

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
For Winter Rose

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS for *Winter Rose* (the "Declaration"), made this 16 day of June, 1999, by Lifestyle Communities, Inc., a Georgia Corporation (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Dekalb County, Georgia, being more particularly described in Plat Book 107, Page 54, Dekalb County Records attached hereto and incorporated herein by this reference (the "Property"), and Declarant desires to subject the Property to the provisions of this Declaration, to construct a residential community; to provide for the maintenance thereof; to ensure the best use and the most appropriate development and improvement of each of the Lots which are defined in Article I hereof; to protect the owners of said Lots and properties against improper use thereof as will depreciate the value of any of said Lots and properties; to preserve, as far as practicable, the natural beauty of said Lots and properties; in general, to ensure that improvements on said Lots and properties will be of a high quality; and, by establishing and providing for the enforcement of this Declaration during and after development; and

WHEREAS, to this end, the Declarant desires to subject the Property, and the Lots described in Article I hereof to the covenants, restrictions, easements, agreements, charges and liens hereinafter set forth, each of which is for the protection and benefit of said Lots and Property, and for the benefit of all subsequent Owners of said Lots and Property, and each of which shall inure to the benefit of and run with each of said Lots; and

WHEREAS, Declarant has deemed it desirable to create an agency to which should be delegated and assigned the powers of maintaining the administering portions of the Property and the improvements thereon and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of Georgia a nonprofit corporation called *Winter Rose H.O.A., Inc.* (hereinafter the "Association"), a non-profit corporation, for the purpose of exercising said functions:

NOW, THEREFORE, the Declarant hereby declares that all of the Property and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) are hereby subjected to this Declaration and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration and to the covenants, conditions, restrictions, easements, agreements, charges and liens hereinafter set forth. Every grantee of any interest in any Lot made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or other conveyance, whether or not such deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to all the terms and conditions hereof and shall be deemed to have assented to all of said terms and conditions.

ARTICLE I

PROPERTY HEREBY SUBJECTED TO THIS DECLARATION

The Lots which are, by the recording of this Declaration, subjected to the covenants, restrictions and easements hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration, are all those certain subdivided Lots numbered 1 thru 51 inclusive, shown on that certain plat of subdivision recorded in Plat Book 107, Page 54, Dekalb County, Georgia Records and incorporated and made a part hereof by this reference.

Said plat, as may be amended or revised from time to time, is hereinafter referred to as the "Plat", said Lots as shown on the Plat are hereinafter referred to singularly as "Lot" and collectively as "Lots", and the Lots together with all of the other real property shown on the Plat are hereinafter referred to as the "Property".

The record owner, whether one or more persons, including Declarant, of fee simple title to any Lot or Lots are hereinafter referred to as "Owner", excluding, however, those persons having such and interest solely as security for the performance of an obligation.

ARTICLE II,

H.O.A

Section 2.1. Name of H.O.A. The name of the homeowners association shall be Winter Rose H.O.A., Inc.

Section 2.2. Membership. Every Owner shall be deemed a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot, and ownership of any Lot shall be the sole qualification for such membership. In the event that fee title to a Lot is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot. The right and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse but in no event shall more than one vote be cast or more than one office held for each Lot owned. When more than one person holds an interest in a Lot, the vote for such Lot shall be exercised as the Owners of such Lot shall themselves determine. The vote appurtenant to any Lot shall be suspended in the event that more than one person seeks to exercise it.

Section 2.3. Classes of Membership. The Association shall have two (2) classes of voting membership that shall be known as Class A and Class B:

(a) With the exception of the Declarant, every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is a record Owner of a fee interest in any Lot which is a part of the Property subject to the Declaration, or which otherwise becomes subject, by the terms of this Declaration as amended, to assessment by the Association, shall be a Class A member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of a debt or obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to *one (1) vote for each Lot* in which such member holds the interest required for Class A membership.

(b) The Class B member shall be the Declarant, the approved builders, or the Declarant's nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by assignment from the Declarant which specifically assigns the rights of Class B membership. The Class B member or members shall have one (1) Class B membership for each Lot in which such member holds the interest otherwise required for Class A membership. Each Class B member shall be entitled to three (3) votes for each Class B membership which it holds. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) Thirty (30) days following the date on which the total authorized issued and outstanding Class A memberships equal the total authorized issued and outstanding Class B memberships multiplied by three (3); or

(ii) On December 31, 2005; or

(iii) Upon the surrender of said class B memberships by the then holder thereof for cancellation on the books of the Association. Upon lapse or surrender of any of the Class B memberships as provided for in this paragraph, the Declarant or its successor in interest shall thereafter remain a Class A member of the Association as to each and every Lot in which the Declarant then holds the interest otherwise required for such Class A membership. The members of the Association shall have no preemptive rights, as such members, to acquire any memberships of this Association that may at any time be issued by the Association except as may be specifically provided in this paragraph.

Both Class A and Class B members are hereinafter referred to singularly as "Member" and collectively as "Members".

ARTICLE III

PROPERTY RIGHTS

Section 3.1. Development.

(a) Except as otherwise set forth in this Declaration, all Lots within the Subdivision shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale, to make improvements and changes to all Lots owned by Declarant, including without limitation, (i) changes in the location of the boundaries of any Lots owned by Declarant, and (ii) installation and maintenance of any water, sewer, and other utility systems and facilities.

(b) Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lien holder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of this Section. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Section may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

(c) Declarant reserves the right to modify, amend, revise, and add to the Plat, at any time and from time to time, setting forth such information as Declarant may deem necessary with regard to the Subdivision, including, without limitation, the locations and dimensions of the Lots, roads, utility systems, drainage systems, utility easements, drainage easements, access easements, and set-back line restrictions.

Section 3.2. Easements for Declarant. Declarant hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under, and through any portion of the Property owned by the Declarant for so long as Declarant owns any Lot primarily for the purpose of sale:

(a) For the erection, installation, construction, and maintenance of wires, lines, and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables, and other utilities;

- (b) For the construction of improvements on the Lots;
- (c) For the installation, construction, and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility function;
- (d) For use as sales offices, model homes and parking spaces in connection with its effort to market the Lots; and
- (e) For the maintenance of such other facilities, equipment and signs as in the sole discretion of Declarant may be reasonably required, convenient or incidental to the completion, improvement and sale of the Lots.

Section 3.3. Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or portion thereof in the performance of their respective duties and responsibilities, including those set forth in Section 3.2 hereof. Said right and easement specifically includes, but is not limited to, the right to enter upon *Lots 1 & 21* for the purpose of maintaining, landscaping and repairing those items set forth in ARTICLE VI above. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon reasonable advance notice to the Owner of the Lot directly affected thereby.

Section 3.4. Retaining Walls. Declarant can require builders to build a retaining wall(s) between homes and in drainage easements, as the Declarant deems necessary. Declarant may also specify the type of material, the size, the bottom and top of the elevation of the retaining wall(s). Declarant may also require the builder of the new construction to adjust existing retaining wall on adjacent Lots. The Declarant and the builders of new construction have an easement to adjust existing retaining wall(s) and the drainage which affect the retaining walls.

ARTICLE IV

ASSESSMENTS

Section 4.1. Purpose of Assessments. The assessments for common expenses 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 the Lots in the Subdivision, including but not limited to management fees, administration expenses, utility charges, insurance premiums, maintenance, landscaping, repair costs, and establishment of reserve funds, all as may be more specifically authorized from time to time by the board of directors of the Association.

Section 4.2. Creation of Lien and Personal Obligation of Assessments. Each of the Lots described in Article I hereof is hereby made subject to a lien and permanent charge in favor of the Association for monthly assessments or charges, and special assessments or charges, and each Lot hereafter made subject to this Declaration shall automatically be subjected to said lien and permanent charge at the time such Lot is made subject to this Declaration. Such monthly and special assessments shall be fixed, established and collected as hereinafter provided. Any and all of said assessments and charges, together with late charges as may be assessed, simple interest at the rate of 18% (eighteen percent) per annum, and court costs and attorney's fees incurred to enforce or collect such assessments, shall be an equitable charge and a continuing lien upon the Lot against which each assessment is made, and such permanent charge and lien shall bind such Lot and the successors

in interest in such Lot while such successor holds an interest therein. The lien of said assessments shall be superior to all other liens and encumbrances on such Lot except only for (i) liens of advalorem taxes, and (ii) liens for all sums unpaid on a first priority Mortgage or on any Mortgage to Declarant, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such mortgage and secured thereby in accordance with the terms of such instrument.

(c) Each Owner of any Lot which is or shall become subject to this Declaration, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such document, whether or not such document shall be signed by such Owner and whether or not such Owner shall otherwise consent in writing, shall be deemed to covenant, promise and agree to pay to the Association monthly assessments or charges and special assessments or charges, such monthly and special assessments to be fixed, established and collected from time to time as hereinafter provided; and any person or persons who was or were the Owner or Owners of any Lot or Lots subject to assessment by the Association at a time when any assessment came due with respect to such Lots shall be personally obligated to pay such assessment, together with interest thereon, if any.

(d) The permanent charge, the lien and the personal obligation hereby created may be enforced by the Association in any appropriate proceeding in law or in equity.

Section 4.3. Monthly Assessments. Beginning on the first day of the month following closing of the sale of a Lot to an Owner other than Declarant and approved builder, and for every month thereafter, unless changed as provided in Section 4.5 of this Article, the monthly assessment payable by the Owner of such Lot shall be, initially, Twenty Dollars (\$20.00), subject to future adjustment as determined by the Association. At the option of the Declarant or the Board of Directors, the monthly assessments may be collected annually.

Section 4.4. Initial Assessment. At the closing of the sale of all Lots to first Owner to purchase such Lot for a purpose other than the construction of a residence thereon, said Owner shall pay at the closing of the purchase and sale of said Lot an initial assessment of \$150.00. The initial assessment shall be paid only once for each lot and shall be paid to the Association.

Section 4.5. Changes in Assessments. The amount of the monthly assessment fixed by Section 4.3 hereof may be changed by the assent of 51% of the votes of the members eligible to vote on such proposed change who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.6. Special Assessments. In addition to the monthly assessment authorized by Section 4.3, the Association may levy in any assessment month a special assessment, provided that any such special assessment shall have the assent of all of the votes of the Members who are eligible to vote on such proposed assessment who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.7. Date of Commencement of Assessments; Due Dates. The monthly assessments provided for in this Article IV shall commence as to each Lot on the first day of the month following the month in which the Lot is conveyed to an Owner holding title for purpose other than construction of residence on such Lot, and continue for each month thereafter. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

Section 4.8. Certificate. The Treasurer, or the manager of the Association shall, within seven (7) days after written request therefor and upon payment of such fee as is from time to time determined by the Board, furnish to any Owner, a certificate in writing signed by an officer of the Association setting forth whether the assessments for which said Owner is responsible, have been paid, and, if not paid the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. A reasonable charge, as determined by the Association's Board of Directors, may be made for the issuance of such certificates. Such certificate shall be

conclusive evidence, against all but such Owner, of payment of any assessment therein stated to have been paid.

Section 4.9. Subordination of the Charge and Lien to Mortgages.

(a) The lien and permanent charge of all assessments authorized herein (including initial, monthly and special) with respect to any Lot is hereby made subordinate to the lien of any first priority mortgage placed on such Lot and to the lien of any mortgage recorded prior to the recording of this Declaration.

(b) Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he or she is the Owner of such property.

Section 4.10. Individual Assessments. Any expense of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitee of any Owner shall be specifically assessed against such Owners and their respective Lots. The individual assessments provided for in this Section shall be levied by the Board of Directors of the Association and the amount and due date of such assessment shall be as specified by said Board.

Section 4.11. Effect of Non-Payment; Remedies of the Association. Any assessments that are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board of Directors of the Association from time to time and shall also commence to accrue simple interest at the rate of 18% (eighteen percent) per annum. A lien and equitable charge as herein provide for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within 30 days, the entire unpaid balance of the assessment may be accelerated at the option of said Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by said Board, interest on the principal amount due at the rate set forth above, all costs of collection (including reasonable attorney's fees and court costs) and other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for herein shall be in favor of the Association, and each Owner, by his/her acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him/her personally for the collection of said assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, abandonment of his/her Lot or by renunciation of membership in the Association.

ARTICLE V

ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 5.1. Purpose. In order to preserve the natural setting and beauty of the Subdivision, to establish and preserve a harmonious and aesthetically pleasing design for the Subdivision, and to protect and promote the value of the Property, the Lots and all improvements located thereon or therein shall be subject to the restrictions set forth in this Article V. Every grantee of any interest in the Property or in any Lot, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article V.

Section 5.2. Architectural Control Committee. The Architectural Control Committee shall be comprised

of Sam L. Leveto, Greg Leveto, and Taylor Carstarphen and any other persons or entities appointed to said committee by Declarant, until the earlier to occur of the following events: (a) the death or resignation of Sam L. Leveto from said Architectural Review Committee; (b) the sale by Declarant of all Lots within the Subdivision.

Upon the occurrence of either of the foregoing events the Board shall appoint a new Architectural Control Committee which shall consist of up to five (5) (but not less than two (2)) members, all of whom shall be Owners and who may or may not be members of the Board. The regular term of office of each member shall be one (1) year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Architectural Control Committee shall elect a chairman and he/she, or in his/her absence the vice chairman, shall be the presiding officer at its meetings. The Architectural Control Committee shall meet at least annually and as may be required, as well as upon call of the chairman, and all meetings shall be held at such places in Dekalb County as may be designated by the chairman. A majority of the members of the committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Control Committee shall constitute the action of the Architectural Control Committee on any matter before it. The Architectural Control Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist said committee in performing its functions set forth herein.

Section 5.3. Permitted Improvements: Standards.

(a) No Structure of any nature shall be constructed, altered, added to, and/or maintained upon any part of the Property, except (i) those Structures and other improvements constructed by Declarant or and affiliate of Declarant, (ii) those Structures or improvements as are approved by the Architectural Control Committee in accordance with this Article, and (iii) those structures and other improvements which pursuant of this article do not require the consent of the Architectural Control Committee.

(b) The Architectural Control Committee is hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Standards") governing the construction, location, landscaping and design of Structures and other improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to this article. Any such Standards published shall be binding and enforceable on all Owners with respect to all Structures and other improvements in the Subdivision requiring the approval of the Architectural Control Committee. The Control Committee shall maintain the developer's original development standards as a guideline in setting architectural standards.

Section 5.4. Architectural Approval. (a) To preserve the architectural and aesthetic appearance of the Subdivision, no Structure shall be commenced, constructed, placed, moved onto, or maintained by any Owner, other than Declarant or an affiliate of Declarant, on any Lot, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials, and location of same shall have been submitted to and approved in writing by the Architectural Control Committee as to the compliance of the improvement set forth in such plans and specifications with harmony of external design, location and appearance in relation to surrounding structures and topography. One copy of such plans, specifications and related data so submitted shall be retained in the records of the Architectural Control Committee and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved". The Architectural Control Committee shall establish a fee sufficient to cover the expense of reviewing submissions and to compensate any consulting architects, landscape architects, urban designers, inspectors or attorneys retained in accordance with the terms hereof. The fee initially established for such review

shall be \$25.00 for each submission, and the committee shall have the right to increase this amount from time to time. The foregoing, notwithstanding, an Owner may make any interior improvements and alterations within the residence on his Lot that do not affect the exterior appearance without the necessity of approval or review by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether plans and specifications and other data submitted for approval are acceptable to the Association. Representatives of the Architectural Control Committee shall have the right during reasonable hours to enter upon and inspect any Lot or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event that said Committee shall determine that such plans have not been approved or are not being complied with, the Association shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with the approved plans and specifications.

(b) In the event that the Architectural Control Committee fails to approve or disapprove any plans or specifications within thirty (30) days after such plans shall have been submitted, such plans will be deemed to have been expressly approved, provided that the proposed improvements are generally in harmony with the scheme of the Subdivision set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction contemplated in the plans has not been substantially commenced within six (6) months of the approval of the plans and specifications therefor or unless the plans and specifications are materially altered or changed. The Architectural Control Committee may refuse to approve any plans and specifications upon any grounds consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

Section 5.5. Approval of Builders. Any builder or landscaper, prior to performing any work on any Lot in the Subdivision, must first be approved by the Architectural Control Committee as to financial stability, building or landscaping experience and ability to build or landscape Structures or grounds of the class and type of those which are to be built in the Subdivision. Such approval may be granted or withheld in the sole and uncontrolled discretion of the Architectural Control Committee. No person or company shall be approved as a builder or a landscaper unless such person or company obtains its income primarily from the construction or landscaping of the type to be performed on the Lot. No Owner will be permitted to act as its own builder or contractor except where such Owner obtains his/her income primarily from the construction of the type of Structures to be constructed on the Lot and otherwise meets the qualifications for approval of the Architectural Control Committee as set forth in this Article.

Section 5.6. Landscaping Approval. To preserve the aesthetic appearance of the Subdivision, no landscaping, fencing, grading, excavation, or filling of any nature whatsoever shall be installed by Owner, other than Declarant or a builder approved by Declarant, unless the plans therefor have been submitted to and approved in writing by the Architectural Control Committee. The provisions in this article regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation and/or filling. No approval is necessary for trees planted in the rear yard which when mature would not affect the neighbor's yard or for shrubs or plants planted anywhere on the Lot which do not exceed 3 feet in height when mature or cause a sight distance problem for automobile traffic.

Section 5.7. Approval not a Guarantee. No approval of plans and specifications and no publication of Standards shall be construed as representing or implying that such plans, specifications or Standards will, if followed, result in properly designed improvements. Such approvals and Standards shall in no event be construed as representing or guaranteeing that any residence or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Declarant, the Association, nor the Architectural Control Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to terms of this Article, any loss or damages to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and

specifications with any governmental ordinances or regulations, nor any defects in construction undertaken by pursuant to such plans and specifications. By submission of such plans and specifications to the Architectural Control Committee as required by this Article, every Owner of any Lot releases and agrees to hold harmless and to defend the Declarant, the Association and any and all members of the Architectural Control Committee from any such alleged liability, claim and/or damage.

Section 5.8. Building Restrictions. All Structures and other improvements shall be constructed in compliance with any and all applicable state, county, and municipal zoning and building restrictions.

Section 5.9. Use of Lots and Dwellings. Except as specifically permitted by this Declaration, each Lot shall be used for single-family residential purposes only and no trade or business of any kind may be carried on therein. The use of a portion of a residence as an office by an Owner or its tenant shall not be deemed to be a violation of this covenant if such use does not create regular customer, client, or employee traffic or otherwise create a nuisance. The use of a residence or a portion thereof for business meetings, entertainment or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be deemed to be a violation of this covenant if such use does not create regular customer, client, or employee traffic or otherwise create a nuisance.

Section 5.10. Fences. No fence or wall of any kind shall be erected, maintained, placed, or altered on any Lot by any Owner, other than the Declarant or and affiliate of Declarant, without the prior written consent of the Architectural Control Committee of the plans and specifications for such fence or wall. No fences shall exceed 6 foot in height. Split rail fences with a dark coated mesh backing are permitted. All fences may be constructed of natural wood, such as cedar. There shall not be any chain link fences unless it is constructed on the rear property line of an exterior subdivision boundary or adjacent to a power line easement. The Declarant is excepted from this covenant and may use whatever fencing material it feels necessary for the completion of the development of the community. At Declarant's option, exceptions may be permitted as to fence types.

Section 5.11. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may, reasonably, be or become an annoyance, discomfort, embarrassment, or nuisance to other Owners or occupants of other portions of the subdivision.

Section 5.12. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building or structure shall be used on any Lot for more than one 24 hour period and under no circumstances for a residence either temporarily or permanently. The Declarant or an approved builder may at the Declarant's option use such structure as needed by them for the construction and marketing of the homes in *Winter Rose*.

Section 5.13. Signs. No sign of any kind (including but not limited to commercial and similar signs) shall, without the Architectural Control Committee's prior written approval of the plans and specifications therefore, be installed, altered or maintained on any Lot or on any portion of a Structure visible from the exterior thereof, except:

- (a) such signs as may be required by legal proceedings;
- (b) not more than one "For Sale" or "For Rent" provided however, that in no event shall any such sign be larger than six square feet in area;
- (c) directional signs for vehicular or pedestrian safety in accordance with the plans and specifications approved by the Architectural Control Committee; and,

(d) a sign indicating the builder of the residence of a Lot.

Section 5.14. Pets. No animals, livestock, reptiles, birds or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other generally recognized household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. A maximum of four (4) pets per household shall be allowed and all pets shall be under leash or voice control at all times when walked or exercised outside of all fenced areas of any Lot.

Section 5.15. Sewage Disposal and Water Supply. An individual sewage disposal system shall not be permitted on any Lot. No individual water supply shall be permitted on any Lot without the prior written consent of the Architectural Control Committee.

Section 5.16. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain within 15 feet of the intersection of two or more roadways abutting on any Lot.

Section 5.17. Antennae. Any dish or dish type radio and television can not be installed closer than 3 feet from an exterior boundary of a Lot. Said antennae may be installed on the rear roofs provided that the antennae's size does not exceed 18 inches high x 18 inches length and on the side of houses where the same antennae is placed at the most inconspicuous place. The placement shall be subject to the prior written approval of the plans and specifications by the Architectural Control Committee.

Section 5.18. Playground and Recreational Equipment. No playground or recreational equipment shall be placed or installed on any Lot which would cause said equipment to be visible from the street(s) abutting such Lot; without the prior written approval of the Architectural Control Committee except basketball goals. Goals can be constructed no further than 20 feet from the nearest part of the house toward the street nor any further than 3 feet within any side yard as defined by the governing municipality.

Section 5.19. Swimming Pools. Above ground swimming pools will not be permitted in the Subdivision. No pool can be situated closer than 20 feet from an exterior boundary of any Lot, the location of which being subject to the approval of the Architectural Control Committee.

Section 5.20. Use of Concrete Blocks, etc. Whenever a building erected on any Lot is constructed in whole or in part of concrete blocks, cinder blocks or other fabricated masonry block units, such blocks shall be faced with brick, natural stone, stucco, or other material approved by the Architectural Control Committee, over the entire surface exposed above finish grade.

Section 5.21. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers and shall be removed on a regular but not less than weekly basis by the local municipality. Garbage and trash containers shall be stored abutting the rear or sides of houses, screened from view by Owners of adjacent Lots and kept in a clean, sanitary condition.

Section 5.22. Building Location. No buildings shall be located nearer to a street or side line than indicated by the building line restriction shown on the Plat or as approved by Dekalb County. For the purposes of this Article V, eaves, steps, and open porches not covered by roof structures shall not be considered as a part of a building; provided however, that this shall not be construed to permit any portion of the building or construction on any Lot to encroach upon another Lot or upon the easements reserved in Article III hereof.

Section 5.23. Dwelling Size. One-story dwelling buildings erected on any Lot shall have not less than 1,300 square feet of heated floor space. Multi-level buildings such as two stories, split-levels and tri-levels shall

have not less than 1,300 square feet of heated floor space. These minimum floor space requirements shall be exclusive of any space in garages, porches, terraces, bulk storage, and finished basements, whether heated or not.

Section 5.24. Garages and Carports. All garages shall be fully enclosed with doors. Open carports are not permitted on any Lot.

Section 5.25. Vehicles. All automobiles owned or used by Owners or by other than temporary guests and visitors shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise such that they become unavailable for the parking of cars therein. The Board shall have the authority to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any Lot of any mobile home, trailer (either with or without wheels), motor home, tractor, truck, commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices. Furthermore, while not expressly prohibited hereby, the Board may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other similar vehicles, or any of them, from being kept, placed, stored maintained or operated upon any portion of the Property if in the opinion of the Board such prohibition shall be in the best interest of the subdivision. No Owners or other occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Section 5.26. Mailboxes. Mailboxes on every Lot shall be of a type and design consistent with the character of the neighborhood and shall be subject to approval of the Architectural Control Committee.

Section 5.27. Zoning. Zoning regulations applicable to the Property subject to this Declaration shall be observed. In the event of any conflict between any provision of such zoning restrictions and the restrictions of this Declaration, the more restrictive provisions shall apply.

Section 5.28. Sidewalks. The Owner of each Lot (excluding Declarant or any affiliate of Declarant) shall be responsible to construct, prior to receipt of the certificate of occupancy for any Structure of such Lot, a sidewalk along the street frontage of said Lot if required by the Declarant. The sidewalk shall be constructed to the local municipality's requirements. Local municipality requirements shall prevail.

Section 5.29. Clotheslines. No outside clotheslines shall be constructed, placed, or maintained on any Lot without the prior written approval of the Architectural Control Committee.

Section 5.30. Site Plan. Unless otherwise stated in writing, the Declarant requires each builder to submit a grading and drainage plan prior to the start of construction for Declarant's approval. The plan shall include but not be limited to the following:

- (a) The placement of the house on the Lot including finished floor elevations.
- (b) How the Lot will drain.
- (c) Any retaining walls to be constructed including materia, length, and top and bottom elevations.
- (d) How construction may affect existing Lots.
- (e) Where excess soil will be moved to.

Section 5.31. Tree Removal. No trees can be cut down that is three inches in diameter or larger at its base without the approval of the architectural committee. This section does not apply to the Declarant.

ARTICLE VI

MAINTENANCE

Section 6.1. Association's Responsibilities. (a) Except as otherwise provided for herein, the Association shall maintain, landscape and keep in good repair, as the case may be, (i) the wall or fence, if any, surrounding the Subdivision, (ii) the entryway treatment, entryway signs and entryway landscaping for the Subdivision, (iii) the entryway lights, if any, (iv) the irrigation facilities, if any, serving the entryway landscaping for the Subdivision, (v) the detention pond or facility located on the Property, to the extent that maintenance and repair of same is not assumed by Dekalb County, (vi) any recreational facilities built for the common use of all Owners including, but not limited to, any community pool, tennis courts, cabanas, and/or playground equipment as may be constructed on any of the Property. The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner or any other person. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any other or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

(b) In the event that Declarant or the Board determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance including landscaping and landscape maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitee, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot are subject and shall become a lien against such Lot. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's cost and expenses.

Section 6.2. Owner's Responsibilities. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots, together with all other improvements thereon or therein, shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his or its Lot in a neat, clean and sanitary condition, and such responsibility shall include but not be limited to the maintenance and care of all exterior surfaces of all improvements, common yard maintenance and weed control, buildings and other Structures located on the Lot (including repainting). As provided in Section 6.1 of this Article, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner but which responsibility such Owner fails or refuses to discharge. No Owner shall decorate, repaint, change by materially altering the appearance of any portion of the exterior of his residence or the landscaping, grounds or other improvements within a Lot unless such

decoration, repainting, change or alteration is first approved, in writing, by the Architectural Control Committee as provided in this Declaration, or do any work which, in the reasonable opinion of the Architectural Control Committee, would jeopardize the soundness and safety of the Subdivision, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining the prior written approval of the Architectural Control Committee.

Section 6.3. Declarant's Responsibility. Declarant will replace or repair any or the following, not including the normal wear and tear that is part of monthly maintenance, of (if any) landscape material, entry walls, fencing, pool, cabana, common parking areas, and tennis courts if any for a period of one year from the installation of the facility. At the end of a one-year period, the Association shall assume the responsibility for the repairs and replacement, if needed, of these improvements. Under no circumstances shall the Declarant be responsible for dead tree removal anywhere within the subdivision or common areas.

ARTICLE VII

ADMINISTRATION

Section 7.1. Construction Commencement, Completion. Any purchaser of a vacant Lot must commence construction on the home on said Lot within six months following the date of closing. Construction shall be deemed to have begun when the Lot has been fully cleared and graded in preparation for construction and a building permit obtained for the construction of a residence on such Lot. In addition to the commencement of construction within six (6) months following the date of closing, any Owner having a home built on his or her Lot shall ensure that construction is completed within twelve (12) months following the date of closing. Construction shall be deemed to be completed as of the date of the issuance of a certificate of occupancy for the residence under construction.

Section 7.2. Occupancy. All homes shall be Owner-occupied unless the Association shall approve a tenant.

Section 7.3. Control of Association. Except to the extent otherwise required by the provisions of the Official Code of Georgia relating to nonprofit corporations, this Declaration, the Articles of Incorporation and By-Laws of the Association, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners. Declarant shall have the right to appoint and remove all members of the Board any officer or officers of the Association until such time as the first to occur of the following events: (i) the date as of which the last Lot in the Subdivision owned by Declarant shall have been conveyed by Declarant to an Owner other than a person or persons constituting Declarant or an affiliate of Declarant; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed by the Declarant. Each Owner by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Declaration.

Section 7.4. Duties and Powers. This duties and powers of the Association shall be those set forth in the Official Code of Georgia relating to nonprofit corporations, this Declaration, the Articles of Incorporation and By-Laws of the Association (as may from time to time be amended), together with those reasonably implied to effect the purposes of the Association; provided however, that if there are conflicts or inconsistencies between the Official Code of Georgia, this Declaration, the By-Laws or the Articles of Incorporation, the Official Code of Georgia, this Declaration, the By-Laws then the Articles of Incorporation, in that order, shall prevail, and each Owner of a Lot, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such

amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right of privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 7.5. Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the common Property fully insured, except for a deductible, by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in the amount adequate to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of such improvements in the event of loss of any and/or all of such improvements, together with fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the common Property. Any such policies of insurance shall require that the certificate holders and insured be given thirty (30) days prior written notice of any cancellation of such policies.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverage as are determined to be necessary by the Board.

(c) The Board or its duly authorized agents shall have the authority and may obtain such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

Section 7.6. Damage or Destruction to Improvements. Immediately after the damage or destruction by fire or other casualty of all or any portion of the improvements covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction, as used in this Article, means restoring or repairing the damaged Property to substantially the same condition in which it existed prior to the fire or other casualty. The Association shall restore or replace such damaged or destroyed improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may be established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote as required elsewhere in this Declaration, such assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such an emergency assessment shall be levied against all the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and used for the benefit of the Association.

ARTICLE VIII

ENFORCEMENT

Section 8.1. Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules

and regulations of the Association, if any, adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to its Lot, if any. Failure to comply with any of the same shall be grounds for imposing of fines, or suspending voting rights and/or instituting an action to recover sums due, for damages and/or injunctive relief, such actions to be maintainable by Declarant, the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorney's fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws and the rules and regulation of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by the recovery of damages and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies may require and shall be entitled to the remedy of injunction to restrain any such violation or breach. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association, for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-laws or any rules and regulations of the Association, however long continued.

Section 8.2. Self-Help. In addition to any other remedies provided for herein, the Declarant and the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, an erection, thing, or condition which violates this Declaration, the By-Laws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1. Duration. The Provisions of this Declaration shall run with and bind the Property, shall be and remain in effect, and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded.

Upon the expiration of twenty (20) years, the Declaration shall be automatically renewed and extended beyond said 20-year term for successive periods of ten (10) years each unless, at the end of the initial twenty (20) years or at any time thereafter, two-thirds (2/3) of the Members shall execute an agreement terminating some or all of the provisions of this Declaration and shall then record said termination agreement in the Office of the Clerk of the Superior Court of the county in which the Property or any portion thereof lies. Every purchaser or grantee of any interest in any property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of this Declaration may be extended as provided above.

Section 9.2. Notices. Any notice required to be sent to any Member pursuant to any provision of this Declaration shall be served by depositing such notice in the mails, post-paid, regular mail, addressed to the Member for whom it is intended at his or her last known place of residence, or to such other address as may be

furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

Section 9.3. Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant shall have the right to appoint and remove all of the members of the Board of the Association and any officer and officers of the Association as provided by and for the term set forth in Section 7.3 hereof. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 9.3 and the provisions of Section 7.3. Upon the expiration of Declarant's right to appoint and remove directors and officers of the Association pursuant to this Section 9.3 and Section 7.3 such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

Section 9.4. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or the application thereof 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.

Section 9.5. No Liability. Declarant has used its best efforts and acted with due diligence in connection with the preparation and recording of this Declaration to ensure that the Association and each Owner has the right and power to enforce the terms and provisions hereof against every other Owner. In the event this Declaration is unenforceable by the Association or an Owner or any other person for any reason whatsoever, the Declarant and its agents shall have no liability of any kind as a result of such enforceability, and each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that the Declarant and its agents shall have no such liability.

Section 9.6. Captions. The captions of each Section hereof 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 sections to which they refer.

Section 9.7. Gender. The masculine gender shall be construed to include a female or a partnership where the context so requires.

Section 9.8. Definitions. Unless the context otherwise requires, whenever used in this Declaration:

- (a) "Person" shall include a partnership or other legal entity.
- (b) "Lot" shall mean any plat of land shown as a numbered parcel on the Plat including and additional Lots created or relocated on any amendments to or revisions to the Plat any plat of survey hereafter recorded if such numbered parcel becomes subject to this Declaration and the jurisdiction of the Association.
- (c) "Subdivision" shall mean *Winter Rose* Subdivision.
- (d) "Board" shall mean the Board of Directors of *Winter Rose H.O.A., Inc.*

(e) "Mortgage" and "mortgages", as used in this Section, shall include deeds to secure debt. "Lien" shall include, where the context requires, the security title of any holder of a deed to secure debt. "Mortgagee" and "mortgagees" shall include any holder or holders of a deed or deeds to secure debt.

(f) "Structure" shall mean and refer to: (i) any thing or object, the placement of which upon any Lot may affect the appearance of the Lot, including by way of illustration and not limitation, any building or part of a building, garage, porch, gazebo, shed, greenhouse or bathhouse, coop, cage, hutch or doghouse, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree shrub, sign, signboard, satellite dish, mailbox, driveway, temporary or permanent living quarters (including house trailers) or any other temporary or permanent improvements to a Lot; (ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the flow of any waters in any natural or artificial creek, stream, wash, or drainage channel from, upon or across any Lot; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this section applies to such change.

(g) "Approved Builder" shall mean to be a builder who has been recognized by the Declarant as a builder who income is derived primarily from home building and has contracted with Declarant to purchase Lots within this community.

Section 9.9. Amendments by Declarant. Subject to the terms of Section 10.2 of this Declaration, during any period in which Declarant retains the right to appoint and remove any directors or officers of the Association, Declarant may amend this Declaration to be an instrument in writing filed and recorded in the records of the Office of the Clerk of the Superior Court of Dekalb County, Georgia, without the approval of any Owner or Mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all Mortgagees so affected. Any amendment made pursuant to this Section 9.9 shall be certified by Declarant as having been duly approved by Declarant, and such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.9 and further agrees, that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Property (A) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on any Lot or other improvements subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots or other improvements subject to this Declaration.

Section 9.10. Amendment by Association. Amendments to this Declaration, other than those authorized by Section 9.9 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be provided to each member of the Association as set forth in this Declaration.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

(d) This Article shall not be amended without the prior written approval of Declarant, so long as the Declarant owns any property described in Article I hereof.

(e) Neither the Declarant nor the Association can convey any portion of the Common Area as a security interest or as collateral for any loan to the Association without the consent of Two-thirds of all Class A Members and the Class B Members as well as the consent of all Mortgagees.

ARTICLE X

ANNEXATION OF ADDITIONAL PROPERTY, IF APPLIABLE

Section 10.1. Annexation Without Approval of Class "A" Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2005, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property located in Land Lots _____ of the ___th District, Dekalb County and the property more particularly described in Exhibit "B", attached hereto. Such annexation shall be accomplished by filing in the public records of Dekalb County, Georgia, a Supplemental Declaration and shall not require the consent of Members, but shall require the consent of the Owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described as *Winter Rose* or Article I and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 10.2. FHA/VA Approval. The foregoing notwithstanding, as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration and/or the Veteran's Administration: mergers and consolidations, dissolution, annexation of additional properties, dedication of Common Area, and all amendments of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officer, and its corporate seal to be hereunto affixed, the day and year first above written.

Signed, Sealed, and delivered
in the presence of:

Unofficial Witness

Notary Public
(notary seal)

My Commission Expires:

Lifestyle Communities, Inc.

By: _____

Sam L. Leveto, President
Its: **President**
Declarant

(CORPORATE SEAL)