

2017-005810

Klamath County, Oregon

05/30/2017 11:32:00 AM

Fee: \$92.00

37782AM  
RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
DOCUMENT TO:

Jared Rann, Esq.  
Embree Asset Group, Inc.  
4747 Williams Drive  
Georgetown, TX 78633

Space Above This Line  
for Recorder's Use Only

**EASEMENT AGREEMENT**  
**WITH COVENANTS AND RESTRICTIONS**

THIS EASEMENT AGREEMENT WITH COVENANTS AND RESTRICTIONS (this "**Agreement**") is made this 26 day of May, 2017, by and between Taylor A. Day (hereinafter referred to as "**Day**") and DG-Chiloquin, OR-1-UT, LLC (hereinafter referred to as "**DG**").

**WITNESSETH:**

WHEREAS, Day is the owner of that certain tract or parcel of land lying and being in Chiloquin, Oregon, being more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference (hereinafter referred to as the "**Day Tract**"); and

WHEREAS, DG acquired from Day and is the owner of that certain tract or parcel of land contiguous to the Day Tract and lying and being in Chiloquin, Oregon, and being more particularly described on Exhibit "B" attached hereto and made a part hereof by this reference (hereinafter referred to as the "**DG Tract**"); the Day Tract and the DG Tract each being herein sometimes referred to individually as a "**Tract**" and collectively as the "**Tracts**"); and

WHEREAS, Day and DG desire to establish certain easements and rights benefiting and burdening the Tracts, as hereinafter provided.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, Day and DG do hereby covenant and agree as follows:

1. Benefited Parties/Binding Effect. The rights, easements and obligations established in this Agreement shall run with the land and be for the benefit of the Tracts and shall run with the land and be binding upon the Tracts. The owners of the Tracts may delegate the right

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to use and maintain the easements granted herein to their respective tenants, customers, invitees, employees, agents, contractors and licensees, successors and assigns.

2. Easements.

(a) Access/Egress from Hwy 422. DG hereby grants and conveys to Day, for the benefit of and as an appurtenance to the Day Tract, a non-exclusive, perpetual shared access/egress easement over, upon, across and through that easement area described in Exhibit "C" attached hereto and as shown on that Partition Plat LP 11-16, a replat of a portion of the Government Lots 1, 7 and 8 in the NE1/4 of Section 4, Township 35 South, Range 7 East, of the Willamette Meridian Klamath County, Oregon, recorded April 7, 2017 in Instrument 2017-003674 (the "**DG Easement Area**") and located on the DG Tract for the purposes of pedestrian and vehicular access, ingress and egress between the Day Tract and Highway 422 as shown crosshatched as the "DG Easement Area" on Exhibit "D". To the extent there is discrepancy between the legal description of the DG Easement Area on Exhibit "C" and the crosshatched depiction of the DG Easement Area on Exhibit "D" (specifically the northeast and southeast curved corners of the DG Easement Area where it abuts the Day Tract) the crosshatched depiction of the DG Easement Area on Exhibit "D" shall control. Such easement shall run with and bind the land described herein and shall be and remain in effect perpetually to the extent permitted by law and shall specifically exclude use by construction vehicles during any future construction of improvements on the Day Tract. However, in the event Day, or Day's successors and assigns wish to develop the Day Tract and are unable to obtain a separate construction access to the Day Tract from Highway 422/ Chiloquin Blvd, then Day shall have the right to use the DG Easement Area for construction vehicles to access the Day Tract subject to the following conditions: i) Day shall install a construction entrance on the Day Tract, which shall include rumble plates to dislodge dirt and debris from vehicle tires, as is customary on construction sites, and over which all construction vehicles and equipment must travel in order to exit the Day Tract onto the DG Tract; ii) such construction traffic shall not cause an unreasonable disruption to the business of any owner or tenant occupying the DG Tract; and iii) Day, or Day's successors and assigns shall be responsible for power washing the DG Easement Area daily to remove any dirt and debris caused by the use of the construction traffic.

(b) Proposed Future Cross Access off Hwy 97. If DG shall obtain and construct direct access to Hwy 97 (but DG shall have no obligation to do so), DG shall grant Day an easement in favor of the Day Tract, for shared access to and from Hwy 97 as depicted and labeled as "Future Access Drive Area" on Exhibit "D." Day shall have the independent right to obtain the necessary government approvals and to construct the curb cuts and entry for the Future Access Drive Area (subject to DG's tenant's prior written approval and at Day's sole cost and expense), in which case, DG shall grant Day the aforesaid

easement over the Future Access Drive Area. In the event DG decides to construct and reconfigure the driveways on the DG Tract such that there shall be ingress and egress between the DG Tract and Hwy 97 through the existing gas station adjacent to DG's south property line, DG shall grant to Day an easement in favor of the Day Tract, for shared access to and from Hwy 97.

This Agreement does not dedicate the easements created herein to the general public, nor does this Agreement restrict the use and development of the DG Tract. It is the intent of this Agreement to grant the easements set forth above without limiting the right of DG to alter, demolish, redevelop or, subject to the provisions of this Paragraph 2, improve the remainder of its Tract. Day and DG shall use the easement areas with due regard for the rights of one another. Day and DG agree to keep the easement areas free from obstacles or obstructions which would prevent or hinder the free passage of vehicular traffic within or across the easement areas except temporarily, for reasonable times and in a reasonable manner, for purposes of performing work permitted by this Agreement.

3. Restrictions on Seller's Tract. So long as the DG Tract is occupied by DG or its assigns for the purpose of operating a discount general merchandise store, Day covenants and agrees that Day shall not lease, rent, occupy, or allow to be leased, rented or occupied, any part of the Day Tract for the purpose of conducting business as or for use as a Dollar Express, Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Maxway, Big Lots, Odd Lots, Walgreens, CVS, Rite Aid, or any Wal-Mart concept. In addition, Day covenants and agrees not to lease, rent, occupy, or allow to be leased, rented or occupied, any part of the Day Tract to be used or operated for any of the following: (a) for any unlawful purpose or in any way which would constitute a legal nuisance to an adjoining owner or occupant; (b) as a discotheque, dance hall or night club; (c) as a massage parlor; (d) funeral parlor; (e) bingo parlor; (f) car wash; (g) any use which emits a strong, unusual, offensive or obnoxious odor, fumes, dust or vapors, or any extreme and obnoxious sounds which can be heard outside of any buildings on the either the DG Tract or the Day Tract, except that any usual paging system be allowed; (h) any assembling or manufacturing of heavy equipment, any distilling, refining, smelting, agricultural, or mining operation; (i) Intentionally Omitted; (j) any mobile home park, trailer court, labor camp, junk yard, recycling facility or stock yard; (k) any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located near the rear of any building); (l) any dry cleaners performing on-site cleaning services; (m) any automobile, truck, trailer or recreational vehicles sales, leasing, storage, display or body shop repair operation; (n) any living quarters, sleeping apartments or lodging rooms (except the foregoing shall not prohibit a national or local multi-unit hotel chain); (o) any veterinary hospital or animal raising facilities (except this provision shall not prohibit pet shops and shall not prohibit the provision of veterinary services in connection with pet shops or pet supplies business); (p) any establishment selling or exhibiting paraphernalia for use with illicit drugs, and establishment selling or exhibiting materials or devices which are adjudicated to be pornographic by a court of competent jurisdiction, and any adult bookstore, adult video store or adult movie theater; (q) any bar or tavern; provided, however, a bar within a restaurant shall be permitted; (r) any pool or billiard hall, gun range or shooting gallery, or amusement or video arcade; and (s) any use which creates fire, explosives or other hazards.

4. Restrictions on DG Tract. DG shall not build a block wall or fence taller than three (3) feet along the north boundary of the DG Tract, so long as the Day Tract is not zoned for residential use and provided DG is not required to do so by any governmental authority.

5. Insurance and Indemnification. Each of Day and DG shall maintain or cause to be maintained in full force and effect commercial general liability insurance for their respective use and enjoyment of the easement areas with a combined single limit of liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury to or personal injury or death of any person and consequential damages arising therefrom, and for property damage arising out of any one occurrence, and with minimum excess or umbrella policy limits in commercially reasonable amounts per occurrence insuring against personal injury, bodily injury and property damage, and the other party shall be an additional insured under such policy. Such insurance shall be procured from a company licensed in the State of Oregon. Such insurance shall provide that it shall not be cancelable without thirty (30) days prior, written notice to additional insureds. Upon request, each party shall provide a certificate of such insurance coverage to the other. Day shall indemnify and hold DG harmless from and against any and all loss, cost, damage, liability or expense (including reasonable attorneys' fees actually incurred and court costs) incurred by DG in connection with the exercise by Day of the easements and rights created herein, except to the extent caused by the negligence or willful act of DG, its employees, tenants, contractors, agents, invitees or licensees.

6. Extent of Liability. Notwithstanding any other provision contained in this Agreement to the contrary, Day and DG hereby expressly agree that the obligations and liability of each of them shall be limited solely to the fair market value of their respective Tracts as determined by a licensed MAI appraiser as of the date the acts or omissions giving rise to the liability occurred. Day and DG agree that any claim against a party hereto shall be confined to and satisfied only out of, and only to the extent of, such party's interest in its Tract, as such interest is constituted from time to time. Nothing contained in this paragraph shall limit or affect any right that any party might otherwise have to seek or to obtain injunctive relief or to specifically enforce the rights and agreements herein set forth, provided that such injunctive relief or specific performance does not involve the payment of money from a source other than such party's interest in its Tract, as such interest may be constituted from time to time.

7. Miscellaneous. This Agreement shall be governed in accordance with the laws of the State of Oregon. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers. No party hereto shall be obligated to take any action to enforce the terms of this Agreement or to exercise any easement, right, power, privilege or remedy granted, created, conferred or established hereunder. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns, and only with the prior written consent of Dollar General Corporation, so long as it, its successors, assigns or assignees is occupying the property. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

**Taylor A. Day:**

Date: 5-26-17

By: [Signature]  
Name: Taylor A. Day

STATE OF  
COUNTY OF

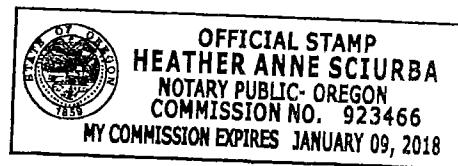
Oregon )SS  
Klamath

On 26 day of May, 2017, before me, Heather Sciurba, Notary Public, personally appeared Taylor A. Day, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]



DG-Chiloquin, OR -1-UT, LLC a Utah  
limited liability company

By: Embree Asset Group, Inc. its Member

Date: 5/25/17

By: [Signature]  
Name: Stephen R. Schreiber  
Title: Vice President – Real Estate Legal

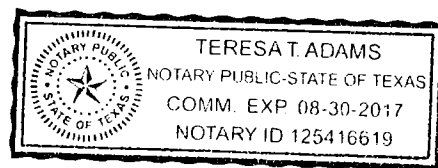
STATE OF Texas)SS  
COUNTY OF Williamson)

On the 25th day of May, 2017, before me, Teresa T. Adams, Notary Public, personally appeared Stephen R. Schreiber, as Vice President – Real Estate Legal of Embree Asset Group, Inc., a Texas corporation, on behalf of said corporation, as Member of DG-Chiloquin, OR-1-UT, L.L.C., a Utah Limited Liability Company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]



## Exhibit A – Day Tract Legal Description

PARCEL 1 OF PARTITION PLAT LP 11-16, A REPLAT OF A PORTION OF THE GOVERNMENT LOTS 1, 7 AND 8 IN THE NE1/4 OF SECTION 4, TOWNSHIP 35 SOUTH, RANGE 7 EAST, OF THE WILLAMETTE MERIDIAN KLAMATH COUNTY, OREGON, RECORDED APRIL 7, 2017 IN INSTRUMENT 2017-00367, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD AT THE NORTHEAST CORNER OF GOVERNMENT LOT 7, SECTION 4, TOWNSHIP 35 SOUTH, RANGE 7 EAST, OF THE WILLAMETTE MERIDIAN; THENCE NORTH 1° 24' 30" EAST A DISTANCE OF 362.15 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE SOUTH 89° 03' 38" EAST A DISTANCE OF 244.43 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE SOUTH 6° 53' 57" WEST A DISTANCE OF 364.18 FEET TO A POINT; THENCE SOUTH 6° 53' 57" WEST A DISTANCE OF 245.77 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC." ON THE NORTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 422; FOLLOWING SAID RIGHT-OF-WAY, THENCE SOUTH 48° 01' 30" WEST A DISTANCE OF 45.61 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; LEAVING SAID RIGHT-OF-WAY, THENCE NORTH 6° 53' 57" EAST A DISTANCE OF 238.90 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 90° 00' 00" WEST A DISTANCE OF 153.58 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 0° 07' 37" EAST A DISTANCE OF 30.95 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 88° 17' 53" WEST A DISTANCE OF 69.76 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE SOUTH 7° 21' 57" WEST A DISTANCE OF 20.10 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 90° 00' 00" WEST A DISTANCE OF 15.26 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC." ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 97; FOLLOWING SAID RIGHT-OF-WAY, THENCE NORTH 9° 20' 11" EAST A DISTANCE OF 30.28 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; LEAVING SAID RIGHT-OF-WAY, THENCE SOUTH 88° 00' 31" EAST A DISTANCE OF 61.38 FEET TO THE POINT OF BEGINNING.

CONTAINS 197245 SQUARE FEET OR 2.23 ACRES, MORE OR LESS

## Exhibit B – DG Tract Legal Description

PARCEL 2 OF PARTITION PLAT LP 11-16, A REPLAT OF A PORTION OF THE GOVERNMENT LOTS 1, 7 AND 8 IN THE NE1/4 OF SECTION 4, TOWNSHIP 35 SOUTH, RANGE 7 EAST, OF THE WILLAMETTE MERIDIAN KLAMATH COUNTY, OREGON, RECORDED APRIL 7, 2017 IN INSTRUMENT 2017-00367, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC." ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 97, SAID POINT BEING SOUTH 67° 16' 45" WEST A DISTANCE OF 71.83 FEET FROM THE NORTHEAST CORNER OF GOVERNMENT LOT 7, SECTION 4, TOWNSHIP 35 SOUTH, RANGE 7 EAST OF THE WILLAMETTE MERIDIAN; FOLLOWING SAID RIGHT-OF-WAY, THENCE SOUTH 9° 20' 11" WEST A DISTANCE OF 44.52 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE SOUTH 9° 20' 11" WEST A DISTANCE OF 80.32 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE SOUTH 9° 20' 11" WEST A DISTANCE OF 79.51 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; LEAVING SAID RIGHT-OF-WAY, THENCE SOUTH 88° 00' 31" EAST A DISTANCE OF 91.50 FEET TO A 1/2" IRON PIPE; THENCE SOUTH 1° 56' 09" WEST A DISTANCE OF 189.93 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC." ON THE NORTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 422; FOLLOWING SAID-RIGHT-OF WAY, THENCE NORTH 48° 01' 30" EAST A DISTANCE OF 215.88 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; LEAVING SAID RIGHT-OF-WAY, THENCE NORTH 6° 53' 57" EAST A DISTANCE OF 238.90 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 90° 00' 00" WEST A DISTANCE OF 153.58 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 0° 07' 37" EAST A DISTANCE OF 30.95 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 88° 17' 53" WEST A DISTANCE OF 69.76 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE SOUTH 7° 21' 57" WEST A DISTANCE OF 20.10 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC."; THENCE NORTH 90° 00' 00" WEST A DISTANCE OF 15.26 FEET TO THE POINT OF BEGINNING.

CONTAINS 68184 SQUARE FEET OR 1.57 ACRES, MORE OR LESS



### Exhibit C – DG Easement Area Legal Description

BEING A PORTION OF PARCEL 2 OF PARTITION PLAT LP 11-16, A REPLAT OF A PORTION OF THE GOVERNMENT LOTS 1, 7 AND 8 IN THE NE1/4 OF SECTION 4, TOWNSHIP 35 SOUTH, RANGE 7 EAST, OF THE WILLAMETTE MERIDIAN KLAMATH COUNTY, OREGON, RECORDED APRIL 7, 2017 IN INSTRUMENT 2017-00367, SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "AES INC." ON THE NORTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 422, SAID POINT BEING SOUTH 27° 43' 34" EAST A DISTANCE OF 314.07 FEET FROM THE NORTHEAST CORNER OF GOVERNMENT LOT 7, SECTION 4, TOWNSHIP 35 SOUTH, RANGE 7 EAST OF THE WILLAMETTE MERIDIAN; FOLLOWING SAID RIGHT-OF-WAY, THENCE SOUTH 48° 01' 30" WEST A DISTANCE OF 49.72 FEET TO A POINT; LEAVING SAID RIGHT-OF-WAY, THENCE NORTH 41° 58' 30" WEST A DISTANCE OF 16.14 FEET TO A POINT OF CURVATURE; THENCE ALONG SAID CURVE, CONCAVE NORTHEASTERLY, WITH A RADIUS OF 20.00, A DISTANCE OF 14.65 FEET, WITH A CHORD BEARING NORTH 20° 59' 15" WEST A DISTANCE OF 14.33 FEET TO A POINT; THENCE NORTH 0° 00' 00" EAST A DISTANCE OF 126.92 FEET TO A POINT; THENCE NORTH 90° 00' 00" EAST A DISTANCE OF 67.29 FEET TO A POINT; THENCE SOUTH 6° 53' 57" WEST A DISTANCE OF 119.91 FEET TO THE POINT OF BEGINNING.

CONTAINS 8149 SQUARE FEET OR 0.19 ACRES, MORE OR LESS

# Exhibit D – Easement Area

