

When recorded return to:
Homeowners Association
P.O. Box 1778
Overgaard, AZ 85933

MODIFICATION OF RESTRICTIVE COVENANTS

The undersigned, representing more than three-fourths of the record owners of Lots 55 through 81 inclusive, and Tract B Mogollon Airpark Unit 11, recorded in Book 16 of Plats Page 13, records of Navajo County, Arizona, and pursuant to provision 27 of the “Declaration” dated November 5, 1985 and recorded in Docket 811, Pages 843-856, records of Navajo County, Arizona, hereby consent to the amendment of Provision 5 entitled Architectural Control and by this instrument do amend said Provision 5 by deleting the period of the sixth sentence and adding the words:

“or a product resembling cedar shake made from Portland cement and/or other synthetic materials.”

With the above amendment it is the express intention of the Association that roof material may be cedar shake or similar-looking material that concerns itself with fire safety.

IN WITNESS WHEREOF the undersigned have agreed to and acknowledged this instrument at the time and place shown on the attached acknowledgements after receipt of a copy of the original instrument.

Acknowledgments are attached hereto.

DATED this 28th day of March 1997

Melvin Trushinsky

**DECLARATION OF ESTABLISHMENT OF CONDITIONS,
RESERVATIONS, AND RESTRICTIONS, AND MUTUAL AND
RECIPROCAL COVENANTS AND LIENS RUNNING WITH THE LAND**

This declaration is made this 5th day of November 1985 by MOGOLLON AIRPARK PROPERTIES, an Arizona Limited Partnership, hereinafter called Declarant, as present owner of the second beneficial interest in FIRST AMERICAN TITLE INSURANCE AGENCY, INC., as Trustee under Trust No. 5928, being properly authorized so to act by the terms of the trust and FIRST AMERICAN TITLE INSURANCE AGENCY, INC., as Trustee thereunder, hereinafter called Trustee, solely as bare legal title held and not personally and acting at the proper direction of said Beneficiary-Declarant, executes this declaration of reservations, covenants, conditions, and restrictions to run with the following real property for the purpose as hereinafter set forth: Lots 55 through 81 inclusive, and Tract B. MOGOLLON AIRPARK UNIT TWO, recorded in Book 16 of Plats, Page 13, records of Navajo County, Arizona.

The Declarant hereby declares that it has established, and does hereby establish, a general plan for the improvement and development of the property shown on said plat and does hereby establish the provisions, conditions, restrictions, and covenants upon which and subject to which all lots and portions of said lots shall be improved or sold and conveyed by the said FIRST AMERICAN TITLE INSURANCE AGENCY, INC., as Trustee, as owner thereof; each and every one of said provisions, conditions, restrictions, and covenants is and all are for the mutual and reciprocal benefit of each owner of land in said subdivision, or any interest therein, and is a factor in the determination of the value and sales price of said land, and shall inure to and pass with each and every parcel of said subdivision, and shall bind the respective successors in interest of the present owner thereof and any and all other persons who may become owners or interested in said land, said provisions, conditions, restrictions, and covenants are and each

thereof is imposed upon the said lots, all of which are to be construed as real covenants and liens running with the title to said lots and with each and every parcel thereof, to wit:

LAND USE

1. Said lots are hereby restricted to single-family dwellings for residential use only. No business activities of any kind whatsoever shall be conducted upon any of said lots or improvements located thereon.

2. All buildings or structures erected on said lots shall be of new construction and no used building or structure shall be moved from other locations onto said premises. Not more than one single-family structure may be erected on any individual lot, provided however, a separate guest quarter may be constructed without cooking facilities on lots which are 30,00 square feet and above. Every residential structure shall have an area devoted to living purposes, exclusive of porches, terraces, garages, and guest quarters of not less than 1,050 square feet.

3. All plumbing, including, but not limited to toilets, bath facilities, and kitchen facilities shall be of the modern inside type.

4. Setback Requirements. No structure shall be erected on any lot within 20 feet of the front or rear line of said lot or within 15 feet of either side line of said lot; provided however, that the setback requirements herein provided may be amended or modified by the Mogollon Airpark Association, a non-profit association hereinafter defined and described and referred to herein as the "Association" upon written application by any owner, if the Association is of the opinion that the setback requirements would work an undue hardship, or where a variation thereof would be in the best interest of the lot owners and subdivision as a whole, without the prior consent or approval of the other lot owners. Should a variance be requirement it must be obtained through the Navajo County Planning Department by Board of Adjustment action. In the event a lot is

served by a driveway and also fronts on the street, the street side of the lot shall be considered the front side of the lot. In addition, that lot can only use the driveway as a method of ingress and egress to the lot and cannot use another way from the street.

5. Architectural Control. No building, fence, wall, antenna, or other structure shall be commenced, erected, maintained, or remodeled until the plans and specifications showing the nature, kind, shape, color, height, material, floor plans, location, and approximate cost of such a structure shall have been submitted to and approved by the Association (and in certain instances to the Navajo County Planning Department) and a copy thereof, as finally approved, lodged permanent with said Association. The following are specific requirements for the materials to be used in the structures: Laminated wood siding is prohibited. A solid wood siding shall be requirement for the structures. Redwood and cedar shiplap or tongue-and-groove solid wood siding or logs are specifically approved. Any deviation from these siding materials must be specifically approved by the Association. The roof material shall be cedar shake. No deviation shall be granted to this requirement. Failure of said Association to reject in writing said plans and specifications within thirty (30) days from the date the same are submitted shall constitute approval of said plans and specifications. Approval of plans or specifications shall not be unreasonably withheld and rejected of any plans or specifications must be based on reasonable judgment as to the effect that said construction changes and alterations will have on the subdivision as a whole. The Association shall have the right to refuse to approve any such plans or specifications or grading plan, which are not suitable or desirable, in its opinion, for aesthetic, or any other reasons, and in so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, to the site upon which it is proposed to

erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations, including, but not limited to, painting of exterior surfaces of any building, fence, wall, or other structure, shall be subject to the prior approval of the Association.

6. All lots which abut and share the use of a driveway shall contribute to the common maintenance of that driveway, including, but not limited to, grading, snow removal, graveling, etc. The maintenance shall be that agreed upon by the lots sharing the use of the driveway and should any lot owner fail to make it pro rata contribution, that lot shall be subject to a lien for the amount due and, if the owner fails to pay the amount due, the court may assess him with a reasonable attorney's fee.

7. Corner Lots. In the event a lot is situated on the corner so that it abuts two streets or a street and a driveway, then the side facing the street shall still be considered the front; however, the elevation abutting the other street or driveway, as the case may be, shall also be considered a front only for architectural approval purposes when the Association considers the architectural treatment of the side of the structure facing the other street or driveway. In addition, that lot can only use the driveway as a method of ingress and egress to the lot and cannot use another way from the street.

8. No horses, cattle, sheep, goats, pigs, or other livestock or poultry may be kept, boarded, or maintained on any of said lots or any part thereof; provided however, this restriction shall not be construed as prohibiting the keeping of ordinary domestic pet fowls, animals, or game birds upon such property.

9. All clotheslines, equipment, garbage cans, incinerators, and service yard shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring parcels and streets. No metal fence shall be erected on any lot. All rubbish, trash, or garbage shall be removed from the premises and shall not be allowed to accumulate thereon.

10. No temporary house trailer, travel trailer, mobile-type home, mobile home, or any temporary housing shall be placed or erected on any lot in said subdivision. "Mobile home" as used in these restrictions shall be as defined in the Arizona Revised Statutes Sections 33-1409. Manufactured housing shall be permitted within the subdivision, but only if the architectural design of such housing is approved by the Association prior to construction on a lot.

11. No elevated tanks of any kind shall be erected, placed, or permitted upon any of said lots. Any tanks for use in connection with any residential construction on said property, including tanks for the storage of gas or fuel oil, must be buried or walled in or kept screened by adequate planting to conceal it from the neighboring tracts, roads, and streets.

12. No lot or lots shall be subdivided except with the permission of the Association and the Navajo County Board of Supervisors. Any ownership of single holding by any person comprising parts of two adjoining lots or the whole of one lot and parts of one or more adjoining lots shall, for the purposes of this Declaration of Conditions and Restrictions, be deemed to constitute a single lot.

13. In the event the owner of any lot shall fail to maintain the premises and the exterior of the improvements situation thereon in a manner reasonable satisfactory to the Association, or in the event the owner of any lot shall fail to keep a fire line cleared to the mineral soil around his lot, or permit litter and debris to accumulate on his lot, or fail to comply with any other reasonable fire preventive requirements, the Association, through its agents and employees, shall

have the right to enter upon such premises and to repair, maintain, rehabilitate, and restore the exterior of any improvement situated thereon an/or clean or clear any lot of litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; provided however, that the Association shall first give written notice to the owner of said lot of its intention to make such repairs or of its intention to perform such cleaning, maintenance, or rehabilitation work, affording the owner of said lot thirty (30) days time to make said necessary repairs, maintenance, or clearing work. If at the end of said thirty (30) day period the work to be performed has not been done by the owner, then the Association shall have the right, as set forth herein, to make such repairs, rehabilitation, clearing, or maintenance work. Nothing herein contained shall be construed to grant to the Association any right to enter into or inside of any building located on any lot without the consent of the owner thereof. Any costs incurred by the Association in enforcing any carrying out of the performance of this paragraph shall be charged against the owner of said lot, and a lien may be created on said lot until the Association has been paid in full for all costs incurred which lien may be foreclosed in the manner set forth in Paragraph 34 of this Declaration.

14. Within twelve (12) months after the date of the initial purchase of any lot, the lot owner shall cause said lot to be raked to the mineral soil and the vegetation thereon thinned to comply with reasonable fire preventive requirements. In the event the owner of the lot shall fail to have said lot raked and thinned within the period, the Association through its agents and employees shall have the right to enter upon such premises and perform said raking and thinning. In so doing, the Association shall follow the same procedures for notice to the owner and shall be reimbursed for costs incurred which lien may be foreclosed in the manner set forth in Paragraph 34 of this Declaration.

15. Fireplaces at the time of their construction or installation shall have spark arresters installed.

16. No individual water system shall be permitted on any lot in said subdivision. A duly franchised water company or its agent, or an agent of the improvement district provided for herein, shall supply all necessary water to lot owners.

17. Although there is no requirement that a residence or other improvement be constructed upon any lot, upon the commencement of this construction of any improvement such construction of at least the exterior thereof shall be prosecuted with reasonable diligence to completion so that the aesthetics of the area are not disturbed by the appearance of an incomplete structure for an unreasonable period of time.

18. No signs, advertisements, billboards, "for sale or rent" signs or promotional signs of any kind shall be erected and/or exhibited in any manner on or above the property without prior written approval from the Association. The issuance of such approved "for sale" sign must be removed from any lot within thirty (30) days after sale has been consummated. Promotional signs are defined as subdivision advertisement signs only.

19. Any exterior lighting caused or allowed to be erected on any lot by a lot buyer shall be shaded so as not to create a nuisance to any other lot owner or occupier thereof.

20. Easements for roadway slopes, drainage, sewers, water, cable, television, electricity, telephone, and other utilities along, under, around, adjacent to, and across the lots which are subject to these restrictions are hereby granted, reserved, and established; such shall include the right to excavate for, place, cover, repair, and do everything necessary or desirable to maintain the same in a workmanlike manner and proper condition. This right shall be exercised in such manner as to preserve the greatest amount of natural growth and vegetation and do the least

amount of injury to the lots, consistent with the most feasible location of, and proper construction of any improvements to, said easements. The location of these easements and the construction of any improvements thereto shall be as shown on the subdivision plat. Any such easements shall be within fifteen (15) feet of any lot line. Within these easement areas, no structure, plants, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement areas of each lot and parcel of land and all improvements in it shall be maintained continuously by the owner of said lot and parcel of land.

21. All injuries or rights to assert damage to lots arising out of the construction of roads to grades or elevations other than the grades or elevations of such lots, or arising out of the construction of sewer to grades or elevations such that gravity service is not available to such lots, are hereby waived, provided said roads or sewers are constructed in accordance with good engineering practice.

22. During the time of construction of the easement improvements referred to in Paragraph 22, easements for the construction of same, for the movement and storage of equipment and materials, and for entry and access for inspection and other incidental purposes are hereby granted, reserved, and established in, over, under, and upon each of said lots, in order to facilitate construction and completion of such improvements. This right shall be exercised in such manner as to preserve the natural growth and vegetation and do the least amount of injury to said lots, consistent with the economic construction of said improvements.

23. No trees or other native vegetation shall be cleared from any of said lots except to the extent that such clearing is necessary and to provide for reasonable fire protection or its removal

is necessary as a safety precaution. All clearing and grading of lots must first have written approval from the Association.

24. A no-fee County Highway Department permit shall be required for all access to a County Highway and/or roadway accepted for maintenance by the County and for egress and ingress from subdivision lots and shall be obtained prior to any construction and/or installation of same. The permit will show the egress and ingress requirements and will include the specifications for driveway drainage culverts to subdivision lots, said culverts to be provided by owner and installed to county specifications and be installed by Navajo County Engineering Department. There shall be no ingress or egress from or to a county road or subdivision streets from subdivision lots until the proper culverts are installed to specifications. If ingress and/or egress control signs are required there will be a fee to cover their purchase and installation by the County Highway Department except for those as outline in ARTICLE IX of the SUBDIVISION REGULATIONS AND REQUIREMENTS as adopted by the County Board of Supervisors on April 5, 1971. The required permit(s) may be obtained from one of the County Highway Departments or the County Engineer's office and shall be posted in view at the construction site.

25. All construction on subdivision lots shall require a Navajo County Building permit and shall comply with all established requirements.

26. The covenants, restrictions, reservations, and conditions contained herein shall run with the land and shall be binding upon all persons purchasing or occupying any lot or lots in said subdivision after the date on which this instrument has been recorded. These covenants, restrictions, reservations, and conditions may be enforced by the owner of any parcel in said subdivision or any one of more of said individuals and corporation; provided however, that any break of said covenants, restrictions, reservations, and conditions or any right of re-entry by

reason thereof, shall not defeat or affect the lien of any mortgage or Deed of Trust made in good faith and for value upon said land, but except as hereinafter provided each and all of said covenants, restrictions, reservations, and conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustee's sale, or otherwise and provided also that the break of any of said covenants, restrictions, reservations, and conditions may be adjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such Deed of Trust or mortgage. All instruments of conveyance of any interest in all or any part of said subdivision shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations, and conditions herein as fully as though the terms and conditions of this instrument were therein set forth in full; provided however, that the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

27. Unless otherwise provided herein, these covenants, restrictions, reservations, and conditions shall remain in full force and affect for a period of thirty (30) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument, in writing, executed and acknowledged by the owners of not less than three-fourths of the lots in said subdivisions, which said instrument shall be recorded in the office of the County Recorder of Navajo County, Arizona, within ninety (90) days prior to the expiration of the initial affective period hereof or any ten (10) year extension.

28. Wherever the terms "owner" or "owners" are used herein, such terms shall include purchase or purchasers under an agreement for sale or contract to purchase and beneficiary or beneficiaries of any trust owning or purchasing any parcel within said subdivision.

29. Invalidation of any one of these covenants, restrictions, reservations, or conditions, by judgment or court order shall in no way affect the validity of the other provisions, and the same shall remain in full force and affect.

30. All restrictive covenants listed or contained herein are subject in all instances to compliance with the State of Arizona and the County of Navajo Health ordinances, restrictions, and regulations, zoning regulations, or any other duly enacted laws or regulations.

31. Should it become necessary at any time that anyone authorized by this Declaration to enforce same, employ counsel to enforce any of the provisions, conditions, restrictions, or covenants herein contained, all costs incurred in the enforcement of such provisions, conditions, restrictions, or covenants herein contained including, but not limited to, a reasonable fee for counsel, shall be paid by the owner of a lot or lots who, through their breach, make it necessary for the Association to enforce such provisions, conditions, restrictions, or covenants herein contained. The Association shall have a lien upon such lot or lots to secure payment of such costs, which lien may be enforced in the manner specified in Paragraph 34 hereof.

32. None of the rights of the Association to enforce the covenants and restrictions contained herein shall be construed to be a mandatory obligation or duty of the Association to enforce said covenants and restrictions.

33. The Association shall have the right to enter upon the land when a provision or provisions of this Declaration of restrictions has been violated and remedy such breach and bring about the proper aesthetics and sanitary conditions as are contained herein without deeming such entrance as trespassing.

34. Each property owner agrees that by the acceptance of the contract of purchase or deed to any lot within said tract that he will become a member of the Mogollon Airpark Association

("Association") and each of the above described lots shall entitle the owner or owners thereof to one membership in the Association. The owner thereof shall be entitled to the rights and privileges of each membership and shall comply with the duly promulgated rules and regulations of the Association. Each of said lots shall be assembled by the Association as provided in the Bylaws thereof, and any such assessment shall constitute, from the date of such assessment, a lien on each such lot to secure the payment of the assessment. In the event that any such assessment shall not be paid on or before the due date thereof, the Association shall have the right to foreclose in the manner prescribed by Arizona law for the foreclosure of liens on real property other than mortgage liens. In the event of any action to foreclosure such lien, the lien shall be deemed to secure, in addition to all assessments then due and unpaid, all costs and expenses (including reasonable attorney's fees) incurred in preparation for or in connection with such foreclosure, together with interest on the unpaid assessment or assessments from the due date thereof until paid. The primary purpose of the Association shall be for the administration of those restrictions set forth in this Declaration (including the appointment of a committee to approve or disapprove proposed improvements as required by Paragraph 5 of this Declaration) not specifically committed to administration by another, to maintain and operate certain common areas and facilitate for the benefit of all members and to maintain and operate or contribute to the maintenance and operation of the improvements referred to in this Declaration which otherwise would be insufficiently maintained and operated, in the judgment of the Association. The execution of any agreement to purchase any of said lots of the acceptance of a deed to any such lot shall, without further affirmative act or accent by such purchaser or recipient, cause such recipient or purchaser and the lot so purchased or received, to be subject to the Bylaws and any duly promulgated rules and regulations of the Association and the provisions of the Declaration.

35. This agreement shall be construed under the laws of the State of Arizona.

36. Each party who acquires any interest in all or any part of the property described herein further agrees that upon such acquisition of any interest in all or part of the real property said acquiring party shall look only to the other subscribing property owner or owners acquiring an interest in said property for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions, and restrictions contained herein.

TRACT A, TRACT B, AND LOT 1

Notwithstanding any of the restrictions and conditions above set forth, the following property shall not be subject to the same conditions, reservations, and restrictions, but shall be governed by this paragraph and shall be declared as common areas under the ownership, control, and management of the Homeowners Association. Any revenues shall accrue to the Homeowners Association.

1. Tract A. Tract A is hereby declared to be a general commercial usage area. The use shall be limited to that usage, which is generally considered as commercial airport use. The Homeowners Association shall have the right to review the architectural plans for such use prior to any buildings being constructed thereon.

2. Tract B. Tract B shall be limited to airport runway and taxiway use only.

3. Lot 1. Lot 1 of Phase I shall be for the common use of the Homeowners Association above set forth for the use of the erection of a lodge, general commercial airport property usage and for aircraft tie down areas. Any building constructed on Lot 1 shall be subject to the prior review of the Homeowners Association.

IN WITNESS WHEREOF, MOGOLLON AIRPARK PROPERTIES, an Arizona Limited Partnership, has caused its name to be hereunto affixed this 5th day of November 1985.

MOGOLLON AIRPARK PROPERTIES,
an Arizona Limited Partnership

By: _____
B. R. PREECE, General Partner

By: _____
DONALD FOXWELL, General Partner

RATIFIED AND APPROVED:

FIRST AMERICAN TITLE INSURANCE AGENCY, INC.,
As Trustee solely as bare legal title
Held and not personally, under Trust 5928

By: _____
Barbara Reynolds, Trust Secretary