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REAL ESTATE DOCUMENT  
GREENE COUNTY, MISSOURI  
RECORDERS CERTIFICATION

*Linda S. Montgomery*  
RECORDER OF DEEDS

recmlp

**PROPERTY OWNERS ASSOCIATION DECLARATION  
LEXINGTON SQUARE SUBDIVISION PHASE I**

THIS DECLARATION, made as of the 20<sup>th</sup> day of October, 2005, by LEXINGTON SQUARE, LLC, a Missouri Limited Liability Company ("Developer");

WITNESSETH:

WHEREAS, Developer has executed and filed with the Recorder of Deeds of Greene County, Missouri, a plat of the subdivision known as "Lexington Square Phase I"; and

WHEREAS, such plat creates the subdivision of Lexington Square Phase I, composed, in part, of the following described lots and tracts, to-wit:

All of Lots 1 through 64, along with all detention and common areas, in the Final Plat of Lexington Square Subdivision, City of Springfield, Greene County, Missouri;

and

WHEREAS, Developer, as the present owner and developer of the above-described lots and tracts, desires to create and maintain a residential neighborhood and a property owners' association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby subjects Lots 1 through 64 of Lexington Square Subdivision Phase I to the covenants, charges, assessments and easements hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

For purposes of this Declaration, the following definitions shall apply:

(a) "Board of Directors" shall mean the Board of Directors of the Property Owners Association.

(b) "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged and recorded by the Developer stating that all, or at the Developer's discretion, substantially all, of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed.

(c) "Common Areas" shall mean (i) street right-of-ways, (ii) streets and street islands, (iii) gateways, entrances, monuments, berms and other ornamental areas and related utilities, street lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, (iv) detention areas and drainage easements, and (v) all other areas and places, together with all improvements thereon and thereto (including any swimming pool, tennis courts, clubhouse or other recreational facilities that may be constructed or erected), which are intended for the use, benefit or enjoyment of all of the Owners within the District, whether or not any "Common Area" is located on any Lot, all as shown on the recorded plat of all or part of the District.

(d) "Developer" shall mean and refer to LEXINGTON SQUARE, LLC, and its successors and assigns.

(e) "District" shall mean all of the above-described lots in Lexington Square Subdivision Phase I, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

(f) "Property Owners Association" shall mean the Missouri not-for-profit corporation to be formed by the Developer for the purpose of serving as the Property owners association for the District.

(g) "Lot" shall mean any lot shown as a separate lot on any recorded plat of all or part of the District.

(h) "Owner" shall mean the record owner in fee simple of any Lot, including the Developer.

(i) "Street" or "street" shall mean any public street, road, terrace, circle, boulevard or cul-de-sac shown on any recorded plat of all or part of the District.

(j) "City" shall be the City of Springfield, Missouri, and its City Council and City Manager.

## **ARTICLE II**

### **PROPERTY OWNERS ASSOCIATION MEMBERSHIP, VOTING AND MANAGEMENT**

Membership in the Property Owners Association shall be limited to the Owners of Lots within the District, and every such Owner shall automatically be and become a member upon acquisition of fee title to a Lot. The Property Owners Association shall have only one class of membership. Each member shall have one vote for each Lot for which he is the Owner and upon which he shall not be delinquent in the payment of any assessment; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall the vote be divided nor shall more than one vote be cast with respect to such Lot.

## **ARTICLE III**

### **POWERS AND DUTIES OF THE PROPERTY OWNERS ASSOCIATION**

1. In addition to the powers granted by other portions of this Declaration, by any deeds, declarations or plats covering the property in the District or by law, the Property Owners Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by its Board of Directors to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in its own name, any and all building, use or other restrictions, obligations, agreements or reservations which have been or hereafter may be imposed upon any of the Lots; provided, however, that this right of enforcement shall not serve to prevent changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Property Owners Association may be paid out of the general fund of the Property Owners Association, as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his or her own name.

(b) To acquire and own title to or interests in, and exercise control over, the Common Areas, subject to the rights (including ownership) of any governmental authority, utility or any other person or entity therein or thereto.

(c) To maintain public liability, workers' compensation, fidelity, fire and other casualty, director and officer liability, indemnification and other insurance with respect to the activities of the Property Owners Association and the property within the District.

(d) To levy and collect the assessments which are provided for in this Declaration and to maintain accounts and accounting records with respect thereto.

(e) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer and the Property Owners Association and its members and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Developer, other developers, other property owners' associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the District, and the sharing of expenses related thereto.

(g) To engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Property Owners Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas and maintenance of lawns and landscaping.

(h) To engage the services of a security guard or security patrol service.

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the District; and to do any other things necessary or desirable in the judgment of the Board of Directors of the Property Owners Association to keep any property in the District neat in appearance and in good order.

(j) To exercise any architectural and aesthetic control and authority given and assigned to it in this Declaration or in any other deed, declaration or plat relating to all or any part of the District.

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines for the purpose of adequately and properly carrying out the provisions and purposes of this Declaration.

(l) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Property Owners Association.

2. In addition to the duties required by other portions of this Declaration and by law, the Property Owners Association shall have the following duties and obligations with respect to providing services to Owners within the District:

(a) Except as otherwise provided in any agreement with the Developer, the Property Owners Association shall at all times pay and be responsible for the proper maintenance of, and shall maintain, the Common Areas, including, but not limited to, drainage facilities, subject to any control thereover maintained by any governmental authority, utility or other person or entity.

## ARTICLE IV

### METHOD OF PROVIDING GENERAL FUNDS

1. For the purpose of providing a general fund to enable the Property Owners Association to exercise the powers, maintain the improvements and render the services provided for herein, all Lots in the District, other than Lots then owned by the Developer or the City of Springfield, shall be subject to an annual assessment to be paid to the Property Owners Association by the respective Owners thereof as provided in this Article IV. The amount of such assessment per Lot shall be fixed periodically by the Property Owners Association, and, until further action of the Property Owners Association, shall be \$216 per year.

2. The rate of assessment upon each Lot in the District may be increased or decreased (a) annually by the Board of Directors to an amount not to exceed twenty-five percent (25%) of the rate of assessment then in effect, or (b) at any time or times at a meeting of the members specially called for that purpose and of which advance notice is given and if at least fifty percent (50%) of the members present at such meeting and entitled to vote authorize such increase or decrease by an affirmative vote therefor; provided, however, that the rate of assessment may not be less than an amount that is necessary to permit the Property Owners Association to perform its duties as specified in subsection 2 of Article III above.

3. The assessment provided for herein shall be due and payable on such dates as shall be determined by the Board of Directors from time to time, and may be made payable in installments at the discretion and in such manner as the Board of Directors shall determine; provided, however, that the first assessment for each Lot shall be due and payable upon the earlier of occupancy of the residence on the Lot or the closing of the sale of the Lot from the builder to the buyer and shall be prorated as of the date thereof. No Owner or Lot shall be entitled to receive any services to be provided by and through the Property Owners Association or to use any Common Areas other than streets until such time as the first assessment has been paid.

4. Notwithstanding any other provision to the contrary within these Covenants, and in conjunction with the powers granted to the City of Springfield under Article I, Land Development Code, Section 5-2300, et seq., as amended, re-adopted or re-codified from time to time, which is incorporated herein by reference, in the event for any reason the Association should fail to maintain any Common Area or Areas, or in the event the Association should be dissolved for any reason or cease to exist, and the Lot Owners fail

to maintain such Common Area or Areas, then the City shall have the right and full authority and ability to intercede and maintain the Common Areas and assess the City's costs of same to the Lot Owners within the subdivision or any lot or parcels previously served by the Association or any of the Common Areas of the subdivision, on a pro rata basis of square footage of the lots within the area previously served by the Association and such shall run as a lien against the lots. The City shall be given the power provided herein, as well as any other remedy available to it under Law, to set and enforce such assessments to pay for the maintenance of, or abatement of any nuisance contained in, any Common Area or Areas. The Association may not be dissolved without the written consent of the City Manager of the City.

## **ARTICLE V**

### **LIEN ON REAL ESTATE**

1. Each Owner (other than the Developer) shall be personally liable for payment of all assessments becoming due and payable during the time such Owner holds fee title to a Lot, and the assessment shall become a lien on such Lot as soon as it is due and payable. In the event of the failure of any Owner to pay any assessment within thirty (30) days of the due date thereof, then such assessment shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid. Should an attorney be engaged to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage or deed of trust now existing or which may hereafter be placed upon such Lot.

3. Nonpayment of any assessment provided for herein within thirty (30) days from the due date thereof shall cause such assessment to become delinquent. Payment of both principal and interest of a delinquent assessment may be enforced as a mortgage lien on such Lot through proceedings in any court in Greene County, Missouri, having jurisdiction of suits for the enforcement of such liens, or by any other appropriate proceedings allowed by law. The Property Owners Association may file certificates of nonpayment of assessments in the office of the Recorder of Deeds of Greene County, Missouri, whenever any assessment is delinquent. For each certificate so filed, the Property Owners Association shall be entitled to collect from the Owner of the Lot described therein a fee established by the Property Owners Association from time to time, which initially shall be \$100, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

4. Such liens shall continue for a period of ten (10) years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under execution of judgment.

5. The Property Owners Association may cease to provide any or all of the services to be provided by or through the Property Owners Association with respect to any Lot during any period that the Owner is delinquent in the payment of any assessment (including special assessments) due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner shall be entitled to use any Common Areas (other than streets) during such period of delinquency.

## ARTICLE VI

### SPECIAL ASSESSMENTS

In addition to the other assessments provided for herein, the Board of Directors (a) shall have the authority to levy from time to time a special assessment against any Lot (other than any Lot when owned by the Developer) and its Owner (other than the Developer) to the extent the Property Owners Association expends any money (whether for services or materials or otherwise) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon) and (b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Property Owners Association to perform its duties as specified in subsection 2 of Article III hereof that require any expenditure during any period in an amount in excess of the general funds of the Property Owners Association available therefor. In addition, special assessments against each and every Lot (other than any Lot then owned by the Developer) to pay the costs of constructing, maintaining, altering or repairing any Common Area or improvement thereon may be levied (i) if fifty percent (50%) of the Owners (other than the Developer if it is then an Owner) present and entitled to vote at a meeting of the members specially called for that purpose and of which advance notice is given authorize such special assessments by an affirmative vote therefor, and (ii) if the Developer, if it is then an Owner, approves such special assessments in writing. Special assessments shall be due and payable, shall be the personal obligation of the then-Owner of each Lot and shall become a lien on such Lot upon notice to such Owner of the assessment. Interest at the rate of eighteen percent (18%) per annum shall accrue from the due date until paid and shall also be part of the lien against such Lot. Such lien shall be enforced and terminated in accordance with the provisions of Article V above.

## **ARTICLE VII**

### **LIMITATION ON EXPENDITURES**

The Property Owners Association shall at no time expend more money within any one year than the total amount of the assessments (including special assessments) for that particular year, plus any surplus and available reserves which it may have on hand from prior years; nor shall the Property Owners Association have the power to enter into any contract which binds the Property Owners Association to pay for any obligation out of the assessments for any future year, except for contracts for utilities, maintenance or similar services or matters to be performed for or received by the Property Owners Association or its members in subsequent years.

## **ARTICLE VIII**

### **COMMON AREAS**

The Developer covenants and agrees to convey title to or its interest in the Common Areas (except any part thereof that is within any Lot or outside the District) to the Property Owners Association, without cost to the Property Owners Association, not later than one month after the Developer has recorded the Certificate of Substantial Completion.

## **ARTICLE IX**

### **NOTICES**

1. At least thirty (30) days prior to any meeting of the Property Owners Association, it shall give written notice to all members of the place, time and purpose of the regular or special meeting of the Property Owners Association.
2. The Property Owners Association shall designate from time to time, by notice to all Owners, the place where payment of assessments shall be made and the place or places where other business in connection with the Property Owners Association may be transacted and where the Property Owners Association may be contacted.
3. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person entitled to such notice at the last address listed with the Property Owners Association for such person. Notice to one co-owner shall constitute notice to all co-owners.



## **ARTICLE X**

### **EXTENSION OF DISTRICT**

The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to streets and right-of-ways) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

## **ARTICLE XI**

### **OBSERVANCE OF ALL LAWS**

The Property Owners Association shall at all times observe all applicable federal, state, county, city or other laws, rules, regulations and ordinances. If at any time any of the provisions of this Declaration shall be found to be in conflict with such laws, rules, regulations or ordinances such provisions shall be of no force or effect to the extent of such conflict for so long as such conflict exists, but no other parts of this Declaration not in conflict therewith shall be affected thereby.

## **ARTICLE XII**

### **AMENDMENT AND TERMINATION**

This Declaration may be amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners (excluding therein the Developer if it is then an Owner) of fifty percent (50%) of the Lots (excluding those owned by the Developer) within the District as then constituted and (b) the Developer if it is then an Owner, except as provided in Article IV, paragraph 4.

No amendment shall be made to dissolve the Property Owners Association, to relieve the Property Owners Association of the obligation to maintain the Common Areas or terminate the authority of the City of Springfield to make assessments without the consent of the City of Springfield. No amendment shall be effective until it is recorded in the office of the Recorder of Deeds in Greene County, Missouri.

## **ARTICLE XIII**

### **ASSIGNMENT**

1. The Developer shall have the right and authority from time to time, by appropriate agreement made expressly for that purpose and recorded in the office of the Recorder of Deeds of Greene County, Missouri, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

2. So long as the Developer is an Owner, the Property Owners Association shall have no right, without the written consent of the Developer, to assign, convey, transfer or set over all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

## **ARTICLE XIV**

### **COVENANTS RUNNING WITH THE LAND**

All provisions of this Declaration shall be deemed to be covenants running with the land and into whosoever hands any of the property in the District shall come, for the benefit of all the land in the District.

## **ARTICLE XV**

### **SEVERABILITY**

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

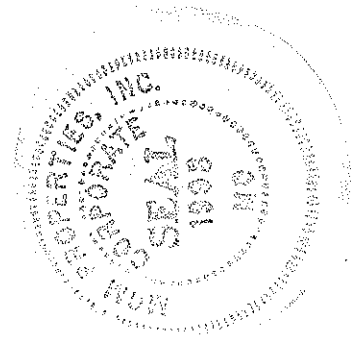
LEXINGTON SQUARE, LLC,  
a Missouri Limited Liability Company

MGM Properties, Inc., Member

By: Terry McKee  
Terry McKee, President

Attest:

Keith McKee  
Keith McKee, Secretary



STATE OF MISSOURI     )  
  )   SS  
COUNTY OF GREENE    )

On this 20<sup>th</sup> day of October, 2005, before me, Rick J. Muenks, a Notary Public in and for said State, personally appeared Terry McKee, President of MGM Properties, Inc., member of Lexington Square, LLC, known to me to be the person who executed the within Property Owners Association Declaration, Lexington Square Subdivision Phase I in behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year last above written.

Rick J. Muenks  
Notary Public  
Rick J. Muenks

My commission expires: 4/6/2008

After recording, return to:  
Rick J. Muenks, Attorney at Law,  
333 Park Central East, #505,  
Springfield, MO 65806

**RICK J. MUENKS**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Greene County  
My Commission Expires April 6, 2008