

DECLARATION FOR VIEWPOINTE IN SAINT CHARLES

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DECLARATION FOR VIEWPOINTE IN SAINT CHARLES

This Declaration for Viewpointe in Saint Charles is made and entered into by The Viewpointe in Saint Charles Association (f/k/a The Viewpointe Association), with the written consent of Owners representing not less than 51% of the Undivided Interests under the Original Declaration (defined below). This document is also executed by Lexington Homes, L.L.C., which, upon the recording of this Declaration, shall become the Developer (as defined below).

RECITALS

The Declaration of Property Ownership, Covenants, Conditions and Restrictions for Viewpointe was recorded in Kane County, Illinois as Document No. 96K088712 (the "Original Declaration"). Section 10.02 of the Original Declaration provided that the Original Declaration could be amended by an instrument executed by owners of at least fifty-one percent (51%) of the

Undivided Interests (as defined therein). The Owners of at least fifty-one percent (51%) of the Undivided Interests desire to amend and restate the original Declaration in its entirety.

ACCORDINGLY, the Original Declaration is hereby renamed the Declaration for Viewpointe in Saint Charles and is hereby superseded, amended and restated to be and read in its entirety as follows:

ARTICLE ONE

Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ASSOCIATION: The Viewpointe in Saint Charles Association (f/k/a The Viewpointe Association), an Illinois not-for-profit corporation, its successors and assigns.

1.02 BOARD: The board of directors of the Association, as constituted at any time or from time to time. In accordance with the applicable provisions of Article Five.

1.03 BY-LAWS: The By-Laws of the Association.

1.04 CHARGES: The Community Assessment, any special assessment levied by the Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.05 CITY: The City of Saint Charles, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the City as of the Recording in this Declaration.

1.06 COMMUNITY AREA: Those portions of the Premises which are described and designated as "Community Area" in Exhibit A hereto, together with all improvements located above and below the ground and appurtenant thereto. The Community Area shall generally include private roads which serve the Development, open space, landscaped areas, detention areas, and all storm sewers in, or under, the Community Area and shall not include any Lots.

1.07 COMMUNITY ASSESSMENTS: The amounts which the Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article Six.

1.08 COMMUNITY EXPENSES: Except as specifically otherwise provided herein, the expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping of the Community Area; the cost of insurance for the Community Area; the cost of general and special real estate taxes and assessments levied or assessed against the Community Area owned by the Association, the

cost of and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the maintenance of the Community Area; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

1.09 COUNTY: Kane County, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the Recording of this Declaration.

1.10 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.11 DEVELOPER: Lexington Homes. L.L.C., an Illinois limited liability company, its successors and assigns.

1.12 HOME: That portion of a Lot which is improved with a single family home.

1.13 LOT: Each subdivided lot designated in Exhibit A hereto as a Lot, together with all improvements thereon and thereto.

1.14 MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Lot.

1.16 NON-OWNER: A person other than an Owner or a Resident.

1.17 OWNER: A Record owner, whether one or more persons, of fee simple title to a Lot, including contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Developer shall be deemed to be an Owner with respect to each Lot owned by the Developer.

1.18 PERSON: A natural individual, corporation, partnership, trustee or other entity capable of holding title to real property.

1.19 PREMISES: The real estate which is legally described in Exhibit A hereto, as amended from time to time, with all improvements thereon and rights appurtenant thereto.

1.20 RECORD: To record in the office of the Recorder of Deeds for the County.

1.21 RESIDENT: An individual who resides in a Home.

1.22 TURNOVER DATE: The date on which the rights of the Developer to designate the members of the Board are terminated under Section 9.05.

1.23 VOTING MEMBER.: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Five.

ARTICLE TWO

Scope of Declaration

2.01 PROPERTY SUBJECT TO DECLARATION: The Premises are subject to this Declaration.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants

appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in any part of the Premises. Any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document, regardless of whether a specific reference is made in such instrument to this Declaration.

2.03 DURATION: Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by a Recorded instrument as provided in Section 10.0 hereof.

2.04 LOT CONVEYANCE: Once a Lot has been conveyed by the Developer to a bona fide purchaser for value, then any subsequent conveyance or transfer of ownership of the Lot shall be of the entire Lot and there shall be no conveyance or transfer of a portion of the Lot without the prior written consent of the Board.

2.05 ACCESS EASEMENT: Each Owner of a Lot and the Owner's guests and invitees shall have a non-exclusive perpetual easement for ingress to and egress from the Owner's Lot to public streets and roads over and across driveways and walkways located on the Community Area, which easement shall run with the land, be appurtenant to and pass with title to every Lot. The Association shall have the right and easement to come onto any Lot to furnish services required to be furnished hereunder by the Association or to enforce its rights and powers hereunder.

ARTICLE THREE

The Community Area

3.01 IN GENERAL: The restrictions and limitations contained in this Article shall be subject to the rights of the Developer set forth in Article Nine.

3.02 OWNERSHIP: The Community Area shall be conveyed to the Association by Developer free and clear of any mortgage or trust deed whatsoever on or before the Turnover Date. The Association shall be responsible for the payment of any and all Community Expenses in connection with the Community Area, including, without limitation, real estate taxes, if any, and property damage and public liability insurance premiums.

3.03 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Lot, and shall be subject to and governed by the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association.

3.04 DELEGATION OF USE: Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Community Area and the Owner's Lot to Residents of his Lot. An Owner shall delegate such rights to tenants and contract purchasers of the Lot who are Residents.

3.05 MAINTENANCE, REPAIRS AND REPLACEMENTS:

(a) Except as specifically provided herein, maintenance, repairs and replacements of the Community Area shall be furnished by the Association as a Community Expense, and shall include, without limitation the following:

(i) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass, and all other landscaping on the Community Area; and

(ii) maintenance, repair and replacement of private roads, detention areas and improvements on the Community Area, including, without limitation, sidewalks, street lights and entry monuments.

(b) The Association shall furnish maintenance (including snow plowing), repair and replacement or driveways located on the Community Area and Lots as a Community Expense.

(c) The Association shall furnish periodic grass cutting of grass on Lots as a Community Expense. Each Owner of a Lot shall be responsible, at the Owner's expense, for landscape maintenance (other than grass cutting) of the landscaping on the Owner's Lot.

(d) Except as otherwise specifically provided herein, each Owner of a Lot shall be responsible for (i) the maintenance of the Owner's Lot and Home, (ii) watering landscaping located on the Owner's Lot, and (iii) watering those portions of the Community Area located adjacent to the Owner's Lot as may be directed from time to time by the Board.

3.06 ALTERATIONS, ADDITIONS, OR IMPROVEMENTS TO THE COMMUNITY: No alterations, additions or improvements shall be made to the Community Area without the prior approval of the Board. The Association may cause alterations, additions, or improvements to be made to the Community Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than four (4) months assessments then in effect under the then current budget shall be approved in advance at a special meeting of the Owners.

3.07 DAMAGE BY OWNER: If, due to the act or omission of the Owner of a Lot damage shall be caused to the Community Area or a Lot and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Community Expense, then the Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance carried by the Association.

ARTICLE FOUR

Insurance/Condemnation

4.01 COMMUNITY AREA INSURANCE:

(a) The Association shall have the authority to and shall obtain fire and all risk coverage insurance covering the improvements, if any, to the Community Area (based on current replacement cost for the full insurable replacement value) of such improvements; provided, that the Association shall not be required to obtain insurance with respect to portions of driveways or related improvements located on the Community Area.

(b) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Developer, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with, the Community Area. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(c) Fidelity bonds indemnifying the Association, the Board, and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling funds of the Association may be obtained by the Association in such amounts as the Board may deem desirable.

(d) The premiums for any insurance obtained under this Section shall be Community Expenses.

4.02 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Community Area Capital Reserve being held for such part of the Community Area, shall, In the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Community Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Community Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Association and Recorded.

4.03 WAIVER OF SUBROGATION: The Association and each Owner hereby waives and releases any and all claims which the Association or the Owner may have against any other Owner, the Association, its directors and officers, the Declarant, the Developer, the manager and the managing agent, if any, and their respective employees and agents, for damage to the Community Area, the Lots, or to any personal property located in the Lots or Community Area, caused by fire or other casualty, to the extent that such damage is covered by fire or other casualty insurance, and to the extent this release is allowed by the applicable insurance policies.

ARTICLE FIVE

The Association

5.01 IN GENERAL: The Association shall be the governing body for all of the Owners for the administration and operation of the Community Area and shall be responsible for the maintenance, repair, and replacement of the Community Area.

5.02 MEMBERSHIP: Each Owner shall be a member of the Association. There shall be one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Lot within ten (10) days after such change.

5.03 VOTING MEMBERS: Subject to the provisions of Section 9.05, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the Voting Member for each Lot. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot.

5.04 BOARD: Subject to the rights retained by the Developer under Section 9.05, the Board shall consist of that number of members provided for in the By-Laws, each of whom shall be an

Owner or Voting Member.

5.05 VOTING RIGHTS: Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Developer and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member shall have one vote for each Lot which the Voting Member represents. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

5.06 DIRECTOR AND OFFICER LIABILITY: Neither the directors nor the officers of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence, or fraud. The Association shall indemnify and hold harmless the Developer and each of the directors and officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such director may be involved by virtue of such person being or having been such director or officer provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence, or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence, or fraud in the performance of his duties as such director or officer.

5.07 MANAGING AGENT: The Developer (or an entity controlled by the Developer) may be engaged by the Association to act as the managing agent for the Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Association and the Developer (or an entity controlled by the Developer). Any management agreement entered into by the Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Association without payment of a termination fee on 90 days written notice.

5.08 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the Lots to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws or rules and regulations adopted by the Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Association in proceedings instituted against it.

5.09 ATTENDANCE AT BOARD MEETINGS BY OWNERS: Owners may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion. It is not the intention that Owners shall have the right to attend meetings of the Board in the same manner as provided for members of condominium associations under the Illinois Condominium Property Act

ARTICLE SIX

Assessments

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be limited to the purposes of maintaining the Community Area, administering the affairs of the Association, paying the Community Expenses, and accumulating reserves for any such expenses.

6.02 COMMUNITY ASSESSMENT: Each Year on or before December 1, the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year, which shall show the following with reasonable explanations and itemizations:

(1) The estimated Community Expenses;

(2) The estimated amount, if any, to maintain adequate reserves for Community Expenses including, without limitation, amounts to maintain the Capital Reserve;

(3) The estimated net available cash receipts from the operation and use of the Community Area, plus estimated excess funds, if any, from the current year's assessments;

(4) The amount of the "Community Assessment" payable by the Owners, which is hereby defined as the amount determined in (i) above, plus the amount determined in (2) above, minus the amount determined in (3) above;

(5) That portion of the Community Assessment which shall be payable with respect to me ensuing calendar year by the Owner of each Lot which is subject to assessment hereunder, which shall be equal to the Community Assessment divided by the number of Lots, so that each Owner shall pay equal Community Assessments for each Lot owned. The Community Assessment shall be paid in periodic installments as determined by the Board from time to time, but no less frequently than once each calendar year.

Anything herein to the contrary notwithstanding, the following provision shall apply with respect to the period prior to the Turnover Date. Any budget prepared by the Board prior to the Turnover Date shall be based on the assumptions that (i) the Premises has been fully constructed as shown on Developer's then current plan for the Premises and (ii) all proposed Homes have been sold and are occupied. The current plan for the Development shall be kept on file with the Association and may be modified from time to time by the Developer. Developer shall not be obligated to pay any Community Assessments to the Association prior to the Turnover Date. However, if with respect to the period commencing on the date of the Recording of this Declaration and ending on the Turnover Date, the amount of the Community Assessments payable by Owners (other than Developer), less the portions thereof which are to be added to Reserves is less than the Community Expenses actually incurred with respect to such period, then the Developer shall pay the difference to the Association. From time to time prior to the Turnover Date, the Developer shall deposit with the Association amounts which reasonably approximate Developer's obligation as estimated by the Developer. A final accounting and settlement of the amount, if any, owed by the Developer to the Association or the Association to the Developer, as the case may be, shall be made as soon as practicable after the Turnover Date. If the Developer fails to pay to the Association any amounts due to the Association under this paragraph, the Association shall have a lien against the Lot or Lots then owned by the Developer for the amount unpaid; provided, however, that any such lien shall be subordinate to the lien of a first mortgage or first trust deed with respect to any such Lot.

6.03 PAYMENT COMMUNITY ASSESSMENT: Each Owner of a Lot which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Community Assessment which is payable by each Owner of a Lot under Section 6.02(5) or

Section 6.08, as applicable, at such times as the Board shall determine from time to time.

6.04 REVISED ASSESSMENT: If after the Turnover Date the Community Assessment proves inadequate for any reason (including nonpayment of any Owners assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 6.02(5) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

6.05 SPECIAL ASSESSMENT: After the Turnover Date the Board may levy a special assessment as provided in this Section (1) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Community Area, or any other property owned or maintained by the Association, or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of Lots in equal shares. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.06 CAPITAL RESERVE: The Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Community Area (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Area and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Community Area and the purchase of other property to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the Community Assessment which shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Association equal to such percentages multiplied by each installment of the Community Assessment paid by such Owner.

6.07 INITIAL CAPITAL CONTRIBUTION: Upon the closing of the first sale of a Lot by the Developer to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to one sixth of the Community Assessment at the rate which shall become effective with respect to the Lot as of the closing. Said amount shall be held and used by the Association for its working capital needs.

6.09 PAYMENT OF ASSESSMENTS: Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owners Lot and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Article Seven.

ARTICLE SEVEN

Collection of Charges and Remedies for Breach or Violation

7.01 CREATION OF LIEN AND PERSONAL OBLIGATION: The Developer hereby covenants, and each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner on the Owner's Lot. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Lot against which such Charge is made and also shall be the personal obligation of the Owner of the Lot at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

7.02 COLLECTION OF CHARGES: The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

7.03 NON-PAYMENT OF CHARGES: Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the due date to the date when paid. The Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest costs and reasonable attorney's fees for any such

action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Community Area or by abandonment or transfer of his Lot.

7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 7.01, shall be subordinate to the Mortgagee's mortgage on the Lot which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Lot. Where title to a Lot is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of the Lot shall be personally liable for his share of the Charges with respect to which a lien against his Lot has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Community Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Lot, as provided in this Article.

7.05 SELF-HELP BY BOARD: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Home, judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.06 OTHER REMEDIES OF THE BOARD: In addition to or in conjunction with the remedies set forth above, to enforce any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Board may levy a fine or the Board may bring an action at law or in equity by the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof to recover sums due or payable or to recover damages or fines, and against the land to enforce any lien created hereunder, and failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

7.07 COSTS AND EXPENSES: All costs and expenses incurred by the Board in connection with any action., proceedings or self-help in connection with exercise of its rights and remedies under this Article. including, without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages. liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a Lien for all the same, upon his Lot as provided in Section 7.01.

7.08 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Lot to enforce any lien created hereunder.

ARTICLE EIGHT

Use Restrictions

8.01 INDUSTRY/SIGNS: No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Community Area and no "For Sale" or "For Rent" signs or any other advertising shall be maintained or permitted on any part of the Community Area or any part of a Lot or Home where the sign is visible from outside the Home, except as permitted by the Board or as permitted under Article Nine.

8.02 UNSIGHTLY USES: No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Community Area or a Lot. The Premises shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

8.03 SATELLITE DISHES / ANTENNAE: No antenna, radio receiver, satellite dish or similar apparatus shall be attached to or installed on any portion of the exterior of any Home or the Community Area; provided, that a satellite dish of less than eighteen (18) inches in diameter may be installed in the rear or side yard or on the exterior of the Home as long as the satellite dish is not visible from the front of the Home.

8.04 RESIDENTIAL USE ONLY: Each Home shall be used only as a residence;

provided that no Owner shall be precluded, with respect to his Home, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

8.05 PARKING: No commercial vehicle, recreational vehicle, snow mobile, motorcycle, or other motorized vehicle and no boat, trailer, hitch or other similar personal property shall at any time be parked or stored on any portion of the Premises other than on a driveway or in a garage. Unless otherwise specifically permitted by the Board or pursuant to rules and regulations adopted by the Board. Driveways on the Premises may only be used to park commercial vehicles, recreational vehicles, snow mobiles, boats, trailers, or other similar vehicles for not more than twenty-four hours at a time and to park operable automobiles.

8.06 OBSTRUCTIONS / REFUSE: Except as Permitted under Section 9.03 there shall be no obstruction of the Community Area. and nothing shall be stored in the Community Area without the prior written consent of the Board. All rubbish and refuse shall be deposited in such areas and in such receptacles as shall be designated from time to time by the Board.

8.07 PETS: No animal of any kind shall be raised, bred, or kept in the Community Area. The Board may from time to time adopt rules and regulations governing the (a) keeping of pets in the Home, which may include prohibiting certain species of pets from being kept in the Home and (b) use of the Community Area by pets, including, without limitation, rules and regulations which require an Owner to clean up after his pet.

8.08 NO NUISANCE: No noxious or offensive activity shall be carried on in the Premises nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Residents.

8.09 NO FENCES: No fence of any type or material shall be permitted on any Lot, except as may be permitted in Article 9.02.

ARTICLE NINE

Developers Reserved Rights and Special Provisions Covering Development Period

9.01 IN GENERAL: In addition to any rights or powers reserved to the Developer under the provisions of this Declaration or the By-Laws, the Developer shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. Except as otherwise provided in this Article, the rights of Developer under this Article shall terminate at such time as the Developer no longer holds or controls title to any portion of the Development Area.

9.02 PROMOTION OF PROJECT: In connection with the promotion, sale or rental of any improvements upon the Development Area: (i) the Developer shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Developer may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Developer may deem advisable; and (ii) Developer, its agents, prospective purchasers and tenants, shall have the right of ingress, egress, and parking in and through, and the right to use and enjoy the Community Area, at any and all reasonable times without fee or charge. The Developer shall have the right and power to lease any unit owned by it or the Developer to any person or entity which it deems appropriate in its sole discretion.

9.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises, the Developer, its agents and contractors, shall have the right, at the Developer's own expense, (but shall not be obligated) to make such alterations, additions, or improvements to any part of the Premises including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any portion of the Premises owned by the Developer or to any portion of the Community Area which the Developer deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or planting and replanting of any unimproved portions of the Premises. In connection with the rights provided in the preceding sentence, the Developer, its agents and contractors, shall have the right of ingress, egress, and parking on the Premises and the right to store construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

9.04 GRANT OF EASEMENTS AND DEDICATIONS: Developer shall have the right to dedicate portions of the Community Area to the County, the City, or any municipality or other governmental authority which has jurisdiction over such portions. Developer shall also have the right to reserve or grant easements over the Community Area to any governmental authority, public utility, or private utility for the installation and maintenance of cable TV, electrical and telephone conduit and lines, gas, sewer or water lines, or any other utility services serving any Lot.

9.05 DEVELOPER CONTROL OF ASSOCIATION: The first and all subsequent Boards shall consist solely of three (3) persons from time to time designated by the Developer, which persons may, but need not, be members under Section 5.02. Developer's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Developer no longer holds or controls title to any Lot, (ii) the giving of written notice by Developer to the Association of Developers election to terminate such rights, or (iii) seven (7) years from the date of Recording hereof. The date on which the Developer's rights under this Section shall terminate shall be referred to as the "Turnover Date". From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Developer and the Owners shall have no voting rights.

9.06 OTHER RIGHTS: The Developer shall have the right and power to execute all documents and do all other acts and things affecting the Premises which, in Developer's opinion, are necessary or desirable in connection with the rights of Developer under this Declaration.

9.07 ASSIGNMENT BY DEVELOPER: All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable, or transferable. Any successor to, or assignee of the rights of the Developer hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein. No such successor assignee of the rights of Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

ARTICLE TEN

Amendment

10.01 SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Developer reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veteran's administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Lots, (iii) to correct errors

or inconsistencies in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Developer to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as Developer no longer holds or controls title to a portion of the Premises.

10.02 AMENDMENT: Subject to Section 10.01 and Article Eleven, the provisions of this Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least Seventy-Five percent of the total votes or by an instrument executed by Owners of at least Seventy-Five Percent (75%) of the Lots; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all Mortgagees, (ii) Article Nine or any other provisions relating to the rights of Developer may be amended only with the written consent of the Developer, and (iii) no amendment to the Declaration which changes the ratio of assessments against Owners shall become effective without the consent of all Mortgagees. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Lot shall no longer have the legal access to a public way from his Lot. No amendment which would materially and adversely affect the access rights granted to an Owner under Section 2.05 hereof shall become effective without such Owner's written consent. No Amendment shall become effective until properly Recorded.

ARTICLE ELEVEN

Mortgagee's Rights

11.01 NOTICE TO MORTGAGEES: Upon the specific, written request of Mortgagee or the insurer or guarantor of a Mortgagee's mortgage, such party shall receive some or all of the following:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Lot covered by the Mortgagees mortgage;

(b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Owners: provided, that, if an audited statement is not available, then upon the written request of the holder, insurer or guarantor of a Mortgage. the Association shall permit such party to have an audited statement for the preceding fiscal year of the Association prepared at such party's expense;

(c) Copies of notices of meetings of the Owners:

(d) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Community Area.

(e) Notice of any default by the Owner of the Lot which is subject to the Mortgagee's mortgage under this Declaration, the By-Laws, or the rules and regulations of the Association which is not cured within 30 days of the date of the default;

(f) The right to examine the books and records of the Association at any reasonable times; and

(g) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

The request of any such party shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association.

11.02 INSURANCE PROCEEDS / CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of any part of the Community Area or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Community Area, any such distribution shall be made to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the Mortgagee of a Lot with respect to any such distribution to or with respect to such Lot; provided, that, nothing in this Section shall be construed to deny to the Association the right (i) to apply insurance proceeds to repair or replace damaged Community Area or (ii) to

apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Four.

ARTICLE TWELVE

City of Saint Charles

12.01 IN GENERAL: The City shall have the rights, powers, and easements set forth in this Article.

12.02 EASEMENTS: The City is hereby granted the right and easement of access over, across and through the Premises for any purposes reasonably related to the proper exercise of the rights and powers of City, including without limitation, the right and easement (i) to come upon the Community Area for the purpose of reading water meters installed by or on behalf of the City and (ii) to come upon the Premises and to install, lay, construct, renew, operate, maintain, repair and replace lines, pipes, pumps and other equipment (including housings for such equipment) into, over, under, along, and through the Premises for the purpose of providing electricity, water, storm sewer and sanitary sewer services and storm water detention areas, if any, to the Premises, to any part or parts thereof, and to adjacent property. Any fees or charges assessed by the City to provide such services to the Premises, to any part or parts thereof, or to adjacent property may be vain by the Association to be collected through assessments as provided herein.

12.03 PARKING REGULATIONS: The City shall have the right and power to pass ordinances regulating traffic flow, fire lanes, and “no parking” areas with respect to the Community Area. The City shall have the right and power to issue citations to person violating any such ordinances and/or to cause violating automobiles to be removed from the Premises in the event of a parking violation.

ARTICLE THIRTEEN

Miscellaneous

13.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent when (i) mailed, postage prepaid, to his or its last known address as it appears on the records of the Association at the time of such mailing or (ii) when delivered personally to his Lot.

13.02 CAPTIONS: The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

13.03 SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment, or court order shall in no way affect any other provisions of this Declaration which shall, and all other provisions, remain in full force and effect.

13.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of George Bush, former President of the United States at the time this Declaration is Recorded.

13.05 TITLE HOLDING LAND TRUST: In the event title to any Lot is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such Lien or obligation shall continue to be a charge or lien upon the Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot

Dated:12/04/97

Association:

THE VIEWPOINTE IN SAINT CHARLES

ASSOCIATION (F/K/A THE VIEWPOINTE ASSOCIATION)

Developer:

LEXINGGTON HONES. L.L.C.