

Return To: SP 000 12 7470
FIDELITY NATIONAL TITLE INSURANCE CO.

*Document signed in counterpart

AFTER RECORDING, PLEASE RETURN TO:

Rawls Law Firm, PLLC
315 South Jupiter Road, Suite 200
Allen, Texas 75002
Attention: Dawn M. Rawls

RETAINING WALL EASEMENT AGREEMENT

THIS RETAINING WALL EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 31 day of August, 2023 ("Effective Date"), by and between **RS GIBSON, LLC**, a Texas limited liability company ("Parcel 1 Owner"), and **THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**, a body corporate of the State of New Mexico ("Parcel 2 Owner"). The following recitals are a material part of this Agreement:

WHEREAS, Parcel 1 Owner is the owner of certain real property located in Albuquerque, New Mexico, being more particularly described on Exhibit A attached hereto ("Parcel 1");

WHEREAS, Parcel 2 Owner is the owner of certain real property located in Albuquerque, New Mexico, being more particularly described on Exhibit B attached hereto ("Parcel 2");

WHEREAS, Parcel 1 Owner desires to construct a retaining wall ("Wall") on Parcel 2 in the location depicted on Exhibit C attached hereto and labeled "Retaining Wall Area" ("Wall Area"); and

WHEREAS, Parcel 2 Owner consents to Parcel 1 Owner constructing and maintaining the Wall subject to the terms and conditions set forth herein.

WHEREAS, Parcel 1 Owner and Parcel 2 Owner (individually "Owner" and collectively "Owners") desire to grant reciprocal easements for the Wall.

WHEREAS, Parcel 1 and Parcel 2 are sometimes individually referred to as a "Parcel" and collectively as the "Parcels".

NOW, THEREFORE, in consideration of the agreements contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Wall Easement Grants. Parcel 2 Owner grants to Parcel 1 Owner a non-exclusive easement in the portion of the Wall Area located on Parcel 2, for the Wall. Parcel 1 Owner grants Parcel 2 Owner a non-exclusive easement in the portion of the Wall Area located on Parcel 1 for the Wall. In addition to the foregoing, Parcel 2 Owner grants to Parcel 1 Owner a non-exclusive intermittent easement on, over and across only those portions of Parcel 2, and for only such periods as are reasonably necessary, for the construction, installation, maintenance, repair, restoration, replacement and existence of the Wall.

2. Construction of Wall. Parcel 1 Owner, at Parcel 1 Owner's sole cost and expense, shall construct (or cause the construction of) the Wall. Parcel 1 Owner shall complete construction of the Wall on or before twenty four (24) months after the Effective Date. The Wall shall be constructed in accordance with such plans and specifications as are reviewed and approved in writing by Parcel 2 Owner. Parcel 1 Owner shall secure, maintain and comply with all required licenses, permits, inspections and certificates related to or otherwise necessary or appropriate for the construction of the Wall. The Wall shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances (collectively "Laws") related to construction and use of the Wall, including but not limited to building codes and building permits. Without limiting the foregoing, Parcel 1 Owner shall comply with all Laws governing the prevention, abatement and elimination of pollution, retention and control of surface waters, protection of the environment and the employment of workers. Parcel 1 Owner shall be responsible for all costs and expenses related to the Wall. In conjunction with this Agreement, Parcel 1 Owner shall prevent any lien from being filed against all or any portion of Parcel 2.

3. Maintenance of Wall. Parcel 1 Owner, at Parcel 1 Owner's expense, shall construct, install, maintain, repair, restore and replace the Wall. In conjunction with the construction, installation, maintenance, repair, restoration and replacement of the Wall, Parcel 1 Owner shall take such action as to not materially interfere with the ordinary use of the Parcels by the respective Owner, the Owner's tenants and their agents, employees, customers and invitees.

4. Duration of Wall Easement. The easements created by this Agreement shall run with the land, and be appurtenant to Parcel 1 and Parcel 2.

5. Temporary Construction Easement. Parcel 2 Owner grants to Parcel 1 Owner and Parcel 1 Owner's employees, agents, contractors and licensees, a non-exclusive temporary construction easement on, over and across those portions of Parcel 2 that are necessary to construct and install the Wall. The temporary construction easement granted hereunder shall expire upon the earlier of: (i) the date the construction and installation of the Wall is completed; or (ii) the date that is twenty-four (24) months after the Effective Date.

6. Compliance with Law and Indemnification. Each Owner shall, with respect to its respective Parcel, comply with (or cause the compliance with) all Laws. Except to the extent caused by the gross negligence or willful misconduct of Parcel 2 Owner, Parcel 1 Owner indemnifies, defends and agrees to hold Parcel 2 Owner harmless against all claims, demands, loss,

damage, liabilities and expenses and all suits, actions and judgments (including but not limited to costs and attorney's fees) arising out of or in any way related to the failure to maintain the Wall in a good and safe condition. Each Owner shall give prompt and timely notice (or cause such notice to be given) of any claim made or suit or action commenced against the other Owner which in any way would result in indemnification under this Agreement.

7. Notices. Any notice or communication allowed or required under this Agreement shall be in writing and shall be: (a) delivered personally to the addressee, (b) sent by a recognized overnight courier service for next day delivery, (c) sent by certified mail, or (d) sent by electronic mail (so long as also sent by one of the other methods listed above for notice). Notices sent in compliance with this Section 7 shall be effective: (i) upon receipt or refusal if delivered personally; (ii) one (1) business day after depositing with such an overnight courier service; (iii) the third (3rd) day following deposit by certified mail with all fees paid, or (iv) on confirmation of delivery of the electronic mail if delivered by electronic mail. Any party may change the address for notice, the person to whom notices are sent and the e-mail notification address specified above by giving the other party ten (10) days advance written notice of such change of address. The notice addresses of Parcel 1 Owner and Parcel 2 Owner are as follows:

Parcel 1 Owner: RS GIBSON, LLC
Attn: Beau Tucker and Kevin Mattson
2560 King Arthur Blvd., Suite 124-104
Lewisville, TX 75056
Email: btucker@redskyholdings.com

Parcel 2 Owner: The Regents of the University of New Mexico
Attn: Director of Real Estate
2811 Campus Boulevard NE
Albuquerque, NM 87106
Email: tneale@unm.edu

8. Liens. The Owners agree that no mechanics and materialmen's liens shall be permitted to attach to Parcel 1, Parcel 2, or the Wall Area. Within thirty (30) days of the date of recording, any mechanics and materialmen's liens shall be released or, pursuant to New Mexico Statutes, removed.

9. Enforcement.

(a) In the event of any default, violation or threatened violation of this Agreement, each Owner shall have all rights and remedies under statute, at law, in equity, under this Agreement or otherwise, including, without limitation, an injunction, a suit for damages and/or a suit for specific performance of this Agreement.

(b) If Parcel 1 Owner fails to perform its maintenance obligations pursuant to this Agreement within thirty (30) days after written notice from Parcel 2 Owner (or such additional period, if any, as may be reasonably required to cure such failure but in no event to exceed sixty (60) days in the aggregate, provided that Parcel 1 Owner commences to cure the failure within

such 30-day period and thereafter diligently pursues such cure to completion), then, Parcel 2 Owner shall have the right, but not the obligation, to perform any necessary work or furnish any necessary materials or services to cure such failure. In the event Parcel 2 Owner cures Parcel 1 Owner's default in accordance with this Section 9(b), then Parcel 1 Owner shall reimburse Parcel 2 Owner for all reasonable costs and expenses incurred by Parcel 2 Owner in connection with such curative action within twenty (20) days following Parcel 1 Owner's receipt of an invoice from Parcel 2 Owner.

(c) In the event of a default under this Agreement by Parcel 1 Owner, Parcel 1 Owner shall be liable to Parcel 2 Owner for all costs and expenses incurred in connection with the enforcement of this Agreement, including attorneys' fees, incurred by Parcel 2 Owner as a result of the default. If at any time Parcel 2 is owned by a person or entity other than The Regents of the University of New Mexico, a related entity owned or controlled by The Regents of the University of New Mexico, and/or another governmental entity, to the extent permitted by law, in the event of a default by Parcel 2 Owner under this Agreement, Parcel 2 Owner shall be liable to Parcel 1 Owner for all costs and expenses incurred in connection with the enforcement of this Agreement, including reasonable attorneys' fees, incurred by Parcel 1 Owner as a result of the default. Notwithstanding anything set forth in this Agreement to the contrary, the parties acknowledge and agree that the provisions of this Section 9(c) are in no way intended to prohibit or limit the rights or remedies available pursuant to Section 9(a) of this Agreement.

10. Not a Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the real property described in this Agreement to the general public or for general public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes stated in this Agreement.

11. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of each Owner and its tenants, occupants, licensees, heirs, successors, grantees and assigns, and not for the benefit of any third person. This Agreement shall not be deemed to confer any rights, express or implied, upon any third person.

12. Modifications. This Agreement may only be modified by a written document signed by all of the Owners which is recorded in the real property records of the county in which the Parcels are located.

13. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the state in which the Parcels are located.

14. Raising Cane's Rights. Parcel 2 Owner acknowledges that Raising Cane's Restaurants, L.L.C., a Louisiana limited liability company ("Cane's"), currently leases Parcel 1 from Parcel 1 Owner pursuant to that certain Ground Lease dated effective as of June 29, 2022. Parcel 2 Owner further acknowledges and agrees that so long as Cane's is an occupant of Parcel 1, Cane's shall benefit from all rights and benefits of Parcel 1 Owner under this Agreement, provided that Cane's complies with and performs all obligations of Parcel 1 Owner under this Agreement in the exercise of such rights. So long as Cane's is the occupant of Parcel 1, Parcel 2 Owner agrees to give copies of any notices sent to Parcel 1 Owner pursuant to this Agreement both

to Raising Cane's Restaurants, L.L.C., Attn: Real Estate Department, 6800 Bishop Road, Plano, TX 75024, Email: realestate@raisingcanes.com, and to Rawls Law Firm, PLLC, Attn: Dawn M. Rawls, 315 S. Jupiter Road, Suite 200, Allen, TX 75002, Email: dawn@rawlslaw.com.

15. Insurance. Parcel 1 Owner shall procure and maintain general liability insurance naming Parcel 2 Owner as an "insured" or "additional insured" regarding use by Parcel 1 Owner and Parcel 1 Owner's tenants, employees, agents, customers, tenants, invitees, contractors and licensees of the Wall Area pursuant to this Agreement. If at any time Parcel 2 is owned by a person or entity other than The Regents of the University of New Mexico, a related entity owned or controlled by The Regents of the University of New Mexico, and/or another entity subject to New Mexico Risk Management, Parcel 2 Owner shall procure and maintain general liability insurance naming Parcel 1 Owner as an "insured" or "additional insured" regarding use by Parcel 2 Owner and Parcel 2 Owner's tenants, employees, agents, customers, tenants, invitees, contractors and licensees of the Wall Area pursuant to this Agreement. So long as The Regents of the University of New Mexico, a related entity owned or controlled by The Regents of the University of New Mexico is Parcel 2 Owner, and/or another entity subject to New Mexico Risk Management, Parcel 2 Owner's responsibilities pursuant to this section shall be satisfied by New Mexico Risk Management, not private insurance. All private insurance (as opposed to New Mexico Risk Management) procured pursuant to this Agreement shall provide that the insurance carrier shall give at least thirty (30) days prior written notice to the other Owner before changing or cancelling any insurance policy. Each private insurance policy shall cover specific risks, be in an amount, contain a deductible and otherwise be in a form reasonably acceptable to the other Owner.

16. Limitation of Indemnifications. To the extent applicable, if at all, the indemnifications contained in this Agreement are subject to and limited by the provisions of § 56-7-1 of the New Mexico Statutes.

17. Lender's Consent. As of the date of the recording of this Agreement, Parcel 1 Owner represents to Parcel 2 Owner that no mortgage or other lien exists on Parcel 1. Without limiting the foregoing, to the extent a mortgage or other lien exists any time on Parcel 1, Parcel 1 Owner shall obtain in favor of Parcel 2 Owner a consent, non-disturbance and agreement not to foreclose this Agreement from the person or entity holding the mortgage or lien on Parcel 1. Such document shall be in a form reasonably acceptable to Parcel 2 Owner.

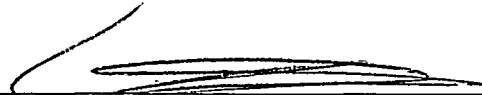
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Parcel 1 Owner has caused this Agreement to be executed and effective as of the Effective Date.

PARCEL 1 OWNER:

RS GIBSON, LLC,
a Texas limited liability company

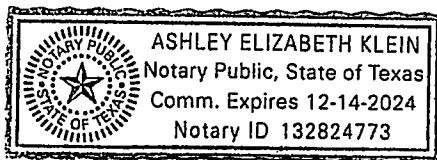
By:



Kevin Mattson
Manager

ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Dallas §
§

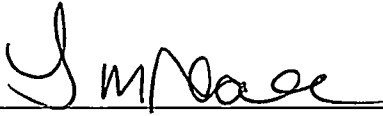
BEFORE ME, the undersigned authority, on this 30th day of August, 2023, did personally appear Kevin Mattson, as Manager of RS GIBSON, LLC, a Texas limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.




Notary Public
My Commission Expires: 12.14.2024


REVIEWED AND APPROVED BY:

THE REGENTS OF THE UNIVERSITY OF
NEW MEXICO

By: 
THOMAS M. NEALE
Director of Real Estate

APPROVED AS TO FORM FOR UNM:

HURLEY, TOEVS, STYLES, HAMBLIN & PANTER, P.A.

By: 
MARK STYLES

MSS/UNM/Tucker/6 Retaining Wall Easement Agree Ward 082323

JOINDER OF RAISING CANE'S RESTAURANTS, L.L.C.

Raising Cane's Restaurants, L.L.C., a Louisiana limited liability company, as tenant under that certain Ground Lease effective June 29, 2022, and as holder of a leasehold interest in Parcel 1, hereby consents to the execution and recording of the foregoing Access Easement Agreement, and agrees to be bound thereto.

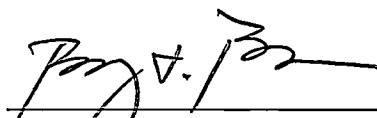
EXECUTED this 31st day of August, 2023.

DS
GL

RAISING CANE'S RESTAURANTS, L.L.C.,
a Louisiana limited liability company

DS
DG

By:

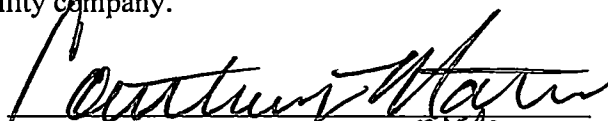

Bryan L. Brown
Chief Development Officer

STATE OF TEXAS

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§
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COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this 31st day of August, 2023, did personally appear Bryan L. Brown, as Chief Development Officer of Raising Cane's Restaurants, L.L.C., a Louisiana limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.


Notary Public, State of TEXAS

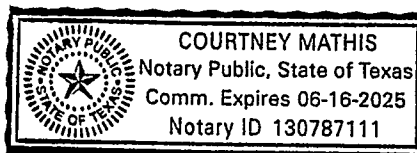


EXHIBIT A

LEGAL DESCRIPTION OF PARCEL 1

Tract numbered Three (3) of the Plat of UNM Gibson Commercial District (a replat of Tracts A & B, Ever Ready Subdivision, Tracts 4 & 5, Gibson Tracts and Tract A, 40/25 Associates Subdivisions and unplatted land in Section 28, T10N, R3E NMPM), Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the Plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico on December 22, 2011 in Map Book 2011C, folio 138.

EXHIBIT B

LEGAL DESCRIPTION OF PARCEL 2

Tract numbered Five (5) of the Plat of UNM Gibson Commercial District (a replat of Tracts A & B, Ever Ready Subdivision, Tracts 4 & 5, Gibson Tracts and Tract A, 40/25 Associates Subdivisions and unplatted land in Section 28, T10N, R3E NMPM), Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the Plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico on December 22, 2011 in Map Book 2011C, folio 138.

RETAINING WALL

