

Old Republic Title Company 2101459 LD

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION is made effective the 27th day of September, 2021, by I25 & Gibson, LLC, a New Mexico limited liability company ("**Developer**"), which declares that the real property comprised of all of the lots, parcels, and sites, platted or unplatted, legally described on Exhibit "A" attached hereto and incorporated herein by reference, to be known in the aggregate as the "**Project**", which is currently owned by the Developer, is and shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as the "**Declaration**" or "**ECR**") hereinafter set forth.

ARTICLE I PURPOSE

The purpose of this ECR is to control the proper use and most appropriate development of the Project through the imposition of uniform standards and to create easements and common areas for the mutual benefit of the owners of the Project. It is the intent of this ECR to provide conditions, covenants, restrictions and easements that ensure the Project will always be maintained as an attractive, quality-oriented, business environment.

ARTICLE II DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

Section 2.1 "**Applicable Laws**" shall mean and refer to any and all laws, statutes, codes, regulations, ordinances or other governmental or quasi-governmental regulations applicable to and binding on the Project.

Section 2.2 "**Architectural Review Committee**" or "**ARC**" shall initially be comprised of the Developer and shall have the powers and duties as set forth herein. The Developer shall have the right to transfer responsibility and designate other members of the ARC as provided herein below.

Section 2.3 "**Building**" shall mean any constructed improvement as may be allowed within a Lot which contains enclosed space or improvements or equipment to be used exclusively in connection with enclosed space located on such Lot, including walls, facades, patios, porticos, porches, drive thru lanes, kiosks, ATMs, vending machines, exclusive loading and unloading areas, and trash enclosures and appurtenances.

Section 2.4 "**Common Area**" shall mean and refer to those portions of the Project excluding the Buildings, Individual Lot Improvements, and Dedicated Utilities but specifically including all common utilities, shared utility lines and meters, entry features, common signage, drainage (surface and subsurface), sidewalks, roads, drive aisles, access drives, rights-of-way, parking, or any other use or area designated by the Developer for the mutual benefit of Developer, Owners, and/or Occupants of all or a portion of the Project. The Developer declares that all of the Common Areas, whether owned or held by Developer or any Owner, are subject to the reciprocal

easements as provided for in and subject to Article IV herein below, for the mutual benefit of the Developer, Owners and/or Occupants for the above recited purposes, including the rights of ingress, egress, service and accommodation of the general public who have legitimate business with Developer, any Owner, Occupant, tenant or lessee of all or any portion of the Project.

Section 2.5 **"Dedicated Utilities"** shall mean and refer to utility lines and meters that exclusively serve the Lot upon which they are located.

Section 2.6 **"Developed Lot"** shall mean a Lot on which construction has commenced on any portion of the Building on such Lot.

Section 2.7 **"Developer"** shall mean and refer to I25 & Gibson, LLC, a New Mexico limited liability company, its successors and assigns of any or all of its rights under this Declaration.

Section 2.8 **"Improvements"** shall mean and refer to any man-made alterations to the Project including, but not limited to, structures and construction of any kind, whether above or below the property surface, such as any Building, fence, wall, sign, addition, alteration, screen enclosure, sewer, drain, disposal, lake, waterway, road, paving, utilities (shared or dedicated), grading, landscaping and exterior illumination, as well as construction within the public right of way that is required for or serving the Project.

Section 2.9 **"Individual Lot Improvements"** shall mean and refer to those Improvements that benefit only a single Lot when said Improvements are not located on such Lot and that do not benefit the burdened Lot. The Developer shall, from time to time, designate those Improvements that are Individual Lot Improvements. Each Individual Lot Improvements shall have the prior written consent of the Owner of the burdened Lot, such consent not to be unreasonably withheld, conditioned or delayed. There may be multiple, separate Individual Lot Improvements within the Project. Individual Lot Improvements shall be constructed by an Owner or Occupant of the benefited Lot at the sole cost and expense of the Owner or Occupant of the benefited Lot, lien-free in and a good and workmanlike manner. The Owner of the burdened Lot shall have the right to post statutory notices of non-responsibility on the burdened Lot during the entirety of the construction of the Individual Lot Improvements. Each Owner whose Lot benefits from an Individual Lot Improvement shall be responsible for the construction, repair and maintenance of said Individual Lot Improvement.

Section 2.10 **"Lot"** shall mean and refer to any legally subdivided parcel of the Project, together with any and all Improvements thereon, created and existing by a plat recorded before, concurrent or after the date of this Declaration in the public records of Bernalillo County, New Mexico, on which any Improvement could be constructed, whether or not it has been constructed.

Section 2.11 **"Occupant"** shall mean and refer to any person or organization which has occupied, purchased, leased, rented or is otherwise licensed or legally entitled to occupy and/or use any Lot or Improvement or any portion thereof (whether or not such right is exercised), as well as their heirs, personal representatives, assigns and successors in interest.

Section 2.12 **"Owner"** shall mean and refer to the record owner, whether one or more partners, persons, trusts, corporations, or other entities, of the fee simple interest (but not contract sellers) to a Lot and including contract purchasers, their heirs, personal representatives, successors or assigns. An Owner may, upon written notice to the Developer, assign all or part of its rights, but not its duties hereunder, to Owner's Occupant. Notwithstanding the foregoing, it is the sole responsibility of Owner to ensure complete compliance with this ECR by any Occupant of the Owner's Lot.

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 which have been adopted by the ARC on or after the date of this Declaration and which may be reasonably amended from time to time by the ARC. Notwithstanding the foregoing, the Developer shall have the right to amend the Project Development Plan and Design Criteria to change the size and boundaries of any Lot and the size and location of any Building, Common Area or Improvements on any Lot with the approval of the owner of said Lot. The Project Development Plan and Design Criteria shall be binding upon all Owners and Occupants of the Project.

Section 2.14 **"Project"** shall refer to the Project, any portion thereof, and any and all Improvements thereon and additions thereto, as are subject to this Declaration.

Section 2.15 **"Site Development Plan"** shall mean any submittals, drawings and conditions of approval as may be approved and granted administratively by the governing authority and the ARC in conjunction with developing or constructing Improvements on all or a portion of any Lot.

Section 2.16 **"Undeveloped Lot"** shall mean a Lot that is not a Developed Lot.

Section 2.17 **"Undeveloped Lot Improvements"** shall mean and refer to those Improvements on an Undeveloped Lot that benefit one or more Developed Lots and that will benefit the Undeveloped Lot when it becomes a Developed Lot. The Developer shall, from time to time, designate those Improvements that are Undeveloped Lot Improvements. There may be multiple, separate Undeveloped Lot Improvements within the Project. If an the Owner of another Lot (the **"Developing Owner"**) determines to develop its Lot prior to commencement of development of the Undeveloped Lot and wishes to construct Improvements on the Undeveloped Lot, then with the prior written consent of the owner of the Undeveloped Lot, such consent not to be unreasonably withheld, conditioned or delayed, the Developing Owner shall have the right to construct the Undeveloped Lot Improvements at the sole cost and expense of the Developing Owner, lien-free in and a good and workmanlike manner. The Owner of the Undeveloped Lot shall have the right to post statutory notices of non-responsibility on the Undeveloped Lot during the entirety of the construction of the Undeveloped Lot Improvements. All Undeveloped Lot Improvements shall be considered a part of Common Area.

ARTICLE III

ARCHITECTURAL REVIEW COMMITTEE

Section 3.1 Necessity of Architectural Review and Approvals. No Improvement of any kind shall be commenced, constructed, erected, placed, altered or maintained upon any Lot, nor shall any addition, change or alteration thereon or thereof be made, nor shall any subdivision platting or replatting of any Lot be made, until the Site Development Plan with respect thereto has been approved by the ARC. The Site Development Plan shall include any and all information as required by the ARC. The Site Development Plan shall be submitted to the ARC in PDF format over the signature of the Owner or the Owner's authorized agent together with a review fee of \$1,000.00 per submittal ("**ARC Review Fee**"). The ARC Review Fee is subject to revision from time to time by the ARC.

Section 3.2 Architectural Review Committee Review and Approval Process. Approval of the Site Development Plan shall be based upon, among other things, the conformity thereof with the Project Development Plan and Design Criteria. All submittals and approvals shall be made in accordance with the requirements of the ARC. The ARC shall not arbitrarily or unreasonably withhold its approval of the Site Development Plan. ARC approval does not constitute governing body approval, technical approval, compliance with governmental codes or suitability of the Improvements for Owner or Occupants intended use. The Project Development Plan and Design Criteria is subject to revision from time to time by the ARC.

Section 3.3 Powers and Duties. The ARC shall have the following powers and duties:

- A. To reasonably modify or amend the Project Development Plan and Design Criteria from time to time.
- B. To require submittals by Owners related to all Improvements.
- C. To approve or disapprove any Improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Project and to approve or disapprove any exterior additions, changes, modifications or alterations therein, thereon or thereto. All decisions of the ARC shall in all events be final and dispositive upon all parties.
- D. If any Improvement is changed, modified or altered without prior approval of the ARC, then the Owner shall upon demand cause the Improvement to be restored to comply with the Site Development Plan originally approved by the ARC and said Owner shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the ARC.
- E. To revise or waive the ARC Review Fee.
- F. To perform such incidental acts as may be necessary in the exercise of its powers.

Section 3.4 Initial ARC. Developer shall serve as the initial ARC until such time as Developer assigns its rights hereunder and records notice thereof in the public records of Bernalillo County, New Mexico. All submittals and notices required to be sent to Developer shall be sent to:

I25 & Gibson, LLC

ATTN: ARC
7620 Jefferson St. NE
Albuquerque, NM 87109

Section 3.5 Liability. Neither the ARC, its individual members, the Developer nor their respective heirs, successors or assigns shall be liable for damages to anyone submitting a Site Development Plan to them for approval, or to any Owner or Occupant affected by this Declaration, by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such Site Development Plan. Every person who submits a Site Development Plan to the ARC for approval agrees, by submission of such Site Development Plan and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, that said Owner or Occupant will not bring any action or suit against the ARC, its members or Developer to recover any such damages.

Section 3.6 Limitation of Action. Notwithstanding anything to the contrary herein contained, after the expiration of three (3) year from the date of the issuance of a certificate of occupancy by the appropriate governmental authority for any Improvement or substantial completion thereof if no certificate of occupancy is required, said Improvement shall, in favor of purchasers, tenants and encumbrancers, in good faith and for value, be deemed to be in compliance with all provisions of this Article, unless: (i) the purchaser, tenant or encumbrancer has actual notice of such noncompliance or noncompletion; (ii) the ARC has filed of record a notice of noncompliance or noncompletion in the public records of Bernalillo County, New Mexico; or (iii) legal proceedings shall have been instituted to enforce compliance or completion.

ARTICLE IV COMMON AREAS

Section 4.1 Grant of Easements. Developer and each Owner hereby grants:

A. a perpetual, non-exclusive, reciprocal access easement for vehicular, pedestrian and bicycle ingress and egress over, upon and across the Common Areas of the Project as such Common Areas may exist from time to time for the use of Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees, and any emergency and governmental service providers;

B. a perpetual, non-exclusive, reciprocal cross drainage (surface and subsurface) easement over, under and across all portions of each Lot which are not used for Buildings to Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees. In addition, each Lot shall comply with Applicable Laws regarding retention or detention requirements and such other requirements established under the Project Development Plan and Design Criteria;

C. a perpetual non-exclusive, underground and surface utility easement within the Common Areas to the governing authority and other public and private utility companies, Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees for the purpose of placing, connecting and maintaining lines for gas lines, electric, communication, cable, drainage, water, and sanitary sewer along with other pipe conduits as well

as meters, pedestals, transformers and other surface equipment to the extent it cannot be located underground; provided, however, utilities shall not be located so as to impact the location of the Building on any Lot;

D. a perpetual, non-exclusive reciprocal parking easement for vehicles and bicycles to Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees within the parking area portions of the Common Areas on each Lot as the same may exist from time to time; provided, however, the Owner of each Lot shall at all times provide sufficient parking on its Lot or portion thereof to satisfy any and all Applicable Laws and subject to the approval of the Developer, the Owner may designate a limited number of parking spaces on their Lot as short term exclusive use; and

E. A perpetual non-exclusive easement for the construction (including staging), maintenance, repairs and replacements of the Individual Lot Improvements and Undeveloped Lot Improvements to the Developer and benefitted Owner(s) by each Owner over, upon, under and across their respective Lots.

Section 4.2 Limitations on Use of and Common Areas.

A. The Common Areas are hereby reserved for the sole and exclusive use of the Developer, Owners, and Occupants of the Project, and their successors, assigns, agents and invitees. The Common Areas may be used for the purposes set forth herein and for no other purpose unless otherwise specifically agreed to by the Developer. All Improvements placed or constructed in the Common Areas shall be approved by the ARC and shall be in accordance with the Project Development Plan and Design Criteria. The Common Areas shall be kept, repaired, replaced and maintained as provided for in Article V. All portions of a Lot which are not used for Buildings, and are not designated Individual Lot Improvements or Undeveloped Lot Improvements shall be developed by the Owner of the Lot, at that Owner's sole cost and expense, in accordance with the Project Development Plan and Design Criteria. No changes to the Common Areas Improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, walls, fences and landscaped areas may be made without the prior written approval of the ARC.

B. Customers and invitees of businesses in the Project shall not be permitted to park on the Common Areas except while shopping or transacting business in the Project.

C. The alteration in the natural water flow which may occur on a Lot as a natural consequence of normal construction activities and the existence of the Improvements substantially as shown on the Project Development Plan and Design Criteria (including, without limitation, Buildings and Building expansions, curbs, drives and paving) shall be permitted, provided that such diversion of water flows does not interfere with the use and beneficial enjoyment of any of the other Lots.

D. No walls, fences or barriers of any kind shall be constructed or maintained within the Common Areas, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including, without limitation, of pedestrians and vehicular traffic between the various Lots; except in the event of a bona fide emergency.

E. Subject to Article IX, no portion of the Common Areas shall be used for outdoor sales, construction staging, signage (other than as contained on Developer-designated

signs or storefronts), including without limitation, flags, A-frame signage, sandwich boards, banners, and/or billboards without the written approval of the ARC.

ARTICLE V MAINTENANCE/INSURANCE/TAXES

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 replacements, of Improvements on their respective Lots. Each Owner, at its sole cost and expense, shall be responsible for keeping its Lot free of debris, rubbish and weeds.

Section 5.2 Individual Lot Improvements Maintenance Responsibilities. Maintenance of Individual Lot Improvements shall be the responsibility of the Owner of the Lot benefited by the Individual Lot Improvements.

Section 5.3 Undeveloped Lot Improvements Maintenance Responsibilities. Until commencement of construction of improvements on the Undeveloped Lot by the Owner thereof (“**Construction Start**”), the Owner of the Developed Lot benefited by the Undeveloped Lot Improvements, at its sole expense, shall maintain the Undeveloped Lot Improvements in good order and repair. From and after Construction Start on the Undeveloped Lot, the Undeveloped Lot Improvements shall be considered Improvements maintained in accordance with Section 5.1.

Section 5.4 Insurance on Lot. Each Owner shall be responsible for providing and maintaining, or causing such insurance to be provided and maintained, (a) commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring itself, the Developer, if applicable, against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Lot, including all Common Areas within said Lot, and (b) property insurance on any Improvements on the Lot against loss, damage or destruction by fire and other casualty (excepting flood, earthquake and terrorism coverage) under a standard "special form" policy in an amount equal to the full replacement cost of the Improvements, or equivalent self-insurance approved by the Developer. Such insurance shall be written with an insurer licensed to do business in New Mexico with an A.M. Best Company (“**Best’s**”) rating of at least A- and a Best’s financial performance rating of at least VII, and the Developer shall be named on the policy as an additional insured. The limits of liability of all such insurance shall be not less than \$2,000,000.00 for personal injury or bodily injury or death of any one person, \$2,000,000.00 for personal injury or bodily injury or death of more than one person in one occurrence and \$2,000,000.00 with respect to damage to or destruction of the Improvements; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000.00 per occurrence. The Developer may increase the limits of such insurance as reasonably necessary to reflect then appropriate limits for such insurance. The Owners shall furnish the Developer prior to taking title to any Lot and thereafter prior to the expiration or termination of any existing insurance policy with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall

not be canceled, materially changed or nonrenewed without the giving of thirty (30) days' prior written notice to Developer. Any Owner may elect, upon prior written notice to Developer to self-insure for any of the risks otherwise covered by the commercial general liability insurance described in this Section 5.4, provided that such Owner certifies to Developer at the time of commencement of such self-insurance, and maintains throughout the period of self-insurance, a minimum net worth of One Hundred Million Dollars (\$100,000,000.00) as determined using generally accepted accounting principles, consistently applied. The obligations of an Owner under this Section 5.4, upon written notice to the Developer, may be assigned to the Occupant of the applicable Lot.

Section 5.5 Taxes and Governmental Assessments. The Owners shall pay prior to delinquency all taxes and governmental assessments levied or assessed against their respective Lots. The Owners shall each have the right to contest the amount or validity of all or any part of the taxes and assessments which said Owners are required to pay.

Section 5.6 Enforcement. If, in the reasonable opinion of the Developer or any other Owner or Occupant (“**Enforcing Party**”), any Owner or Occupant has failed in any of the duties or responsibilities under Section 5.1 through 5.4, then the Enforcing Party may give such person written notice of such failure, and such person must obtain the insurance required by Section 5.4 within ten (10) days of such written notice and commence performance of the care, repair, replacement or maintenance required by Sections 5.1 through 5.3 within thirty (30) days of such written notice and diligently pursue performance to completion. Should any such person fail to fulfill this duty and responsibility within such period, then the Enforcing Party, through its authorized agents, shall have the right and power to enter onto the Lot of the offending Owner or Occupant and perform such care, repair, replacement and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person or entity, or acquire insurance in compliance with Section 5.4. The Owners and Occupants for which such work is performed or insurance is obtained shall, jointly and severally, be liable for the cost of such work or policy, plus an additional twenty percent (20%) of such costs as an administrative fee to cover the Enforcing Party’s costs associated with such work or policy. Owner or Occupant shall reimburse the Enforcing Party within thirty (30) days after receipt of a statement for such work from the Enforcing Party.

ARTICLE VI REPAIR REIMBURSEMENT; LIEN FOR UNPAID OBLIGATIONS

Section 6.1 Repair Reimbursement. If, in the process of construction upon any Lot or other portion of the Project, or in making any Improvement, or through negligence or intentional misconduct, the Owner or Occupant, their employees, agents or independent contractors cause damage to any other Lot, Improvement, Common Areas, public rights-of-way or to any other property owned by someone else within the Project, the Owner or Occupant (where applicable) shall be responsible for such damage. If the Owner or Occupant who caused such damage fails to commence repair all such damage at its sole cost within thirty (30) of written notice thereof from the Developer or any other Owner or Occupant of the damaged Lot and

diligently pursue repair to completion, then the Developer or the Owner or Occupant of the damaged Lot (the **"Repairing Party"**) may make repairs or otherwise cures the damage caused by the Owner, its employees, agents or independent contractors, and the Owner or Occupant (where applicable) shall be obligated to reimburse the Repairing Party for all expenses the Repairing Party incurred in curing the damage plus a twenty percent (20%) administrative fee to cover Repairing Party's costs associated with such repairs or otherwise cure such damage (the **"Repair Reimbursement Amount"**). The Repair Reimbursement Amount shall be due within ten (10) days after receipt of written notice from the Repairing Party by Owner or Occupant (where applicable) setting forth the nature of the work necessitating the repair work and the amount of the Repair Reimbursement Amount.

Section 6.2 **Creation of the Lien and Personal Obligation of Unpaid Obligations.** Each Owner of a Lot or any undivided interest therein (by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance), including any purchaser at a judicial sale, shall be deemed to covenant and agree to pay to all amounts due by the Owner of such Lot (the **"Obligated Owner"**) pursuant to the terms of this Declaration, including but not limited to pursuant to Sections 5.6 and 6.1 (the **"Obligated Owner's Obligations"**). All such amounts for Obligated Owner's Obligations that are not paid timely, together with interest and late charges as hereinafter defined, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge on the Lot or Lots owned by the Obligated Owner (the **"Obligated Owner's Lot(s)"**) and shall be a continuing lien upon the Obligated Owner's Lot(s) in favor of any party that has satisfied any portion of the Obligated Owner's Obligations, including any Enforcing Party and any Repairing Party (as applicable, a **"Curing Party"**) and shall be the personal obligation of the Obligated Owner and its successors. No Obligated Owner of a Lot may waive or otherwise escape liability for the amounts otherwise provided for herein by non-use of the Common Areas or by abandonment.

Section 6.3 **Effect of Non-Payment - the Lien, the Personal Obligation, Remedies.** The lien of the Curing Party upon a Lot for amounts described in Sections 5.6, 6.1 and 6.2 shall be effective from and after recording, in the real estate records of Bernalillo County, New Mexico, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner and the amount and date when due. Such claim of lien shall include amounts which are due and payable when the claim of lien is recorded, plus interest as described below, costs, attorneys' fees, late fees as set forth below, advances to pay taxes and prior encumbrances and interest thereon to the entry of a judgment in favor of the Curing Party with respect to such lien. Such claims of lien shall be signed and verified by an officer or agent of the Curing Party. Upon full payment of all sums accrued by such claim of lien, the same shall be released of record. If the amount due is not paid within fifteen (15) days after the due date, the amount shall bear a late charge in the amount of five percent (5%) of the entire amount then due, and thirty (30) days following the due date the unpaid amount shall bear interest from the date due at the rate of fifteen percent (15%) per annum. Any time an amount due under this Declaration remains delinquent for thirty (30) or more days, the Curing Party may bring an action to foreclose the lien against the Lot(s) in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount due the cost of preparing and filing the complaint in such action including reasonable attorneys' fees, and, in the event a

judgment is obtained, such judgment shall include late charges and interest on the amount due as above provided and reasonable attorneys' fees to be fixed by the Court, together with the cost of the action.

Section 6.4 **Subordination to Lien of Mortgages.** Notwithstanding anything to the contrary in this Declaration, the lien for the amounts due under this Declaration, shall be subordinate to the lien of any first mortgage or deed of trust to a federal or state-chartered bank, life insurance company, federal or state savings and loan association, real estate investment trust, retirement fund or institutional mortgage company. Such subordination shall apply only to the amounts which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure of such mortgage, deed of trust, or a deed or other transfer in lieu of foreclosure. No sale or transfer shall relieve any Lot from liability for any amounts thereafter becoming due under this Declaration nor from the lien securing any amounts thereafter becoming due under this Declaration.

ARTICLE VII INDEMNIFICATION/WAIVER OF SUBROGATION

Section 7.1 **Indemnification.** Each Owner hereby agrees to indemnify and save the other Owners and Developer harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments of third parties arising from personal injury, death or property damage and occurring on or from its Lot, except to the extent proximately caused, in whole or in part, by the act or omission of the party claiming indemnification hereunder.

Section 7.2 **Waiver of Subrogation.** Neither the Developer nor the other Owners, their successors and assigns shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any Improvement or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees if any such loss or damage is covered by insurance benefitting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Declaration. The Developer and the other Owners, their successors and assigns shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

Section 7.3 **Limitation on Indemnities.** To the extent, if at all, §56-7-1 N.M.S.A. 1978 is applicable to this Declaration, no indemnity obligation provided in this Declaration will extend to any obligation that violates such statute, including but not limited to any liability, claims, damages, losses or expenses, including attorney's fees relating to the construction, installation, alteration, modification, repair, maintenance, servicing, demolition, excavation, drilling, reworking, grading, paving, clearing, site preparation or development of any real property or of any improvement on, above or under real property and arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by the indemnitee, or the agents or employees of the indemnitee, or (ii) the giving or the failure to give directions or instructions by the indemnitee, or the agents or the employees of the indemnitee

where the giving or failure to give directions or instructions is the primary cause of bodily injury to Persons or damage to property.

ARTICLE VIII EMINENT DOMAIN AND CASUALTY

Section 8.1 **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, condemnation or transfer in lieu thereof affecting said other Owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain, condemnation or transfer in lieu thereof of any part of the Common Areas, the award attributable to the Project and Improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

Section 8.2 **Collateral Claims.** All Owners other than the Owner of the Lot taken by the exercise of eminent domain, condemnation or transfer in lieu thereof may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the Project and Improvements taken from the Owner of said Lot.

Section 8.3 **Casualty.** In the event all or any portion of any Building or the Improvements in the Project is damaged or destroyed by fire or other casualty, or is taken or damaged as a result of the exercise of the power of eminent domain, condemnation or any transfer in lieu thereof, the Lot Owner or Occupant shall: (A) promptly restore or cause to be restored (i) the remaining portion of the Improvements as nearly as practicable to the condition of the same immediately prior to such casualty or eminent domain, condemnation or transfer in lieu thereof, and (ii) the remaining portion of such Building; or (B) in lieu thereof, shall remove or cause to be removed the damaged portion of such Building and/or such Improvements together with all rubble and debris related thereto. All portions of the Lot on which Buildings are not reconstructed following a casualty or eminent domain, condemnation or transfer in lieu thereof shall be graded or caused to be graded by the Owner of said Lot to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Project or any portion thereof shall be left in a stabilized condition with dust/weed/erosion control as agreed to by the ARC.

ARTICLE IX USE AND RESTRICTIONS

Section 9.1 **Prohibited Uses.** No part of the Project shall be used for the purposes of the sale of adult products or adult bookstores or adult audio/video products stores or any store or club whose activities include the display of partially or totally nude males or females (whether topless or bottomless or otherwise).

Section 9.2 **Prohibited Activities.** No exterior portion of any Building shall be used for outdoor sales, construction staging, signage (other than as contained on Developer designated signs or storefronts), including without limitation, flags, A-frame signage, sandwich boards,

banners, and/or billboards without the written approval of the ARC.

ARTICLE X DEVELOPER'S RESERVED RIGHTS TO PROJECT

Section 10.1 Extension of ECR to Include Additional Property. The Developer may at any time make other properties now or hereafter owned by Developer subject to this ECR by executing an instrument in writing applying this ECR to such other properties and by recording the instrument in the public records of Bernalillo County, New Mexico.

Section 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, including Improvements, at any reasonable time to perform such inspection and/or maintenance as may be authorized in this Declaration.

Section 10.3 Enforcement. Developer shall have the right to take such steps as it deems necessary to prevent those persons not authorized to use the Common Areas from using the Common Areas for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Project except along the common boundary line of any Lot with any other Lot.

Section 10.4 Withdrawal of Property. Developer may, but shall have no obligation to, withdraw at any time or from time to time portions of the Project that are then not Developed Lots. The withdrawal of said portions of the Project as aforesaid shall be made and evidenced, by filing in the public records of Bernalillo County, New Mexico, a supplementary Declaration executed by the Developer alone, with respect to the portions of the Project to be withdrawn.

Section 10.5 Future Platting and Subdivision. 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 owned by Developer and to file subdivision restrictions and/or amendments thereto with respect to any portion or portions of the Project owned by Developer, without the consent of the ARC or the Owners or any mortgagee of the Project. If required, Owner and/or its successors or assigns or any mortgagee of the Project shall execute such approvals, as are required by the municipality governing such platting and subdivision.

Section 10.6 Continued Development. 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, without the consent of the ARC or the Owners or any mortgagee of the Project. Each Owner and/or its successors or assigns will cooperate fully and promptly with Developer, its successors and/or assigns to enable Developer, its successors and/or assigns to develop the remaining portion of the Project. Such cooperation shall include Owner and/or its successors or assigns or any mortgagee of the Project executing such approvals, as are required by the governmental and/or quasi-governmental body governing the development.

Section 10.7 Future Easements and Rights-of-Way. The 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. Each Owner agrees to cooperate in granting such easements and rights-of-way, for the benefit of the Project.

ARTICLE XI CONSTRUCTION RULES

Section 11.1 Contractors.

A. All contractor(s) shall be properly licensed to perform the construction activity being undertaken by or on behalf of any Owner or Occupant.

B. All construction activity performed by or on behalf of any Owner or Occupant shall comply with:

- i. applicable laws, statutes, ordinances, rules, regulations and codes and the requirements of various rating bureaus, including procurement of all licenses and permits required for such work;
- ii. the Project Development Plan and Design Criteria and Site Development Plan; and
- iii. the requirements of all applicable governmental authorities, public bodies and other entities (such as public utilities) having jurisdiction.

C. Owner or Occupant's contractor shall maintain the following "Required Insurance":

- i. Worker's Compensation and Employer's Liability Insurance.
 1. Worker's compensation insurance as required by any applicable law or regulation.
 2. Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- ii. General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and required coverages:
 1. Premises and Operations;
 2. Products and Completed Operations;
 3. Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
 4. Broad Form Property Damage (including Completed Operations);
 5. Explosion, Collapse, and Underground Hazards;
 6. Personal Injury Liability:
 - \$2,000,000 each occurrence (for bodily injury and property damage;

- \$2,000,000 for Personal Injury Liability;
 - \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work);
 - \$2,000,000 general aggregate.
7. Automobile Liability Insurance.
- Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.
8. Umbrella/Excess Liability Insurance
- The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000 unless otherwise approved by the ARC.
- iii. If the construction activity involves the use of any area outside of the Owner's Lot, the ARC's written consent must be given and such consent will be conditioned, among other things, on each area outside of the Owner's Lot complying with the Required Insurance, including naming any impacted Lot's Owner as an additional insured.
- iv. All Required Insurance must be written by an insurance company licensed in the State of New Mexico with Best's rating of at least A- and a Best's financial performance rating of at least VII and must provide that it shall not be canceled, or reduced in an amount or coverage below the criteria set forth above without at least thirty (30) days prior written notice to the additional insured(s). If such insurance is canceled or expires, Owner/Occupant and/or Owner/Occupant's contractor(s) shall immediately cease all construction activity until either the required insurance is reinstated or replacement insurance obtained.
- v. All insurance shall name Developer as an additional insured holder/additional insured:

I25 & Gibson, LLC, a New Mexico limited liability company
 7620 Jefferson NE
 Albuquerque, New Mexico 87109

- vi. The Required Insurance shall remain in full force and effect until the completion of Owner or Occupant's construction activity.

Section 11.2 Construction Activities and Staging

A. Owner/Occupant shall not perform or cause to be performed any construction activity outside of the Owner's Lot or in any Common Areas of the Project without the ARC's prior written approval.

B. All staging areas must be approved by the ARC surrounded by appropriate fencing in accordance with local governmental requirements.

C. No portion of the Common Areas of the Project 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.

D. All construction activity shall be accomplished in an expeditious, diligent and speedy manner.

E. All construction activity shall be performed in a manner to reasonably minimize any dust, debris or noise and in such a manner so as not to unreasonably interfere with any occupant's or invitees' use and access to spaces within the Project, the Common Areas of the Project, and use of the drive aisles in the Project.

F. Owner/Occupant shall: (a) pay all costs and expenses associated with its construction activity; (b) take necessary measures to minimize disruption and inconvenience caused by Owner/Occupant construction activity; (c) make adequate provisions for the safety and convenience of other Owners/Occupants of the Project; (d) control dust and other particles, noise, noxious odors, and other effects of such work using methods customarily utilized in order to control such deleterious effects associated with construction projects in a populated or developed area; (e) repair any and all damage caused by or resulting from construction activity; (f) restore all affected portions of the Project to a condition equal to or better than the condition existing prior to beginning construction activity; (g) indemnify and hold harmless all other Owners and Occupants in the Project against any mechanics' liens for developing Owner/Occupant's construction activity.

G. Owner/Occupant will be responsible for removal of construction rubbish. The location of the developing Owner's rolloff or dumpster for construction rubbish shall be approved by the ARC. The developing Owner/Occupant shall repair any damage caused by the placement or servicing of the rolloff or dumpster.

H. No construction activity shall be in existence for more than nine (9) consecutive calendar months without written approval of the ARC.

I. At no time shall the developing Owner/Occupant's construction activity unreasonably interfere with the business operations of the Project (outside of the Lot being developed) and shall not block or impede ingress or egress from public roads to the Project.

Section 11.3 Construction Blackout Dates. In no event shall any Construction Activity be performed during the period from November 1 of any year to January 2 without written approval of the ARC.

ARTICLE XII MISCELLANEOUS

Section 12.1 Owners' Easements of Enjoyment. Every Owner shall have a reciprocal right of easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title of all portions of the Project, subject to the following:

A. All provisions of this Declaration and the plats of all or any part of the Project.

B. Rules and regulations governing use and enjoyment of the Common Areas adopted by the Developer.

C. Restrictions filed separately in the records of Bernalillo County, New Mexico with respect to all or any part of the Project.

Section 12.2 **Allowed Operations and Uses.** All of the Lots are intended to be used for commercial uses, in compliance with all ordinances of the governing authority and the Project Development Plan and Design Criteria. Any other uses must be approved by Developer and be in compliance with this Declaration, all ordinances of the governing authority, title matters of record, and the Project Development Plan and Design Criteria.

Section 12.3 **Nuisance.** Unless otherwise specifically prohibited by the governing authority, title matters of record, the Project Development Plan and Design Criteria or this Declaration, any operation and use will be permitted if it is performed or carried out entirely within a Building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to adjacent Lots such as, but not limited to, vibration, sound, electro-mechanical disturbance, radiation, discharge of waste materials, electromagnetic disturbance, air or water pollution, dust pollution or the emission of odorous, toxic or non-toxic matter. Further, no noxious or offensive trade, service or activity such as night clubs or strip clubs shall be permitted within the Project.

Section 12.4 **Delegation of Use.** Subject to such limitations as may be imposed by this Declaration, or rules and regulations imposed by the Developer, each Owner may delegate the right of enjoyment in and to the Common Areas to its Occupants and invitees.

Section 12.5 **Occupant Designee.** An Owner may designate, by written notice delivered to the other Owners and the Developer containing such designee's name and address, an Occupant with respect to an entire Lot to act as such Owner's designated agent for all purposes under this Declaration and to exercise all rights and perform all obligations of such Owner under this Declaration, including any self-insurance provisions applicable to such Owner. Upon delivery of such written designation to the other Owners and the Developer, the designated Occupant shall be recognized as the party responsible for, and with authority regarding, all matters under this Declaration respecting the Lot owned by such Owner, except as otherwise expressly set forth below. Such designation shall remain in full force and effect until delivery to the other Owners, the Developer of a written revocation of the designation by the Owner (or the Owner's successors or assigns). Notwithstanding the foregoing, the Owner shall at all times remain primarily responsible and liable for the obligations of such Owner under this Declaration. Notwithstanding the foregoing, the designated Occupant of an Owner shall have no power or authority to agree or consent to the amendment, modification or termination of this Declaration.

Section 12.6 **Further Subdivision.** Subject to Section 10.5, no further subdivision or vacation of a subdivision of the Project shall be allowed unless approved by the ARC and the governing authority.

Section 12.7 **No Partition.** There shall be no judicial partition of the Common Areas, nor

shall Developer, any Owner and any other person acquiring any interest in the Project or any part thereof, seek judicial partition thereof.

Section 12.8 Term. This Declaration, every provision hereof, and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of thirty (30) years from the recording hereof in the public records of Bernalillo County, New Mexico, and shall thereafter be renewed automatically for successive ten (10) year periods unless and until terminated as provided in Section 12.9 below.

Section 12.9 Termination and Modification. 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 affected to its material detriment, the Lot's access points or driveways materially changed, or the use materially changed shall require the written consent of the Owner of the affected Lot.

Section 12.10 Assignment of Developer's Rights and Duties. Any and all of the rights, powers and reservations of the Developer herein contained may be assigned to any person or entity, which person or entity will assume the duties of the Developer pertaining to the particular rights, powers and reservations assigned, and upon any such person or entity evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Developer herein. If at any time the Developer (A) does not own any Lot within the Project; or (B) ceases to exist; and (C) has not made such an assignment, the Owners shall form an association to administer this Declaration, which shall assume the rights, powers and reservations of the Developer. The Developer may from time to time delegate any or all of its rights, powers, discretion and duties hereunder to one or more agents, including a property manager whether affiliated or un-affiliated with Developer, as it may nominate. The Developer may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to it by this Declaration to any one or more persons or entities, that will accept the same. Any such assignment shall be in writing and recorded in the public records of Bernalillo County, New Mexico and the assignee shall join therein for the purpose of evidencing its acceptance of the same. Such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to the Developer and the Developer shall automatically be released from such responsibility.

Section 12.11 Mutuality and Reciprocity - Runs With Land. All covenants, restrictions, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Lot in favor of every other Lot, shall create reciprocal rights and obligations between all grantees of each Lot, their heirs, successors, personal representatives and assigns, and shall, as to said grantees, their heirs, successors, personal representatives and assigns, operate as covenants running with the land for the benefit of all other Lots.

Section 12.12 Benefits and Burdens. The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Developer, the Owners of all Lots and the

grantees of additional land made subject to this Declaration and their respective heirs, successors, personal representatives and assigns.

Section 12.13 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties hereto that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of a Lot, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the Owner and the Developer. Notwithstanding any other provisions herein to the contrary, Developer or the Owner(s) of the Lot(s) affected hereby may periodically restrict ingress and egress to and from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the Owners and Occupants, and to the extent it is done by Owners shall be approved by the ARC.

Section 12.14 Notices. Any notice required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for an Owner: (A) if the Lot is improved, to the address set forth in the tax rolls; (B) if the Lot is not improved, to the address set forth in the deed; or (C) if none of the foregoing, to the last known address of the Owner; and if intended for Developer, to the following address:

I25 & Gibson, LLC
Attn: General Counsel
7620 Jefferson NE
Albuquerque, New Mexico 87109
Telephone: (505) 858-0001

The address of the Developer may be changed from time to time by recording a change of address in the county land records specifically referencing this recorded Declaration by book and page.

Section 12.15 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine or feminine, as the context requires.

Section 12.16 Failure to Enforce Not a Waiver of Rights. Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the Project or of any other provision of this Declaration. The failure of Developer or any Owner to enforce any provision of the Declaration shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision of the Declaration.

Section 12.17 Condominium. This Declaration shall not be construed to limit or prevent a Lot or other Project and the Improvements thereon from being submitted to a plan of condominium ownership, and particularly the recordation of a plan of condominium ownership for any Lot or other Project shall not be construed as constituting a subdivision of the Lot or other Project.

Section 12.18 Annexation. In the event the Project or any portion thereof is annexed into the City of Albuquerque, approval of the City of Albuquerque, as applicable shall be required.

Section 12.19 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project has and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein.

Section 12.20 Severability. All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations nor any part thereof shall be thereby affected or impaired.

Section 12.21 Captions. The captions, section numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of the Declaration nor in any way modify or affect this Declaration.

Section 12.22 Limitation of Developer Liability. The total liability of Developer for any default and any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Declaration from any cause or causes including but not limited to Developer's negligence, errors, omissions, strict liability, breach of contract or breach of warranty by Developer under the terms of this Declaration shall be limited to the interest of Developer in the Project, and Developer shall not be liable for any deficiency.

[signature on separate page]

IN WITNESS WHEREOF, the Developer has executed this Declaration effective the date first hereinabove set forth.

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

By: SK
Steve Maestas, Manager

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on September 27 2021, by Steve Maestas, Manager of I25 & Gibson, LLC, a New Mexico limited liability company on behalf of said company.

MY COMMISSION EXPIRES:

10-27-23

Samantha Stonehouse
NOTARY PUBLIC



OFFICIAL SEAL
Samantha Stonehouse
NOTARY PUBLIC-State of New Mexico
My Commission Expires 10-27-23

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.