

**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

**RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND
RESTRICTIONS**

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Agreement**") is made this 24th day of November, 2020, by UP-Goshen, CA-1, LP a California limited partnership (hereinafter referred to as "**UP-Goshen**") and Frank and Adriana Leyendekker as Trustees of The Frank Leyendekker and Adrianna Leyendekker 1993 Revocable Family Trust (collectively "**Seller**").

WITNESSETH:

WHEREAS, UP-Goshen purchased from Seller that certain tract or parcel of land lying and being in Goshen, CA, being more particularly described on Exhibit A attached hereto and made a part hereof by this reference (hereinafter referred to as "**Parcel 1**" respectively)

WHEREAS, Seller is the owner of that certain tract of parcel of land being more particularly described on Exhibit A attached hereto (hereinafter referred to as "**Parcel 2**"). Each of Parcel 1 and Parcel 2 is sometimes individually referred to as a "**Parcel**" and collectively referred to as the "**Parcels**";

WHEREAS, UP-Goshen intends to develop Parcel 1 and wishes to restrict certain uses on Parcel 2 for the benefit of the proposed fuel service station, convenience store and car wash to be constructed upon Parcel 1 and establish certain rights, easements and obligations as necessary to promote the orderly development of both Parcels, as hereinafter provided.

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth below, the sufficiency of which both parties acknowledge, UP-Goshen and Seller agree that the Parcels are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Agreement, which shall run with the land and be binding on all parties having any right, titles or interest in the Parcels or any part thereof.

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 and be

binding on the Parcels (or any portion thereof as they may be subdivided in the future). The owners of the Parcels may delegate the right to use and maintain the easements granted herein to their respective tenants, customers, invitees, employees, agents, contractors and licensees, successors and assigns.

2. **Initial Construction.** UP-Goshen shall construct the initial improvements on Parcel 1, at UP-Goshen's cost and expense, and such other improvements as reflected in the Development Agreement between UP-Goshen and Seller related to the sale of Parcel 1. In conjunction with such development, UP-Goshen shall construct the following improvements to benefit both Parcels:

i. **Access Drive.** A paved access drive from the northern boundary of Parcel 1 across Parcel 2, running parallel to the western boundary of Parcel 2 and connecting to Road 63 as depicted on Exhibit B attached hereto and including pole mounted lighting and underground electric lines (the "**Access Drive**").

ii. **Dry Retention Pond.** A dry retention pond located on the northern most portion of Parcel 2, to satisfy the stormwater drainage needs of both Parcels as shown on Exhibit B attached hereto (the "**Retention Pond**").

iii. **Shared Pylon Signage.** UP-Goshen shall own and install a shared multi-tenant pylon signage structure located on Parcel 1 to advertise the businesses located on the Parcels (the "**Pylon Sign**"). Seller will be entitled to install two sign panels on the Pylon Sign (the fabrication and installation of such panels shall be the responsibility of Seller, its successors or assigns) each panel being four foot (4ft) by seven foot five inches (7ft 5 in) (subject to applicable jurisdictional requirements) in the location as approved by UP-Goshen. The Pylon Sign shall be constructed such that the panels benefitting Parcel 1 and the panels benefitting Parcel 2 are powered from separate power sources and each Parcel shall be responsible for connecting power to its sign panels, with Parcel 2 having an easement to maintain electrical lines from the boundary of its Parcel to the Pylon Sign.

3. **Access Easement** UP-Goshen and Seller hereby establish as a benefit to and burdening both Parcels, a nonexclusive access easement over and across the driveways, drive aisles, sidewalks and parking areas (including the Access Drive) as they may be constructed on each of the Parcels in the future, for vehicular and pedestrian access, ingress and egress between the Parcels, and to and from Betty Drive and Road 63 (the "**Access Easement**"). The owners of the Parcels shall keep the Access Easement areas free from obstacles or obstructions which would prevent or hinder the free passage of vehicular or pedestrian traffic within or across the easement area except temporarily, for reasonable times and in a reasonable manner, for purposes of performing work permitted by this Agreement. 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.

4. **Drainage Easement** Seller hereby establishes for the benefit of and as an appurtenance to Parcel 1 an easement for the installation, construction, maintenance and repair of storm drainage facilities over, upon, across and through Parcel 2 connecting to

the Retention Pond (the “**Drainage Easement**”) and located on Parcel 2 for the purposes of providing drainage services to Parcel 1. 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.

5. **Utility Easements.** UP-Goshen shall grant specific utility easements to the relevant utility providers as needed for the sole purpose of installation, maintenance and repair of telephone, cable, electricity (if required by the utility provider) and domestic water services to Parcel 2, such easements to be approved by the tenant of Parcel 1, such approval not to be unreasonably conditioned, withheld or delayed .

6. **Grading and Slope Easement.** Seller hereby grants UP-Goshen an easement for UP-Goshen, its contractors, and employees to enter upon and perform grading work over a portion of Parcel 2 being an area twenty feet (20ft) wide and running immediately adjacent to the north boundary line of Parcel 1 (the “**Grading & Slope Easement**”). The Grading & Slope Easement shall allow UP-Goshen to cause the grades within such area of Parcel 2 to be altered and conformed to the grading plan for the development of Parcel 1 which shall raise the elevation of Parcel 1 above the elevation of Parcel 2. From the date a final certificate of occupancy is issued for Parcel 1, the slope established over the Grading and Slope Easement by UP-Goshen’s contractors shall not be disturbed or undercut as it shall provide horizontal support for the raised Parcel 1. The Grading and Slope Easement shall automatically terminate at such point in time the owner of Parcel 1 approves grading plans for Parcel 2. The owner of Parcel 2 shall deliver such plans approved by Tulare County to the owner of Parcel 1 for review and approval. Such approval shall not be unreasonably withheld, conditioned, or delayed and shall be deemed as approved if no response is delivered within thirty (30) days of receipt of said plans..

7. **Signage Rights.** The owners of the Parcels shall be entitled to display sign panels on the designated spaces on the Pylon Sign advertising the businesses on their respective Parcels only, and in accordance with all jurisdictional requirements. Without limiting the foregoing, the following shall not be permitted uses of the Pylon Sign; 1) any rude, offensive or illicit language or imagery, or 2) any advertisements for the sale or lease of the Parcels.

8. **Maintenance.**

i. Except as otherwise provided herein, each owner of a Parcel, or its respective tenant(s) shall be responsible for maintaining the improvements located on their own Parcel.

ii. Following the initial installation of the Access Drive, Retention Pond, and Pylon Sign, the owner of Parcel 1, or any tenant occupying the same, shall cause the Access Drive, the Retention Pond, and the Pylon Sign to be maintained in accordance with the terms of this Agreement. In regard to the Access Drive this shall mean maintenance, repair, and replacement of any cracked or broken surfaces and curbs, sweeping of dirt, rubble and

debris as needed, removal of trash, re-striping as needed and snow removal as needed. In regard to the Retention Pond this shall mean periodic maintenance as needed to allow the Retention Pond to perform at its designed standards for percolation and retention capacity including cleaning, maintenance and repair of any pipes and inlets associated with the Retention Pond, any required mowing, any required landscaping of the berm, removal of any trees or shrubs that may affect the structural integrity or performance of the Retention Pond, trash removal, silt and debris removal as needed. In regard to the Pylon Sign this shall mean periodic maintenance and repair of the Pylon Sign structural components. The owners of the Parcels shall each be responsible for the manufacture, installation and maintenance, repair and replacement of their respective sign panels installed on the Pylon Sign. When performing any work on its sign panels, the owner of Parcel 2 shall give due regard to the right of the occupant of Parcel 1, and shall not interfere with the business operations on Parcel 1, including but not limited to parking any vehicles or equipment within the Access Easement.

iii. Notwithstanding Section 6(ii), above, at such time as the owner of Parcel 2, or any tenant occupying same, opens for business and begins operating on Parcel 2, the owner of Parcel 1, or any tenant occupying same, shall continue to be responsible for maintaining the Access Drive and Pylon Sign structure and may (but shall not be obligated) to assess the owner of Parcel 2 a fee equaling one half (1/2) of the cost to maintain the Access Drive (not to include any costs associated with any access drives or driveways located on Parcel 1) and Pylon Sign structure. Such fee shall be invoiced monthly and payable within thirty (30) days of receipt of written notice therefor and copies of invoices evidencing the cost thereof.

iv. Notwithstanding Section 6(ii), above, at such time as the owner of Parcel 2, or any tenant occupying same, opens for business and begins operating on Parcel 2, the owner of Parcel 2, or any tenant occupying same, shall be responsible for maintaining the Retention Pond and may (but shall not be obligated to) assess the owner of Parcel 1 (or its tenant) a fee equaling one half (1/2) of the cost to maintain the Retention Pond. Such fee shall be invoiced monthly and payable within thirty (30) days of receipt of written notice therefor and copies of invoices evidencing the cost thereof.

This Agreement does not dedicate the easements created herein to the general public, nor does this Agreement restrict the use and development of the Parcels, except as stated herein. It is the intent of this Agreement to grant the easements set forth above without limiting the right of any owner of a Parcel to alter, demolish, redevelop or, improve its respective Parcel unless expressly stated herein to the contrary. The owners of any Parcel shall use the easement areas with due regard for the rights of one another. If any owner ("**Defaulting Party**") fails to maintain the easement areas as specified herein for thirty (30) days after receipt of written notice from another owner or tenant of a Parcel benefitted by this Agreement ("**Curing Party**") of the need for any such maintenance and repairs then the Curing Party shall have the right but not the obligation to perform said maintenance and repairs on behalf of and at the expense of the Defaulting Party. The Defaulting Party agrees to reimburse the Curing Party any amount so paid by the Curing Party, within twenty (20) days from receipt of a written request from the Curing Party for payment thereof accompanied by copies of paid invoices.

9. **Restrictions on Parcel 2.** Parcel 2 or any part thereof shall not be leased, rented, occupied, or allowed to be leased, rented or occupied, for the purpose of conducting business as or for use as a fuel service station, convenience store, or car wash.

10. **Mutual Restrictions on the Parcels.** Each of UP-Goshen and Seller covenants and agrees not to lease, rent, occupy, or allow to be leased, rented or occupied, any part of its 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) any refining, smelting, agricultural, or mining operation; (c) any mobile home park, trailer court, labor camp, junk yard, recycling facility or stock yard; (d) any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located near the rear of any building); (e) any dry cleaners performing on-site cleaning services; (f) 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.

11. **Insurance and Indemnification.** Upon opening for business on its respective Parcel, each of the owners of Parcel 1 and Parcel 2 (or any portion thereof) shall maintain or cause its respective tenant to maintain in full force and effect commercial general liability insurance with respect to such activities 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 California. 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.

12. **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by expedited, prepaid overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, or (b) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by personal delivery and delivered after 5:00 p.m., Central Time, shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, upon transfer of ownership of either Parcel, the new owner's information shall be provided to the non-transferring party at the addresses below. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice.

UP-Goshen:

UP-Goshen, CA-1, LP
Attn: Real Estate Legal
4747 Williams Dr.
Georgetown, TX 78633

Copy To:

APRO, LLC
Attn: Chief Legal Officer
4130 Cover St.
Long Beach, CA 90808

Seller:

Frank Leyendekker
9001 Ave 360
Visalia, CA 93291

12. **Miscellaneous.** This Agreement shall be governed in accordance with the laws of the State of California. 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 any owners of the Parcels partners or joint venturers. No party 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. Notwithstanding the preceding sentence, any owner of a Parcel, after providing thirty (30) days' written notice to the owner(s) of the other parcel of a material breach of this Agreement, and after a failure of the other owner(s) to cure the breach within the period of notice, may commence formal legal proceedings to obtain injunctive relief to enforce the terms and conditions of this Agreement and/or to recover damages for breach of this Agreement. The prevailing party in such litigation shall be entitled to recover their attorneys' fees and costs, in addition to any other relief granted by the Court. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all owners of Parcels 1 and 2 (or any portions thereof) or their respective successors or assigns. Time is of the essence of this Agreement.

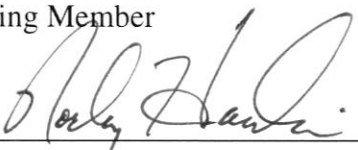
[Space intentionally left blank, signatures to follow on the next page]

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

**UP-Goshen, CA-1, LP,
a California limited partnership**

By: National BTS Developers, LLC,
a Texas limited liability company,
General Partner

By: Embree Asset Group, Inc. its
Managing Member

By: 
Name: Rocky Hardin
Title: Chief Financial Officer/Executive
Vice President

STATE OF TEXAS)

) SS

COUNTY OF WILLIAMSON)

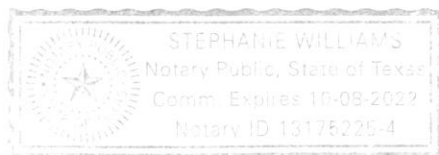
On this the 18th day of Nov., 2020, before me, the undersigned officer, personally appeared Rocky Hardin, known to me to be the person whose name is subscribed to the within instrument and who acknowledges himself to be the Chief Financial Officer, Executive VP of Embree Asset Group, Inc., a Texas corporation on behalf of said corporation as the Managing Member of National BTS Developers, LLC, a Texas limited liability company, on behalf of said limited liability company as the General Partner of UP-Goshen, CA-1, LP, a California limited partnership, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said limited partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Signature

SEAL:



My Commission Expires: 10-08-2022

Seller(s):

The Frank Leyendekker and Adrianna Leyendekker 1993 Revocable Family Trust


Frank Leyendekker
Trustee

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.

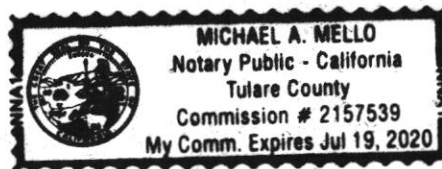
State of California)
County of Tulare)

On July 31, 2020 before me, Michael A. Mello Notary Public, personally appeared Frank Leyendekker, 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.

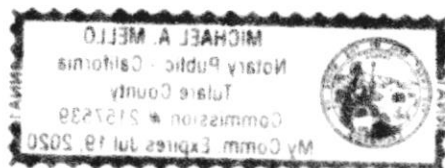
WITNESS my hand and official seal.

(Signature)



(Affix Seal)

The Notary Commission extended
pursuant to Executive Order N-63-20.



Adriana Leyendekker
Adriana Leyendekker
Trustee

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.

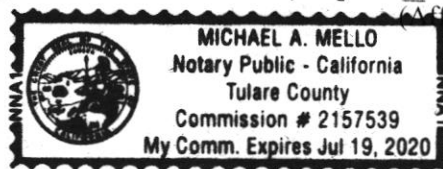
State of California)
County of Tulare)

On July 24, 2020 before me, Michael A. Mello Notary Public, personally appeared Adriana Leyendekker, 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)



*The Notary commission extended
pursuant to Executive Order N-63-20*

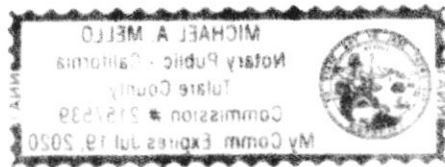


EXHIBIT A- Legal Descriptions of the Parcels

Legal Description of Parcel 1

Parcel 1, as shown upon the map entitled, "PARCEL MAP NO. 5306", and filed October 30, 2020, in Book 54 of Parcel Maps, at Page 13, records of Tulare County, State of California.

Legal Description of Parcel 2

Parcel 2, as shown upon the map entitled, "PARCEL MAP NO. 5306", and filed October 30, 2020, in Book 54 of Parcel Maps, at Page 13, records of Tulare County, State of California.

EXHIBIT B – Depiction of Parcel 1 and Parcel 2

