

WHEN RECORDED, RETURN TO:

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TEMPE, ARIZONA 85252

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MOGOLLON AIRPARK**

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR MOGOLLON AIRPARK**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mogollon Airpark (this “**Declaration**”) is made this ____ day of _____, 2017, by the Mogollon Airpark, Inc., an Arizona nonprofit corporation (“**Association**”), to run with the real property herein described in Exhibit A (the “**Property**”) for the purposes hereinafter set forth.

RECITALS

A. The Property is comprised of six subdivisions or “**Units**”, each subject to a separate Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land as set forth on Exhibit B. Collectively, these declarations, as amended, shall be referred to herein as the “**Unit Declarations**”.

B. A.R.S. § 33-1817 provides that each Unit Declaration may be amended by the Association by written consent of the number of owners specified in the Unit Declaration, which is owners of not less than three-fourths of the Lots subject to the Unit Declaration.

C Owners of at least three-fourths of the Lots in each Unit have consented in writing to amend and restate in their entirety their respective Unit Declaration as set forth in this Declaration.

NOW, THEREFORE, for the purposes above set forth, the Association hereby amends and restates (and wholly supersedes and replaces) the Unit Declarations and declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, assessments, charges, servitude, liens, reservations, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each Owner thereof, the Association and each member of the Association.

**ARTICLE 1
DEFINITIONS**

All capitalized terms not defined herein shall have the meanings and definitions set forth in the Declaration.

1.1. “Articles” means the articles of incorporation of the Association, as amended from time to time.

1.2. “Assessment Lien” means the lien created and imposed by Article 5.

1.3. “Association” means the Mogollon Airpark, Inc., an Arizona nonprofit corporation, its successors and assigns.

1.4. “Association Expenses” means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

1.5. “Association Rules” or “Rules” means any rules and regulations adopted by the Association, as amended from time to time.

1.6. “Board” means the Board of Directors of the Association.

1.7. “Bylaws” shall mean the Bylaws of the Association, as amended from time to time.

1.8. “Collection Costs” mean all costs, fees, charges, and expenditures, including, without limitation, attorneys’ fees (whether or not a legal action is filed), court costs, filing fees, and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, late fees, demand fees, interest or other amounts payable to the Association pursuant to the Community Documents.

1.9. “Common Area” or “Common Areas” means any land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the Owner of the fee or leasehold interest, including, without limitation, Lots 1 and 2 according to the Unit 1 Plat, and Tracts A, B, C, D, PP, QQ, and RR, except Common Area shall not include any Lot the Association acquires by the foreclosure or by any deed in lieu of foreclosure.

1.10. “Community Documents” means this Declaration, the Articles, the Bylaws, the Association Rules, any amendments to any of the foregoing, and any duly adopted resolutions of the Board.

1.11. “County” means Navajo County, Arizona.

1.12. “Declaration” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mogollon Airpark, as amended from to time.

1.13. “Dwelling Unit” means a manufactured or constructed building or structure situated upon a Lot designed and intended for use and occupancy as a residence.

1.14. “First Mortgage” means any deed of trust or mortgage Recorded against a Lot which has priority over all other deeds of trust or mortgages Recorded against the same Lot.

1.15. “Hangar Tracts” means Tracts E through Z, inclusive, and AA through OO, inclusive, according to the Plats for Unit 4B and Unit 6.

1.16. “Improvement” means: (a) grading, excavating or leveling of any portion of a Lot, (b) a Dwelling Unit or other building; (c) a fence or wall; (d) a road, driveway or parking area; and (e) any other structure, temporary or permanent, of any type, kind or nature.

1.17. “Lot” means any of Lots 3 through 265, inclusive, identified on the Plat and, where the context indicates or requires, any Improvements constructed from time to time thereon.

1.18. “Member” means any Person holding a Membership in the Association pursuant to this Declaration, as further set forth in Section 6.1.

1.19. “Owner” means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot or Hangar Tract. Owner shall not include Persons having an interest in a Lot or Hangar Tract merely as security for the performance of an obligation, or a lessee or tenant of a Lot or Hangar Tract. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract subject to A.R.S. § 33-741, *et seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Hangar Tracts the fee simple title to which is vested in a trustee pursuant to A.R.S. § 33-801, *et seq.*, the Trustor shall be deemed to be the Owner.

1.20. “Person” means a natural person, corporation, partnership, limited liability company, trust or any other legal entity.

1.21. “Plat” means any subdivision plat Recorded with respect to any portion of the Property, including, but not limited to, the plats for Unit 1, Unit 2, Unit 3, Unit 4A, Unit 4B, and Unit 6 described on Exhibit A.

1.22. “Property” or **“Mogollon Airpark”** refers to all the real property described on Exhibit A.

1.23. “Recording” or **“Recordation”** means placing an instrument of public record in the office of the County Recorder of Navajo County, Arizona, and **“Recorded”** means having been so placed of public record.

1.24. “Resident” means each natural person legally occupying or residing in a Dwelling Unit.

1.25. “Tract” means any part of the Property designated as a tract on the Plat. The Tracts identified on the Plat are Tracts A through Z, inclusive, and Tracts AA through RR, inclusive.

1.26. “Unit 1”, “Unit 2”, “Unit 3”, “Unit 4A”, “Unit 4B”, and “Unit 6” are defined in Exhibit B.

ARTICLE 2
LAND USE

2.1 Residential Purposes. The Lots are restricted to single family Dwelling Units for residential use only. Home based businesses are allowed; however, any type of business activity that creates an adverse impact on any portion of the Property, such as, but not limited to, increased vehicle or other types of traffic, noise, lights, dust, odor, or any type of advertisements or signs are prohibited.

2.2 Building Requirements; Minimum Square Footage.

2.2.1 All buildings or structures erected on a Lot shall be of new construction and no used building or structure shall be moved from other locations onto said premises. Not more than one Dwelling Unit may be erected on any individual Lot; provided, however a separate guest house may be constructed on a Lot that is 30,000 or more square feet. For the purposes of this provision, a guest house may be constructed as part of an aircraft storage hangar on the Lot or on a Hangar Tract.

2.2.2 Every Dwelling Unit shall have an area devoted to living purposes, exclusive of porches, terraces, garages, and guest quarters of not less than: (i) 975 square feet on Lots in Unit 1 (Lots 2 to 54, inclusive); (ii) 1050 square feet on Lots in Unit 2 (Lots 55 to 81, inclusive); and (iii) 1200 square feet on Lots in Units 3, 4A, 4B, and 6 (Lots 82 to 265, inclusive).

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

2.3 Hangar Tract Ownership. The Hangar Tracts were initially sold by the developer of Mogollon Airpark to Lot Owners. Any subsequent resale of any Hangar Tract shall only be to Owners of Lots who are Members of the Association.

2.4 Setback Requirements. No structure shall be erected on any Lot within twenty (20) feet of the front or rear line of the Lot or within fifteen (15) feet of either side line of the Lot; except that for all Hangar Tracts the setback shall be a minimum of five (5) feet on all sides except if a property line is common with a public right-of-way or a Lot. In such case, the minimum setback will be ten (10) feet from that property line. However, specifically for Tracts E, F, and G the setback shall be twenty (20) feet from the front of the Tract (taxiway side), ten (10) feet on the back of the Tract and five (5) feet on each side of the Tract, and, for Tracts H through M, inclusive, the setback shall be ten (10) feet on the front, back and sides of the Tract. Specifically in the case of Lot 253 the setback shall be ten (10) feet from the property lines of adjacent Lots 252 and 254 in order to provide sufficient building space for a hangar on Lot 253 in the narrow portion of the Lot just off the taxiway. The setback requirements herein provided may be amended or modified by 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 prior consent or approval of the other Lot Owners. Should a variance be required it must be obtained through the County Planning Department by the Board of Adjustment action.

2.5 Additional Lot Structures. Insofar as is practical, the architecture of any hangar, guest house, or other detached structure shall match that of the Dwelling Unit on the same Lot. Specifically, the siding and roofing materials shall be of a similar appearance.

2.6 Exterior Materials.

2.6.1 Siding Material. The following are specific requirements for the materials to be used on the exteriors of structures. A solid wood shiplap, tongue-and-groove, or log style of siding, or solid wood logs, or a product resembling wood siding made from Portland cement are specifically approved. Other types of solid wood, engineered wood, or a product resembling wood siding made from other materials must be specifically approved by the Association.

2.6.2 Roof Material. The roof material shall be imitation cedar shake, which shall match in quality, color, appearance to real cedar shakes and shall require the specific approval of the Association. Standing seam type sheet metal roofing is also approved and shall require the specific approval of the Association with regards to color and style. The use of natural cedar shake or other natural solid wood materials must be specifically approved by the Association for all new construction or complete reroofing of existing structures.

2.6.3 Exterior Finish. Dwelling Units, Hangars, and other buildings shall have natural stain, oil, paint or other protective coating which will enhance the natural texture and beauty of the wood or have a finish that will match in quality, color, and appearance, to real wood stain when used on other materials.

2.7 Hangar Requirements. The architectural design of those hangars on Tracts E through M, inclusive, and P through MM, inclusive, shall be as illustrated in Exhibit C attached hereto and shall meet the following specifications: The siding, roofing materials, and exterior finish shall meet the requirements of Section 2.6. The location and number of windows and doors with the exception of the main hangar door shall be at the discretion of the Owner of the hangar subject to approval by the Association. The main hangar door shall be oriented as illustrated in Exhibit C and shall face the taxiway or tie down area serving that hangar tract. Metal sheeting, painted a medium to dark brown or dark green, may be used to cover the hangar door. The hangar shall be forty-six (46) feet wide and thirty-six (36) feet deep as shown in Exhibit C. The hangar door opening shall be forty-two (42) feet wide and twelve (12) feet high.

2.8 Solar Collection Panels or Devices. The Association recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, the Association desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to the restrictions of applicable law and prior written approval of the plans therefor by the Association, solar collecting panels and devices may be placed, constructed, or maintained upon any Lot or Hangar Tract within the Property (including upon the roof of any structure upon any Lot or Hangar Tract). The Association may adopt rules and regulations regarding the placement of solar energy devices in order to limit, to the extent possible, the visual impact of such solar collecting panels and devices. The restrictions in this Section 2.8 shall be subject to any limitations imposed by law.

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

2.10 Corner Lots. All Lots have been designated a street address by the County. In the event a Lot is situated on the corner so that it abuts two streets, then the side facing the street with the designated address shall be considered the front; however, the elevation abutting the other street 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.

2.11 Animals. No horses, cattle, sheep, goats, pigs, or other livestock or poultry may be kept, boarded, or maintained on any Lot or Tract or part thereof, and no animals may be kept, boarded, or maintained on any Lot or Tract for commercial purposes.

2.12 Metal Fences. No metal fence shall be erected on any Lot or Hangar Tract except that a protective metal fence may be used to enclose a swimming pool or spa on a Lot. However, such protective metal fence shall be of a design and color, which will blend with the natural environment of the airport. All fences shall require the specific approval of the Association.

2.13 Nuisance. All rubbish, trash and garbage shall be removed from any Lot or Hangar Tract and shall not be allowed to accumulate thereon.

2.14 Recreational Vehicles. A single recreational vehicle such as a motor home, camping trailer, travel trailer, park model trailer, pickup camper, van, fifth wheel trailer or other type of recreational vehicle may be placed on a Lot or Hangar Tract for a period not to exceed a total of thirty (30) days per year to facilitate the use of the Lot or Hangar Tract. Except as allowed in the preceding sentence no motor home, camping trailer, travel trailer, park model trailer, pickup camper, van, fifth wheel trailer or other type of recreational vehicle or house trailer, mobile-type home, mobile home, or any temporary housing shall be placed or erected on any Lot or Tract; provided however, during the period of actual construction of the home, a temporary trailer may be installed for a total period not to exceed twelve (12) months. "Mobile home" as used in these restrictions shall be as defined in the A.R.S. § 33-1409, as amended from time to time.

2.15 Structure Completion. Although there is no requirement that a Dwelling Unit or other structure be constructed upon any Lot or Hangar Tract, upon the commencement of this construction of any such 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. For the purposes of this paragraph, a reasonable period of time to complete construction of the exterior section of any structure shall be twelve (12) months from the commencement of the construction of the exterior unless additional time is granted by the Board.

2.16 Propane and Elevated Tanks. Propane tanks may be installed no higher than one (1) foot above ground level. No elevated tanks of any kind shall be erected, placed, or permitted upon any Lots or Hangar Tracts.

2.17 Exterior Lighting. Any exterior lighting caused or allowed to be erected on any Lot or Hangar Tract by an Owner shall be shaded so as not to create a nuisance to any neighboring Owner or occupier thereof. All exterior lighting shall be installed and used in a manner that minimizes outdoor lighting in order to maintain dark skies and the rural character of the Property.

2.18 Construction Traffic. Construction traffic is prohibited on the Common Area runway, taxiways, and tie down areas, except as otherwise permitted in writing by the Association. The Association may adopt rules and regulations regarding the maximum weight of any vehicle allowed on the Common Area runway, taxiways, or tie down areas pursuant to Section 4.3.

2.19 Further Subdivision. No Lot or Hangar Tract shall be subdivided except with the permission of the Association and the County Board of Supervisors. Any ownership of single holding by any Person consisting of two adjoining Lots or the whole of one Lot and parts of one or more adjoining Lot(s) may, for the purposes of this Declaration, be deemed to constitute a single Lot; however, the dues and other financial obligations to the Association shall remain the same as if the Lot had not been combined. Lots that were combined prior to July 1, 2005 may continue to pay dues as if they were one Lot; however, if those combined Lots are separated in the future, they shall immediately and henceforth pay individual dues on each of the separated Lots even if they are again combined.

2.20 Water Delivery. An individual water system shall be permitted on any Lot, Hangar Tract, or combination thereof, subject to County regulations and Arizona law.

2.21 Maintenance of Lots and Hangar Tracts. In the event the Owner of any Lot or Hangar Tract shall fail to maintain the premises and the exterior of the Improvements situated thereon in a manner reasonably satisfactory to the Association, or in the event the Owner of any Lot or Tract shall permit litter and debris to accumulate on the Lot or Tract, 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 Improvements situated thereon and/or clean any Lot or Hangar Tract 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 property of its intention to make such repairs or of its intention to perform such cleaning, maintenance, or rehabilitation work, affording the Owner of said property a reasonable period of time as determined by the Board in which to make said necessary repairs, maintenance, or cleaning work. If at the end of said 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, cleaning, 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 or Hangar Tract without the consent of the Owner thereof. Any costs incurred by the Association in enforcing and carrying out of the performance of this paragraph shall be charged against the Owner of the Lot or Hangar Tract, and shall be subject to the Assessment Lien until the Association has been paid in full for all costs incurred.

2.22 Right of Entry. The Association shall have the right to enter upon the land when a provision or provisions of this Declaration 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.

2.23 Vegetation. No live trees or other native vegetation shall be cleared from any Lot or Hangar Tract without the prior written approval of the Association, except to the extent that such clearing is necessary to allow construction of a Dwelling Unit or hangar, as the case may be, to provide driveway access thereto, to provide for reasonable fire protection, and as necessary as a safety precaution. All clearing and grading of Lots and Hangar Tracts must first have written approval from the Association.

2.24 Signs. No signs whatsoever that are visible from neighboring property shall be erected or maintained on any Lot except: (a) signs required by legal proceedings and signs that must be permitted by law, (b) signs permitted by the Association Rules, and such other signs that have been approved in advance and in writing by the Board as to size, color, design, message content, and location.

2.25 Building Permits. All construction on Lots and Hangar Tracts shall require a County Building Permit and shall comply with all established requirements.

ARTICLE 3 **ARCHITECTURAL CONTROL**

3.1 Approval Required. 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, and location of such a structure shall have been submitted to and approved by the Association (and in certain instances to the County Planning Department) and a copy thereof, as finally approved, lodged permanently with the Association. All subsequent additions to or changes or alterations, including, but not limited to, refinishing of exterior surfaces of any building, fence, wall, or other structure, shall be subject to the prior approval of the Association.

3.2 Timeline for Review. Failure of the 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 and specifications shall not be unreasonably withheld and rejection 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.

ARTICLE 4
ASSOCIATION AND MEMBERSHIP

4.1 Purpose. The primary purpose of the Association shall be for the administration of those restrictions set forth in this Declaration not specifically committed to administration by another, 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 Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable: (a) to perform the Association's duties and obligations under the Community Documents or imposed by law; (b) to exercise the rights and powers of the Association set forth in the Community Documents; and (c) to foster and promote the common good and general welfare of the Property, the Owners and Residents, and the surrounding community. The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege. The execution of any agreement to purchase any of Lot or Hangar Tract or the acceptance of a deed to any such Lot or Tract shall, without further affirmative act or accent by such purchaser or recipient, cause such recipient or purchaser and the Lot or Tract so purchased or received, to be subject to the Community Documents.

4.2 Membership. Each Owner of a Lot shall automatically be a Member of the Association. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more than one (1) Membership per Lot. Each Member shall have one (1) Membership for each Lot owned by such Owner within the Property as shown on any Plat.

4.3 Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. If a Membership is owned by more than one Person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

4.4 Membership Rights. Each Member shall have the rights, duties, and obligations set forth in this Declaration and such other rights, duties, and obligations as are set forth in the Articles and the Bylaws, as the same may be amended from time to time.

4.5 Transfer of Membership. The rights and obligations of the Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the

transferee of ownership of the Lot. A transferor of a Lot must notify the Board of the transfer in writing, and remains liable for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership to a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership(s) appurtenant to such Lot to the new Owner thereof.

4.6 Enforcement.

4.6.1 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 Tract who, through their breach, make it necessary for the Association to enforce such provisions, conditions, restrictions, or covenants herein contained. The Association shall have an Assessment Lien upon such Lot or Tract to secure payment of such costs, which Assessment Lien may be enforced in the manner specified in Article 5.

4.6.2 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.

4.6.3 The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

ARTICLE 5 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

5.1 Assessments. The Board shall from time to time assess dues upon each Owner of a Lot as fixed by the Board as required for the operation of any facility or facilities by the Association for the benefit of the Members and their guests, and for all other Association Expenses. Each assessment, together with all interest thereon, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment became due. No Owner shall be relieved of the obligation to pay any of the assessments by abandoning or not using his, her or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her or its Lot. Failure to pay such assessments on or before the due date fixed therefor after reasonable notice thereof shall be grounds for the denial of any or all rights or privileges granted to the Owner under this Declaration. Any dues assessed by the Board and all Collection Costs shall be the legal obligation of the Owners and shall be subject to collection in the manner of any legal obligation. No diminution or abatement of assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or the

Board to take some action or perform some function required to be taken or performed under the Community Documents.

5.2 Assessment Lien. Each Lot shall be assessable by the Association as provided in Section 5.1, 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 (the “**Assessment Lien**”). The Assessment Lien shall also be deemed to secure all Collection Costs, together with interest on the unpaid assessment or assessments from the due date thereof until paid.

5.3 Effect of Nonpayment of Assessments; Remedies of Association.

5.3.1 The Assessment Lien shall be prior and superior to all other liens affecting the Lot in question, except (a) taxes, bonds, assessments and other levies which, by law, are superior thereto, and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Assessment Lien, and to acquire and hold, lease, mortgage and convey the same. During the period such property is owned by the Association, no right to vote shall be exercised with respect to that property and no assessment shall be assessed or levied on or with respect to that property, provided, however that the Association’s acquisition and ownership of a Lot shall not be deemed to convert the same into Common Areas. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

5.3.2 The Board may invoke any or all of the sanctions provided for herein or in this Declaration, or any other reasonable sanction, to compel payment of any assessment (or installment thereof), or any other amount payable to the Association under the Community Documents, which is not paid when due (a “**Delinquent Amount**”). Such sanctions include, but are not limited to, the following:

(a) **Interest and Late Fees.** The Board may impose late fees for payment of any Delinquent Amount that is not made within fifteen (15) days of the due date, and interest in such amounts as it determines are appropriate from time to time, subject to any limitations stated herein or imposed by law which such amounts shall be secured by the aforementioned liens;

(b) **Suspension of Rights.** The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner’s voting rights, rights to use and enjoy the Common Areas, and other Membership rights as provided herein, in accordance with the procedures that conform to Arizona law;

(c) **Collection of Delinquent Amount.** The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount to the fullest extent permitted by law;

(d) **Recording of Notice.** Subject to applicable law, the Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency, and recording a notice of satisfaction of the lien; and

(e) **Foreclosure of Lien.** The Board may foreclose the lien against the Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

5.3.3 It shall be the duty of every Owner to pay all assessments and any other amount payable with respect to the Owner's Lot the manner provided herein. Such assessments and other amounts, together with interest and Collection Costs as provided for herein and in this Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such assessments and other amounts are made, provided, however, that such lien shall be subordinate to only those matters identified in this Declaration. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or the Bylaws, or otherwise available at law or in equity for the collection of all unpaid assessments or other amounts payable to the Association, interest thereon, costs of collection thereof and reasonable collection agency fees and attorneys' fees.

5.3.4 The Association shall be entitled to maintain suit to recover a money judgment for unpaid assessments and other amounts payable to the Association without a foreclosure of the lien for such assessments, and the same shall not constitute a waiver of the lien for such assessments or such other amounts payable to the Association.

ARTICLE 6

COMMON AREA AND EASEMENTS

6.1 Common Area. The Common Area shall be under the ownership, control and management of the Association. The Association shall be responsible for the maintenance, custody, and control of this area.

6.2 Airpark Facilities. Tracts A and B and Lots 1 and 2 according to the Unit 1 Plat shall be limited to use as an airport and related facilities for the benefit of the Owners. Any change of use of these Common Areas shall require the written consent of Members holding at least three-fourths (3/4) of the total eligible votes in the Association.

6.3 Transfer or Encumbrance of Common Area. Except for utility easements, which shall not require approval of the Members, the Common Area shall not be sold, leased, mortgaged or encumbered without the prior written consent of Members holding at least three-fourths (3/4) of the total eligible votes in the Association.

6.4 Two Pilot Rule. The use of Common Area for the purpose of operating an aircraft shall be restricted to use by a maximum of two (2) active licensed pilots per Lot unless prior written approval shall be granted by the Association. This Section does not limit the use of the Common Area by guests of Lot Owners, provided such guests have any required documentation on file with the Association. The Association reserves the right to limit the number of guests per Lot using the Common Area if such use is excessive or a safety hazard. In addition, this Section does not preclude the use of the Common Area for special events provided the special events have the prior written approval of the Association.

6.5 Indemnification and Insurance Requirements.

6.5.1 The Association shall indemnify, defend, and hold harmless the County and all of its employees, agents, representatives, and insureds (herein collectively referred to as “Indemnities”) from any and all claims, demands, suits, actions, proceedings, losses, causes, and damages of every kind and description, including but not limited to, any attorneys’ fees and/or costs and expenses, whether or not a lawsuit is filed which may be brought or made against or incurred by any indemnitee (a) arising out of, or contributed to, in whole or in part, by reason of any alleged act, omission, fault, mistake, or negligence of the Association, its employees, agents, representatives, or sub-contractors, in connection with or incident to the use, condition, operation of the taxiway system, runways, or aircraft operations, or (b) in connection with any valid claim made by any indemnitee against the Association or any lot owner for indemnity. The Association’s obligation under this Section shall extend to any liability caused by the sole or concurrent negligence of any indemnitee (including both active and passive negligence).

6.5.2 The Association shall maintain liability insurance with limits no less than \$10,000,000 for operations of Mogollon Airpark and shall name the County as an additional insured in the policy. In addition a thirty (30) day Breach of Warranty in favor of the County shall be made a provision of the insurance policy. In the event that this insurance is not maintained, in addition to all other remedies, the County shall have the right to stop all aircraft ground operations at the three crossings of roadways/taxiways in Unit 6 of Mogollon Airpark, including the right to install fences or barricades to prevent such aircraft movement across the public roadway easement in Unit 6.

6.6 Additional Development of Tract B. The Drainage Report for Unit 6 has considered the effect on drainage by the improvements planned for Tract B taxiways and tie down areas. Additional development of Tract B involving increases in peak flows, volumes, or redirection of flow should not result in conditions at existing drainage facilities that exceed design capacities.

6.7 Maintenance of Signs and Striping in Tract B. The maintenance of signs and striping in Tract B and on the approach roads to Tract B are the responsibility of the Association.

6.8 Fence Maintenance. The maintenance of the fence separating the northeastern portion of Unit VI from U.S. Forest Service land shall be the responsibility of the Association.

6.9 Drainage Areas. Tracts C and D are hereby reserved as drainage areas for Unit 4B, and Tracts PP, QQ, and RR are hereby reserved as drainage areas for Unit 6. There shall be

no construction of any type whatsoever within these tracts and the Association shall ensure the areas remain free of trash or debris and are properly maintained aesthetically.

6.10 Aircraft Parking and Taxiway Easements.

6.10.1 The Owners of Tracts E, F, G, and P through AA, inclusive, and Lots 183 through 194, inclusive, shall have that portion of Tract B located adjacent to such Owner's Hangar Tract or Lot, as applicable, reserved for such Owner's exclusive use only. The parking of aircraft in this area of Tract B shall be reserved for these Owners and their guests. However, the parking of aircraft in these areas shall not limit or interfere with aircraft using the taxiway or the ingress and egress of aircraft to Lots 246, 247, 252, 253, 254, and 255.

6.10.2 The Owners of Tracts OO and NN shall have a sixty foot (60') wide portion of the Tract B tiedown area adjacent to these Tracts reserved exclusively for the ingress and egress of aircraft to these Tracts.

6.10.3 In order to provide wingtip clearance for taxiing aircraft, a taxiway easement is hereby established along the northern portion of Tract P. The hangar or tiedown area to be constructed on this Tract shall be situated such that it begins fifteen feet (15') from the property line between Tracts P and Q. For a structure of forty-six feet (46') in width as specified in Section 2.7 and Exhibit C, this would result in the north side of the hangar being approximately 60' from the property line between Tracts P and Q.

6.11 Utility Easements. Easements for roadway slopes, drainage, sewers, water, cable television, electricity, telephone, and other utilities along, under, around, adjacent to, and across the Lots and Hangar Tracts 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 a manner as to preserve the greatest amount of natural growth and vegetation and do the least amount of injury to the Lots or Hangar Tracts, 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 Plats. Any such easements shall be within fifteen feet (15') of any Lot or Hangar Tract 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 Hangar Tract and all improvements in it shall be maintained continuously by the Owner of such Lot or Hangar Tract.

ARTICLE 7
GENERAL PROVISIONS

7.1 Declaration Runs with the Land. 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 Hangar Tract. These covenants, restrictions, reservations, and conditions may be enforced by the Owner of any Lot or Tract in the Property; provided however, that any breach 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 First Mortgage 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 breach of any of said covenants, restrictions, reservations, and conditions may be enjoined, abated, or remedied by appropriate proceedings, notwithstanding the lien or existence of any such First Mortgage. All instruments of conveyance of any interest in all or any part of a Lot or Hangar Tract 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.

7.2 Amendment. Except as otherwise specifically provided elsewhere in the Declaration, this Declaration may be amended by the written consent of Members holding at least two-thirds (2/3rds) of the eligible votes in the Association. Notwithstanding the foregoing, the Board may amend this Declaration, without obtaining the approval or consent of any Owner, solely to conform this Declaration to the law. A certificate of amendment, setting forth the full amendment adopted, duly signed and acknowledged by the President or Vice-President of the Association shall be Recorded.

7.3 Severability. 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.

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

7.5 Governing Law. This agreement shall be construed under the laws of the State of Arizona.

7.6 Joint and Several Liabilities. In the case of joint ownership of a Lot or Hangar Tract, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

7.7 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, words in the singular shall include the plural, and words in the plural shall include the singular.

7.8 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

7.9 Notices. Any written notice or other documents relating to or required by this Declaration may be delivered personally, by first class mail, certified mail, facsimile, e-mail, overnight delivery service or by any other reasonably reliable method. If by mail, it shall be

deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows; if to the Association, at the address of record for the Association on file with the Arizona Corporation Commission; if to an Owner, to the address of any Lot within the Property owned, in whole or in part, by the Owner or to any other address last furnished by the Owner to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

7.10 Attorneys' Fees. In the event the Association incurs legal expenses and costs, including but not limited to, attorneys' fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including but not limited to, proceedings before an Administrative Law Judge, or any appeal thereof, the Association shall be entitled to recover its attorneys' fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

7.11 Responsibility for Others. Owners hereby acknowledge and agree that they are fully responsible for the actions and inactions of the Owner's family, Residents, guests, licensees, invitees, tenants, and pets. If an Owner's family, Resident, guest, licensee, invitee, tenant, or pet commits a violation of Community Documents, the Owner will be responsible in the same manner as if the Owner had committed such violation.

7.12 Priority of Community Documents. If a conflict exists between the provisions of the Declaration and the other Community Documents, the Declaration prevails. If a conflict exists between the provisions of the Articles and Bylaws or Rules, the Articles prevail. If a conflict exists between the provisions of the Bylaws and the Rules, the Bylaws prevail.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the President of the Association hereby certifies that the foregoing Declaration was approved in accordance with A.R.S. § 33-1817.

MOGOLLON AIRPARK, INC.,
an Arizona nonprofit corporation

By: _____
Its: President

STATE OF ARIZONA)
) ss.
County of Navajo)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____ day of _____, 2017, by _____, the President of Mogollon Airpark, Inc., an Arizona nonprofit corporation, for an on behalf of the corporation.

Notary Public

My Commission Expires:

[NOTE: THIS CERTIFICATION WILL ONLY BE SIGNED IF THE REQUIRED NUMBER OF LOT OWNERS OF EACH UNIT APPROVE THE AMENDED AND RESTATED DECLARATION.]

EXHIBIT A

Description of Property

[For Unit 1:] Lot 1 through 54, inclusive, and Tracts A and B, MOGOLLON AIR PARK, according to the plat recorded in Book 15 of Plats, Page 32, records of Navajo County, Arizona

[For Unit 2:] Lots 55 through 81, inclusive, and Tract B, MOGOLLON AIR PARK UNIT TWO, according to the plat recorded in Book 16 of Plats, page 13, records of Navajo County, Arizona

[For Unit 3:] Lots 82 through 140, inclusive, and Tract B, MOGOLLON AIR PARK UNIT THREE, according to the plat recorded in Book 16 of Plats, page 50, records of Navajo County, Arizona

[For Unit 4A:] Lots 141 through 177, inclusive, Tracts B and C, Taxiways A and B, MOGOLLON AIR PARK UNIT 4A, according to the plat recorded in Book 18 of Plats, page 1, records of Navajo County, Arizona

[For Unit 4B:] Lots 178 through 213, inclusive, Tracts B through M, inclusive, MOGOLLON AIR PARK UNIT 4B, according to the plat recorded in Book 18 of Plats, page 9, records of Navajo County, Arizona

[For Unit 6:] Lots 214 through 265, inclusive, Tracts B and N through Z, inclusive, and AA through RR, inclusive, MOGOLLON AIR PARK UNIT VI, according to the plat recorded in Book 18 of Plats, page 12, records of Navajo County, Arizona

EXHIBIT B

Description of Unit Declarations

(All documents are recorded in the official records of Navajo County, Arizona)

1. A Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land of Restrictions was recorded November 30, 1984 in Docket 762, Page 706 (the “**Original Unit 1 Declaration**”) establishing a general plan of development for the subdivision known as Mogollon Airpark, according to the plat recorded in Book 15 of Plats, Page 32 (“**Unit 1**”). The Original Unit 1 Declaration was amended on July 2, 1999 by the document recorded at recording number 1999-13633 (collectively, the amendment and the Original Unit 1 Declaration are referred to herein as the “**Unit 1 Declaration**”).
2. A Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land of Restrictions was recorded January 30, 1986 in Docket 811, Page 843 (the “**Original Unit 2 Declaration**”) establishing a general plan of development for the subdivision known as Mogollon Airpark Unit Two, according to the plat recorded in Book 16 of Plats, Page 13 (“**Unit 2**”). The Original Unit 2 Declaration was amended and three times as follows: on April 25, 1997 by the document recorded at recording number 1997-6650; September 3, 2002 by the document recorded at recording number 2002-17878; and on September 6, 2005 by the document recorded at recording number 2005-25404 (collectively, the amendments/restatements and the Original Unit 2 Declaration are referred to herein as the “**Unit 2 Declaration**”).
3. A Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land of Restrictions was recorded March 27, 1987 in Docket 862, Page 489 (the “**Original Unit 3 Declaration**”) establishing a general plan of development for the subdivision known as Mogollon Airpark Unit Three, according to the plat recorded in Book 16 of Plats, Page 50 (“**Unit 3**”). The Original Unit 3 Declaration was amended on October 20, 1994 by the document recorded in Docket 1209, Page 475 (collectively, this amendments and the Original Unit 3 Declaration are referred to herein as the “**Unit 3 Declaration**”).
4. A Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land of Restrictions was recorded June 24, 1993 in Docket 1133, Page 427 and re-recorded July 9, 1993 in Docket 1136, Page 119 (the “**Original Unit 4A Declaration**”) establishing a general plan of development for the subdivision known as Mogollon Airpark unit 4A, according to the plat recorded in Book 18 of Plats, Page 1 (“**Unit 4A**”). The Original Unit 4A Declaration was amended three times as follows: on October 15, 2008 by the document recorded at recording number 2008-21125 and re-recorded on July 2, 2015 at recording number 2015-08610; on April 23, 2010 by the document recorded at recording number 2010-06515; and on April 28, 2010 by the document recorded at recording number 2010-06817 (collectively, these amendments and the Original Unit 4A Declaration are referred to herein as the “**Unit 4A Declaration**”).

5. A Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land of Restrictions was recorded August 17, 1994 at recording number 1994-13859 (the “**Original Unit 4B Declaration**”) establishing a general plan of development for the subdivision known as Mogollon Airpark unit 4B, according to the plat recorded in Book 18 of Plats, Page 9 (“**Unit 4B**”). The Original Unit 4B Declaration was amended twice as follows: on October 31, 1994 by the document recorded at recording number 1994-18873; and on October 2, 2008 by the document recorded at recording number 2008-20279 (collectively, these amendments and the Original Unit 4B Declaration are referred to herein as the “**Unit 4B Declaration**”).

6. A Declaration of Establishment of Conditions, Reservations and Restrictions and Mutual and Reciprocal Covenants and Liens Running with the Land of Restrictions was recorded September 29, 1995 at recording number 1995-15953 (the “**Original Unit 6 Declaration**”) establishing a general plan of development for the subdivision known as Mogollon Airpark Unit VI, according to the plat recorded in Book 18 of Plats, page 12 (“**Unit 6**”). The Original Unit 6 Declaration was amended on July 25, 2001 by the document recorded at recording number 2001-14190 (collectively, this amendment and the Original Unit 6 Declaration are referred to herein as the “**Unit 6 Declaration**”).

EXHIBIT C

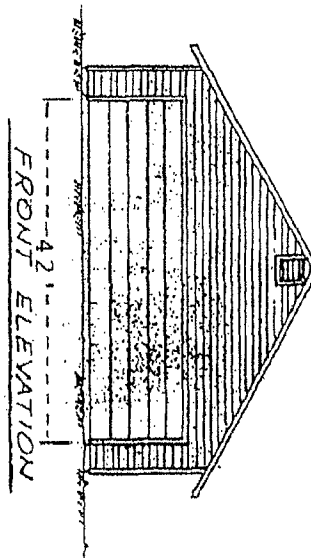
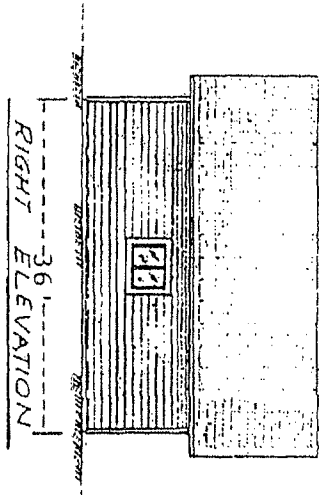
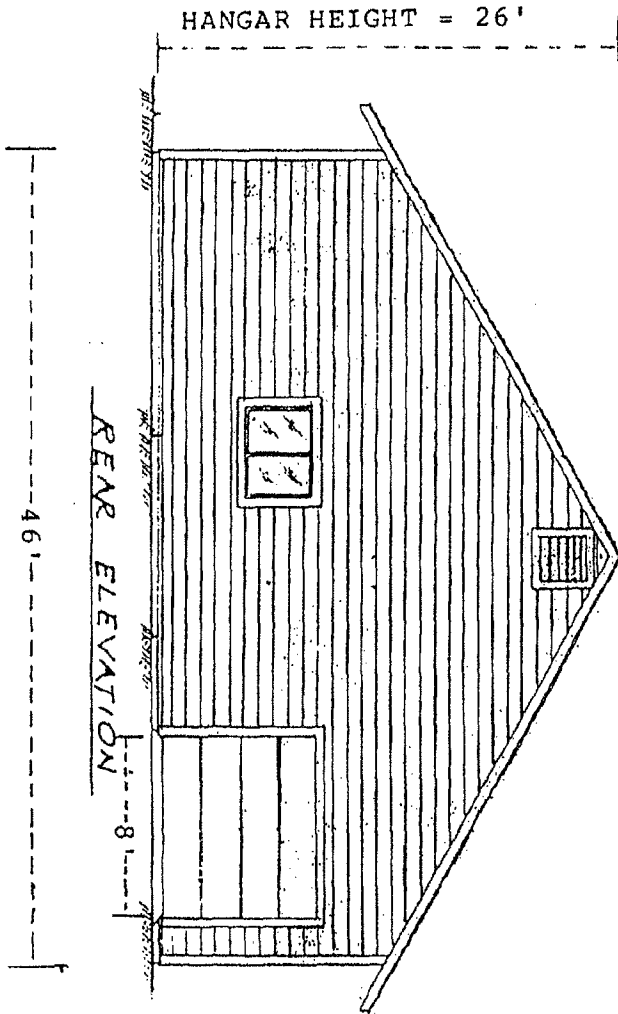
**Hangar Illustration
(attached)**



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Licensed & Bonded

Res./Lic. 078150 Comm./Lic 092796



ROOF PITCH = 12/7