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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
WHISPERING PINES AIRPARK

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THIS INSTRUMENT ESTABLISHES A MANDATORY MEMBERSHIP HOMEOWNERS ASSOCIATION PURSUANT TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. 44-3-220, *ET SEQ.*

DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

WHISPERING PINES AIRPARK

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CONSENT FORM

EXHIBIT "A" - PROPERTY SUBMITTED TO THIS DECLARATION OF PROTECTIVE COVENANTS  
UPON FILING IN THE PUBLIC RECORDS

EXHIBIT "B" - BY-LAWS OF WHISPERING PINES COMMUNITY ASSOCIATION, INC.

DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

WHISPERING PINES AIRPARK

THIS DECLARATION is made on the date hereinafter set forth by the undersigned owners of property in Whispering Pines Airpark (hereinafter sometimes collectively called "Declarants");

W I T N E S S E T H

WHEREAS, Declarants are the owners of the real property described in Section 2.1 of this Declaration; and

WHEREAS, Declarants desire to subject the real property described in Section 2.1 hereof to the provisions of this Declaration to create a property owners' development in accordance with the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*, (the "Act") and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarants hereby declare that the real property described in Section 2.1 of this Declaration, including the improvements constructed thereon, is hereby subjected to the provisions of this Declaration and the Act and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, and the provisions of the Act, for the purpose of protecting the value and desirability of and which shall run with the title to, the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each and every Owner of all or any portion thereof.

Article 1  
Definitions

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

1.1 "Act" means the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, *et seq.*, as amended and supplemented from time to time.

1.2 "Airstrip" means that certain real property in the Community, which is approximately nine acres owned by the Corporation, used solely for the purpose of aircraft take-offs and landings. For purposes of this Declaration, the Airstrip shall be considered a Lot subject

to the covenants and restrictions set forth herein.

1.3 "Articles of Incorporation" means the Articles of Incorporation of Whispering Pines Community Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.4 "Association" means Whispering Pines Community Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.5 "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under Georgia corporate law.

1.6 "By-Laws" means the By-Laws of Whispering Pines Community Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference as may be amended from time to time.

1.7 "Community" refers to Whispering Pines Airpark located in Gwinnett County and Rockdale County, Georgia, respectively, as shown on the subdivision plats for Whispering Pines Airpark recorded with the Clerk of the Superior Courts of Gwinnett County and Rockdale County, Georgia; said plats may be a portion of the property described on Exhibit "A" hereto and by this reference incorporated herein.

1.8 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association.

1.9 "Corporation" means Whispering Pines Airpark, Inc., a nonprofit Georgia corporation, its successors and assigns formed for the purpose of administering, maintaining, repairing, replacing and operating the Airstrip.

1.10 "Lot" means any plot of land within the Community which constitutes a single-family dwelling site as shown on the recorded subdivision plats and which has been subjected to this Declaration by the Owner thereof pursuant to Section 3.2 of this Declaration. A Lot may also contain an area used for the storage of an aircraft as well as the Airstrip as set forth in Section 1.2 herein

1.11 "Mortgage" means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.12 "Mortgagee" means the holder of a Mortgage.

1.13 "Occupant" means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.14 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation. An Owner shall include the Person who holds record title to the Airstrip.

1.15 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust or other organization, whether or not recognized as separate legal entity.

1.16 "Safety and Operating Guidelines" means those rules, regulations and guidelines which may be published by the Corporation regarding the operation of aircraft in the Community, as may be amended or supplemented from time to time.

1.17 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects one or more additional Lots to this Declaration.

1.18 "Tie-Down Lots" means those Lots in the Community used solely for the storage and maintenance of a single aircraft owned by the Tie Down Lot Owner, including, without limitation, the remaining Lots "A" through "J" as more particularly shown on that certain Final Plat for Whispering Pines Airpark Phase Two, recorded May 20, 1988 in Plat Cabinet C, slide 128 Rockdale County, Georgia land records. Tie-Down Lots shall not contain a single family dwelling site.

1.19 "Total Association Vote" means the votes attributable to the entire membership of the Association entitled to vote, not merely a majority vote of the members attending a meeting of members.

It is the purpose of this Declaration to continue the spirit of community cooperation that has been the hallmark of the Community. Therefore, except as provided herein, no action to enforce or change these covenants may be commenced without the affirmative vote of two-thirds (2/3) of the Total Association Vote.

1.20 "Whispering Pines Taxiway" or "Taxiway" means that certain right-of-way shown on the recorded subdivision plat(s) for the Community used solely for the purpose of providing access, ingress and egress for aircrafts to and from the Airstrip.

## Article 2 Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements herein set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference incorporated herein

as is held of record by the undersigned Lot Owners who execute this Declaration on the consent form attached to the Declaration ("Consent Form") on the date this Declaration is recorded in the Gwinnett County and Rockdale County, Georgia land records. Lot numbers identifying the subjected property are shown under the signatures of the undersigned Owners on the Consent Form.

2.2 Other Property. Only the real property described in Section 2.1 is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Owners and the Association have the right, but not the obligation, upon the payment of any initiation fee then in effect by the Owner(s) thereof, to subject other lots to the provisions of this Declaration. The Association and the lot owner(s), without the consent of any other Owners in the Community, may annex any other lot in the Community to the provisions of this Declaration and the jurisdiction of the Association by filing a Supplementary Declaration describing the Lot for record with the Clerk of the Superior Court of the county where the property is located. Any such Supplementary Declaration shall be signed by the Owner(s) of the lot being annexed and the President of the Association and any such annexation shall be effective upon the filing for record, unless a later effective date is provided therein.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned. There shall be one category of membership. Members may hold elective office, may vote on all matters coming before the Association, and shall have the full use and enjoyment of the Airstrip as more particularly set forth in Article 9 hereof. Any Person who is a member of the Corporation, but has not subjected his or her property to the provisions of the Declaration shall not be entitled to vote or hold elective office in the Association.

3.2 Execution and Effective Date. Lot Owners who execute this Declaration on the Consent Form or any Supplementary Declaration, agree on behalf of themselves and their heirs, successors and assigns, to immediately subject said Lot to the provisions of this Declaration, to pay the annual assessment, and be members of the Association.

3.3 Voting. Members shall be entitled to one vote for each Lot owned on any matter coming before the members for a vote. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as provided in the Act or as those Owners themselves determine and advise the Secretary prior to or at any meeting. In the absence of such advice, the vote attributable to such Lot shall be suspended in the event more than one Person



seeks to exercise it. The Association shall have the right to suspend the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid.

3.4 Notice of Sale, Lease or Acquisition. Owners must keep the Association apprised of their name, address and telephone number. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

#### Article 4 Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors with the approval of two-thirds of the Total Association Vote.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges (not in excess of the greater of \$10.00 or ten percent (10%) of the amount of each assessment or installment thereof not paid when due), interest (at a rate of ten percent (10%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Treasurer, under the supervision of the Board, to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget. The Board shall cause the budgets and the assessments to be levied against each Lot for the following period to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budgets and the assessment shall become effective upon the approval of two-thirds (2/3) of the Total Association Vote. In the event the membership does not approve the proposed budget, the existing budget in effect shall continue.

General assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment.

General assessments include any sums the Board determines necessary for operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitorial services, landscape maintenance, Airstrip maintenance in the event such responsibility is delegated to the Association as provided in Section 9.2 hereof and expenses and liabilities incurred as provided herein and in the Articles of Incorporation and By-Laws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board of Directors. The Board of Directors may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments. The Board shall have the power to levy specific assessments upon the approval of two-thirds of the Total Association Vote. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration, the initiation fee and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

#### 4.6 Subordination of Liens to Mortgages.

(a) The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such Mortgage.

(b) Such subordination is merely a subordination and shall not relieve the Owner of the Lot of his or her personal obligation to pay all assessments coming due at any time when he or she is the Owner of such Lot; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than thirty (30) days may incur a late charge not in excess of the greater of \$10.00 or ten percent (10%) of the amount of each assessment or installment not paid when due. The Association may cause a notice of delinquency to be given to any Owner who has not paid within thirty (30) days following the date due. In the event that the assessment remains unpaid after ninety (90) days, the Association may institute suit to collect such amounts. Each Owner, by execution of this Declaration or acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association, without a vote of the members, may consider other remedies to resolve delinquent assessments, especially for cases of undue hardship. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Airstrip, to the extent such duty is delegated to the Association as set forth in Section 9.2 hereof, and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to

pay assessments, due during the period of such suspension and shall not effect the permanent lien on such Lot in favor of the Association.

4.8 Initiation Fee. Upon execution of any Supplementary Declaration by a new Lot Owner, an initiation fee in an amount to be determined by two-thirds of the Total Association Vote shall be collected from the new Lot Owner and paid to the Association. The initiation fee shall constitute a specific assessment against the Lot, shall be in addition to, not in lieu of, the annual general assessment and shall not be considered an advance payment of such assessment. The initiation fee may be used by the Association for any purpose, including, without limitation, for the payment of operating expenses of the Association and other expenses incurred by the Association pursuant to the provisions of this Declaration. This specific assessment shall not apply to the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, but shall apply to the Owner acquiring the Lot from the foreclosing Mortgagee.

## Article 5

### Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Airstrip, to the extent such maintenance responsibility is assigned to the Association by the Corporation as set forth in Section 9.2 hereof, and any storm water detention/retention ponds serving the Community, if any; provided, however, the Association shall not be responsible for any maintenance to or landscaping located on a Lot. In the event that the Association determines that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees or invitees of an Owner, and is not covered or paid for by insurance, then the Association, upon the approval of two-thirds of the Total Association Vote, may perform such maintenance, repair or replacement at such Owner's cost and expense, and all costs thereof, not paid for by insurance, may be assessed against the Owner and the Owner's Lot as a specific assessment.

5.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements located thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; maintaining the yard in a manner consistent with the Community-Wide Standard; complying with all governmental health and police requirements; maintenance of grading and storm water drainage as originally established on the Lot; repair of exterior damages to improvements; and complying with any additional maintenance obligations for hangars as more specifically provided in Article 7 of this Declaration. In the event that the Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation,

give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a thirty-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association, upon the affirmative vote of two-thirds of the Total Association Vote, may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.

5.3 Liability. Owners, Occupants and their guests shall use the Airstrip at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. The Association and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on the Airstrip. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant within the Community.

## Article 6 Architectural Control

6.1 General. No exterior construction, alteration or addition of any improvements that would require a permit issued by a local or governmental authority, nor any out-building, shed or other enclosure, temporary or permanent, shall be commenced or placed upon any part of the Community unless approved in accordance with this Article.

6.2 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to the Board of Directors of the Association and approved by two-thirds of the Total Association Vote. If the Board of Directors fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. The Board of Directors shall be the sole arbiter of such plans and may, upon the affirmative vote of two-thirds of the Total Association Vote, withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of any provision of this Declaration.

6.3 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Board of Directors and the members of the Association assume no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications. Neither the Association, nor its officers, directors, members, employees and agents shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against the Association or its officers, directors, members, employees and agents to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.4 No Waiver. The approval of the Board of Directors or the members of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Board of Directors, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.5 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors, upon the approval of Two-Thirds of the Total Association Vote, shall be authorized to grant individual variances from any of the provisions of this Declaration if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) estop the Board of Directors from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.6 Enforcement. Any structure, improvement or landscaping improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board of Directors, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board of Directors and its agents, upon the affirmative vote of two-thirds of the Total Association Vote, shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. In addition to, or in lieu of, the Association may elect to impose fines for non-compliance with this Article as provided in Section 11.1, hereof. All costs, including,

without limitation, reasonable attorney's fees actually incurred, may be assessed against the Lot as a specific assessment. The Board or its officers, agents, or directors shall not be liable for any damage resulting from the removal the nonconforming structure in accordance herewith.

6.7 Architectural Review Committee. The Board of Directors of the Association shall have the sole right, power and authority under this Article; provided, however, the Board of Directors may surrender all or a portion of such right, power and authority to an Architectural Review Committee ("ARC") upon the approval of two-thirds of the Total Association Vote.

## Article 7 Aircraft and Hangar Restrictions

7.1 Private Use Only. The airplane hangar or tie-down space located on each Lot shall be private property and only the Owner of the property on which the hangar or tie-down space is located or the Tie-Down Lot Owner shall be permitted to use said property. No guest of any Owner or Occupant shall be permitted to store, tie down, or hangar any aircraft in the Community for more than thirty (30) days without the prior written consent of the Board of Directors. The Board of Directors shall have the authority to specify the terms and conditions under which a guest's aircraft may be stored, hangared or tied down in the Community.

7.2 Aircraft Hangars. The design and construction of all hangars and hangar locations shall be approved in accordance with Article 6 of this Declaration and shall be consistent with the Community-Wide Standard. Notwithstanding the foregoing, no hangar shall be constructed within thirty (30') feet of the Taxiway-right-of-way or edge of the Airstrip, as may be shown on the recorded subdivision plat(s) for the Community and each hangar shall also have a twenty (20') foot side and rear clearance. All aircraft hangars shall be completely enclosed and shall contain doors and/or windows in all openings. Any hangar constructed in violation of this Section shall be deemed to be nonconforming. The Board shall notify the owner of the nonconforming hangar and such owner shall have ninety (90) days in which to restore such hangar to its original condition or such other condition as may be approved pursuant to Article 6 hereof. If, after such ninety (90) day period, the hangar is in violation of this Section, the Board, upon the affirmative vote of two-thirds (2/3) of the Total Association Vote, shall have the right to enter said hangar and remove it or restore it to substantially the same condition as previously existed and all costs associated therewith shall be a specific assessment against the Lot Owner. Any hangar constructed as of the date this Declaration is recorded in the Gwinnett and Rockdale County, Georgia land records, respectively, shall be deemed a conforming hangar and shall be exempt from the requirements in this Section 7.2.

7.3 Aircraft Tie-Down. Aircraft may be tied down on an Owner's Lot (i.e. not in a hangar) if they are secured with tie downs adequate for the size and weight of the aircraft and stored in accordance with the provisions in Section 7.4 below. The tied-down aircraft must be in airworthy condition as defined by current Federal Aviation Regulations (FAR's), except as permitted by the Board of Directors in writing.

7.4 Unattended Aircraft. No aircraft shall be parked on any part of the Airstrip or Taxiway, permanently or temporarily, and any aircraft parked or left for any period of time

unattended on any Lot shall be securely tied down. Under no circumstances shall structures, tarpaulins or other devices used to protect aircraft be used on any aircraft stored on a Lot; provided however, fitted covers, window screens, vent plugs, gust locks, chocks and other accessories generally considered part of the aircraft shall be permitted. Any aircraft tied down must be at least twenty (20') feet from the edge of the Lot. If any aircraft is not securely tied down or is unattended, as determined by the Board of Directors in its sole discretion, the Board or its agents may, but are not obligated to, secure it and any costs incurred by the Board shall be a specific assessment against the Lot Owner of said aircraft. Any aircraft not hangared and out of annual by more than two (2) years must be either hangared or removed from the Community, unless an extension has been granted by the Board of Directors in writing.

7.5 Run-ups. Pre-takeoff "run-ups" shall be done with a minimum of interference to other Owners and shall not cause inconvenience to or damage the property of other Owners, Occupants or the guests of such Owners and Occupants.

7.6 Flight Operations. Each Owner is required to strictly observe the Safety and Operating Guidelines and all Federal, State, and local statutes, regulations or ordinances regarding the operation of civil aircraft.

7.7 Commercial Business. No commercial aircraft business shall be permitted on a Lot; provided, however, routine maintenance of an aircraft shall not be deemed a commercial business for the purposes of this Section.

7.8 Maintenance of Aircraft. All maintenance of an aircraft, except for normal servicing, shall be performed during reasonable hours and shall not interfere with the quiet enjoyment of other Lot Owners. Any maintenance to an aircraft in the Community shall be performed entirely within a hangar approved pursuant to Article 6 hereof and all parts, materials, supplies and equipment shall be stored in said hangar or such other location as approved by the Board of Directors or the ARC, as the case may be. Any maintenance performed on an aircraft shall be in accordance with the restrictions set forth in this Article 7.

In the event that a member of the Association does not have a hangar on his or her Lot, any maintenance performed on an aircraft shall be performed in a reasonable amount of time, according to generally accepted aircraft maintenance practices, during reasonable hours and with a minimum of interference to the quiet enjoyment of other Lot Owners. Any maintenance performed shall comply with Section 7.12 hereof.

7.9 Ultralight Restrictions. In addition to any rules and regulations promulgated by the Federal Aviation Administration governing ultralight flying, all Owners and Occupants agree to conduct a substantial part of ultralight flying away from Whispering Pines Airpark and abide by the Safety and Operating Guidelines.

7.10 Leasing of Hangars. The leasing of hangars, except to other Owners in the Community, shall be expressly prohibited. Any Owner who leases his or her hangar to another Owner in the Community shall notify the Board of Directors, in writing, of the lease of said hangar. In the event that the parties execute a formal lease agreement for the leasing of the



hangar, a copy of said lease shall be provided to the Board of Directors.

7.11 Construction. Until construction has begun on a single family site or a hangar, no aircraft shall be tied-down overnight on a Lot, unless approved pursuant to Article 6 hereof.

7.12 Storage of Parts. There shall be no storage of dismantled or disabled aircraft on any Lot for an unreasonable or extended amount of time. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts shall not be stored, temporarily or permanently, on any yard, if visible from the street, Taxiway, Airstrip or adjoining Lots and shall not be allowed to accumulate. Such parts must be stored in a hanger or such other location as may be approved in accordance with Article 6.

7.13 Tie-Down Lots. In addition to the rules and regulations set forth in this Article 7, the following restrictions shall also apply to the Tie-Down Lots:

(a) Purpose. Tie-Down Lots shall be used solely for the purpose of airplane storage. No other vehicles, equipment or other items shall be kept or maintained on the Tie-Down Lots; provided however, cars, trucks or other generally accepted means of transportation may be left on any Tie-Down Lot while the aircraft is being flown. Emergency, safety and maintenance vehicles shall also be permitted on any Tie-Down Lot.

(b) Pads and Anchors. Any pad used or installed on a Tie-Down Lot shall be constructed from concrete, shall be at least four (4) inches deep, shall be reinforced with steel mesh and shall have tie-down anchors firmly set in the concrete pad. In the event that a concrete pad is not constructed, the Tie-Down Lot Owner shall install tie-down anchors. Said tie-down anchors shall be set in concrete, which shall be poured into a hole two (2) feet deep with a ten (10) inch diameter at the bottom and an eight (8) inch diameter at the top.

(c) Storage. The storage of any items outside the aircraft, including fuel, is prohibited.

(d) Sheds and Storage Structures. Sheds and other storage structures, temporary or permanent, shall be prohibited. Permitted items on a Tie-Down Lot shall be limited to the aircraft, tie-down anchors, water tap and concrete pad, if any.

(e) Water Tap. All Tie-Down Lots shall contain a water tap, to be located at least twelve (12) inches below the surface and protected with a sturdy surface level cover.

(f) Maintenance. Any maintenance performed on an aircraft located on a Tie-Down Lot shall be performed in a reasonable amount of time, according to generally accepted aircraft maintenance practices, during reasonable hours and with a minimum of interference to the quiet enjoyment of other Lot Owners. No aircraft shall be disassembled or dismantled for an unreasonable or extended amount of time, as determined by the Board of Directors in its sole discretion. Parts, equipment, supplies and other construction or maintenance materials shall not accumulate on said Tie-Down Lot.

Article 8  
Runway Assurances and Operations

8.1 Continued Operation. Whispering Pines Airpark is a Community for individuals involved in the sport and hobby of aviation and every purchaser, lessee or grantee of any property now or hereafter subject to this Declaration, by acceptance of a deed, lease or other conveyance thereof, hereby agrees that the Airstrip shall be owned by the Corporation and maintained by the Association, to extent such responsibilities are delegated by the Corporation as set forth in Section 9.2 hereof, as such until eighty percent (80%) of the Lot Owners, including the Corporation, consent to the Association's dissolution or its operation is interrupted or terminated by local, state or federal authorities. The Declarants and the Association warrant that the Airstrip, as of the date this Declaration is recorded, will continue to be operated as such.

The Association agrees to actively assure that the Airstrip will continue to operate as a runway. All Association members shall report any activity or situation to the Board of Directors that could negatively affect or impact the continued operation of the Airstrip. The Board shall evaluate such activity or situation and recommend a proposed course of action to the membership.

8.2 Complaints. As an aviation community, all Owners understand and agree that Lot owners, their heirs, or assigns relinquish any right to complain, object or take any legal remedies to stop aviation related activities in the Community.

8.3 Control of Airstrip. The Corporation shall have the sole right to control the use of the Airstrip unless such duties have been delegated to the Association as set forth in Section 9.2 hereof, and may prohibit the use of the Airstrip by any aircraft deemed to: (i) endanger the life, health or safety of any Owner or Occupant; or (ii) be unsafe as a result of its size, design, state of repair or condition.

8.4 Control of Airstrip Grounds and Operation. The Corporation, to the extent such responsibility has not been delegated to the Association, shall have the right to make reasonable rules and regulations regarding the Airstrip, air traffic patterns around the Airstrip, grounds and related facilities affecting the use of said premises, and all Lot Owners agree to comply with said rules and regulations. All Lot Owners also agree to comply with any all rules and regulations regarding the Airstrip promulgated by local, state or federal authorities, including, without limitation, the Federal Aviation Administration ("FAA").

8.5 Withholding of Use. The Corporation or the Association, as applicable, shall have the right to suspend the right of any Owner to use the Airstrip who:

(a) is delinquent in the payment of any assessment or fee;

(b) in the judgment of the Corporation or Association, as applicable, uses the Airstrip or any aircraft in a negligent manner or in a manner harmful to the rights of other Owners, Occupants or guests; or

(c) violates the rules and regulations of the Association, including, without limitation, this Declaration, the By-Laws of the Association or the Safety and Operating Guidelines.

8.6 Take-off and Landing Procedures. Owners and Occupants operating an aircraft in Whispering Pines Airpark shall abide by the Safety and Operating Guidelines, which include specific instructions for air operations.

## Article 9 Easement and Cost Sharing of the Airstrip

9.1. Grant, Conveyance, Creation and Declaration of Airstrip Easement. The Corporation, as the owner of the Airstrip and as a Lot Owner in the Community, hereby grants, conveys, declares, creates, imposes and establishes a non-exclusive and joint easement for the benefit of the members of the Association for the use and enjoyment of the Airstrip, as more particularly identified on the recorded subdivision plat(s) for the Community. The Airstrip shall be used for approved aviation operations only, as set forth in the Safety and Operating Guidelines.

(a) Easement for Use and Enjoyment. Every member of the Association shall have the right to use and enjoy the Airstrip, which shall be appurtenant to and shall pass with the title to each such Lot, subject to the following provisions:

(i) the right of the Corporation or Association, as applicable, to enact reasonable rules and regulations governing the use of the Airstrip; and

(ii) the right of the Association or Corporation, respectively, to suspend the right of an Owner or Occupant to use the Airstrip or the right to receive and enjoy any other benefits and services as may be provided by the Association for any period during which any assessment against such Owner's Lot remains unpaid; and for a reasonable period of time for an infraction of the Declaration, By-Laws, rules and regulations or the Safety and Operating Guidelines.

(b) Duration of Easement. The duration of the easement granted pursuant to this Section 9.1 shall be for a period of one hundred (100) years, after which period said easement shall terminate unless renewed in a separate legal instrument recorded in the land records of Rockdale County and Gwinnett County, Georgia.

(c) The rights granted pursuant to this Article 9 shall be in addition to and not in lieu of any existing rights that any Lot Owner may have to use the Airstrip, including, without limitation, membership in the Corporation or the inclusion of such language in any quitclaim deed, warranty deed or other legal instrument by which any Owner acquired title to a Lot in the Community.

9.2 Maintenance of the Airstrip. So long as the Corporation is the owner of the Airstrip, it shall have the sole right, power and authority to make any and all decisions relating to the use, enjoyment, maintenance, repair and replacement of all or any portion of Airstrip and the establishment of the Airstrip Budget as provided in Section 9.3 below; provided, however, the

Corporation shall have the right, but not the obligation, to assign the maintenance responsibility of the Airstrip to the Association. The Association shall be obligated to accept and perform any maintenance responsibility assigned to it and such maintenance obligations shall be specifically set forth in a separate document which shall be placed in the corporate records of both the Corporation and the Association.

9.3 Budget and Billing. The Corporation shall prepare a budget covering the estimated costs of operating and maintaining the Airstrip during each fiscal year (the "Airstrip Budget"). The Corporation shall deliver to the Association a copy of the Airstrip Budget, which shall include any sums the Corporation determines necessary for the continued ownership, operation, maintenance, repair and replacement of the Airstrip, which shall include, without limitation, payment for any items of betterment, payment for the cost of insurance as provided in Section 9.4 below and the establishment of reserve funds as the Corporation, in its sole discretion, shall deem proper. The Corporation shall levy assessments against all of the Lots in the Community as well as any member of the Corporation who did not subject his or her property to the Declaration to fund the actual and estimated expenses incurred by the Corporation pursuant to the Airstrip Budget ("Airstrip Assessment"). The Airstrip Assessment shall be calculated on a pro rata basis and shall be a percentage of the Airstrip Budget, which percentage shall be the number of members in the Association divided by the total number of members of the Association and the Corporation who have the right to use and enjoy the Airstrip; provided, however, those members of the Corporation who are also members of the Association shall not be calculated twice in determining the pro rata amount of the Airstrip Assessment. The Airstrip Assessment shall be a line item expense in the Association's annual budget. The Airstrip Assessment shall be included in the annual, general assessments for the Association, shall be divided equally among all Lot Owners in the Community and shall be paid in such manner and on such dates as may be fixed by the Board of Directors of the Association for general assessments. Any individual who is a member of the Corporation, but not the Association shall be obligated to pay his or her pro rata share of the Airstrip Assessment, the terms and conditions of said payment to be determined by the Board of Directors of the Corporation, in its sole discretion.

In the event that there are expenses associated with the operation and maintenance of the Airstrip that are not contemplated by the Airstrip Budget or in the event of an Airstrip Budget deficit, the costs of said unanticipated expenses and operating budget deficit shall be paid according to the same method and formula set forth above.

The Corporation shall deliver a statement to the Association outlining the amount of the Airstrip Assessment to be paid by the Association. Said statements shall be prepared by the Corporation on a quarterly or less frequent basis as from time to time deemed appropriate by the Corporation, but such statements shall be made no less frequently than annually. All such statements shall be accompanied by such reasonable detail as may be required to establish the nature of expenditures. Payments not received by Corporation within ten (10) days of the date of said statement shall be delinquent. The Association shall incur a late charge equal to the greater of ten (10%) percent of the amounts due or Twenty-Five and No/100 (\$25.00) Dollars after said ten (10) day period for delinquencies. If the amounts due and late charge are not paid within ten (10) days after the end of said ten (10) day period, interest shall commence to accrue on said

amount at the rate of fifteen (15%) percent per annum until paid. The Corporation shall also be entitled to recover from the Association all costs and expenses incurred by the Corporation in its effort to collect the delinquent amounts whether or not suit is filed, including, but not limited to, reasonable attorneys' fees actually incurred.

9.4 Insurance. The Corporation shall obtain insurance for the Airstrip, unless said responsibility is delegated to the Association in a separate document placed in the corporate record books of both the Association and Corporation. Said insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in the amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Additionally, the Corporation shall obtain a public liability policy applicable to the Airstrip and said policy shall cover the Corporation, the Association and their respective members for all damage or injury caused by the negligence of the Corporation, the Association or any of their respective members or agents. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars and shall name the Association as an additional insured. Policies may contain a reasonable deductible as determined by the Corporation. Premiums for all insurance shall be included in the Airstrip Budget and the Airstrip Assessment, respectively.

9.5 Easement and Obligations Perpetual. The easement, rights and obligations granted pursuant to this Article 9 shall be binding upon and shall inure to the benefit of the members of the Association and their respective legal representatives, successors, heirs, grantees, assigns and successors-in-title. The easement, rights, privileges and obligations set forth in this Article 9 shall be appurtenant to and shall run with the title to each Lot in the Community for the period set forth in Section 9.1(a) above, and are intended to be easements and not covenants restricting land to certain uses. Any conveyance of all or any portion of a Lot or the Airstrip shall also convey the rights, privileges, duties and obligations contained in this Article regardless of whether or not specific mention is made of this Article or the Declaration and regardless of whether or not a specific conveyance is made of, or subject to, the rights, privileges, duties and obligations herein.

9.6 Default and Dispute Resolution Procedures. The Corporation or Association shall be deemed to be in default of this Article if it fails or refuses to comply with the terms and conditions set forth herein for any reason. In the event of a default ("Event of Default"), the non-defaulting party shall give the defaulting party notice of default that shall describe the condition causing the Event of Default in detail. The defaulting party shall then have thirty (30) days from the receipt of notice under this Agreement to cure the condition causing the Event of Default. If the defaulting party fails to cure the Event of Default within such time period, the non-defaulting party may, in its discretion, invoke the dispute resolution procedures set forth below.

The Corporation and Association agree first to attempt to resolve disputes arising out of this Article through mediation in lieu of initially filing suit in a court of law. For any claim arising out of the terms of this Article, other than any action taken to obtain temporary emergency relief, the complaining party shall provide the other party with written notice of the claim and the basis for the claim. If the Corporation and Association are unable by themselves to resolve the dispute within ten (10) days after receipt of the written notice, then upon the

written request of either the Corporation or Association, made within ten (10) days after the end of the 10-day period of private resolution, the Corporation and Association, in good faith, shall attempt to resolve the dispute through an independent mediation agency in the State of Georgia. If the Corporation or Association requests mediation, the dispute shall be submitted to mediation within thirty (30) days of such request. If mediation is commenced but the dispute is not resolved within thirty (30) days after submission of the matter to the mediation process, or such longer time as may be mutually agreed upon by each party to the dispute, the mediation shall terminate and the parties may pursue any and all available legal and equitable remedies, including, but not limited to, specific performance.

## Article 10 Use Restrictions and Rules

10.1 Rules and Regulations. The Board of Directors may, from time to time, upon the approval of two-thirds of the Total Association Vote, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a two-thirds of the Total Association Vote.

10.2 Residential Use. Each Lot shall be used for residential purposes exclusively; provided however, the Airstrip shall not subject to the provisions of this Section 10.2. Leasing of a Lot for residential occupancy or storage of an aircraft on a Tie-Down Lot shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing at the Lot may conduct business activities within the house or hangar so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or By-Laws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or Corporation or otherwise negatively affect the ability of the Association or Corporation, as applicable, to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

10.3 Signs. No sign of any kind shall be erected within the Community without the prior written consent of the Board of Directors. Notwithstanding the foregoing, the Association shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may

be erected upon any Lot. Temporary construction signs of a congratulatory nature may be erected for a period not to exceed fifteen (15) days without approval pursuant to Article 6 hereof. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

10.4 Vehicles; Parking. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated parking areas, if any. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and the spaces located in the driveway of each Lot.

Vehicles, including, without limitation golf carts, shall be permitted on the Airstrip for transit purposes only; such transit shall be effected in a cautious and expeditious manner with constant alert for aircraft. Emergency vehicles and aircraft service or maintenance vehicles and any vehicle approved by the Association shall be permitted on the Airstrip and Taxiway.

10.5 Leasing. Lots may be leased for residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least six months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions and rules and regulations of the Association. The lease shall also obligate the Occupants to comply with the foregoing. Prior to the leasing of a Lot, the Owner shall provide the Association with written notice of the name of the tenant and with the address and telephone number of the Owner.

10.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by applicable local or county ordinances.

10.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, sirens, bells, amplifiers or other sound devices, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment or device, mechanical or otherwise which creates or produces excessively loud

sounds, vibrations or any other conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used, placed, installed or maintained on any Lot, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

10.8 Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains.

10.9 Sight Distance at Intersections. All property located at street intersections or at the intersection of the Taxiway shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board of Directors, it would create an unsafe condition.

10.10 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community; provided, however, trees and shrubs cut from a Lot may be burned in compliance with any county or local regulations.

10.11 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed unless approved in writing by the Board of Directors.

10.12 Guns. The use of firearms in the Community shall be governed by applicable jurisdictional ordinances, rules and regulations.

10.13 Air-Conditioning Units. No window air conditioning units may be installed in any front window of a dwelling located on a Lot.

10.14 Lighting. High intensity exterior lighting on any Lot visible from the Airstrip, Taxiway or any other Lot must be approved by the Board of Directors in writing.

10.15 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure and approved by two-thirds of the Total Association Vote.

10.16 Swimming Pools. In no event shall any above-ground swimming pool be permitted on any Lot unless approved in accordance with Article 6 hereof.



10.17 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot so as to be visible from any street or other Lot in the Community.

10.18 Minimum Square Footage Requirements. All new homes constructed on any Lot in the Community shall contain a minimum of 2,500 square feet of heated floor space unless such other amount is approved by two-thirds of the Total Association Vote. This floor space requirement shall be exclusive of any space in garages, carports and finished basements.

10.19 Stream and Creek Buffer. Land-disturbing activities shall not be conducted within any creek or stream buffer area, as shown on the recorded subdivision plat(s) for the Community, except with prior written approval under Article 6 hereof and compliance with Georgia law, including without limitation, the Control of Erosion and Sedimentation Act, O.C.G.A. Section 12-7-1, *et seq.*, as amended from time to time.

10.20 Ponds, Creeks and Streams. Except as herein provided, all creeks, storm water retention or detention ponds and streams within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of ponds, creeks or streams within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any storm water retention or detention ponds, creeks or streams within the Community. Applicable governmental agencies, the Declarant and the Association shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any ponds, storm water retention or detention ponds, streams or creeks within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any pond, creek or stream within the Community and shall not be permitted to withdraw water from any stream as may exist in the Community without the prior written consent of the Board of Directors.

## Article 11

### Insurance and Casualty Losses

Any Owner or Occupant who owns or operates an aircraft stored, maintained or located in the Community shall, upon request, provide a copy of a current certificate of insurance to the Board of Directors.

## Article 12

### General Provisions

12.1 Enforcement. Each Owner and Occupant shall comply strictly with the By-Laws, the rules and regulations and the Safety and Operating Guidelines, as they may be lawfully amended or modified from time to time, and with the covenants and easements set forth in this Declaration. The Board of Directors, upon the approval of two-thirds of the Total Association

Vote, may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules and regulations or the Safety and Operating Guidelines shall be grounds for an action by the Association to recover sums due for damages or injunctive relief, or both, including, without limitation, reasonable attorney's fees actually incurred. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws and rules and regulations and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

12.2 Duration. The covenants and easements of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that Georgia law hereafter limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of twenty (20) years; or (b) extended, renewed, modified or terminated as otherwise provided herein or by law.

12.3 Amendment. This Declaration may be amended upon the affirmative vote or written consent or any combination thereof of at least two-thirds (2/3) of the Total Association Vote. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the By-Laws, the articles of incorporation of the Association and Georgia law were given.

12.4 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

12.5 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

12.6 Notices. Notices provided for in this Declaration or the Articles or By-Laws shall be in writing, and shall be addressed to any Owner at the address of the Lot and to the Association at the address of its registered agent in the State of Georgia. Any Owner may

designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three business days after mailing by United States Mail, or when delivered in person.

12.7 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

12.8 Preparer. This Declaration was prepared by Lisa A. Crawford and Rachel E. Conrad, Dorough & Dorough, LLC, Two Decatur TownCenter, 125 Clairemont Avenue, Suite 520, Decatur, Georgia 30030.

12.9 Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

12.10 Indemnification. To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director, and committee member against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by such Person in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such Person may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled.

12.11 Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

12.12 Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

12.13 No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

12.14 Agreements. Subject to the prior approval of the Association, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

12.15 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors, upon the approval of two-thirds of the Total Association Vote, shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

12.16 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least two-thirds (2/3) of the Total Association Vote. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is approved by the percentage votes necessary to institute proceedings as provided above.

12.17 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANTS, THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANTS, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT THE DECLARANTS, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Association hereby accepts its obligations hereunder and has caused this Declaration to be executed by its duly authorized officers under seal.

This \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ASSOCIATION: **WHISPERING PINES COMMUNITY ASSOCIATION, INC.**, a Georgia nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Secretary

Signed, sealed, and delivered  
in the presence of:

[AFFIX CORPORATE SEAL]

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:  
\_\_\_\_\_

[AFFIX NOTARY SEAL]

IN WITNESS WHEREOF, the Corporation hereby ratifies the provisions of Article 9 hereof and accepts its obligations hereunder and has caused this Declaration to be executed by its duly authorized officers under seal.

This \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CORPORATION: **WHISPERING PINES AIRPARK, INC.**, a Georgia nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Secretary

Signed, sealed, and delivered  
in the presence of:

[AFFIX CORPORATE SEAL]

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:  
\_\_\_\_\_

[AFFIX NOTARY SEAL]

CONSENT FORM

IN WITNESS WHEREOF, the undersigned have set their hands and seals hereto as of the day and year indicated under their signatures and hereby consent to the foregoing as Owner(s) of the Lot indicated below and as members of the Association.

OWNER: \_\_\_\_\_  
(Print Name(s))

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_ (SEAL)

Date: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Owner of Lot \_\_\_\_\_, Whispering Pines Airpark  
Phase \_\_\_\_\_, as more fully described on Exhibit  
"A".

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_  
[AFFIX NOTARY SEAL]



EXHIBIT "A"

Property Submitted To This Declaration of Protective  
Covenants Upon Filing in the Public Records

EXHIBIT "B"

By-Laws of Whispering Pines Community Association, Inc.