



2018-006696

Klamath County, Oregon

06/01/2018 12:05:01 PM

Fee: \$92.00

Return to:

CD DG Klamath Falls South, LLC
4336 Marsh Ridge Road
Carrollton, TX 75010

NON-EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
WITH RESTRICTIONS
(Klamath Falls, OR)

This Non-Exclusive Temporary Construction Easement Agreement with Restrictions ("Agreement") is dated this 24 day of May, 2018, (the "Effective Date") by and between 5 Star OR, LLC, a California limited liability company, its successors and assigns ("Grantor") and CD DG Klamath Falls South, LLC, a Texas limited liability company, its successors and assigns ("Grantee").

RECITALS

WHEREAS, Grantor is the fee simple owner of that certain parcel of real property more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Grantor Parcel").

WHEREAS, Grantee is the fee simple owner of that certain parcel of real property more particularly described on Exhibit "B" attached hereto and incorporated herein (the "Grantee Parcel") upon which a building and related improvements shall be constructed and leased to Dollar General ("Dollar General").

WHEREAS, Grantee has requested from Grantor a non-exclusive temporary access easement to be used by Grantee and Grantee's Permittees (as defined below) for the placement of a temporary ten foot (10') grading and slope easement along the shared property line between the Grantor Parcel and the Grantee Parcel.

WHEREAS, Grantee has requested certain use restrictions on the Grantor Parcel to run with the land and be binding upon Grantor in perpetuity.

NOW, THEREFORE, in consideration of the mutual covenants and conditions as set forth herein, and the payment of Ten and 00/100 Dollars (\$10.00) by each party to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Easement to Grantee. Grantor hereby grants and conveys to Grantee a non-exclusive temporary ten foot (10') grading and slope easement over the Grantor Parcel along the shared property line between the Grantor Parcel and the Grantee Parcel (the "**Easement Area**"), and Grantee shall have the right to permit the use of the Easement Area by its Permittees (as defined in Section 2 below) for the uses and purposes as provided for herein. Grantee covenants and agrees that Grantee shall not in any manner interfere with or restrict the full and complete use and enjoyment of the Grantor Parcel, except as set forth in this Agreement.

2. Permittees. “**Permittees**” shall mean and refer to any successors, assignees, purchasers and holders of easement rights of any properties or portions thereof, tenants, subtenants, agents, licensees, contractors, invitees, visitors, occupants or concessionaires of Grantee and the foregoing parties’ respective employees, licensees, invitees and visitors.

3. Temporary Term. The easement granted herein shall be temporary, commencing at the Effective Date and continuing until the certificate of occupancy is issued for the building to be constructed on the Grantee Parcel.

4. Use Restrictions on the Grantor Parcel. The following use restrictions shall burden the Grantor Parcel until Dollar General, its successors, assigns, or assignees, ceases to lease the Grantee Parcel:

(a) Grantor, its successors and/or assigns, covenants and agrees not to lease, rent or occupy, or allow to be leased, rented or occupied, any part of the portion of the Grantor Parcel legally described on Exhibit “C” and depicted as “Area of Use Restrictions” on Exhibit “E” attached hereto and made a part hereof, for use as a Family Dollar, Bill’s Dollar Store, Fred’s, Dollar Tree, Dollar Zone, Variety Wholesale, Ninety-Nine Cents Only, Deals, Dollar Bills, Dollar Express, Bonus Dollar, Maxway, Super Ten, Planet Dollar, Big Lots, Odd Lots, Walgreens, CVS, Rite Aid, or any Wal-Mart concept.

(b) Grantor, its successors and/or assigns, covenants and agrees not to lease, rent or occupy, or allow to be leased, rented or occupied, any part of the portion of the Grantor Parcel legally described on Exhibit “D” and depicted as “Area of Extended Use Restrictions” on Exhibit “E” attached hereto and made a part hereof, for use as any Wal-Mart concept.

(c) Grantor, 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 Grantor Parcel to be used or operated for any unlawful purpose or in any way which would constitute a legal nuisance to an adjoining property owner or violate the zoning provisions and codes of the City of Klamath Falls.

5. Runs with the Land. The easement 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 parties hereto and the respective successors and assigns, including, without limitation, (a) all subsequent owners of the Grantor Parcel (or any portion thereof), and (b) all subsequent owners lessees, tenants, and agents of the Grantee Parcel (or any portion thereof).

6. Injunctive Relief. In the event of any violation or threatened violation of any of the terms, covenants and conditions of this Agreement, any or all of the owners of the properties included herein 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.

7. Not a Public Dedication. Nothing contained in this Agreement 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 the Grantor and Grantee that the easement granted herein shall be strictly limited to and for the purposes herein expressed.

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

9. Notices. 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:

Grantee: CD DG Klamath Falls, LLC
4336 Marsh Ridge Road
Carrollton, TX 75015

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

Grantor: 5 Star OR, LLC
345 N. Yosemite Street #8
Stockton, CA 95203

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

10. Extent of Liability. Notwithstanding any other provision contained in this Agreement to the contrary, Grantor and Grantee hereby expressly agree that the obligations and liability of each of them shall be limited solely to such party's interest in its respective Parcel, as such interest is constituted from time to time. Grantor and Grantee 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 Parcel, as such interest is constituted from time to time. Nothing contained in this Section 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 set forth in this Agreement, 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.

11. Amendment and Modification. 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, so long as it, its successors or assigns is leasing the Grantee Parcel.

[SIGNATURES AND NOTARY ACKNOWLEDGEMENTS ARE ON THE FOLLOWING PAGES]

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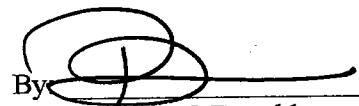
Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

GRANTOR:

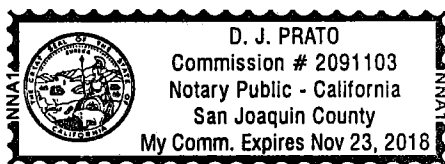
5 Star OR, LLC, a California limited liability company

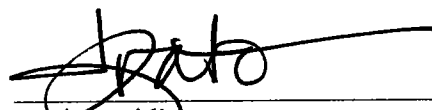
By 
Name: Terry McDonald
Its: Managing Partner

STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

The foregoing instrument was acknowledged before me this 21st day of MAY, 2018, by Terry McDonald, as Managing Partner of 5 Star OR, LLC, a California limited liability company, who did not take an oath and who:

____ is/are personally known to me.
☒ produced current State of CA driver's license as identification.
____ produced _____ as identification.





Notary Public
(Notary Seal Must Be Affixed)

D J Prato
Name of Notary Printed
My Commission Expires: 11/23/2018
Commission Number: 2091103

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

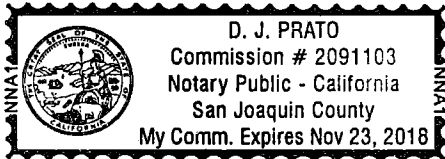
State of California)

County of San Joaquin)

On May 21, 2018 before me, DJ Prato, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared Terry McDonald
Name(s) of Signer(s)

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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document NON Exclusive Agreement w/ Restrictions
Title or Type of Document: Temp Const Easement Document Date: 5/22/2018
Number of Pages: 10 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Terry McDonald

- ☒ Corporate Officer — Title(s): mgr partner
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: 5 Star Oregon LLC

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signed, sealed and delivered in the presence of:

[Signature]
Print Name: Wendee Zang
Wendee Zang
Print Name: Wendee Zang

GRANTEE:

CD DG Klamath Falls South, LLC
a Texas limited liability company

[Signature]
By: Steve Rumsey, President

STATE OF TEXAS
COUNTY OF DENTON

The foregoing instrument was acknowledged before me this 18th day of May, 2018, by Steve Rumsey, as President of CD DG Klamath Falls South, LLC, a Texas limited liability company, who did not take an oath and who:

X is/are personally known to me.
____ produced current _____ driver's license as identification.
____ produced _____ as identification.

Brenda Ellis
Notary Public
(Notary Seal Must Be Affixed)
Brenda Ellis
Name of Notary Printed
My Commission Expires: 3/31/2022
Commission Number: _____

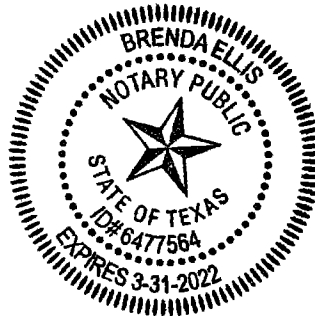


EXHIBIT "A"

Grantor Parcel

A portion of land situated in the Southeast Quarter of Section 7, Township 39 South, Range 9 East, Willamette Meridian, in the City of Klamath Falls, Klamath County, Oregon, and being more particularly described as follows:

Parcels 2 and 3 as shown on Land Partition 35-17, "Land Partition 35-17 for 5 Star OR, LLC", filed on April 19, 2018, as Document No. 2018-004755, Official Records of Klamath County, Oregon.

EXHIBIT "B"

Grantee Parcel

A portion of land situated in the Northwest Quarter of the Southeast Quarter of Section 7, Township 39 South, Range 9 East, Willamette Meridian, in the City of Klamath Falls, Klamath County, Oregon, and being more particularly described as follows:

Parcel 1 as shown on Land Partition 35-17, "Land Partition 35-17 for 5 Star OR, LLC", filed on April 19, 2018, as Document No. 2018-004755, Official Records of Klamath County, Oregon.

EXHIBIT C

Section 4(a) Restriction Area

A portion of land situated in the Southeast Quarter of Section 7, Township 39 South, Range 9 East, Willamette Meridian, in the City of Klamath Falls, Klamath County, Oregon, and being all of Parcels 1 and 3 as shown on Land Partition 35-17, "Land Partition 35-17 for 5 Star OR, LLC", filed on April 19, 2018, as Document No. 2018-004755, Official Records of Klamath County, Oregon, and all of that portion of Parcel 2 as shown on said Land Partition 35-17 lying northerly of a line which is more particularly described as follows:

COMMENCING at a found 5/8" rebar with a plastic cap stamped "PLS 87955" at the southwesterly corner of said Parcel 1;

THENCE, South 01°19'12" West, a distance of 96.54 feet along the easterly right-of-way of Agate Street as shown on said Land Partition 35-17;

THENCE, South 00°52'46" East, a distance of 282.23 feet along said easterly right-of-way to the **POINT OF BEGINNING**;

THENCE, North 64°05'35" East, a distance of 1491.28 feet to the southeasterly corner of said Parcel 3;

THENCE, North 64°05'35" East, a distance of 75.05 feet to the **POINT OF TERMINATION** on the easterly boundary of said Parcel 2 from which a found 5/8" rebar with a plastic cap stamped "PLS 87955" at the northeasterly corner of said Parcel 2 bears North 01°19'22" East, a distance of 247.63 feet.

Containing 13.87 acres of land, more or less.

BASIS OF BEARING:

Identical to that of Land Partition 35-17, "Land Partition 35-17 for 5 Star OR, LLC", filed on April 19, 2018, as Document No. 2018-004755, Official Records of Klamath County, Oregon.

EXHIBIT D

Section 4(b) Extended Restriction Area

A portion of land situated in the Southeast Quarter of Section 7, Township 39 South, Range 9 East, Willamette Meridian, in the City of Klamath Falls, Klamath County, Oregon, and being all of that portion of Parcel 2 as shown on Land Partition 35-17, "Land Partition 35-17 for 5 Star OR, LLC", filed on April 19, 2018, as Document No. 2018-004755, Official Records of Klamath County, Oregon, lying southerly of a line which is more particularly described as follows:

COMMENCING at a found 5/8" rebar with a plastic cap stamped "PLS 87955" at the southwesterly corner of Parcel 1 as shown on said Land Partition 35-17;

THENCE, South 01°19'12" West, a distance of 96.54 feet along the easterly right-of-way of Agate Street as shown on said Land Partition 35-17;

THENCE, South 00°52'46" East, a distance of 282.23 feet along said easterly right-of-way to the **POINT OF BEGINNING**;

THENCE, North 64°05'35" East, a distance of 1491.28 feet to the southeasterly corner of Parcel 3 as shown on said Land Partition 35-17;

THENCE, North 64°05'35" East, a distance of 75.05 feet to the **POINT OF TERMINATION** on the easterly boundary of said Parcel 2 from which a found 5/8" rebar with a plastic cap stamped "PLS 87955" at the northeasterly corner of said Parcel 2 bears North 01°19'22" East, a distance of 247.63 feet.

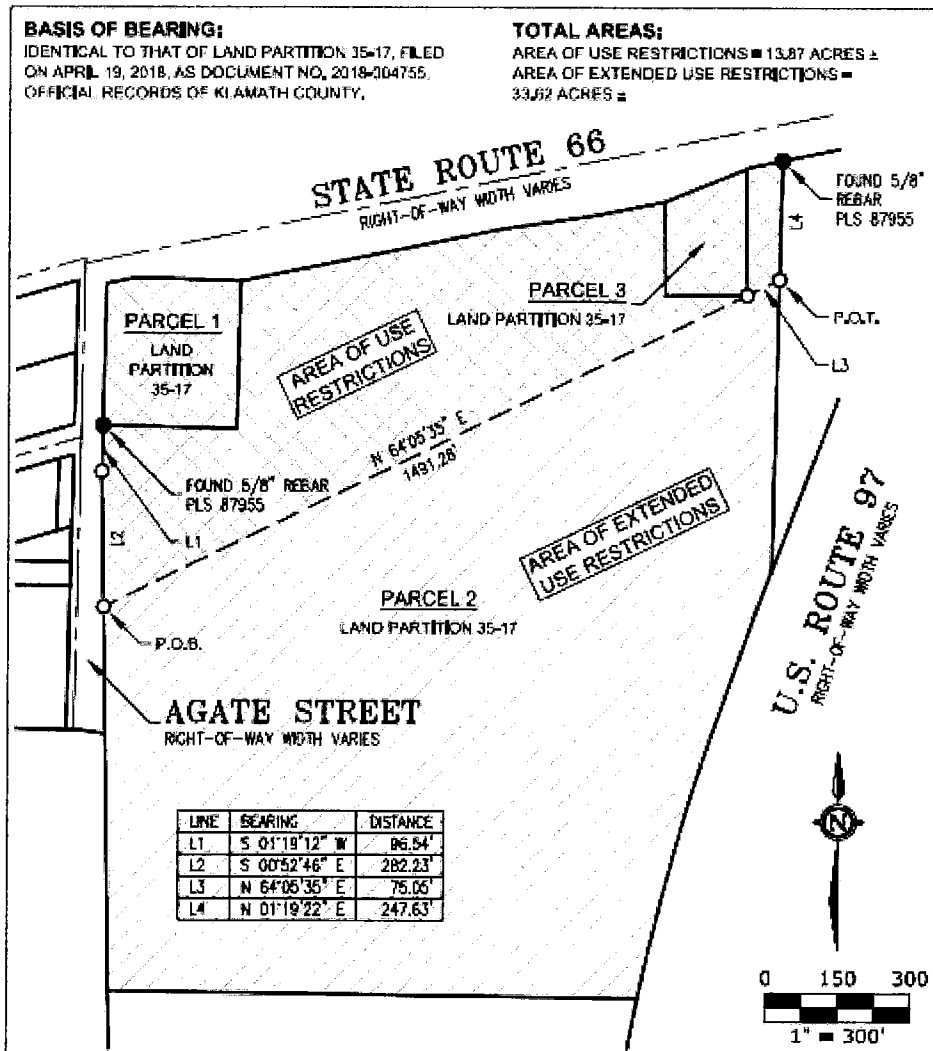
Containing 33.62 acres of land, more or less.

BASIS OF BEARING:

Identical to that of Land Partition 35-17, "Land Partition 35-17 for 5 Star OR, LLC", filed on April 19, 2018, as Document No. 2018-004755, Official Records of Klamath County, Oregon.

EXHIBIT E

Depiction of Restricted Parcels



P.O. Box 3299
Reno, NV 89505
P. 775.786.5111
F. 775.297.4668
www.usgeomatics.com

EXHIBIT E

CD DG KLAMATH FALLS SOUTH, LLC
EXHIBIT SHOWING AREAS OF USE RESTRICTIONS
A PORTION OF THE SOUTHEAST QUARTER
OF SECTION 7, T.39S., R.9E., W.M.
KLAMATH FALLS OREGON

SHEET
1
of
1