

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "**First Amendment**") is made effective the 11th day of April, 2022, by I25 & Gibson, LLC, a New Mexico limited liability company ("**Developer**").

RECITALS

WHEREAS, on September 29, 2021, Developer recorded that certain Declaration of Easements, Covenants and Restrictions in the Office of the County Clerk of Bernalillo County as Doc# 2021116117 (the "**Declaration**"), which subjected the Project (as defined in the Declaration) and as legally described on Exhibit "A" to the covenants, restrictions, easements, charges and liens contained therein.

WHEREAS, Developer desires to amend the Declaration as set forth herein below.

NOW, THEREFORE, Developer hereby amend the Declarations as follows:

1. Amendment to Section 2.3. The definition of "Building" is hereby amended to include fueling canopies, fueling positions and vacuum stations. The following sentence is hereby added to the end of Section 2.3. "The definition of "Building" shall not be changed or modified without prior consent of Owners of the Project."

2. Amendment to Section 2.4. The definition of "Common Area" is hereby amended to include "Critical Access Drives" and "Protected Drive Aisle". The following sentences are hereby added to the end of Section 2.4. "The definition of "Common Area(s)" shall not be changed or modified without prior consent of Owners of the Project. Anything to the contrary in this Declaration notwithstanding, drive-thru lanes shall not be part of the Common Area"

3. Addition of Sections 2.4.A and 2.4.B. The following is hereby added as Section 2.4.A:

Section 2.4.A. "**Critical Access Drives**" shall mean and refer to the access drives, curb cuts, curbing, and aprons within the Project as depicted on Exhibit B-1 attached hereto. The Critical Access Drives shall not be relocated from the area shown on Exhibit B-1, attached hereto and by this reference incorporated herein, without the prior consent of Owners of the Project unless required by a condemning authority or other governmental or quasi-governmental entity (not resulting from a request for action or approval by Developer). Nothing contained herein shall prohibit or prevent Developer from utilizing the Critical Access Drives for other purposes and easements, such as utility easements, so long as the Critical Access Drives, and associated ingress and egress, are not in whole or in part closed,

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blocked, relocated or otherwise altered in any way; provided, however, that the foregoing will not be construed to prohibit a temporary closure of one or more of the Critical Access Drives from time to time that is (i) reasonably necessary in order to prevent a public dedication, (ii) required by a governmental authority, (iii) reasonably necessary in connection with the performance of construction, maintenance and repairs, or (iv) due to an emergency, provided that in each such case (A) reasonable alternative access is available to all affected parties at all times during such temporary closure, and (B) the party responsible for the temporary closure will use good faith, diligent efforts to reopen such access promptly after emergency or temporary closure.

Section 2.4.B. **“Protected Drive Aisle”** shall mean and refer to the internal drive aisle within the Project as depicted on Exhibit B-1. The Protected Drive Aisle may be located anywhere within the Protected Drive Aisle Area as depicted on Exhibit B-1, attached hereto and by this reference incorporated herein; provided, upon completion of the initial construction or subsequent redevelopment on each Lot of the Project, the Protected Drive Aisle shall be no less than 26 feet wide and shall run continuously through said Lot, and shall not otherwise be relocated outside of the Protected Drive Aisle Area. The Protected Drive Aisle shall not be relocated outside of the Protected Drive Aisle Area without the prior consent of Owners of the Project unless required by a condemning authority or other governmental or quasi-governmental entity. Nothing contained herein shall prohibit or prevent (i) Developer from utilizing the Protected Drive Aisle or Protected Drive Aisle Area; or (ii) any Owner from utilizing the portion of the Protected Drive Aisle or Protected Drive Aisle Area contained on such Owner’s Lot for other purposes and easements, such as utility easements, so long as the Protected Drive Aisle is not closed or blocked in any way; provided, however, that the foregoing will not be construed to prohibit a temporary closure of a portion of the Protected Drive Aisle from time to time that is (i) reasonably necessary in order to prevent a public dedication, (ii) required by a governmental authority, (iii) reasonably necessary in connection with the performance of construction, maintenance and repairs, or (iv) due to an emergency, provided that in each such case (A) reasonable alternative access is available to all affected parties at all times during such temporary closure, and (B) the party responsible for the temporary closure will use good faith, diligent efforts to reopen such access promptly after emergency or temporary closure.

4. Amendment to Section 2.13. Section 2.13 is hereby deleted in its entirety and replaced as follows:

Section 2.13. **“Project Development Plan and Design Criteria”** shall mean and refer to the development plan package as approved by the ARC

and such other standards and guidelines for controlling the quality and character of the Improvements to be constructed on the Project along with the review procedures which have been adopted by the ARC on or after the date of this Declaration. Upon adoption, the ARC shall provide written notice and a final copy of the adopted Project Development Plan and Design Criteria to all Owners. After adoption and with the consent of the Owner of said Lot(s) the amendment is being proposed for, the ARC may amend the Project Development Plan and Design Criteria to change the following: (i) the size and boundaries of any Lot(s); (ii) the size and location of any Building, Common Area or Improvements on any Lot(s) (other than the Critical Access Drives or Protected Drive Aisles) or, (iii) the referenced plans and details for any Lot(s). No change to the Project Development Plan and Design Criteria shall relocate the Critical Access Drive or Protected Drive Aisles without the consent of the Owners of the Project as required in Sections 2.4.A. and 2.4.B. All other amendments to the Project Development Plan and Design Criteria shall require the consent of Owners of the Project. The Project Development Plan and Design Criteria shall be binding upon all Owners and Occupants of the Project. In the event of termination of this Declaration, the Project development Plan and Design Criteria shall terminate and be of no further force and effect.

5. Amendment to Section 3.2. The first sentence of Section 3.2 is deleted in its entirety and replaced with the following:

“Approval of the Site Development Plan shall be based solely on the conformity thereof with the Project Development Plan and Design Criteria.”

6. Amendment to Section 3.3.A. Section 3.3.A. is hereby deleted in its entirety and replaced as follows:

Section 3.3.A. To modify or amend the Project Development Plan and Design Criteria in accordance with Section 2.13

7. Amendment to Section 4.1.B. The following sentences are hereby added to the end of Section 4.1.B. “The location of the utility easement shall be subject to the reasonable approval of the Owner of the burdened Lot. The plans for the utility easement and associated utility shall be submitted to the Owner of the burdened Lot at the same time as the submittal to the ARC and shall follow the review procedure established by the ARC.”

8. Amendment to Section 4.1.E. Section 4.1.E is hereby amended to add:

“The location of the Individual Lot Improvements and Undeveloped Lot Improvements shall be subject to the reasonable approval of the Owner of the burdened Lot. The plans for the Individual Lot Improvements and

Undeveloped Lot Improvements shall be submitted to the Owner of the burdened Lot at the same time as the submittal to the ARC and shall follow the review procedure established by the ARC.”

9. Amendment to Section 4.2.E. Section 4.2.E. is hereby amended to delete the words “construction staging”.

10. Amendment to Section 5.1. Section 5.1 is hereby deleted in its entirety and replaced with the following:

Section 5.1 Maintenance of the Improvements and Lots. Subject to Sections 5.2 and 5.3 below, each Owner, at its sole cost and expense, shall be responsible for the operation and continued maintenance, including repair and replacement of Improvements and any Common Area Improvements located on their respective Lots, including any Critical Access Drive(s) and/or Protected Drive Aisle. Each Owner, at its sole cost and expense, shall be responsible for keeping its Lot free of debris, rubbish and weeds.

11. Amendment to Section 5.3. Section 5.3 is hereby deleted in its entirety and replaced with the following:

Section 5.3 Undeveloped Lot Improvements Maintenance Responsibilities. Undeveloped Lot Improvements shall be considered Improvements to be maintained in accordance with Section 5.1.

12. Amendment to Section 5.4. Section 5.4 is hereby amended to provide that no more frequently than once every three (3) years, Developer may increase the limits of the insurance as reasonably necessary to reflect then appropriate limits for such insurance, and the minimum net worth for self-insurance shall be One Hundred Million Dollars (\$100,000,000.00).

13. Amendment to Section 9.2. Section 9.2. is hereby amended to delete the words “construction staging”.

14. Amendment to Section 10.2. Section 10.2 is hereby deleted in its entirety and replaced with the following:

“ 10.2 Grant of Easement. The Developer, through their duly authorized employees and contractors, shall have the right and easement, to enter onto a Lot and/or the Common Areas, but not into Buildings, at any reasonable time to perform such inspection and/or maintenance as may be authorized in this Declaration.”

15. Deletion of Section 10.4. Section 10.4 is hereby deleted in its entirety and replaced with “Intentionally Deleted”.

16. Amendment to Section 10.5. Section 10.5 is hereby deleted in its entirety and

replaced as follows:

Section 10.5. Future Platting and Subdivision. Upon prior consent by all Owners of Lot(s) subject to future platting and subdivision actions or any Lot(s) that will be affected by requirements or restrictions being placed on a Lot not actually being replatted or subdivided and subject to the provisions of Section 2.4.A, Section 2.4.B, and Section 2.13, the Developer shall be entitled at any time and from time to time to plat, vacate and/or replat all or any part of the Project and to file subdivision restrictions and/or amendments thereto with respect to any portion or portions of the Project, without the consent of the ARC or the Owners of Lot(s) not subject to or affected by said platting and subdivision actions, as described above, or any mortgagee of the Project. If consent is granted, Owners of Lot(s) subject to said platting and subdivision actions and/or its successors or assigns shall execute such approvals, as are required by the municipality governing for such platting and subdivision actions. If required, Owners of Lot(s) not subject to or affected by said platting and subdivision actions, as described above, and/or its successors or assigns or any mortgagee of the Project shall execute such approvals, as are required by the municipality governing for such platting and subdivision actions.

17. Amendment to Section 10.6. Section 10.6 is hereby deleted in its entirety and replaced as follows:

Section 10.6. Continued Development. Upon prior written by all Owners of Lot(s) subject to the continued development actions and subject to the provisions of Section 2.4.A, Section 2.4.B, and Section 2.13, the Developer shall be entitled at any time and from time to time to further develop the Project and to obtain and record such governmental or quasi-governmental approval as may be necessary to effectuate such development with respect to any portion or portions of the Project, without the consent of the ARC or the Owners of Lot(s) not subject to said development actions or affected by requirements or restrictions related to such development actions or any mortgagee of the Project. If consent is granted, Owners of Lot(s) subject to or affected by said development actions and/or its successors or assigns shall execute such approvals, as are required by the municipality governing for such development actions. If required, Owners of Lot(s) not subject to said development actions and/or its successors or assigns or any mortgagee of the Project shall execute such approvals, as are required by the municipality governing for such development actions.

18. Amendment to Section 10.7. Section 10.7 is hereby deleted in its entirety and replaced as follows:

Section 10.7. Future Easements and Rights-of-Way. Upon prior consent

by all Owners of Lot(s) subject to or affected by the following easement and right-of-way actions and subject to the provisions of Sections 2.4.A, 2.4.B, and 2.13, Developer reserves the right from time to time hereafter to delineate, plat, grant or reserve within portions of the Project, whether or not previously conveyed or hereby granted, such easements and rights-of-way for public or private streets, roads, sidewalks, ways and appurtenances thereto, and such easements or right of way for public or private drainage and utilities, as it may deem necessary or desirable for the development of the Project (and from time to time to change the location of the same) free and clear of this ECR and to dedicate the same to public use or to grant the same to any governing municipal or regulatory authority, including any appropriate public utility corporations (collectively "Future Reserved Actions", each a "Future Reserved Action") without the consent of the ARC or the Owners of Lot(s) not subject to said easement and right-of-way actions or any mortgagee of the Project. If consent is granted, Owners of Lot(s) subject to said easement and right of way actions and/or its successors or assigns shall execute such approvals, as are required by the municipality governing for such easement and right-of-way actions. If required, Owners of Lot(s) not subject to said easement and right-of-way actions and/or its successors or assigns or any mortgagee of the Project shall execute such approvals, as are required by the municipality governing for such easement and right-of-way actions.

19. Amendment to Section 11.2.C. Section 11.2.C. is hereby deleted in its entirety and replaced as follows:

C. No portion of the Common Areas of the Project outside of the Lot the construction activity is occurring on shall be used: (i) as staging areas for construction equipment or materials, (ii) for the parking of construction vehicles, or (iii) as a parking area or for other use by construction employees, without the express written approval of the ARC any Owner(s) whose Lot(s) will be impacted and burdened by the construction activity.

20. Deletion of Section 11.3. Section 11.3 is hereby deleted in its entirety and replaced with "Intentionally Deleted".

21. Amendment to Section 12.9. Section 12.9 is hereby deleted in its entirety and replaced as follows:

Section 12.9. Termination, Modification, and Owner Consent. Except as otherwise provided for in this Declaration, Developer shall have the right to amend, modify and/or terminate this Declaration without the approval of the ARC or any Owner; provided, however, any amendment or modification that seeks to cause a Lot's parking ratios to be reduced, its utility services to be reduced, the drainage plan affecting the Lot to its material detriment, the Lot's access points or

driveways materially changed, or the use materially changed shall require the written approval of the Owner(s) of the affected Lot, which written approval may granted or withheld at Owner's sole and absolute discretion. Notwithstanding anything to the contrary in this Section or elsewhere in the Declaration, in no event shall Developer terminate this Declaration as to any and all access and/or utility easements benefitting any or all of the Lots of the Project without prior written approval of any and all Owners of said Lots which written approval may granted or withheld at Owner's sole and absolute discretion.

In any case where the consent of an Owner is required by this Declaration, the consent shall be delivered in writing and shall not be unreasonably withheld, conditioned, or delayed. The response of an Owner shall be delivered to the party requesting consent in writing within thirty (30) business days of the receipt of the request for consent. If no response is received within said time frame, consent shall be deemed to have been received and the consenting Owner shall cooperate with any actions required.

22. Amendment to Section 12.14. Section 12.14 is hereby amended to add the following sentence:

"All notices shall be deemed to have been properly given and received on the date delivered."

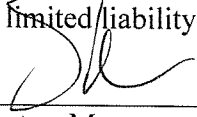
23. Deletion of Section 12.18. Section 12.18 is hereby deleted in its entirety and replaced with "Intentionally Deleted".

24. Miscellaneous. To the extent any provisions of this First Amendment conflict with the Declaration, the terms of this First Amendment shall control. Except as modified by this First Amendment, the terms and conditions of the Declaration shall remain in full force and effect. Capitalized terms not otherwise defined in this First Amendment shall have the meanings ascribed to them in the Declaration. This First Amendment may be executed in multiple counterparts, all of which together shall constitute one and the same instrument.

[signature on separate page]

Developer

I25 & Gibson, LLC, a
New Mexico limited liability company


By: 
Steve Maestas, Manager

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on Apr. 11, 2022, by Steve Maestas, Manager of I25 & Gibson, LLC, a New Mexico limited liability company on behalf of said company.

MY COMMISSION EXPIRES:

7/29/2024


NOTARY PUBLIC

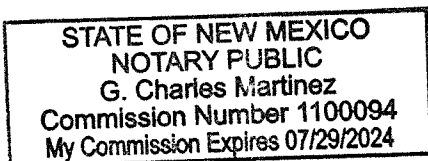


EXHIBIT "A"

Legal Description of Project

Parcel One:

Tracts "B-1" and C-1" of LOVELACE HEIGHTS ADDITION, being a replat of Lovelace Heights Addition and Tract 1-A of Newport Industrial Park West – Unit 2, Albuquerque, New Mexico as the same is shown and designated on said Replat, filed in the Office of the County Clerk of Bernalillo County, New Mexico on August 30, 1985 in Volume C28, folio 44.

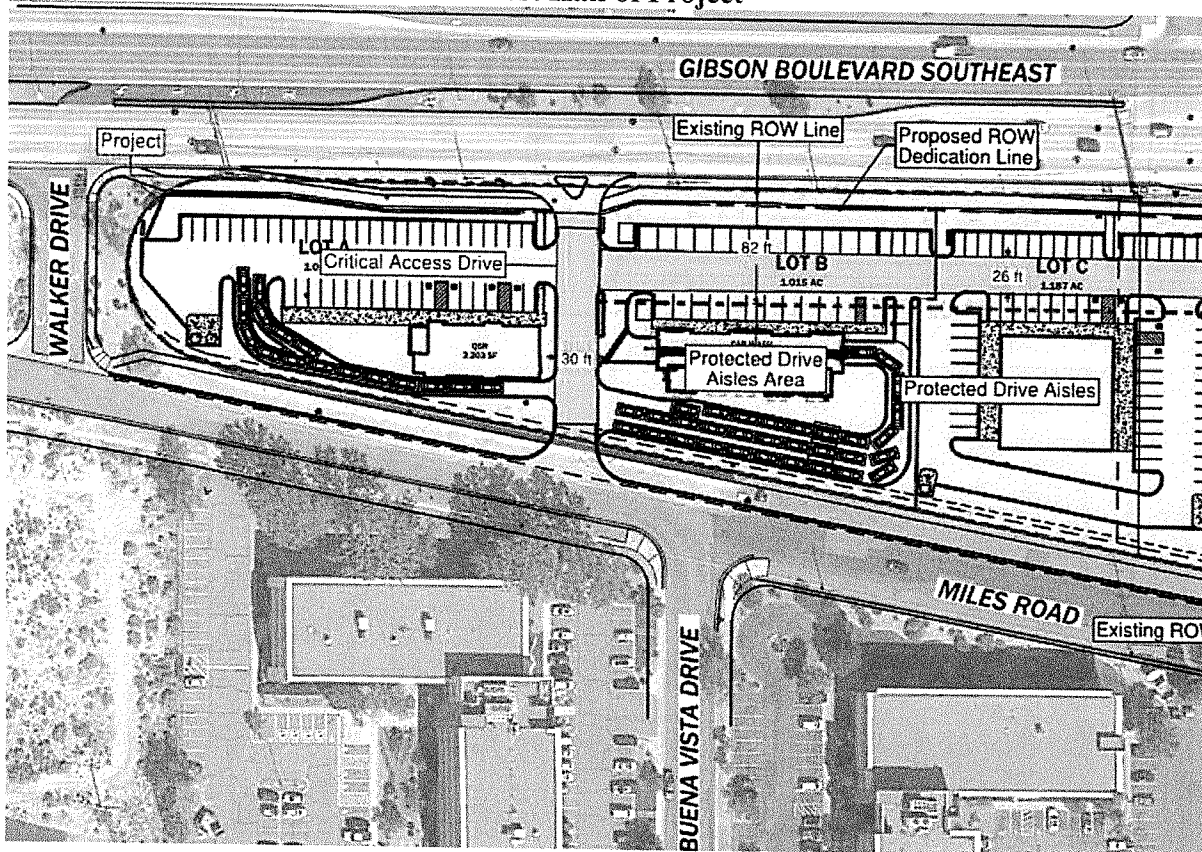
Parcel Two:

Tract "A-1A" of Lovelace Heights Addition, being a replat of and Tract A-1 of said Addition, as the same is shown and designated on said Replat, filed in the Office of the County Clerk of Bernalillo County, New Mexico on March 11, 1987, in Volume C33, folio 29.

EXHIBIT "B-1"

Depiction of Critical Access Drives and Protected Drive Aisles and Protected Drive Aisles Area

West Half of Project



East Park of Project

Existing ROW Line

Proposed ROW Dedication Line

Critical Access Drive

LOT D 0.975 AC

LOT E 0.822 AC

LOT F 1.741 AC

Protected Drive Aisles Area

Protected Drive Aisles Area

Protected Drive Aisles Area

Proposed Lot Line

Proposed 10' Utility Easement

Existing ROW Line

Proposed ROW Dedication Line

YALE BOULEVARD SOUTHEAS