered in the Lane County Circuit Court of the State of Oregon on August 9, 2019, under which EWEB agreed to implement the selected remedial action, including the required institutional controls.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this EES constitutes an admission by EWEB of any liability for the contamination described in the EES.

## **1. DEFINITIONS**

1.1 "Beneficial use" has the meaning set forth in OAR 340-122-0115.

1.2 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

1.3 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.

1.4 "Engineering control" has the meaning set forth in OAR 340-122-0115.

1.5 "Hazardous substance" has the meaning set forth in ORS 465.200.

1.6 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

1.7 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

## **2. GENERAL DECLARATION**

2.1 Grantor, in consideration of Grantee's issuance of a Certification of Completion (with continuing obligations), grants to DEQ an easement for access and accepts the equitable

servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property, and the equitable servitudes granted in Section 3 and easement granted in Section 4 below run with the land for all purposes, are binding upon all current and future owners of the Property as set forth in this EES, and inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

### **3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)**

3.1 **Groundwater Use Restrictions.** Owner may not extract groundwater through wells or by other means or use groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation or maintenance of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2. **Asphalt Cap Engineering Control.** Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate the cap or associated appurtenances currently in place over the upland portion of the Property or jeopardize the cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion. Associated appurtenances may include concrete paving, geomembrane-lined facilities, and other DEQ-approved protective covers over contamination. Owner will maintain the cap and any associated appurtenances to the cap in accordance with the Site Management Plan approved in writing by DEQ on June 24, 2020, along with any future changes to the Site Management Plan approved by DEQ.

3.3 **Shoreline Inspection and Maintenance Engineering Control.** Owner shall conduct shoreline inspections, bank stabilization measures, and reporting, as prescribed in the DEQ-approved Site Management Plan.

3.4 **Land Use Restrictions.** The following operations and uses are prohibited on the Property:

- a. Residential use of any type; and
- b. Buildings meant for human occupancy, unless additional site-specific analysis is conducted, and with DEQ approval.

3.5 **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

#### **4. EASEMENT (RIGHT OF ENTRY)**

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

#### **5. RELEASE OF RESTRICTIONS**

5.1 Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2 Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

#### **6. GENERAL PROVISIONS**

6.1 **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 30 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3.2 or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2 **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Lane County zoning code or any successor code. As of the date of this EES, the base zone for Tax Lots 1500 and 1600 is Downtown Riverfront Special Area Zone – Cultural Landscape and Open Space. The cul-de-sac is public right-of-way.

6.3 **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of, implementation of, and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4 **Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES. In addition, Owner will maintain records documenting inspection and reporting as outlined in the DEQ-approved Site Management Plan. Owner will submit inspection records to DEQ within 30 days of receipt of a notice letter from DEQ of its periodic review of compliance with this EES. Reports provided to DEQ in response to this notification must include sufficient detail to allow DEQ to determine compliance with EES requirements and include a photographic log that supports the report's narrative.

6.5 **Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the county in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.6 **Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.7 **Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the Consent Judgment or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: Eugene Water & Electric Board

By: [Signature] Date: 8/5/2020  
Frank Lawson, General Manager

STATE OF OREGON )  
County of Lane ) ss.

The foregoing instrument is acknowledged before me this 5<sup>th</sup> day of August, 2020, by Frank Lawson of the Eugene Water & Electric Board, on its behalf.

[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 7.12.2022

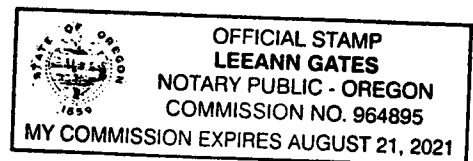
GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: August 3, 2020  
Michael E. Kucinski, Manager  
Western Region Cleanup and Emergency Response

STATE OF OREGON )  
County of Lane ) ss.

The foregoing instrument is acknowledged before me this 3rd day of August, 2020, by Michael E. Kucinski of the Oregon Department of Environmental Quality, on its behalf.

[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: Aug, 21 2021



**EXHIBIT A-1  
MGP Site (TL 1500)  
DESCRIPTION**

Situated in the City of Eugene, Lane County, Oregon in the Northwest 1/4 of Section 32 in Township 17 South, Range 3 West of the Willamette Meridian and described as follows:

Being a portion of the lands that were conveyed to the City of Eugene, a municipal corporation, for the use and benefit of the Eugene Water and Electric Board, in the Warranty Deed that was recorded March 25, 1976 in Reel 787R at Reception Number 7613750 in Lane County Oregon Deed Records. The perimeter of which portion is described more particularly as follows:

Commencing at the iron rod set in a concrete monument at the intersection of Hilyard Street and East 9th Avenue; thence South 88°12'48" East 148.53 feet to a point; thence North 1°47'12" East 367.33 feet to a point marked by a railroad spike; and thence North 1°45'12" East 59.94 feet to the **True Point of Beginning** of the portion being described herein.

Thence, leaving said **True Point of Beginning**, and running along the perimeter boundary of said lands that were conveyed in Reception Number 7613750 the following seven numbered courses: (1) South 88°14'42" East 86.03 feet to point marked by an iron pin; (2) North 46°45'18" East 38.00 feet to point marked by an iron pin; (3) North 01°45'18" East 135.76 feet to point marked by an iron pin on the left bank of the Willamette River; (4) along said left bank of the Willamette River North 64°05'27" West 52.09 feet to a point on said left bank that is marked by an iron pin; (5) South 87°20'18" West 54.91 feet; (6) North 40°02'42" West 115.74 feet; and (7) South 40°36'18" West 219.62 feet to a point of cusp at the beginning of a non-tangent curvature to the right that lies at the northwesterly point of curvature in the curved portion of the general northeast lines of the lands that were conveyed to the City of Eugene, Oregon, in that certain Deed that was recorded January 18, 1977 in Reel 830R at Reception Number 7703299 in Lane County Oregon Deed Records; thence, in a general southeasterly direction and along said general northeast lines of the lands that were conveyed in said Reception Number 7703299 the following two numbered courses: (8) along said non-tangent curve to the right, having a radius center that bears South 49°23'42" East 41.00 feet, a central angle of 155°37'25", and a long chord of South 61°34'42" East 80.15 feet, an arc distance of 111.36 feet to a point of non-tangent line; and (9) along said non-tangent line South 55°15'42" East 106.31 feet to the most easterly corner of said lands that were conveyed in Reception Number 7703299, which corner lies on the south line of aforesaid lands that were conveyed in Reception Number 7613750; and thence along said south line the following one numbered course: (10) South 86°47'02" East 43.50 feet **returning to the True Point of Beginning** and containing 49,733 square feet, more or less.

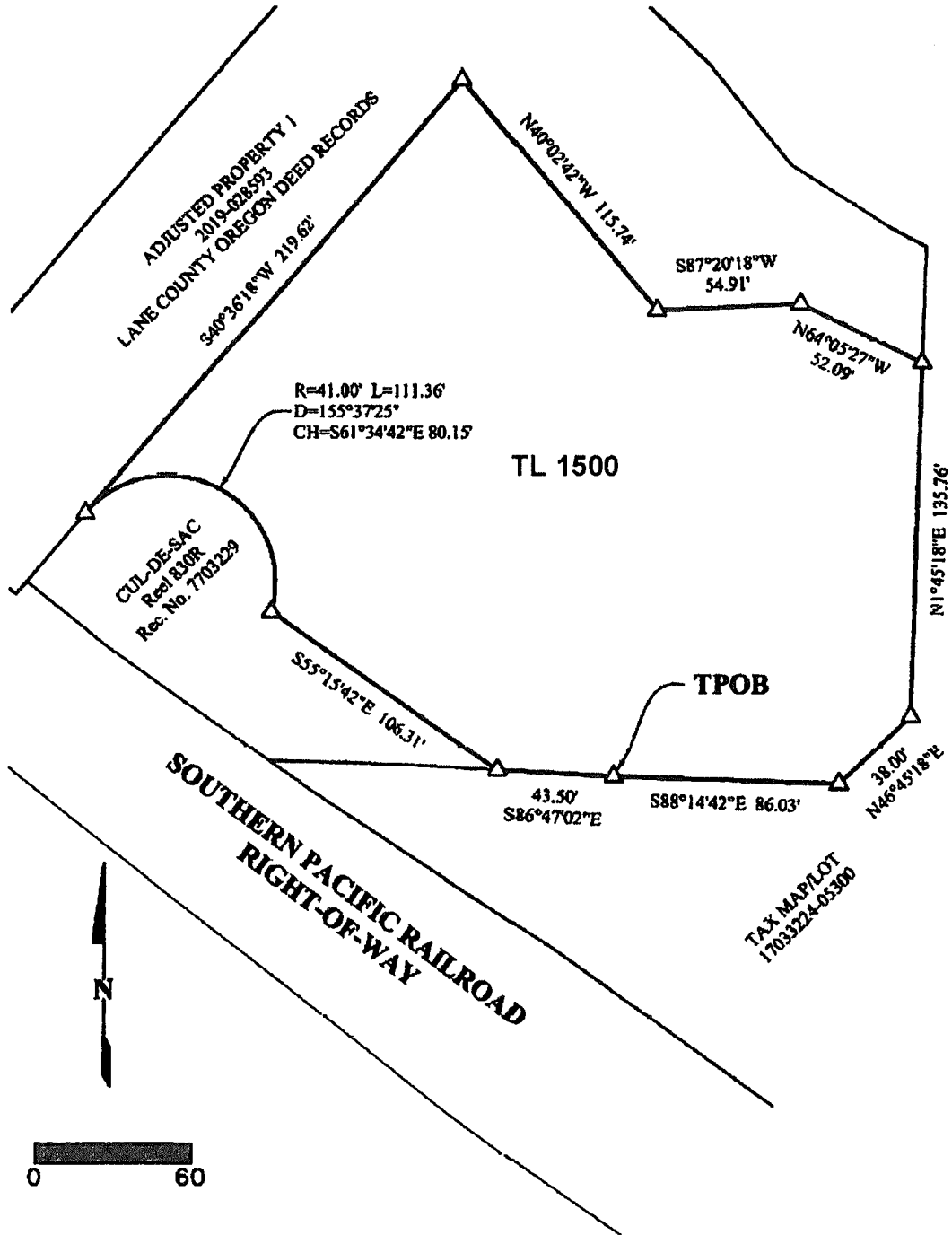
Bearings as shown on the Survey Map by James W. Colton that was filed March 25, 2016 as County Survey File Number 43582 were used as the basis of bearings used in the above description.

*July 16, 2019*  
**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

*REX BETZ*  
**OREGON  
JULY 20, 1983  
REX A. BETZ  
#2608**

*Lic Exp 12/31/19*

EXHIBIT A-1  
MGP Site (TL 1500)  
DEPICTION





**EXHIBIT A-2 (TL 1600)  
DESCRIPTION**

**ADJUSTED PROPERTY 1  
2019-028593  
LANE COUNTY OREGON DEED RECORDS**

SITUATED in the Northwest 1/4 of Section 32 in Township 17 South, Range 3 West of the Willamette Meridian in the City of Eugene, Lane County Oregon and described as follows:

BEING (a) a portion of the lands that were conveyed to the City of Eugene, by and through the Eugene Water and Electric Board, an Oregon municipal utility, and described as "Adjusted Property 2" in that certain "Declaration of Property Line Adjustment Deed 8" that was recorded April 17, 2018 at Reception Number 2018-017632 in Lane County Oregon Deed Records; and (b) a portion of the lands that were conveyed to the City of Eugene, by and through the Eugene Water and Electric Board, an Oregon municipal utility, in that certain Quitclaim Deed that was recorded in 1976 in Reel 777R at Reception Number 7601834 in Lane County Oregon Deed Records. The perimeter boundary of said lands is more particularly described as follows:

BEGINNING at the most easterly corner of "Adjusted Property 1" of said "Declaration of Property Line Adjustment Deed 8", which corner is marked by a 2-1/2" mag nail with 1-1/2" brass washer marked "EGR & ASSOC."; Thence, leaving said POINT OF BEGINNING and running northeasterly along the northwest line of said "Adjusted Property 2 of Declaration of Property Line Adjustment Deed 8", the following one numbered course: (1) North 40° 31' 00" East 54.99 feet, more or less, to the left bank of the Willamette River. Thence, southeasterly along said left bank of the Willamette River, the following eleven numbered course: (2) South 49°25'05" East 30.55 feet, (3) South 53°03'22" East 67.56 feet, (4) South 53°50'47" East 21.66 feet, (5) South 48°58'24" East 44.76 feet, (6) North 85°13'45" East 18.50 feet, (7) South 62°06'06" East 35.54 feet, (8) South 59°42'16" East 42.83 feet, (9) South 46°35'25" East 44.33 feet, (10) South 39°13'52" East 49.00 feet, (11) South 57°17'19" East 44.51 feet, and (12) South 62°38'48" East 16.31 feet to a point that is marked by an iron pin [as called Rec. No. 7601834] in that lies on the east line of said lands that were conveyed in Reception Number 7601834; Thence, southerly along said east line, the following one numbered course: (13) South 01°45'18" West 44.89 feet to the southeast corner of said lands that were conveyed in Reception Number 7601834, which corner is marked by an iron pin [as called Rec. No. 7601834]; Thence, in a general westerly direction along the general southwesterly lines of said lands that were conveyed in Reception Number 7601834, the following four numbered courses: (14) North 64°05'27" West 52.09 feet to a point that is marked by an iron pin [as called Rec. No. 7601834], (15) South 87°20'18" West 54.91 feet to a point that is marked by an iron pin [as called Rec. No. 7601834], and (16) North 40°02'42" West 115.74 feet to a point that is marked by an iron pin [as called Rec. No. 7601834], and (17) South 40°36'18" West 42.08 feet to a point that is marked by an iron pin [as called Rec. No. 7601834]; Thence, leaving said general southwesterly line of said lands that were conveyed in Reception Number 7601834, along the northwest line of the lands that were conveyed to the City of Eugene, by and through the Eugene Water and Electric Board, an Oregon municipal utility, in that certain Warranty Deed that was recorded March 25, 1976 in Reel 787R at Reception Number 7613750 in Lane County Oregon Deed Records, the following one numbered course: (18) South 40°36'18" West 218.47 feet to a point that lies on the northeast right-of-way line of the Southern Pacific Company Railroad; Thence, northwesterly along said right-of-way line, the following two numbered courses: (19) North 54°59'28" West 12.23 feet, and (20) North 52°18'58" West 60.21 feet to a point that is

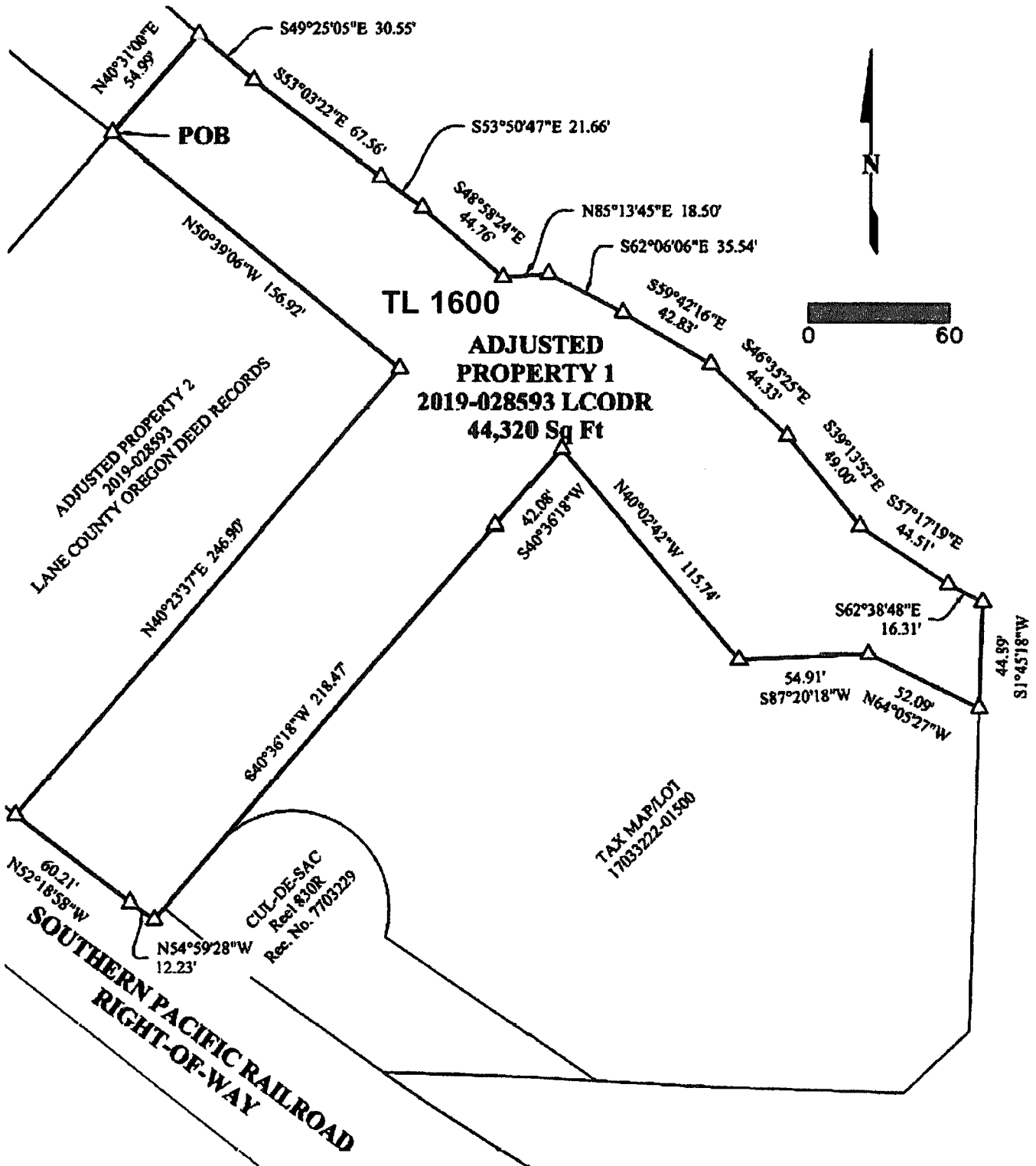
**EXHIBIT A-2 (TL 1600)  
DESCRIPTION (Cont)**

marked by a 5/8" x 15" rebar with orange plastic cap marked "EGR & ASSOC."; Thence, northeasterly and leaving said right-of-way line, crossing through said "Adjusted Property 2 of Declaration of Property Line Adjustment Deed 8" and into said lands that were conveyed in Reception Number 7601834, the following one numbered course: (21) North 40°23'37" East 246.90 feet to a point that is marked by a 5/8" x 30" rebar with orange plastic cap marked "EGR & ASSOC."; and Thence northwesterly from last said point, the following one numbered course: (22) North 50°39'06" West 156.92 feet Returning to the POINT OF BEGINNING and containing 44,320 square feet, more or less.

Bearings and distances shown hereon are taken and derived from data as shown on the Survey Maps by (a) James W. Colton that was filed March 25, 2016 as County Survey File Number 43582 and (b) EGR & Associates, Inc. that was filed April 23, 2018 as County Survey File Number 44308.

July 16, 2019  
**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**  
*[Signature]*  
**OREGON  
JULY 20, 1983  
REX A. BETZ  
#2608**  
Lic. Exp 12/31/19

EXHIBIT A-2 (TL 1600)  
 DEPICTION  
 ADJUSTED PROPERTY 1  
 2019-028593



**EXHIBIT A-3  
CUL-DE-SAC (TL 1501)  
DESCRIPTION**

Situated in the City of Eugene, Lane County, Oregon in the Northwest 1/4 of Section 32 in Township 17 South, Range 3 West of the Willamette Meridian and described as follows:

Being a portion of the lands that were conveyed to the City of Eugene, a municipal corporation, for the use and benefit of the Eugene Water and Electric Board, in the Warranty Deed that was recorded March 25, 1976 in Reel 787R at Reception Number 7613750 in Lane County Oregon Deed Records. The perimeter of which portion is described more particularly as follows:

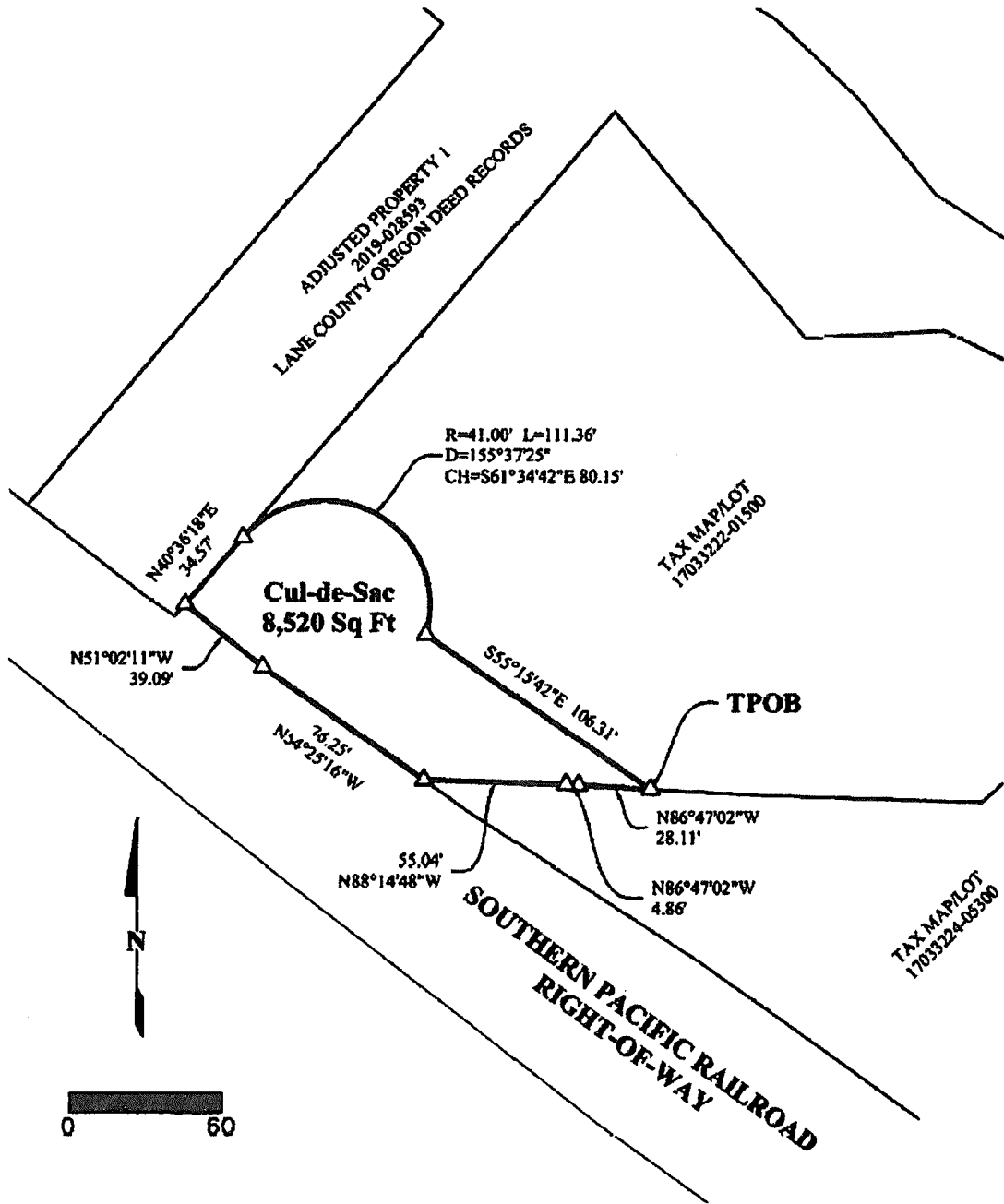
Commencing at the iron rod set in a concrete monument at the intersection of Hilyard Street and East 9th Avenue; thence South 88°12'48" East 148.53 feet to a point; thence North 1°47'12" East 367.33 feet to a point marked by a railroad spike; thence North 1°45'12" East 59.94 feet to the true point of beginning of said lands that were conveyed in Reel 787R, Reception Number 7613750; and thence North 86°47'02" West 43.50 feet to the **True Point of Beginning** of the portion being described herein.

Thence, leaving said **True Point of Beginning**, North 86°47'02" West 28.11 feet to a point marked by an iron pin; thence continuing North 86°47'02" West 4.86 feet to a point marked by an iron pin; thence North 88°14'48" West 55.04 feet to a point on the north line of the Southern Pacific Railroad right-of-way; thence northwesterly along said north line: North 54°25'16" West 76.25 feet and North 51°02'11" West 39.09 feet; thence North 40°37'29" East 34.57 feet to the beginning of a tangent curvature to the right; thence along said tangent curve to the right, having a radius center that bears South 49°23'42" East 41.00 feet, a central angle of 155°37'25", and a long chord of South 61°34'42" East 80.15 feet, an arc distance of 111.36 feet to a point of non-tangent line; and thence along said non-tangent line South 55°15'42" East 106.31 feet **returning to the True Point of Beginning** and containing 8,520 square feet, more or less.

Bearings as shown on the Survey Map by James W. Colton that was filed March 25, 2016 as County Survey File Number 43582 were used as the basis of bearings used in the above description.

*July 16, 2019*  
**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**  
*REX A. BETZ*  
**OREGON  
JULY 20, 1988  
REX A. BETZ  
#2608**  
*Lic Exp 12/31/19*

EXHIBIT A-3  
 CUL-DE-SAC (TL 1501)  
 DEPICTION



**Exhibit B**  
**EWEB Property**

WILLAMETTE RIVER

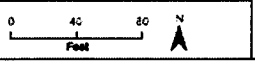
EXHIBIT A-2  
AD. PROPERTY 1  
(TL 1600)

EXHIBIT A-1  
TAX MAP 17-03-32-22  
(TAX LOT 1500)

EXHIBIT A-3  
CUL-DE-SAC  
(TL 1601)

HILYARD STREET

SOUTHERN PACIFIC RAILROAD



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