

Recording requested by
Stewart Title of
California, Inc.
Escrow # 23000300258

00820589 B: 1681 P: 1614
B: 1681 P: 1614 Fee \$40.00
Carri R. Jeffries, Iron County Recorder - Page 1 of 12
07/01/2024 01:23:48 PM By: STEWART TITLE GUARANTY COMPANY

When Recorded Return To:
Associated Retail Operations, Inc.
1850 West 2100 South
Salt Lake City, Utah 84119
Attn: Justin Atwater, General Counsel

MUTUAL ACCESS, MAINTENANCE, EASEMENT AND SITE DEVELOPMENT AGREEMENT

This Mutual Access, Maintenance, Easement and Site Development Agreement, (the "**Agreement**") is executed as of the 19 day of June 2024, by Associated Retail Operations, Inc., a Utah corporation ("**ARO**"), whose address is 1850 West 2100 South, Salt Lake City, Utah 84119, O'Reilly Auto Enterprises, LLC ("**O'Reilly**"), a Delaware limited liability company, whose address is 233 S. Patterson, Springfield, MO 65802, and Foster's Development LLC, a Utah limited liability company ("**Foster**"), whose address is 5011 N. Horseshoe Dr., Enoch, UT 84721.

A. ARO is the fee owner of that certain real property located in Enoch, Iron County, Utah, being more particularly described on Exhibit A attached hereto and incorporated herein by this reference for all purposes (the "**ARO Tract**").

B. Foster is the fee owner of that certain real property located adjacent to the ARO Tract in Enoch, Iron County, Utah, being more particularly described on Exhibit B attached hereto and incorporated herein by this reference for all purposes (the "**Foster Tract**").

C. O'Reilly is and/or will be the fee owner of that certain real property located adjacent to the Foster Tract in Enoch, Iron County, Utah, being more particularly described on Exhibit C attached hereto and incorporated herein by this reference for all purposes (the "**O'Reilly Tract**").

D. ARO and Fosters desire to develop a cohesive mixed-use project that will include a grocery store, various commercial businesses, professional offices and/or residential housing (the "**Project**").

E. In connection with the Project, ARO, Fosters and O'Reilly contemplate entering into covenants, conditions, restrictions and easements to govern the types of uses, definition of common areas, maintenance obligations and grants of easements (the "**Declaration**").

F. In order to facilitate certain applications and approvals from various government agencies relating to the Project, ARO, Fosters and O'Reilly desire to enter into this Agreement to set forth certain minimum easements and restrictions on an interim basis—until completion and recording of the Declaration.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree and declare as follows:

1. Site Plan Approval. Prior to commencing any construction on the Foster Tract or the ARO Tract, the owners will work together in good faith to integrate and include both the Foster Tract and the ARO Tract into a single subdivision and/or project approval. ARO agrees to be primarily responsible for obtaining engineering, drawings, plans, and approvals for the Project from the relevant parties. When the Declaration is recorded, it will supersede this Agreement in all respects and this Agreement will automatically terminate.

2. Easements.

a. Subject to the terms of this Agreement, ARO hereby grants to O'Reilly and Foster, and

their respective successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the O'Reilly Tract and Foster Tract over, upon, and across those certain portions of the ARO Tract that are specifically designated, constructed, improved and/or utilized as sidewalks, access drives, drive aisles or other similar improvements, including, without limitation, the easement area defined on Exhibit D (the "**Primary Access**"). The foregoing easement is for the benefit of and shall be appurtenant to the Foster Tract and O'Reilly Tract.

b. Subject to the terms of this Agreement, Foster hereby grants to O'Reilly and ARO, and their respective successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the O'Reilly Tract and ARO Tract over, upon, and across those certain portions of the Foster Tract that are specifically designated, constructed, improved and/or utilized as sidewalks, access drives, drive aisles or other similar improvements, including without limitation, the Primary Access. The foregoing easement is for the benefit of and shall be appurtenant to the ARO Tract and O'Reilly Tract.

c. Subject to the terms of this Agreement, O'Reilly hereby grants to Fosters and ARO, and their respective successors and assigns a non-exclusive, perpetual easement for the limited purposes of vehicular and pedestrian ingress and egress to and from the Foster Tract and ARO Tract over, upon, and across those certain portions of the O'Reilly Tract that are specifically designated, constructed, improved and/or utilized as sidewalks, access drives, drive aisles or other similar improvements. The foregoing easement is for the benefit of and shall be appurtenant to the ARO Tract and Foster Tract.

3. Development and Maintenance of Drive Aisles. It is contemplated that the parties will enter into a development agreement for the Project in connection with the site plan and subdivision approvals to define the various obligations relating to development, timing and maintenance of the various Project infrastructure, including curb cuts, driveways, curbs, sidewalks, street lighting, utilities and other related improvements thereto (collectively, the "**Drive Improvements**"). ARO, Fosters and O'Reilly shall install and construct the access drives on their respective Tracts, as applicable, at such time as ARO, Fosters and/or O'Reilly improves their respective Tracts. Each of Fosters, ARO and O'Reilly shall pay the costs of the Drive Improvements on their respective Tracts, without reimbursement or participation of the other party. Following completion of any of the Drive Improvements, the Fosters, ARO and O'Reilly shall maintain (which shall include sweeping, snow removal, and other general maintenance) the Drive Improvements on their respective Tracts at their own costs, in good condition and repair and in a condition consistent with and similar to the surrounding and comparable areas. O'Reilly shall construct the Drive Improvements on the Primary Access at such time as O'Reilly improves the O'Reilly Tract, and ARO and Fosters shall each reimburse O'Reilly for 33.33% of the costs incurred by O'Reilly in constructing the Drive Improvements on the Primary Access. In addition to the foregoing, until a common area maintenance agreement or Declaration is agreed to and recorded, ARO shall initially maintain and repair the Primary Access. In consideration of ARO's maintenance and repair of the Primary Access, Fosters shall pay ARO an annual payment equal to 33.33% of the actual costs of maintenance and repair of the Primary Access, commencing on the 12th month following completion of the Drive Improvements on the Primary Access and payable within thirty 30 days after Foster's receipt of an annual statement from ARO and copies of paid invoices evidencing the actual cost of the maintenance and repair of the Primary Access. In consideration of ARO's maintenance and repair of the Primary Access, O'Reilly shall pay ARO an annual payment equal to 33.33% of the actual costs of maintenance and repair of the Primary Access, commencing on the 12th month following completion of the Drive Improvements on the Primary Access and payable within thirty 30 days after O'Reilly's receipt of an annual statement from ARO and copies of paid invoices evidencing the actual cost of the maintenance and repair of the Primary Access. .

4. Remedy for Non-Performance. Any amounts which become owing under this Agreement to any party which are not paid when due shall bear interest at the rate of stated below from the date due until paid. In the event either party fails to perform any non-monetary covenant or condition contained in the Agreement within

the time periods allotted in this Agreement, or if absent a time period such party fails to commence to perform any covenant or condition contained in this Agreement within ten (10) business days following receipt of written notice from the other party and thereafter proceed diligently to complete and cure such failure, the other party may, but shall not be required to enter the non-performing party's property and perform the construction, maintenance and/or repair work abovementioned and receive reimbursement therefor. In such event, within ten (10) business days following written notice of same, the non-performing party shall reimburse the other party all reasonable costs and expenses incurred by such other party, as evidenced by paid invoice, in connection with effectuating such cure, plus all interest which shall accrue against such unpaid amount(s) at the rate of interest equal to the prime rate of interest then announced in the Wall Street Journal plus 4% or the highest rate permitted by applicable law, whichever is less, running from the end of the aforesaid 10-day period until paid in full. The non-performing party hereby grants to the other party a non-exclusive right of entry and non-exclusive easement and cross, over and under all parts of the non-performing party's tract for all purposes reasonably necessary to enable the performing party (acting directly or through contractors, agents or subcontractors) to perform the terms, provisions or conditions of this Agreement which the non-performing party fails or failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of an emergency

5. Indemnification. Any property owner exercising its rights under this Agreement (the "**Indemnifying Owner**") agrees to indemnify, defend and hold harmless the other property owner (the "**Indemnified Owner**") from and against any and all costs, losses, suits, actions, expenses, liabilities, judgments, liens, damages, or claims, including but not limited to reasonable attorneys' fees and cost (collectively "**Loss**") arising out of the Indemnifying Owner's negligence, breach, or willful misconduct in carrying out or directing such activity, except to the extent caused by the negligence, breach, or willful misconduct of such Indemnified Owner. Notwithstanding the forgoing, a party shall not be obligated to indemnify, defend or hold another party harmless for Loss resulting from a default of this Agreement. Notwithstanding the foregoing, O'Reilly (and/or the party constructing the Primary Access) shall indemnify Foster and ARO for any claims arising out of the initial construction of the Primary Access, and ARO shall indemnify Foster for any claims arising out of the maintenance and repair of the Primary Access.

6. Subject to Matters of Record. The easement grants contained herein are expressly subject and subordinate to all outstanding easements, conveyances, liens and other matters of record in the real property records for Iron County, Utah.

7. Running With Land. The easements and the restriction created herein and the covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder shall run with the land, shall burden the ARO Tract, the Foster Tract and the O'Reilly Tract and shall be binding upon ARO, O'Reilly and Foster, their heirs, legal representatives, successors and assigns. This Agreement and the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder are subject to all matters currently of record in the county in which the Foster Tract, ARO Tract and O'Reilly Tract are located. This Agreement will automatically terminate and be of no further force and effect upon recording of a Declaration specifically referencing this Agreement.

8. Transfers of Ownership. If, during the existence of this Agreement, ARO, Foster or O'Reilly sells or transfers their ownership of the ARO Tract, O'Reilly Tract or the Foster Tract or any part thereof, then from and after the effective date of such sale or transfer, that party shall be released and discharged from any and all obligations, responsibilities and liabilities under this Agreement and accruing thereafter, insofar as they relate to the parcel so conveyed, and any such transferee, by the acceptance of the transfer of such interest, shall thereupon become subject to the covenants contained herein, insofar as they relate to the parcel so conveyed to the same extent as if such transferee were originally a party hereto. The provisions of this Agreement, insofar as they affect the subsequent owners of the ARO Tract, the O'Reilly Tract or the Foster Tract or any portion thereof, may be enforced by the subsequent owner of any portion of the ARO Tract, O'Reilly Tract or the Foster Tract only to the extent the easements granted hereby affect such tract so acquired by each such subsequent owner.

9. No Parking Easements. Nothing contained herein shall be construed to grant any parking easements, privileges or rights.

10. No Dedication to the Public. The easements created herein are solely for benefit of the owners of the Foster Tract, O'Reilly Tract and the ARO Tract, are private and are not intended to grant any rights to the public. Each party agrees that nothing herein shall be construed as giving it any interest in any award or payment made to the other in connection with any exercise of eminent domain or transfer in lieu thereof affecting the other's property.

11. Taxes. Any and all taxes imposed either upon the value of real property or upon any right, privilege or other incident of ownership related to the ARO Tract, O'Reilly Tract and the Foster Tract shall be paid by the legal or equitable owner thereof according to the requirements of law.

12. Amendment. Except as otherwise stated herein, this Agreement and the rights, privileges and benefits arising hereunder or pursuant hereto may be released, terminated, modified, amended or waived only with the written consent of the owner of the Foster Tract, O'Reilly Tract and the owner of the ARO Tract.

13. Severability. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Agreement shall not be affected thereby, and in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

14. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Utah, without regards to conflicts of laws principles.

15. No Partnership or Joint Venture. Nothing in this Agreement shall be construed to make the owner of the Foster Tract, the O'Reilly Tract and/or the owner of the ARO Tract partners or joint venturers or render any of such persons or entity liable for the debts and obligations of any other such persons or entity.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original to the same effect as if all parties had executed the same instrument.

17. Multiple Tracts.

a. The ARO Tract contains or may in the future contain more than one tract of land. The easements and rights granted to ARO shall inure to the benefit of and shall be appurtenant to each tract of land comprising the ARO Tract, including, without limitation, any tract created from the further subdivision of the tracts currently comprising the ARO Tract. The owner of any such tract, regardless of whether it owns any other portion of the land comprising the ARO Tract, shall be entitled to exercise and benefit from the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder.

b. The Foster Tract contains or may in the future contain more than one tract of land. The easements and rights granted to Foster shall inure to the benefit of and shall be appurtenant to each tract of land comprising the Foster Tract, including, without limitation, any tract created from the further subdivision of the tracts currently comprising the Foster Tract. The owner of any such tract, regardless of whether it owns any other

portion of the land comprising the Foster Tract, shall be entitled to exercise and benefit from the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder.

c. The O'Reilly Tract contains or may in the future contain more than one tract of land. The easements and rights granted to O'Reilly shall inure to the benefit of and shall be appurtenant to each tract of land comprising the O'Reilly Tract, including, without limitation, any tract created from the further subdivision of the tracts currently comprising the O'Reilly Tract. The owner of any such tract, regardless of whether it owns any other portion of the land comprising the Foster Tract, shall be entitled to exercise and benefit from the easements, covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder.

18. Waiver. The failure of either ARO, O'Reilly or Foster to exercise any right given hereunder shall not constitute a waiver of either party's right to exercise such right.

19. Notices. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (a) personally delivered against receipted copy; (b) mailed by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by recognized overnight express delivery service; to the parties at the addresses set forth in the introductory paragraph. Either party may change its address, and addresses for successors and assigns may be added, for the purposes of this Section by giving five (5) days prior written notice of such change to all other party in the manner provided in this Section.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTED as of date set forth above.

ARO:

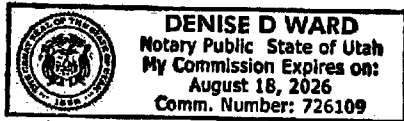
ASSOCIATED RETAIL OPERATIONS, INC.,
a Utah corporation

By: *Darin Peirce*
Name: Darin Peirce
Title: President

STATE OF UTAH

COUNTY OF SALT LAKE

This instrument was acknowledged before me on the 13 day of May, 2024, by Darin Peirce, the President of ASSOCIATED RETAIL OPERATIONS, INC., a Utah corporation on behalf of said corporation.

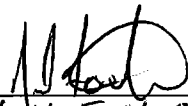


Denise D Ward
Notary Public in and for the State of Utah

[SIGNATURES ON FOLLOWING PAGE]

Foster:

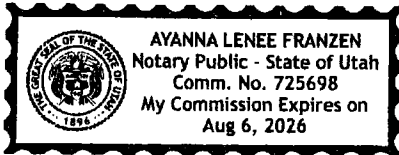
FOSTER'S DEVELOPMENT, LLC,
a Utah limited liability company

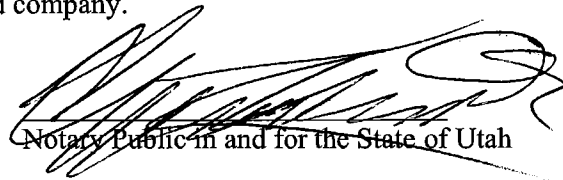
By: 
Name: Neil Foster
Title: President

STATE OF UTAH

COUNTY OF WASHINGTON

This instrument was acknowledged before me on the 9th day of May, 2024 by NEIL FOSTER, the PRESIDENT of FOSTER'S DEVELOPMENT, LLC, a Utah limited liability company on behalf of said company.




Notary Public in and for the State of Utah

O'Reilly:

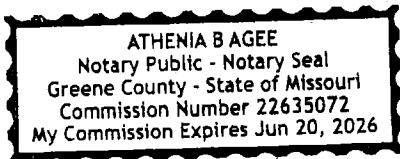
**O'REILLY AUTO ENTERPRISES, LLC,
a Delaware limited liability company**

By: *PHH*
Name: Phil Hopper
Title: Sr. VP of Real Estate & Expansion

STATE OF Missouri

COUNTY OF Greene

This instrument was acknowledged before me on the 19 day of June, 2024, by Phil Hopper, the SVP Real Estate Expansion of O'REILLY AUTO PARTS, a Delaware company on behalf of company. *O'Reilly Auto Enterprises, LLC*



Athenia Agee
Notary Public in and for the State of Utah
Missouri

**EXHIBIT A
ARO TRACT**

PARCEL 1:

Beginning at a point South 88°55'27" East along the section line 703.47 feet and South 00°00'00" East 50.00 feet from the North quarter corner of Section 14, Township 35 South, Range 11 East, Salt Lake Base and Meridian, said point being on the South right-of-way line of Mid-Valley Road, and running thence South 88°55'27" East along said right-of-way line 601.36 feet to the PC of a curve to the right, curve data: Delta=89°23'01", Radius=35.00 feet, chord=South 44°13'57" East 49.23 feet; thence along the arc of said curve 54.60 feet to the PT; said point being on the West right of way line of Minersville Highway, and running thence South 00°27'34" West along said right of way line 719.65 feet; thence North 89°33'40" West 635.67 feet; thence North 00°26'18" East 761.35 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following:

A parcel of land in fee for the widening of the existing State Highway 130 known as Project No. F-0130(26)6, being part of an entire tract of property situate in the Northwest quarter of the Northeast quarter of Section 14, Township 35 South, Range 11 West, Salt Lake Base and Meridian in Iron County, Utah. The boundaries of said parcel of land are described as follows:

Beginning at a point South 88°55'27" East 1283.73 feet along the North line of said Section 14, and South 00°00'00" East 50.00 feet from the North quarter corner of said Section 14, point being 105.00 feet perpendicularly distant Westerly from the SR-130 Control Line, of said project opposite approximate engineer station 159+02.47, point also being on the south right of way line of 4800 North Street, and running thence South 88°55'27" East 21.10 feet along the said line, to a point 83.90 feet perpendicularly distant Westerly from said control line, of said project opposite approximate engineer station 159+02.21; thence Southeasterly 54.60 feet along the arc of a 35.00-foot radius curve to the right (Note: Chord to said curve bears South 44°13'56" East 49.23 feet, central angle 89°23'01"), to a point on the West right of way line of SR-130 to a point 49.33 feet perpendicularly distant Westerly from said control line, of said project opposite approximate engineer station 158+67.15; thence South 00°27'34" West 27.15 feet to a point 49.38 feet perpendicularly distant Westerly from said control line, of said project opposite approximate engineer station 158+40.00; thence North 41°18'54" West 83.64 feet, to the point of beginning.

(Note: Rotate above bearings 00°35'20" clockwise to equal Highway Bearing based on the Utah State Plane Coordinate System, NAD83, South Zone).

(Note: Engineer Stations used in the above description are based on the SR-130 Control Line for said Project No. F-0130(26)6).

EXHIBIT B

Foster TRACT

PARCEL 3

BEGINNING AT A POINT WHICH IS SITUATED S.89°19'06"E. ALONG THE SECTION LINE 570.29 FEET AND S.0°40'54"W 39.74 FEET FROM THE NORTH 1/4 CORNER OF SECTION 14, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SLB&M, THENCE S.83°11'58"E. 97.04 FEET, THENCE S.89°19'06"E. 37.64 FEET, THENCE S.0°02'39"W. 761.35 FEET, THENCE S.89°57'19"E. 635.67 FEET, THENCE S.0°03'55"W. ALONG THE WEST RIGHT-OF-WAY LINE OF MINERSVILLE HIGHWAY 78.21 FEET, THENCE N.89°57'19"W. 202.38 FEET, THENCE S.0°02'39"W. 132.60 FEET, THENCE S.89°36'21"W. 24.26 FEET, THENCE S.22°32'39"W. 86.40 FEET, THENCE S.0°23'39"E. 203.24 FEET, THENCE N.89°29'13"W. 511.51 FEET, THENCE N.0°02'39"E. ALONG THE EAST BOUNDARY LINE OF 3 PEAKS SUBDIVISION PHASE 1 1263.06 FEET TO THE POINT OF BEGINNING.

CONTAINS 8.79 ACRES OF LAND

SUBJECT TO AND TOGETHER WITH A 20.00-FOOT PUBLIC UTILITY EASEMENT ALONG THE SOUTH BOUNDARY LINE.

SUBJECT TO A 20-FOOT WIDE PUBLIC UTILITY EASEMENT AND SHARED ACCESS EASEMENT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS SITUATED S.89°19'06"E. ALONG THE SECTION LINE 1339.86 FEET AND S.0°03'55"E. ALONG THE WEST RIGHT--OF-WAY LINE OF UT-130 804.28 FEET FROM THE NORTH 1/4 CORNER OF SECTION 14, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SLB&M THENCE S.0°03'55"W. 20.00 FEET, THENCE N.89°57'19"W. 337.14 FEET, THENCE N.0°03'56"E. 20.00 FEET, THENCE S.89°57'19"E. 337.14 FEET TO THE POINT OF BEGINNING.

SUBJECT TO AND TOGETHER WITH THE FOLLOWING DESCRIBED 20-FOOT SEWER EASEMENT: BEGINNING AT A POINT WHICH IS SITUATED S.89°19'06"E. ALONG THE SECTION LINE 704.42 FEET AND S.0°41'10"W. 50.00 FEET FROM THE NORTH 1/4 CORNER OF SECTION 14, TOWNSHIP 35 SOUTH, RANGE 11 WEST, SLB&M THENCE S.0°02'39"W. 761.35 FEET, THENCE S.0°00'34"W. 176.31 FEET, THENCE S.89°59'26"E. 396.18 FEET, THENCE S.43°53'04"E. 53.29 FEET, THENCE S.0°02'39"W. 28.83 FEET, THENCE N.43°53'04"W. 65.54 FEET, THENCE N.89°59'26"W. 407.67 FEET, THENCE N.0°02'13"E. 957.89 FEET, THENCE S89°19'06"E. 19.97 FEET TO THE POINT OF BEGINNING.
CONTAINS 28,125 SQUARE FEET

**EXHIBIT C
O'REILLY TRACT**

Beginning at a point which is situated S89°19'06"E along the section line 1339.86 feet and S0°03'55"W along the west right-of-way line of Minersville Highway 1056.76 feet from the North 1/4 Corner of Section 14, Township 35 South, Range 11 West, SLB&M, thence N89°56'05"W 184.32 feet to a point of curve, thence around the arc of curve to the right with a radius of 18.00 feet a distance of 28.27 feet (the chord of said curve bears N44°57'21"W 25.46 feet), thence N0°02'39"E 156.20 feet, thence S89°57'19"E 202.38 feet, thence S0°03'55"W along the west right-of-way line of Minersville Highway 174.27 feet to the point of beginning.

Contains 35,186 square feet or 0.808 acres, more or less.

**EXHIBIT D
PRIMARY ACCESS**

