



GANZ  
BOX 895  
KEARNEY, NE 68848

2017-02852  
KELLIE JOHN  
BUFFALO COUNTY REGISTER OF DEEDS  
KEARNEY, NEBRASKA  
RECORDED ON: 05/23/2017 4:33:30 PM  
EASEMENT  
REC FEE: 58.00  
PAGES: 9  
PD: 58.00  
ESCROW:  
CK INFO: #11265 GANZ

After Recording, Return To:  
Tim O'Neill  
O'Neill, Heinrich, Damkroger  
Bergmeyer & Shultz, P.C., L.L.O.  
121 S. 13th St., Ste. 800  
Lincoln, NE 68508

**PERPETUAL EASEMENT**

This PERPETUAL EASEMENT ("Agreement") is made and entered into by and between Safe Harbour EAT - XXIII, L.L.C., a Kansas limited liability company ("Grantor"), and Barney Building & Land Company, L.L.C., a Nebraska limited liability company ("Grantee"), effective the 23 day of May, 2017.

**RECITALS**

- A. Grantor is the owner of certain real property legally described as Lot No. Forty-Eight (48), EXCEPT the East 14 feet and the West 25 feet thereof, in Perkins and Harford's Second Addition to the City of Kearney, Buffalo County, Nebraska (the "Property").
- B. Grantee is the owner of an advertising structure (the "billboard sign") located on the Property.
- C. Grantor and Grantee desire to establish certain rights and obligations with respect to a perpetual easement on the Property for the billboard sign together with an ingress-egress easement over and across the Property subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. Grant of Perpetual Easement to Grantee. Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to Grantee, its successors and assigns, a perpetual non-exclusive easement for a billboard sign located on that portion the Property legally described and depicted on Exhibit A, which Exhibit is attached hereto and incorporated herein (the "Easement Area"), together with vehicular ingress and egress between the Easement Area and West 38th Street, Kearney, Buffalo County, Nebraska for the use and benefit, in common with others, of Grantee, its successors, assigns, employees and contractors, to maintain, repair, replace the billboard sign (the "Easement").

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(2)

2. Obstruction of Easement. Grantor hereby agrees that it will not erect, maintain, place or leave any obstruction, fence, wall or barricade that obstructs the billboard sign or access to the Easement Area; provided, however, Grantee acknowledges that from time to time Grantor may temporarily suspend access to the Easement due to demolition of existing improvements, construction of new improvements or maintenance of improvements on the Property. Grantor agrees that it will use reasonable efforts to minimize length of time of the suspension and shall work in good faith with Grantee if a repair to the billboard sign on the Easement Area is necessary during such suspension.
3. No Public Dedication. The parties agree that the Easement Area is not intended and shall not be construed as a dedication of the property covered thereby for public use, and agree to refrain from and take whatever steps may be necessary to avoid such dedication.
4. Alterations. So long as Grantee retains the right to vehicular ingress and egress to and from the Easement Area and West 38<sup>th</sup> Street, Grantor retains the right, at Grantor's sole expense and in Grantor's sole and absolute discretion, to alter, change, move or relocate the access lanes to and from the Easement Area.
5. Maintenance & Other Obligations. Grantee agrees, at its sole cost and expense, to keep and maintain the billboard sign and the Easement Area in good condition and state of repair (including, but not limited to, periodic painting of the sign pole). Grantee shall not increase the size of the billboard sign by more than five (5) feet on each side or by more than four (4) feet on top and shall not lower the billboard sign. Grantee shall at all times have the right to repair and maintain billboard sign and the Easement Area, and in its sole determination, to replace its billboard sign with a replacement advertising structure of its choosing on the Easement Area, subject to the limitations set forth herein. All utilities serving the billboard sign shall be separately metered and provided to Grantee at its sole cost and expense; provided, however, in all instances repairs, maintenance, replacement and other access to the Easement Area shall be at a time and in a manner least disruptive to the business conducted on the Property and in no event shall Grantee access the Easement Area between the hours of (a) 11 am and 2 pm and (b) 5 pm and 8 pm each day, unless such access is necessary for safety purposes or such access is allowed by prior arrangement with Grantor. Grantee also agrees that the billboard sign shall not (A) contain any advertisement for any:
  - i. Slim Chickens restaurant;
  - ii. Chick-fil-A restaurant;
  - iii. Zaxby's restaurant;
  - iv. PDQ restaurant;
  - v. Kentucky Fried Chicken restaurant; or

vi. Any nude or semi-nude dancing establishments; any so-called adult or X-rated book store or X-rated video store; any so-called "head shop" selling or displaying paraphernalia for the use of illegal drugs; any business which principally features sexually explicit products; a message parlor; or a body piercing facility; or

(B) involve any restaurant advertisement involving chicken products.

These restrictions shall only apply to the billboard sign so long as the Property is used as a Raising Cane's Restaurant or any other fast food or quick service restaurant or similar food service establishment which prepares, serves or sells de-boned chicken products and derives thirty percent (30%) or more of its annual gross sales from the sale of de-boned chicken products.

6. Ownership. All equipment and materials placed upon the Easement Area shall remain the property of Grantee and may be removed and/or replaced by Grantee at its sole discretion as provided herein. Grantee shall have the right to make any applications with governmental bodies and obtain permits for the construction, maintenance, repair and replacement of its billboard sign or other advertising structure of its choosing at its sole discretion, subject to the limitation set forth herein. All permits shall be and remain the property of the Grantee. Grantor warrants and represents that it is the owner of the Property and that it has the right to grant this perpetual easement along with the right of ingress-egress to the Easement Area to Grantee. Grantor further warrants that there are no other easements or leases on the Property with regard to billboard sign advertising and that none will be granted on the Property by Grantor without the express written consent of Grantee.
7. Right to Perform in Event of Default. In the event that Grantor or Grantee defaults in their obligations under this Agreement (the "Defaulting Party"), then the other Party (the "Non-Defaulting Party") shall have, and is hereby granted the option to enter upon the Defaulting Party's property to cure such default; provided, however, that the Defaulting Party shall have fifteen (15) days after written notice to such default from the Non-Defaulting Party within which to cure the default, unless a longer cure period is specifically set forth herein. In the event that the Non-Defaulting Party exercises such option to cure such default and does in fact cure such default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred by the Non-Defaulting Party in curing the default plus interest on such costs and expenses at the lower of the highest rate of interest permitted by applicable law or twelve percent (12%) per annum from the date such costs and expenses were incurred until such costs and expenses are paid.
8. Covenants to Run with Land. It is intended that the Easement and covenants, agreements, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of, and binding upon, the Property, shall bind every person having any fee, leasehold or other interest therein and shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, assigns and lessees. At such time as Grantor hereto conveys its fee interest in the Property,

then the Grantor shall have no further liability hereunder for the covenants and obligations herein set forth accruing after the date of such conveyance, such covenants and obligations being enforceable only by and against the then current owner of the Property, and at such time as Grantee shall sell and transfer its billboard sign business and assign and transfer the Easement and this Agreement to the buyer, then the Grantee shall have no further liability hereunder for the covenants and obligations herein set forth accruing after the date of such assignment and transfer, such covenant and obligations being enforceable only by and against the current owner of the billboard sign business and assignee of the Easement and this Agreement.

9. Taxes and Assessments. Grantor hereby covenants and agrees to pay, prior to delinquency, all taxes and assessments on or against the Property, and Grantee hereby covenants and agrees to pay, prior to delinquency, all taxes and assessments on or against the billboard sign and Easement. Notwithstanding the foregoing, the owner of such property may contest the validity or amount of any taxes assessed against such property, or portion thereof, and/or against improvements thereon, by appropriate proceedings, diligently conducted in good faith, in which event such owner may defer payment thereof during the pendency of such contest.
10. Indemnity. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, damages, liens (including, without limitation, mechanics' and materialmen's liens), losses, suits, actions, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs and expenses of litigation) to the extent that such claims, liens, losses, suits, actions, judgment, liabilities, costs or expenses result from or are caused by the act or omission of such party in connection with its obligations hereunder or use of the Perpetual Easement.
11. Assignment. Grantee shall have the right to assign this Agreement to any party at its sole discretion at any time, subject, however to the terms, conditions, obligations and restrictions set forth herein.
12. Condemnation. In the event of an eminent domain taking of all or any portion of the Property or the billboard sign in the Easement Area, the eminent domain award made with respect to such property shall belong solely to the owner of such property so taken or such owner's mortgagee. The term "eminent domain taking" includes a voluntary conveyance made under threat of or in anticipation of an involuntary eminent domain taking.
13. Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other shall be in writing and shall be deemed effective when personally delivered to the address of the party to receive such notice set forth below or, whether actually received or not, when deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Grantee: Barney Building & Land Company, L.L.C.  
Attn: Attn: Greg Barney  
704 West 25<sup>th</sup> Street  
Kearney, NE 68845

with a copy to: Parker, Grossart, Bahensky, Beucke,  
Bowman and Symington, L.L.P.  
Attn: Jerry J. Grossart  
1516 First Avenue  
Kearney, NE 68848-1600

If to Grantor: JoEI Investment Group, LLC  
Attn: Justin Jones  
PO Box 83327  
Lincoln, NE 68501

with a copy to: O'Neill, Heinrich, Damkroger  
Bergmeyer & Shultz, P.C., LLO  
Tim O'Neill  
800 Lincoln Square  
121 South 13<sup>th</sup> Street  
Lincoln, NE 68508

or such other place as the Grantor or Grantee, respectively, may from time to time designate by written notice to the other party.

14. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement regarding the billboard sign shall not be binding upon either party except to the extent incorporated in this Agreement. Time is of the essence with respect to the obligations of the parties hereunder.
15. Termination. The term of this Agreement is perpetual and may be terminated only by the written agreement of both parties, or by their successors and assigns.
16. Modification. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by an authorized representative of each party.
17. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.
18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.
19. Captions. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

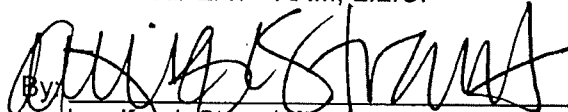
20. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

EXECUTED as of the date set forth below.

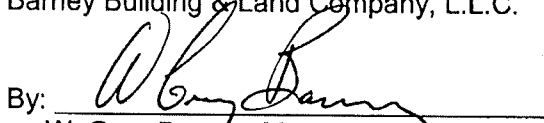
Grantor:

Safe Harbour EAT - XXIII, L.L.C.

By:   
Jennifer J. Strand, Manager

Grantee:

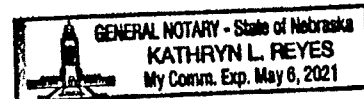
Barney Building & Land Company, L.L.C.

By:   
W. Greg Barney, Manager

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me on May 17, 2017 by Jennifer J. Strand, Manager of Safe Harbour EAT - XXIII, L.L.C., a Nebraska limited liability company, on behalf of the company.

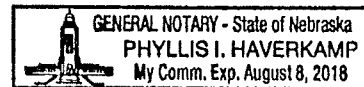
  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF BUFFALO )

The foregoing instrument was acknowledged before me on May 23, 2017 by W. Greg Barney, Manager of Barney Building & Land Company, L.L.C., a Nebraska limited liability company, on behalf of the company.

  
Notary Public



The foregoing instrument is approved as to form and content:

JoEl Investment Group, LLC

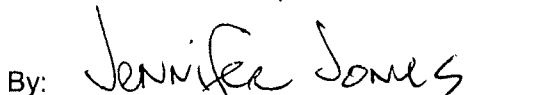
By:   
Jennifer Jones, Manager

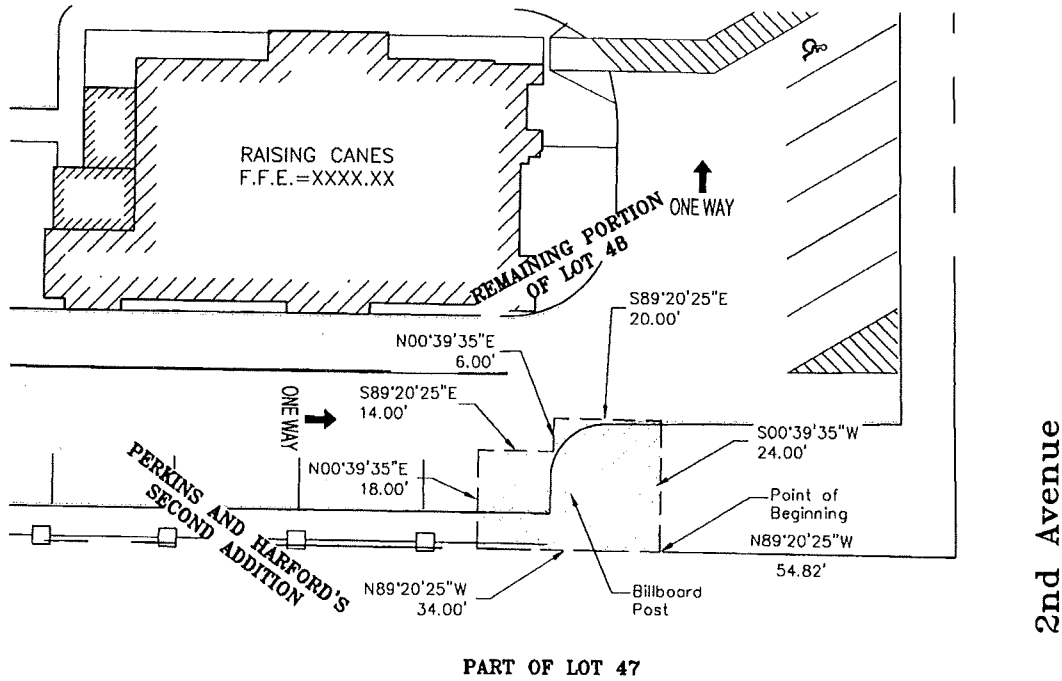
Exhibit A

Easement Area  
(one page attached)

I:\589\92\005\3.5 Sign Easement - New Buyer 5.4.17.docx



# SIGNAGE EASEMENT EXHIBIT



**A LEGAL DESCRIPTION FOR AN SIGNAGE EASEMENT IN THE REMAINING PORTION LOT 48**

A LEGAL DESCRIPTION FOR AN SIGNAGE EASEMENT LOCATED IN THE REMAINING PORTION LOT 48, EXCEPT THE EAST 14 FEET AND THE WEST 25 FEET THEREOF, IN PERKINS AND HARFORD'S SECOND ADDITION TO THE CITY OF KEARNEY, BUFFALO COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID LOT 48, PERKINS AND HARFORD'S SECOND ADDITION TO THE CITY OF KEARNEY, THENCE N89°20'25\"W, A DISTANCE OF 54.82 FEET, TO THE POINT OF BEGINNING; THENCE N89°20'25\"W, A DISTANCE OF 34.00 FEET; THENCE N00°39'35\"E, A DISTANCE OF 18.00 FEET; THENCE S89°20'25\"E, A DISTANCE OF 14.00 FEET; THENCE N00°39'35\"E, A DISTANCE OF 6.00 FEET; THENCE S89°20'25\"E, A DISTANCE OF 20.00 FEET; THENCE S00°39'35\"W, A DISTANCE OF 24.00 FEET, TO THE POINT OF BEGINNING, CONTAINING A CALCULATED AREA OF 732.00 SQUARE FEET, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

REGA ENGINEERING 402-484-7342 OFFICE  
 601 OLD CHENEY ROAD  
 SUITE A 402-484-7344 FAX  
 LINCOLN, NE 68512



**REGA**  
 ENGINEERING  
 GROUP, INC.

JOB NAME: SIGNAGE EASEMENT EXHIBIT  
 LOCATION: 3720 2ND AVENUE  
 LOT FORTY-EIGHT (48), EXCEPT THE EAST 14 FEET  
 AND THE WEST 25 FEET THEREOF, IN PERKINS AND  
 HARFORD'S SECOND ADDITION  
 KEARNEY, NEBRASKA

DRAWN BY: FBS	CHECKED BY: REGA
SCALE: NO SCALE	
DATE: 2-20-2017	
JOB NUMBER	SHEET
171000	1 OF 1

DESCRIPTION: SIGNAGE EASEMENT EXHIBIT

- ENGINEERING
- PLANNING
- SURVEYING