

**DECLARATION OF COVENANTS,  
AND GRANT OF EASEMENTS**

THIS DECLARATION OF COVENANTS AND GRANT OF EASEMENTS ("**Agreement**") is made as of the \_\_\_\_ day of March, 2013, by **WILLIAMS INVESTMENT GROUP, INC., a New Mexico corporation** ("**Developer**").

**RECITALS:**

A. Developer is the owner in fee simple of the following described property situated in Bernalillo County, New Mexico:

Lot 2B-1, as shown and described on the Plat of Lots 2B-1 and 2B-2, Airport Technical Center, filed in the Bernalillo County, New Mexico real estate records on March \_\_\_\_, 2013, in Vol. 2013C, Folio \_\_\_\_

B. Developer is the owner in fee simple of the following described property situated in Bernalillo County, New Mexico:

Lot 2B-2, as shown and described on the Plat of Lots 2B-1 and 2B-2, Airport Technical Center, filed in the Bernalillo County, New Mexico real estate records on March \_\_\_\_, 2013, in Vol. 2013C, Folio \_\_\_\_

Lot 2B-1 and Lot 2B-2 are individually referred to as a Lot and jointly referred to herein as the "Lots".

C. Developer desires to establish and impose certain covenants and easements upon the Lots.

**NOW, THEREFORE**, in consideration of the covenants contained herein, Developer covenants and agrees as follows:

I. **INCORPORATION.** RECITALS A through C, and Exhibit "A" attached hereto are incorporated herein and made a part hereof.

II. **DEFINITIONS.** The following terms shall have the meanings specified below.

A. **Access Driveway Areas.** The term "**Access Driveway Areas**" shall mean the 25' Private Access Easement shown on the plat, and the shaded area marked as "Private Access Easement Area" on Exhibit "A."

B. **Access Driveway Area Improvements.** The term "**Access Driveway Area Improvements**" shall mean the driveway improvements constructed within the Access Driveway Areas.

C. **City.** The term "**City**" shall mean the City of Albuquerque, New Mexico.

D. **Grading and Drainage Plans.** "**Grading and Drainage Plans**" shall mean the grading and drainage plans approved by the City in conjunction with the approval of the Plat, if any, as they may be amended from time to time.

E. **Governmental Requirements.** "**Governmental Requirements**" shall mean all applicable laws, rules, regulations, codes, and ordinances, and all directives and orders of any

governmental agency with jurisdiction over the Lots, as amended.

F. Common Use Area. The term "**Common Use Area**" means those areas within the Lots, which do not have buildings on them, from time to time, and consist of driveways for access, ingress and egress, service drives, curbs, sidewalks, parking areas and non-dedicated streets. For purposes of the foregoing, buildings on the Lots shall include canopies, supports, loading docks, truck ramps and outward extensions.

G. Owner. The term "**Owner**" or "**Owners**" means the one or more persons or entities who or which own fee simple title to any Lot, and their respective assigns, grantees and successors in interest. If two or more parties are Owners as co-tenants of a single Lot, they shall be considered to constitute a single "Owner".

H. Landscape Area. The term "Landscape Area" shall mean the sloped area at the north side of the Lots north of the northerly most fencing and curbing.

I. Lot. The term "**Lot**" and "**Lots**" shall mean the singular and plural of any legally subdivided portion of the Lots.

J. Off-Site Property. The term "Off-Site Property" shall mean the following properties:

Tract 3B Airport Technical Center as shown and described on the Plat thereof filed in the Bernalillo County, New Mexico real estate records on September 8, 1987, in Book C34, Page 128

Tract 3B Airport Technical Center as shown and described on the Plat thereof filed in the Bernalillo County, New Mexico real estate records on September 8, 1987, in Book C34, Page 128

K. Plat. The term "**Plat**" means the Plat of Lots 2B-1 and 2B-2, Airport Technical Center, Bernalillo County, New Mexico recorded in the real estate records of Bernalillo County, New Mexico, on March \_\_\_\_\_, 2013, in Vol. 2013C, Folio \_\_\_\_\_.

III. LOT SUBDIVISION OR RECONFIGURATION AND IMPROVEMENTS; MODIFICATION OF SITE PLAN.

Each Owner shall have the right to subdivide, reconfigure, and improve its Lot (including Common Use Area improvements), provided that: (i) the Access Driveway Areas and vehicular traffic flow over and across the Access Driveway Areas are not disturbed, restricted or adversely and materially effected in any manner; (ii) all governmental parking requirements are met on each Lot for that Owner's property; (iii) all governmental requirements are complied with by the Owner; and (iv) the subdivision, reconfiguration, or improvements do not conflict with any provision of this Agreement.

IV. BUILDINGS; SIGNAGE; RESTRICTIONS

A. General Location and Use of the Lots. There shall be no restriction on the size, location or use of buildings or other improvements on any Lot except as set forth in applicable Governmental Requirements and except as set forth below.

B. Landscape Area. The Landscape Area must be maintained in its current condition and may not be modified without the consent of all of the Owners.

C. Signage. All signage at the Lots shall be in accordance with all applicable Governmental Requirements. [SIGNAGE FOR WEST LOT?]

V. COMMON USE AREA; ACCESS ROADS; PARKING.

A. Common Use Area and Construction. The Common Use Area shall be used primarily for vehicular access, circulation and parking, pedestrian traffic and the comfort and convenience of the Owners and their tenants, subtenants, occupants, customers, invitees, licensees, concessionaires and agents of the Owners and business occupants of the buildings constructed on the Lots, and for the servicing and supplying of such businesses. In addition, the Common Use Area on an Owner's Lot may be used: (i) in connection with temporary construction and repair of any buildings on the Owner's Lot; (ii) in connection with the construction and maintenance of utility lines; or (iii) for any other use approved in writing by the Owners, which such approval shall not be unreasonably withheld, delayed or conditioned; provided however that the foregoing, does not unreasonably restrict access, ingress or egress to and from the businesses or the buildings on the Lots or the Access Driveway Areas, or otherwise conflict with this Agreement. Except in connection with construction, and except for the permanent improvements including the buildings located or to be located on the Lots, from time to time, no barricade or structure may be placed, erected or constructed within the Common Use Area on any Lot except as approved in writing by the Owners and any other improvements which may be required under Governmental Requirements. There shall be no charge or other validation for parking on the Common Use Area (unless required by Governmental Requirements) without the prior written consent of all of the Owners.

B. Parking Requirements. The Owner of each Lot shall each satisfy the parking Governmental Requirements and parking shall be self supporting for each Lot.

(1) Customers and invitees of the Owner of a Lot shall not be permitted to park on the parking areas within the Common Use Area except in those areas indicated for parking and except while transacting business at the Lots.

(2) Employees of each Owner or its tenant or subtenant shall only be permitted to park in the Common Use Area on the Owner's Lots at which they are employed. Each Owner may from time to time designate and approve employee parking areas on their respective Lot.

C. Drainage. Each Owner shall maintain his Lot, and any improvements constructed thereon, including maintenance of the grade of the Lot and any permanent or temporary drainage improvements constructed thereon in such a manner as to comply with the Grading and Drainage Plans. Each Owner shall indemnify and hold the other Owners harmless from loss, claims, damages or liabilities resulting from the indemnifying Owner's failure to maintain its Lot in conformity with the Grading and Drainage Plans.

VI. EASEMENTS.

A. Ingress and Egress. Developer and each successive Owner(s) hereby grant to the other Owners, as grantees, for the benefit of each of the other Owners, and their respective successors in interest, tenants, subtenant, employees, agents, customers, guests, contractors, concessionaires and invitees, and for the benefit of the Lot owned by each grantee, a perpetual non-exclusive easement appurtenant to each Lot owned by each grantee in those portions of the



Common Use Area which are designed for ingress and egress by vehicular and pedestrian traffic over and across the grantee's Lot, from time to time, and the Access Driveway Areas. Each Owner agrees not to obstruct or interfere with the free flow of pedestrian and vehicular traffic over and across the ingress and egress areas except for necessary and reasonable repair, maintenance, and improvement, and traffic regulation and control regarding the foregoing easements in compliance with this Agreement.

B. Off-Site Property. Any owner of a Lot shall have the right to grant to the Off-Site Property access easements over the 25' Private Access Easements shown on the Plat upon the condition that the owner of the Off-Site Property grants to the Owner of the Lots a non-circuitous access easement from the 25' Private Access Easement to University Blvd., SE, with constructed driveway improvements, which improvements the Owner(s) of the Off-Site Property agrees to maintain.

C. Storm Drainage. There is hereby granted to the Owners, as grantees, for the benefit of each of the Owners, and their respective successors in interest, tenants, employees, agents, customers and invitees and for the benefit of the Lots owned by each grantee, a non-exclusive easement appurtenant to each Lot owned by each grantee for the transmission and flow of storm water drainage upon, over and across all of the other Lots (the "**Drainage Easement**"). Such storm water drainage and Drainage Easement will be in accordance with the Grading, and Drainage Plans. The Owners acknowledge that the purpose of the Drainage Easement and the blanket drainage easement referenced on the Plat (the "**Plat Drainage Easement**") is to effectuate the Grading, Drainage and Utility Plans. Upon construction of any buildings on any of the Lots, the Drainage Easement and the Plat Drainage Easement shall automatically terminate and be released for the portion of the Lots upon which the buildings are constructed so long as the Owner procures an amendment to the approved Grading and Drainage Plans, if necessary, to accommodate the flow of drainage waters displaced by such building. The Owners agree to execute documents and take actions necessary to release the Owner's interest in the Drainage Easement and the Plat Drainage Easement (to the extent the Owners are benefitted by the Plat Drainage Easement) so that neither easements interfere with the use of the Lots or any building or improvement constructed on or to be constructed on the Lots.

## VII. MAINTENANCE OF COMMON USE AREA.

### A. Maintenance.

(1) Each Owner shall be responsible for the maintenance and repair of the Common Use Area located on its Lot, and shall keep same in good and first class condition at all times.

(2) Maintenance and repair shall include, but not be limited to the following:

(a) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability (including without limitation repaving and restriping when necessary);

(b) Removing all papers, debris, filth, refuse, snow and ice thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining the Landscaped Areas and repairing automatic sprinkler systems or water lines and making replacements of shrubs and other landscaping as is necessary; and,

(f) Maintaining and repairing any and all Common Use Area walls, Common Use Area storm drains, sewers and other services within the Common Use Area.

B. Owner Responsibility. Each Owner shall be responsible for maintenance of its Lot.

C. No Obstruction of Access Driveway Areas. Each Burdened Owner agrees not to close or otherwise impair the use of Access Driveway Areas on its Lot without the prior written consent of the other Owners. To the extent that any maintenance or repair work requires a Burdened Owner to temporarily obstruct or partially close the Access Driveway Areas, such closure shall only be for brief periods as may be reasonably required for repair and maintenance, scheduled at such times that will eliminate or substantially minimize any disruption to the businesses operating on the Lot, and the Burdened Owner's construction contractor shall be required to keep at least one lane of traffic open on the Access Driveway Areas. Such closure or impairment for repair or maintenance shall require in each instance at least ten (10) days' written notice to the other Owners, and shall not exceed more than five (5) days in any calendar year. No Owner shall impose any restriction regarding use of the Access Driveway Areas or charge a monetary fee for the access granted herein.

D. Emergency. Notwithstanding anything to the contrary, in the event that any circumstance shall occur which a Burdened Owner reasonably and in good faith believes: (i) is or may be threatening to the safety of person(s) or property; or (ii) requires repairs or alterations to assure the continued reasonable use of the Access Driveway Areas or to comply with any applicable legal or insurance requirements an "Emergency"), then the Burdened Owner shall take such action and cause such things to be done as the Burdened Owner reasonably and in good faith believes necessary (including the expenditure of funds whether approved or not by the other Owners). The Burdened Owner shall inform the other Owners of any and all emergencies as soon as practicable. If practicable, the Burdened Owner shall obtain the prior approval of the other Owners for any action in response to an Emergency. A Burdened Owner who reasonably expends funds in connection with an Emergency shall be entitled to reimbursement by the other Owners of their respective Proportionate Shares of amounts so expended. Within thirty (30) days after presentation of copies of invoices reflecting such costs, the other Owners shall reimburse the Burdened Owner their Proportionate Shares of all sums reasonably expended. An Owner who fails to timely reimburse in accordance with the foregoing shall be a Defaulting Owner as defined below, and the Burdened Owner shall be a Non-Defaulting Owner as defined below, who shall be entitled to all rights of a Non-Defaulting Owner as set forth below.

#### VIII. LIABILITY INSURANCE; INDEMNIFICATION.

A. General Coverage and Limits. Each Owner agrees to maintain or cause to be maintained liability insurance against claims for bodily injury, death or property damage occurring on, in or about its Lot and the sidewalks adjacent to its Lot and the Common Use Area on its Lot with a "Combined Single Limit" (covering bodily injury liability and property damage) of not less than Two Million Dollars (\$2,000,000.00). Such insurance may be in the form of blanket liability coverage applicable to the Owner's Lot. Each Owner shall, upon request, provide the other Owners with



evidence of such coverage and a description of any plan of insurance being used. Nothing herein shall be construed from prohibiting an Owner which has a net worth in excess of TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) from self-insuring for such insurance coverage provided for herein under a self-insurance program established in accordance with reasonable actuarial standards.

B. Insurance and Indemnification Notices. All policies of insurance required under this Article shall contain a provision that the insurance company will give each Owner ten (10) days advance written notice prior to cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Each Owner shall deliver to the other a statement from the applicable insurer that such insurance insures the performance by the Owner insured thereunder of the indemnity agreements to limits not less than those specified in this Article. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which such Owner is or may be indemnified against hereunder and shall deliver to such Owner copies of process and pleadings.

C. Indemnification. Each Owner hereby agrees to indemnify, defend and save the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property and occurring on its own Lot, except to the extent caused by the negligence or intentional misconduct of the other Owner.

IX. TAXES. Each Owner and its respective successors and assigns shall pay direct to the County Treasurer when due, the real property taxes and other special taxes and assessments assessed against the Lot owned by such Owner, including the portion of the Common Use Area owned by such Owner. If an Owner is contesting by judicial or administrative proceedings the validity of any such tax or assessment, said Owner will nonetheless pay the tax and at its election designate such payment as being made under protest.

X. EMINENT DOMAIN.

A. Owner's Right to Award. Nothing herein shall be construed to give an Owner any interest in any award or payment made to the other Owner(s) in connection with any exercise of eminent domain, inverse condemnation, or transfer in lieu thereof affecting said other Owner(s) Lot or give the public or any government any rights in the Lots. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Use Area located within the Lots, the award attributable to the land and improvements of such portion of the Common Use Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the Common Use Area, except to the extent of the other Owner's claim for damages for loss of access.

B. Collateral Claims. All other Owners of the Common Use Area may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner.

C. Tenant's Claim. Nothing herein shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between such tenant and Owner for all or a portion of any such award or payment.

XI. GENERAL PROVISIONS.

A. Inurement. This instrument and the easements, covenants, restrictions, benefits and obligations created hereby shall inure to the benefit of and be binding upon each Owner and its successors and assigns; provided, however, that if either Owner conveys any portion or all of its interest in any Lot owned by it, such Owner shall thereupon be released and discharged

from any and all further obligations under this Agreement as it had in connection with the Lot conveyed by it, and provided further, that no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

B. Duration. Except as otherwise provided herein, this Agreement shall remain in full force and effect in perpetuity.

C. Injunctive Relief, Cumulative Remedies and Damages. Any remedies provided for in this Agreement are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

D. Enforcement; Right to Cure.

(1) In the event an Owner fails to perform its obligations hereunder, then any other Owner (the "**Non-Defaulting Owner**") shall have the right to serve written notice of such failure or refusal on the Owner who has failed to so perform, cooperate or pay (the "**Defaulting Owner**"). If the Defaulting Owner fails to cure such default within ten (10) days after receipt of such notice from the Non-Defaulting Owner, then the Non-Defaulting Owner (and its employees, agents or contractors) shall have the right to enter upon the Defaulting Owner's Lot for the purpose of undertaking the subject maintenance or repair at its own instance, and to make written demand upon the Defaulting Owner for the entire expense incurred.

(2) For purposes of the rights and remedies set forth below, the term "**Defaulting Owner**" shall also apply to an Owner who fails or refuses after written demand to pay the entire expense incurred by the Non-Defaulting Owner for performance of the Defaulting Owner's obligations hereunder, and to an Owner who fails or refuses to pay its Proportionate Share or its taxes, and the term "**Non-Defaulting Owner**" shall also apply to the Owner who makes demand upon the Defaulting Owner for such payment(s).

(3) Within ten (10) days of written demand thereof (including providing copies of invoices reflecting costs, if applicable) the Defaulting Owner shall reimburse the Non-Defaulting Owner for any sum reasonably expended by the Non-Defaulting Owner for the maintenance and repair, or the Defaulting Owner's Proportionate Share, or the Defaulting Owner's taxes, together with interest thereon at the rate of Twelve Percent (12%) per annum, and if such reimbursement is not paid within said ten (10) days, the Non-Defaulting Owner shall be entitled to file suit to recover such amounts, as well as interest as provided above and reasonable costs of collection, including without limitation, reasonable attorneys' fees, expenses and costs of court.

(4) Any claim of a Non-Defaulting Owner for reimbursement, together with interest accrued thereon and collection costs, shall constitute a personal obligation and liability of the Defaulting Owner and shall be secured by an equitable charge and lien on the Lot of the Defaulting Owner and all improvements located thereon. Such lien shall attach and be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens encumbering the subject Lot, except that such lien shall not be prior and superior to any mortgages or deeds of trust of record prior to the recording of such Lien Notice, or any renewal, extension or modification (including increases) of previously recorded mortgages or deeds of trust; and any purchaser at any foreclosure sale, as well as any grantee by deed in lieu of foreclosure under any such mortgage or deed of trust shall take title subject only to

liens accruing pursuant to this section after the date of such foreclosure sale or conveyance in lieu of foreclosure. To evidence a lien accruing pursuant to this section, the Non-Defaulting Owner shall prepare a written notice (a "**Lien Notice**") setting forth: (i) the amount owing and a brief statement of the nature thereof; (ii) the Lot to which the payment(s) relate; (iii) the name of the Owner or reputed Owner who owns the subject Lot; and (iv) reference to this Agreement as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by the Non-Defaulting Owner desiring to file the same and shall be recorded in the real estate records in Bernalillo County, New Mexico. A copy of such Lien Notice shall be mailed to the Defaulting Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in like manner as a mortgage on real property is judicially foreclosed under the laws of the State of New Mexico. In any foreclosure, the Lot being foreclosed shall also be charged with the obligation to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice, as provided herein, and all reasonable costs, expenses and attorneys' fees in connection with the foreclosure.

XII. MODIFICATION. Except as otherwise provided in this Article XIV, this Agreement may not be modified or terminated in any respect whatsoever or rescinded, in whole or in part, except with the consent of all Owners and then only by written instrument duly executed and acknowledged by such Owners.

XIII. NOT A PUBLIC DEDICATION. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Lots to the general public or for any public purposes whatsoever (including but not limited to any easement or access rights to any governmental authority for public road right-of-way purposes), it being the intention of the Owners that this Agreement shall be strictly limited to and for the purpose herein expressed.

XIV. BREACH SHALL NOT PERMIT TERMINATION. No breach of this Agreement shall entitle an Owner to cancel, rescind or otherwise terminate this Agreement, but such limitations shall not affect in any manner, any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

XV. ATTORNEYS' FEES. In the event that legal proceedings are brought or commenced to enforce any of the terms of this Agreement against either or other party with an interest in the Lots, the successful party in such action shall then be entitled to receive and shall receive from the defaulting Owner or party reasonable attorneys' fees and costs.

XVI. NOTICES. Any notice required or permitted to be given regarding this Agreement by one party to another will be in writing and the same will be given and be deemed to have been delivered, served and given, (i) if delivered via courier (including "overnight delivery services), when actually delivered to the address specified below, (ii) if mailed, two (2) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the person to whom notice is given at the address specified below.

DEVELOPER: Williams Investment Group, Inc.  
Attn.: Anthony Williams  
P.O. Box 2309  
Los Lunas, New Mexico 87131

The person and the place to which notices are to be mailed may be changed by an Owner by written notice to the other Owners.



XVII. MISCELLANEOUS.

A. Compliance with Laws. This Agreement, including without limitation all easements, restrictions, obligations and covenants provided hereunder, shall be subject to Governmental Requirements.

B. Binding Effect; Running with the Land. All the easements and covenants set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the Owners, and their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

C. New Mexico Statutory Indemnity Limitation. To the extent, if at all, any indemnity, hold harmless or other provision of this Agreement is invalidated pursuant to the terms of Section 56-7-1 NMSA 1978, as amended, the remaining indemnity, hold harmless and other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

WILLIAMS INVESTMENT GROUP, INC.,  
a New Mexico corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF NEW MEXICO            )  
  )  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on March \_\_\_\_\_, 2013, by \_\_\_\_\_,  
\_\_\_\_\_ of Williams Investment Group, Inc., a New Mexico corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

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