

This Instrument Prepared by:
Jack A. Demetree, II
Byrd Campbell, P.A.
180 Park Ave. North, Suite 2A
Winter Park, FL 32789

**DECLARATION OF ACCESS EASEMENT
AND RESTRICTIONS**
(Crescent, Oregon)

This Declaration of Access Easement and Restrictions ("Declaration") is dated this 13th day of March, 2018, ("the Effective Date") by CD DG Crescent, LLC, a Texas limited liability company, its successors and assigns ("Declarant").

RECITALS:

WHEREAS, Declarant is the fee simple owner of two (2) parcels: the first parcel is comprised of approximately .867 acres (the "DG Parcel") upon which a building and related improvements have been constructed and leased to Dollar General Corporation ("Dollar General"), and the second parcel is comprised of approximately .56 acres (the "Access Parcel") (the DG Parcel and Access Parcel sometimes referred to individually as a "Parcel" and collectively as the "Parcels"). The DG Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof. The Access Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof.

WHEREAS, Declarant desires to establish a permanent access easement to run with the land over, across, and upon the Access Parcel.

NOW, THEREFORE, the Declarant hereby covenants and states:

1. Recitals. The above recitals set forth are incorporated by reference and made a part of this Declaration.
2. Access Easement. Declarant hereby establishes and declares a perpetual non-exclusive easement across, along and through that portion of the Access Parcel legally described on Exhibit "C" and depicted on Exhibit "C-1" (the "Access Easement"), for the purpose of providing the DG Parcel with vehicular and pedestrian ingress to, egress from, and access between the DG Parcel and the Access Parcel. This access easement shall be deemed appurtenant to the DG Parcel and for the benefit of the DG Parcel, and any Permittees (as defined below) of the DG Parcel.
3. Maintenance of the Access Easement. Declarant shall be responsible and assume all obligations for, at Declarant's sole cost and expense, the initial construction of the access drive within the Access Easement, to the extent not already constructed. Declarant shall be responsible and assume all obligations for, at Declarant's sole cost and expense, maintenance of the Access Easement until such time as the Access Parcel is sold, transferred, or in any way conveyed to another person, entity, or party (the "Third Party"). Upon conveyance of the Access Parcel to a Third Party, Declarant and Third Party shall each pay one half (1/2) of any maintenance costs of the Access Easement.. Third Party shall maintain the Access Easement including, but not limited to, paving or repaving the drives in the Access Easement, removing ice and snow from the Access Easement, and clearing the Access Easement of any other debris or blockage. The cost of maintaining the Access Easement shall be divided evenly between Declarant and Third Party. Declarant shall reimburse Third Party for Declarant's share of costs for the maintenance of the Access Easement within ten (10) days of receipt of invoice for same. In the event that Third Party defaults in its obligations

hereunder, then Declarant shall have the right, but not the obligation, to perform such maintenance on behalf of Third Party after providing Third Party ten (10) days advance written notice and Third Party shall reimburse Declarant for Third Party's share of costs for the maintenance performed within ten (10) days of Third Party's receipt of an invoice for same.

Whenever a party shall perform any construction, maintenance, repairs or replacements on its Parcel or as otherwise permitted herein, such work shall be done expeditiously and in a good and workmanlike manner and in accordance with all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. Such work shall be carried out in such manner so as to cause the least amount of disruption to any business operations being conducted on the surrounding land as is reasonably practicable.

4. Permittees. All rights granted and obligations imposed in this Agreement shall also be deemed granted to Declarant's owners' successors, assignees, purchasers and holders of easement rights of the DG Parcel or portions thereof, tenants, subtenants, agents, licensees, contractors, invitees, visitors, occupants or concessionaires of Declarant and Declarant's employees, licensees, invitees and visitors (collectively "Permittees").
5. Use Restrictions on the Access Parcel. The following restrictions shall run with and burden the Access Parcel until such time that Dollar General, its successors, affiliates, assigns or assignees shall cease to operate a store on the DG Parcel:

A. The owner of the Access Parcel covenants and agrees not to lease, rent, occupy, or allow to be leased, rented or occupied, any part of the Access Parcel for the purpose of conducting business as or for use as a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Dollar Zone, Variety Wholesale, Dollar Express, Ninety-Nine Cents Only, Deals, Bonus Dollar, Maxway, Super Ten, Planet Dollar, Big Lots, Walgreens, CVS, Rite Aid, or any Wal-Mart concept including but not limited to Super Wal-Mart, Wal-Mart, Wal-Mart Neighborhood Market, or Walmart Express.

B. The owner of the Access Parcel and its successors and/or assigns, covenants and agrees not to lease, rent, occupy, or allow to be leased, rented or occupied, any part of the Access Parcel 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 sound which can be heard outside of any buildings on the DG Parcel or the Access Parcel, except that any usual paging system be allowed; (h) any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (i) any "second hand" store or liquidation outlet; (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; (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;

(s) any use which creates fire, explosives or other hazards; and (t) facilities for the use of treating addiction including but not limited to inpatient or outpatient substance abuse treatment facilities, pharmacological treatment facilities, safe injection sites and methadone maintenance therapy or clinics.

6. Blocking the Easement. No fence, wall, curb or barrier shall be erected, constructed, or caused to be erected or constructed between the Access Parcel and the DG Parcel which would in any manner interfere with or restrict the full and complete use and enjoyment by Declarant of the easement granted in this Declaration.

7. Runs with the Land. The easements and restrictions hereby granted and the agreements herein contained shall be easements, restrictions and covenants running with the land, and be appurtenant to the lands affected, and shall inure to the benefit of and be binding upon the party hereto and its respective successors and assigns, including, without limitation, (a) all subsequent owners of the Access Parcel and (b) all subsequent owners lessees, tenants, and agents of the DG Parcel (or any portion thereof).

8. Injunctive Relief. In the event of any violation or threatened violation of any of the terms, covenants and conditions of this Declaration, any or all of the owners of the Parcels shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. This right of injunctive relief shall be in addition to all the remedies available under statute, law or equity.

9. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the properties described herein to the general public or for the general public or for any public purpose whatsoever; it being the intention of Declarant that the easement granted herein shall be strictly limited to and for the purposes herein expressed.

10. Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Oregon.

11. Notice. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, to the parties of the addresses specified below, or at such other address as may be specified by written notice:

Declarant: CD DG CRESCENT, LLC
4336 Marsh Ridge Road
Carrollton, TX 75010

With Copy to: James S. Campbell, Esquire
Byrd Campbell, P.A.
180 Park Ave. North, Suite 2A
Winter Park, FL 32789

Any communications so mailed shall be deemed delivered three (3) business days after mailing.

12. Insurance and Indemnification. Any owner of the DG Parcel and the Access Parcel shall maintain or cause to be maintained in full force and effect commercial general liability insurance 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. Declarant shall indemnify and hold Third Party harmless from and against any and all loss, cost, damage, liability or expense (including reasonable attorneys' fees actually incurred and court costs) incurred by Third Party in connection with the exercise by Declarant of the easements and rights created herein, except to the extent caused by the negligence or willful act of Third Party, its employees, tenants, contractors, agents or licensees. Third Party shall indemnify and hold Declarant harmless from and against any and all loss, cost, damage, liability or expense (including reasonable attorneys' fees actually incurred and court costs) ever incurred by Declarant in connection with the exercise by Third Party of its easements and rights created herein, except to the extent caused by the negligence or willful act of Declarant, its employees, tenants, contractors, agents or licensees.

13. Extent of Liability. Notwithstanding any other provision contained in this Declaration to the contrary, Declarant hereby expressly states that the obligations and liability of Declarant and Third Party shall each be limited solely to such party's interest in its respective Parcel, as such interest is constituted from time to time. Declarant hereby states that any claim against Declarant or Third Party shall be confined to and satisfied only out of, and only to the extent of, such party's interest in its respective Parcel, 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 Parcel, as such interest may be constituted from time to time.

14. Amendment and Modification. This Declaration may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Declaration or their respective successors or assigns, and only with the prior written consent of Dollar General, so long as it, its successors, assigns or assignees is occupying the DG Parcel.

[SIGNATURE ON FOLLOWING PAGE]


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Declarant has signed, sealed and delivered these presents as of the date and year first written above.

Signed, sealed and delivered in the presence of:

CROSS:

CD DG CRESCENT, LLC,
a Texas limited liability company

By: 
Steven J. Rumsey
President

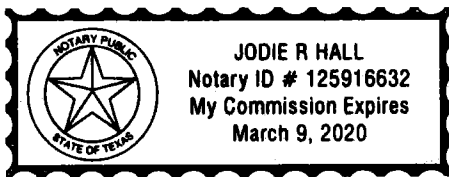
STATE OF TEXAS
COUNTY OF Denton

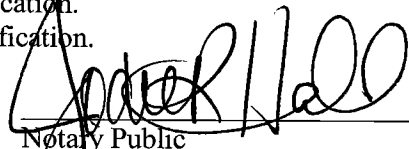
The foregoing instrument was acknowledged before me this 13 day of March, 2018, by Steven J. Rumsey, as President of CD DG Crescent, LLC, a Texas limited liability company, who did not take an oath and who:

☒ is/are personally known to me.

☐ produced current ☐ driver's license as identification.

☐ produced ☐ as identification.




Notary Public
(Notary Seal Must Be Affixed)

JODIE R HALL
Name of Notary Printed
My Commission Expires: 3/9/2020

Commission Number: _____

Exhibit "A"

DG Parcel
LEGAL DESCRIPTION FOR PARCEL 1

A portion of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 24 South, Range 9 East, Willamette Meridian, in Klamath County, Oregon, and being more particularly described as follows:

COMMENCING at a found 5/8-inch rebar at the northeasterly corner of the subject tract as shown on Survey No. 2570, "Plat of Survey for Batista Milani", filed by the Klamath County Surveyor's Office on November 17, 1977, Official Records of Klamath County, Oregon;

THENCE, South $40^{\circ}14'36''$ West, a distance of 237.79 feet along the northwesterly right-of-way of U.S. Route 97 as shown on said Survey No. 2570;

THENCE, South $51^{\circ}33'12''$ West, a distance of 27.75 feet along said northwesterly right-of-way to the **POINT OF BEGINNING**;

THENCE, South $51^{\circ}33'12''$ West, a distance of 23.24 feet along said northwesterly right-of-way;

THENCE, South $40^{\circ}14'36''$ West, a distance of 160.00 feet along said northwesterly right-of-way;

THENCE, South $81^{\circ}25'45''$ West, a distance of 22.87 feet along said northwesterly right-of-way;

THENCE, North $49^{\circ}45'24''$ West, a distance of 150.33 feet along the northeasterly right-of-way of Crescent Road;

THENCE, along the southeasterly right-of-way of the Klamath Northern Railroad as shown on said Survey No. 2570 a distance of 206.66 feet along the arc of a non-tangent curve to the left, having a radius of 1932.29 feet, through a central angle of $6^{\circ}07'40''$, and a radial line to the beginning of said curve to the left bearing South $61^{\circ}10'04''$ East;

THENCE, South $49^{\circ}45'24''$ East, a distance of 221.57 feet to the **POINT OF BEGINNING**.

Containing 37,782 square feet of land, more or less.

BASIS OF BEARING:

Identical to that of Survey No. 7678, "Record of Survey for Oregon Department of Transportation, Horizontal Control, Recovery and Retracement Map, OR 126 (US 97) The Dalles-California Highway", filed by the Klamath County Surveyor's Office on August 10, 2009, Official Records of Klamath County, Oregon.

Prepared by:

Glen C. Armstrong, PLS
Oregon Certificate No. 87955
US Geomatics
P.O. Box 3299
Reno, Nevada, 89505

Exhibit "B"

Access Parcel

LEGAL DESCRIPTION FOR PARCEL 2

A portion of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 24 South, Range 9 East, Willamette Meridian, in Klamath County, Oregon, and being more particularly described as follows:

COMMENCING at a found 5/8-inch rebar at the northeasterly corner of the subject tract as shown on Survey No. 2570, "Plat of Survey for Batista Milani", filed by the Klamath County Surveyor's Office on November 17, 1977. Official Records of Klamath County, Oregon;

THENCE, South 40°14'36" West, a distance of 165.00 feet along the northwesterly right-of-way of U.S. Route 97 as shown on said Survey No. 2570 to the **POINT OF BEGINNING**;

THENCE, South 40°14'36" West, a distance of 72.79 feet along said northwesterly right-of-way;

THENCE, South 51°33'12" West, a distance of 27.75 feet along said northwesterly right-of-way;

THENCE, North 49°45'24" West, a distance of 221.57 feet;

THENCE, along the southeasterly right-of-way of the Klamath Northern Railroad as shown on said Survey No. 2570 a distance of 86.73 feet along the arc of a non-tangent curve to the left, having a radius of 1932.29 feet, through a central angle of 2°34'18", and a radial line to the beginning of said curve to the left bearing South 67°17'43" East;

THENCE, North 40°14'36" East, a distance of 17.91 feet;

THENCE, South 49°45'24" East, a distance of 255.00 feet to the **POINT OF BEGINNING**.

Containing 24,249 square feet of land, more or less.

BASIS OF BEARING:

Identical to that of Survey No. 7678, "Record of Survey for Oregon Department of Transportation, Horizontal Control, Recovery and Retracement Map, OR 126 (US 97) The Dalles-California Highway", filed by the Klamath County Surveyor's Office on August 10, 2009. Official Records of Klamath County, Oregon.

Prepared by:

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Oregon Certificate No. 87955
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P.O. Box 3299
Reno, Nevada, 89505

Exhibit "C"

Access Easement

A portion of land situated in the Northeast Quarter of the Southwest Quarter of Section 30, Township 24 South, Range 9 East, Willamette Meridian, in Klamath County, Oregon, and being more particularly described as follows:

COMMENCING at a found 5/8-inch rebar at the northeasterly corner of the subject parcel as shown on Survey No. 2570, "Plat of Survey for Batista Milani", filed by the Klamath County Surveyor's Office on November 17, 1977, Official Records of Klamath County, Oregon;

THENCE, South 40°14'36" West, a distance of 165.00 feet along the westerly right-of-way of U.S. Route 97 as shown on said Survey No. 2570 to the **POINT OF BEGINNING**;

THENCE, South 40°14'36" West, a distance of 29.96 feet along said westerly right-of-way;

THENCE, North 49°45'24" West, a distance of 13.50 feet;

THENCE, a distance of 29.85 feet along the arc of a tangent curve to the left, having a radius of 19.00 feet, through a central angle of 90°00'00";

THENCE, South 40°14'36" West, a distance of 51.04 feet;

THENCE, North 49°45'24" West, a distance of 38.00 feet;

THENCE, North 40°14'36" East, a distance of 100.00 feet;

THENCE, South 49°45'24" East, a distance of 70.50 feet to the **POINT OF BEGINNING**.

Containing 4,851 square feet of land, more or less.

BASIS OF BEARING:

Identical to that of Survey No. 7678, "Record of Survey for Oregon Department of Transportation, Horizontal Control, Recovery and Retracement Map, OR 126 (US 97) The Dalles-California Highway", filed by the Klamath County Surveyor's Office on August 10, 2009, Official Records of Klamath County, Oregon.

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Exhibit "C-1"

Access Easement

