

### **ACCESS EASEMENT AGREEMENT**

This Easement Agreement ("Agreement") is made as of the \_\_\_\_ day of June, 2012, by and between **THE CITY OF LEXINGTON**, a Nebraska municipal corporation ("Lexington"), Grantor/Grantee, P. O. Box 70, Lexington, Nebraska 68850, and **O'REILLY AUTOMOTIVE STORES, INC.**, a Missouri Corporation, ("O'Reilly"), Grantor/Grantee, 233 S. Patterson, Springfield, Missouri 65802.

WHEREAS, Lexington is the owner in fee simple of that certain real property in the City of Lexington, Dawson County, Nebraska, which is more particularly described on the attached Exhibit "A", (the "Lexington Property").

WHEREAS, O'Reilly is or will be the owner in fee simple of certain real property in the City of Lexington, Dawson County, Nebraska, which is more particularly described on the attached Exhibit "B" (the "O'Reilly Property").

WHEREAS, Lexington wishes to convey and O'Reilly wishes to receive a perpetual, non-exclusive easement for pedestrian and vehicular ingress and egress on, across and over a portion of the Lexington Property.

WHEREAS, O'Reilly wishes to convey and Lexington wishes to receive a perpetual non-exclusive easement for pedestrian and vehicular ingress and egress on, across and over a portion of the O'Reilly Property.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Lexington hereby grants and conveys to O'Reilly, its successors and assigns, a non-exclusive easement and right-of-way on, across and over those curb cuts, access roads and driveways within the Lexington Property as they may from time to time be located, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to O'Reilly and O'Reilly's successors, and assigns forever (the "Lexington Easement Property").

Lexington binds itself and its successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in O'Reilly and O'Reilly's successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the reservations from conveyance of the Lexington Easement Property and exceptions to warranty of the Lexington Easement Property.

O'Reilly hereby grants and conveys to Lexington, its successors and assigns, a non-exclusive easement and right-of-way on, across and over those curb cuts, access roads and driveways within the O'Reilly Property as they may from time to time be located, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to Lexington and Lexington's successors, and assigns forever (the "O'Reilly Easement Property"). O'Reilly binds itself and its successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in Lexington and Lexington's successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the reservations from conveyance of the O'Reilly Easement Property and exceptions to warranty of the O'Reilly Easement Property.

2. Purpose of Easement. The easement on the Lexington Property shall be to grant to O'Reilly's employees, representatives, customers, and invitees a non-exclusive easement and right of use of all curb cuts, access roads and driveways within the Lexington Property for pedestrian and vehicular ingress and egress to the O'Reilly Property. Lexington may build additional buildings or alter the access roads and driveways within the Lexington Property so long as O'Reilly has continuous access from the O'Reilly Property to the Lexington Property.

The easement on the O'Reilly Property shall be to grant to Lexington, Lexington's employees, representatives, customers, tenants and invitees a non-exclusive easement and right of use of all curb cuts, access roads and driveways within the O'Reilly Property for pedestrian and vehicular ingress and egress to the Lexington Property. O'Reilly may build additional buildings or alter the access roads and driveways within the O'Reilly Property so long as Lexington has continuous access from the Lexington Property to the O'Reilly Property.

Each party, their successors and assigns (the "Holders") may erect curbs or other barriers to traffic between the properties owned by that Holder and adjacent portions of the properties, including but not limited to differences in grade levels, only to the extent that such curbs or other barriers will not unreasonably interfere with or restrict direct access to and between the properties by the Holders of other portions of the properties and their employees, representatives, customers, and invitees. A Holder may erect buildings and other improvements on the portion of the properties owned by that Holder only to the extent that the buildings and other improvements will not unreasonably interfere with the use of and access to the access areas and driveways on such portion of the properties by the other Holders and their employees, customers, and other invitees.

3. Maintenance. O'Reilly and Lexington agree that all expenses for maintenance and repair to the easement areas created herein shall be the sole responsibility of each individual owner of the easement area to be repaired. Such items of maintenance and repair shall include, without limitation, resurfacing and resealing the easement areas created herein.

4. Nature of Easement. The burdens of the easement on the Lexington Easement Property shall run with the Lexington Property and shall be binding upon Lexington and every successor owner of the Lexington Property. The easement on the Lexington Easement Property shall inure to the benefit of the O'Reilly Property and O'Reilly.

The burdens of the easement on the O'Reilly Easement Property shall run with the O'Reilly Property and shall be binding upon every successor owner of the O'Reilly Property. The easement on the O'Reilly Easement Property shall inure to the benefit of the Lexington Property and Lexington.

5. Authority. Lexington represents and warrants that Lexington has full right and lawful authority to enter into this Agreement, that Lexington is lawfully seized of the entire Lexington Property, and that no consent or approval of any mortgagee or other entity is required.

O'Reilly represents and warrants that O'Reilly has full right and lawful authority to enter into this Agreement, that O'Reilly is lawfully seized of the entire O'Reilly Property, and that no consent or approval of any mortgagee or other entity is required.

6. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one instrument.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns.

8. Attorney's Fees: In the event this Access Easement Agreement is sought to be enforced by the record owner of the Lexington Property or the record owner of the O'Reilly Property, the judge of such proceedings shall, in his/her order of judgment, enter an award of attorney's fees as said judge shall determine to be reasonable in his/her sole discretion.

9. Reservations from Conveyance and Exceptions to Warranty: Each party reserves for that party and that party's successors, and assigns the right to continue to use and enjoy the surface of their respective properties for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the easements. The conveyances herein are made by each grantor, and accepted by each grantee, free and clear of liens and subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the easements, to the extent, and only to the extent, that the same may still be in force and effect, and shown of record in the office of the County Clerk of the County in which any part of the easement property is located.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date first set forth above.

**SIGNATURES FOLLOW**





**EXHIBIT "A"**  
**"Lexington Property"**

All of Tract 1 and the Northern 80.0 feet of Tract 2 of the Wal-Mart Subdivision located in the Southwest Quarter of Section 8, Township 9 North, Range 21 West of the 6<sup>th</sup> P.M., located in the City of Lexington, Dawson County, Nebraska, more particularly described as follows:

Considering the East line of the Southwest Quarter of said Section 8 to bear N 0°00'00" E and all other bearings used herein relative thereto;

Commencing at the Southeast corner of the Southwest Quarter of said Section 8; thence along the East line of said Southwest Quarter N 0°00'00" E 1593.60 feet; thence S 89°08'00" W 70.01 feet to the POINT OF BEGINNING, said point being on the West right of way line of U.S. Highway 283; thence S 89°08'00" W 660.10 feet; thence parallel with the West right of way line of U.S. Highway 283 S 0°00'00" W 430.00 feet; thence N 89°08'00" E 660.10 to a point on the West right of way line of U.S. Highway 283; thence along the said right of way line N 0°00'05" E 430.00 feet to the POINT OF BEGINNING, EXCEPT that tract of land deeded to the State of Nebraska by Warranty Deed recorded in Book 140, Page 10 and EXCEPT a tract reserved to and retained by GRANTORS, described as follows: The East 185 feet of the South 280 feet to the North 325 feet of the above described real estate.

**EXHIBIT "B"**  
**"O'Reilly Property"**

The East 185 feet of the South 280 feet of the North 325 feet of Tract 1, EXCEPT the East 15' of said Tract 1 deeded to the State of Nebraska by Warranty Deed recorded in Book 140, Page 10, Wal-Mart Subdivision according to the recorded plat thereof, City of Lexington, Dawson County, Nebraska, and described by metes and bounds as follows:

Commencing at the Northeast corner of said Tract 1, Wal-Mart Subdivision (as platted); thence South 89°08'00" West, 15.00 feet along the North line of said Tract 1 (as platted) to the West right of way of Plum Creek Parkway (US Highway 283) as defined in Book 140, Page 10; thence South 0°00'00" West, 45.01 feet along said West right of way to the point of beginning; thence continuing South 0°00'00" West, 280.00 feet along said West right of way; thence South 89°08'00" West, 185.00 feet; thence North 0°00'00" East, 280.00 feet; thence North 89°08'00" East, 185.00 feet to the point of beginning.