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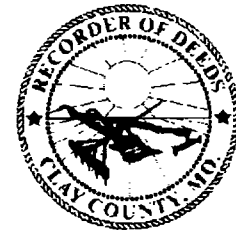
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Grantor A & I DEVELOPMENT  
Grantee A & I DEVELOPMENT



Robert T Sevier, Recorder

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Declaration of Covenants, Conditions and Restrictions of

**ROCK CREEK**

A Subdivision in Clay County, Missouri

**Date:** December 30, 2004

**Grantor:** A & I Development, LLC  
9709 S. 169 Highway  
Agency, MO 64401

**Grantee:** A & I Development, LLC  
9709 S. 169 Highway  
Agency, MO 64401

**Legal Description:**

ALL OF LOTS 1 THROUGH 156 INCLUSIVE OF PHASES I AND 2, ROCK CREEK, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 53 NORTH, RANGE 33 WEST, CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI.

This Declaration, made this 30th day of December, 2004 by A & I Development, LLC, a Missouri limited liability company, referred variously to as "Declarant" and/or "Owner" and/or "Developer".

WITNESSETH:

WHEREAS, A & I Development, LLC filed with the Recorder of Deeds of Clay County, Missouri a plat of an addition to the City of Smithville, County of Clay, State of Missouri, this document number appearing in Plat Book G, said Plat having been previously approved by the City of Smithville; and, pg 61

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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WHEREAS, said plat creates Rock Creek, composed of described lots and tracts in said subdivision which are described above.

WHEREAS, said Declarant has heretofore dedicated to the public all of the streets and roads shown on said plat for use by the public; and

WHEREAS, Declarant is the owner and developer of all of the lots and tracts so shown on the aforesaid plat and now desires to place certain covenants, restrictions, and conditions on all of said lots and tracts, all of which covenants, restrictions, and conditions shall be for the use and benefit of Declarant as the present owner thereof and for its future grantees and assigns to provide for the preservation and enhancement of the property values, amenities, and opportunities in said property contributing to the personal and general health, safety and welfare of the residents therein and for the maintenance of the land and improvements thereon,

NOW, THEREFORE, in consideration of the premises herein, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or other interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and each owner hereinbelow shall be subject to this Declaration;

## **ARTICLE I**

### **DEFINITIONS**

Section 1. "Street" shall mean any street, road, drive or avenue of whatever name, as shown on said plat of Rock Creek.

Section 2. "Outbuilding" shall mean an enclosed, covered or uncovered structure, not directly attached to the residential structure to which it is appurtenant.

Section 3. "Lot" may mean either any lot as platted, or any tract or tracts of land as conveyed, which may consist of one or more lots, or part or parts of one or more lots, as platted, and upon which a single dwelling may be erected thereon in accordance with this Declaration herein, or as set forth in the individual deeds from the Declarant, or from its successors and assigns.

Section 4. "Residence", "building" or "house" shall mean a building designed exclusively for residential occupancy.

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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Section 5. "Family" shall mean an individual or two (2) or more persons related by blood, marriage or adoption.

Section 6. "Building line" shall mean a line parallel to the front street line between which line and the front street line no part of a building shall project, except as otherwise provided herein. The building line is established by the recorded plat of Rock Creek.

Section 7. "Enclosed floor area" is defined in Article VI, Section 2.

Section 8. Words not otherwise defined shall have their common meaning. Words used in the singular number include the plural, plural the singular, and present tense includes the future, unless the context clearly implies otherwise.

## **ARTICLE II**

### **PERSONS BOUND BY THESE RESTRICTIONS:**

All persons, firms, partnerships and corporations who may own or shall hereafter acquire any fee simple title or ownership in the above-described lots hereby restricted agree and covenant with the Declarant and owners of lots herein, and with their successors and assigns, grantees and heirs, to conform to and observe the following covenants, conditions and restrictions, as to the use thereof and the construction of residences and improvements thereon for a period of time ending twenty (20) years from the date hereof, provided, however, that each of said restrictions shall, be renewable in the manner hereinafter set forth.

## **ARTICLE III USAGE**

Section 1. All Lots may be improved, used or occupied only for private single family residential purposes, and no flat or apartment house, duplex, or other structure other than a single-family house though intended for residential purposes, may be built thereon. Any residence erected or maintained on any of the land hereby restricted shall be designed for occupancy, and only occupied, by a single family.

Section 2. No noxious or offensive activity shall be carried on upon any portion of the properties nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood.

Section 3. The Developer reserves the right to maintain on a lot or lots one or more real estate sales offices which may be in a model or an office upon any of the herein restricted lots owned by it for the purpose of promoting, advertising for sale, showing and selling lots, either Improved or unimproved, within Rock Creek.

#### **ARTICLE IV REQUIRED HEIGHT OF RESIDENCES**

Any residence erected on any of the lots hereby restricted shall not be more than two (2) stories in height, provided, however, that a residence of more than two (2) stories in height may be erected thereon with prior consent in writing of the Developer.

#### **ARTICLE V SETBACK OF RESIDENCES FROM STREET**

Section 1. No part of any residence or fence, except as hereinafter provided, may be erected or maintained on any of the lots herein, which extends beyond and in front of the front building line or side building line as shown on said plat. However, the Developer reserves the right, during any sale and conveyance of any of said lots, to change and alter any building line shown thereon, and may, at any time, with the written consent of the then record owners of the fee simple title to any such lots, change any such building line which is shown on said plat, on any such lot or lots, or which may in such sale and conveyance be established by it.

Section 2. No fences or walls more than two (2) feet high may be erected beyond and in front of the front building line of, the house as erected.

#### **ARTICLE VI**

#### **REQUIRED SQUARE FOOT SIZE OF RESIDENCE AND OTHER RESTRICTIONS TO LOTS**

Section 1. Any residence erected in Rock Creek shall contain not less than a minimum of one thousand four hundred (1,400) square feet enclosed floor area and any residential structure one and one-half (1 1/2) stories shall have a minimum eleven hundred (1,100) square feet of such enclosed floor area on the first floor thereof, and any two (2) story residential structure erected on any of said lots shall contain a minimum of one thousand (1,000) square feet of such enclosed floor area on the first floor thereof.

Section 2. The words "enclosed floor area" as used herein shall mean include those areas on the first and second floor of the residence enclosed finished for all year occupancy computed on outside measurements of the residence and shall not mean or include any areas, including, but not limited to basements, garages, porches or attics, even if such space is finished.

Section 3. The Developer reserves the absolute and incontestable right to approve plans and specifications for any residential structure to be erected herein and the absolute and incontestable right to determine whether the enclosed floor area of any

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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residence meets the minimum requirements provided for herein and such determination shall be final.

Section 4. Structures meeting the definition of "earth berm", "earth shelter", "earth contact", or "earth house", or other structures of the like in meaning shall be prohibited.

**ARTICLE VII RIGHT TO APPROVE PLANS AND  
OTHER APPROVALS REQUIRED BY DEVELOPER**

Section 1. The rights to approve all plans and specifications as aforesaid and the rights to approve all other variances from these restrictions where the restrictions allow for such variance with the approval of the Developer shall be vested in the Developer which is hereby defined to be the Developer or its successors and assigns. Any and all such approvals of which the Developer issues to the plans and specifications or variations from these restrictions, where allowable, shall be issued by the Developer in writing and shall not be effective unless and until such approval is issued in writing. Developer may assign its right to approve plans and specifications and variances to an "Architectural Control Committee" which may be created as part of a Home Owners Association which shall be formed concurrently herewith or at later date.

Section 2. No building shall be erected, placed or altered on any lot or building plot in Rock Creek until and unless the building plans, specifications and plot plan showing the location of such building has been approved in writing by the Developer as to conformity and harmony of external design with existing residences in the Addition.

Section 3. For these purposes, as well as for the purpose of enforcing all other rights and restrictions herein contained, the Developer may transfer said rights to a Homes Association to be formed for said subdivision, the same to be composed of the owners of all lots in said subdivision. If said authority to approve plans, as well as to otherwise enforce the provisions of these restrictions, is not sooner assigned or relegated by the Developer to approve plans and make other approvals as herein described, it shall, in any event, cease when Developer has sold all lots within said Addition.

Section 4. Upon a written request for approval of plans, the party requesting such approval shall submit simultaneously with said request the following documentations:

- (a) Exterior elevation delineating front elevation;
- (b) A site plan of the residence;

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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- (c) Floor plan;
- (d) A list of all exterior materials to be used which will include roof, masonry, siding and windows;
- (e) A schedule of exterior colors to be used; and,
- (f) Mailbox style and location.

The documentation listed above is intended only as a minimum requirement and the Developer has the continuing authority to request any and all other documentation that said Developer, in its sole discretion, deems necessary. All such documentation shall be submitted in duplicate and shall be signed by the party requesting its approval. If disapproval is given within thirty (30) days of receipt of documents, no construction will be allowed on that lot until and only until an approval is given. However, in the event said Developer, or its designated representative, takes no action to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no lawsuit to enjoin the erection of said building or the making of such alterations has been commenced prior to substantial completion thereof, such approval will not be required and this provision will be deemed to have been fully complied with.

Section 5. Neither the Developer nor its successor as the Architectural Control Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

Section 6. Anything in this Declaration to the contrary notwithstanding, the Developer, its successors and assigns, shall have, and do hereby reserve, the right to determine the location of all buildings upon the respective lot or lots and the relocation of the top of the foundation thereof to the street level, except as may be prohibited by City ordinance.

Section 7. No residence shall be permitted on any lot which replaces the original residence and improvements constructed thereon unless such residence and improvements are at least of similar size and type as the residence destroyed or removed, subject, however, to the requirements and approval of the Developer as referred to herein.

## **ARTICLE VIII**

### **REQUIRED BUILDING MATERIALS**

Section 1. All driveways and sidewalks shall be constructed of concrete and no asphalt or asphaltic material shall be permitted.

Section 2. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in damaged condition longer than four (4) months. Any owner of the building in violation of this Section may, in the sole discretion of the Developer, be assessed money damages for the Developer ranging from one (\$1.00) Dollar to One Hundred (\$100.00) Dollars per day for every day the violation continues. Said damages are liquidated damages since actual damages are difficult to ascertain and determine.

Section 3. If the money damages due herein for any violation are not paid when due and upon written demand, it shall become a lien upon the real estate upon which the structure in violation of this section is located, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed upon said real estate. Said liquidated damages shall be due thirty (30) days from the date of notification of the then record owner of any lot upon which the violation occurs, and if not paid within said thirty (30) day period, shall bear interest at the rate of fifteen percent (15%) per annum until paid. Any such interest accruing shall so be a lien upon the Developer in any court in and all such liens may be enforced by the Clay County, Missouri Court having jurisdiction of suit for the enforcement of such items. Also, Developer shall be entitled to receive reasonable attorneys fees and costs for the filing of the lien and collection of the money due.

## **ARTICLE IX**

### **ENTRANCE MARKERS**

No building shall be erected on a land area of less than one lot, as shown by the original sub-division plat of dedication, unless specific permission in writing has been granted by Developer, its successors and assigns, provided however, that this restriction shall not be construed as preventing the erection of a dwelling on more than one (1) lot where the owner thereof has purchased a tract consisting of more than one (1) lot.

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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**ARTICLE X**

Any Home Owners Association shall be required to maintain the entrance markers for said subdivision.

**ARTICLE XI**

**OBSTRUCTION OF TRAFFIC**

No fence, wall, tree, hedge or shrub planting shall be maintained in such a manner as to obstruct site lines for vehicular traffic.

**ARTICLE XII**

**OUTBUILDING PROHIBITED**

Section 1. No building or other detached structures appurtenant to the residence, including but not limited to gazebos, arbors or trellises, may be erected or placed on any of the lots hereby restricted without the consent in writing of the Developer.

Section 2. Garages shall be attached or a part of the main residence and shall have at least a two (2) car capacity for all single family residences. No garage shall be converted for use as living area; no vehicular garage door shall be removed except to be replaced by another door similarly providing vehicular access. No parking of vehicles shall be permitted except on driveways to garages and no parking shall be permitted anywhere else. No separate parking areas such as on slab, patios, driveways which do not lead into a garage, etc. are permitted, without prior approval of Developer.

**ARTICLE XIII**

**FENCES, WALLS, SHRUBS AND TREES.**

Section 1. No fence, wall, shrub or hedge shall be erected, constructed, planted or maintained upon any of the lots hereby restricted without written approval as to material, design, shape, location, species and height by the Developer and said Developer shall have complete sole discretion with regard to such approval, provided, however, that said Developer not approve any fence, wall, hedge or shrub that violates Article XI hereof. The standard fence design shall be staggered security cedar not to exceed six (6) feet in height.

Section 2. All residences shall have at least one (1) shade tree in the front yard. All shade trees are to be nursery stock at least two (2) inches in diameter.



## **ARTICLE XIV**

### **SWIMMING POOLS**

No above ground swimming pool is permitted. Swimming pools allowed may be covered with flat storage covers to protect the pools from leaves, animals, etc., when the pools are operable. No pool enclosures commonly referred to as glass, plastic, aluminum, metal, or fiber enclosures or air structures, air bubbles or air covers shall be allowed at any time unless approved by the Developer. No pool enclosures, fences and appurtenant structures shall be permitted which the Developer deems unsightly or objectionable to other lot owners in the Addition. Any pool permitted shall be properly cleaned at all times, shall be attractively maintained, and shall be surrounded by a fence at least three (3) feet in height or in accordance with applicable City Code.

## **ARTICLE XV**

### **OIL TANKS AND FLAMMABLES PROHIBITED**

Section 1. No tank for the storage of fuel may be maintained above or below the surface of the ground on any of the lots hereby restricted, without the consent in writing of the Developer.

Section 2. No flammable, combustible, or explosive fluid or chemical substance shall be kept in any home or on any lot except such as are required for normal household use, or use with portable gas barbecue grill, and same shall be kept within the home, except for a portable gas barbecue grill.

Section 3. No lot owner shall permit or suffer anything to be done or kept in his or upon his lot which will increase the cost of insurance for other lot owners or as to their lots or the Association as to the common properties.

## **ARTICLE XVI POWER LINES**

No power, telephone, information service or cable TV distribution or service connection lines or any other lines of any sort for any purpose may be erected or maintained above the surface of the ground, on any of said lots.

## **ARTICLE XVII ELECTRICAL REQUIREMENTS**

All lots upon which a residence is constructed shall have and maintain in good operating condition a unit commonly known as an "electric heat pump" heating and cooling unit. In the alternative each said residence shall have "All Electric" service and

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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shall not use gas for its heating and cooling requirements. Nothing in this restriction shall prohibit a residence with a heat pump from also having gas service for supplementary heating.

**ARTICLE XVIII**

**LIVESTOCK AND POULTRY**

No hogs, cows, horses, chickens, poultry, birds, livestock, pit bull dogs or animals of any kind other than house pets (except house pets with vicious propensities) shall be brought onto or kept on the properties; and no more than two (2) dogs, cats or other such pets may be kept or maintained on any lot or living unit and further provided that they are not kept, bred or maintained for any commercial purpose or as a steady hobby of the owner. Pets shall be confined and not allowed to run at large.

**ARTICLE XIX**

**BILLBOARDS & SIGNS**

Section 1. The construction or maintenance of signs (including for rent or for sale signs), billboards, or advertising structures of any kind on any lot is prohibited, except that Developer or its designated successor, reserves the right to locate and construct signs of any size for temporary sales purposes during such period as sales are offered.

Section 2. Political signs shall only be allowed in Rock Creek within the reasonable restrictions of this section. Political signs (whether for a candidate, issue, or other matter) shall be allowed beginning one month prior to the scheduled election date and shall be removed within one week after said election date. No political sign shall exceed two square feet in area on a side and shall have no more than two sides. There shall be no more than three political signs per Lot. No political signs shall be placed on common areas of Rock Creek.

**ARTICLE XX**

**AUTOMOBILE REPAIRING AND STORAGE OF  
AUTOMOBILES, BOAT, TRAILERS, ETC.**

Section 1. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any of the lots hereby restricted except that automotive repairs on a non-commercial basis and not for hire may be conducted only in any enclosed garage built on the said premises and permitted under provisions of this restriction.

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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Section 2. No motor vehicles, including trucks, trailers, buses, campers, boats, recreation vehicles, motor homes, vans, boat trailers, trailers, motorcycles or other apparatus, except automobiles, shall be left or stored on said property except in an enclosed garage, nor shall any of the aforesaid vehicles be parked on the street; provided however, one (1) recreational vehicle may be parked for a period not to exceed twenty-four (24) hours for the purpose of loading or unloading and shall be forthwith removed thereafter.

Section 3. No non-operating motor vehicles shall be kept on any lot except in an enclosed garage.

Section 4. Parking on the street is prohibited by the residents of Rock Creek. Parking of Tractor Trailers, semi-tractors, etc. is prohibited in anywhere.

Section 5. Guest parking is permissible for no longer than forty-eight (48) hours. Residents' motor vehicles must at all times be parked on the driveway portions of said property.

Section 6. No person shall park a vehicle so as to obstruct or otherwise obstruct any resident's use of ingress or egress to any driveway.

## **ARTICLE XXI**

### **MISCELLANEOUS PROVISIONS**

Section 1. Antennas, satellite dish and solar panels: No television or radio antenna, satellite dish or solar panels shall be placed on the exterior of any residence or constructed separately unless approved by Developer.

Section 2. Clotheslines: No clothesline or apparatus for laundry shall be installed on any lot. No garments, rugs, etc., shall be hung from the windows or doorways of the residence.

Section 3. Christmas lights: Christmas lights and/or decorations may not be erected or maintained on any of the lots hereby restricted except during the period of time from November 1 until January 15 of each calendar year. Any music or amplified sound shall not emanate from the Lot upon which said display is located.

Section 4. Dogs running at large: Dogs shall be confined. All dogs shall be confined within the property boundaries of the owner. No dog runs or dog pens shall be permitted.

Section 5. Basketball goals. Basketball goals may be placed on a free-standing pole only.

**Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri**

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**Section 6. Mailboxes.** No mailbox or standard thereof or replacement of same shall be erected without the prior written approval of the style, construction, and location being granted by the Developer.

**Section 7. Trash, garbage and other materials:** No burning of trash shall be allowed except during time periods as provided from time to time by the City Code of Smithville, Missouri. No storage of trash, garbage, refuse or other materials shall be permitted on any lot outside of the residence except that garbage and trash only may be set out the evening before the trash pick-up. The owner will remove any material that was set out for pick-up but was not picked up that day.

**Section 8. Firewood:** Firewood shall not be stored or stacked except in the rear of the residence and it must be stacked neatly.

**Section 9. Sidewalks:** Sidewalks required in front of all finished residences and the installation, maintenance and upkeep shall be the responsibility of the owner.

**Section 10. Trampolines:** No trampolines, rebound devices, or other athletic, exercise or play devices shall be kept on the outside of the premises except in the back yards.

**Section 1.1. Hot Tubs:** No outdoor hot tubs, spas or soaking tubs or the like will be permitted except after submission of plans, specifications, screening plans and location have been approved by the Developer.

**Section 12. No business structure:** No business structure shall be erected on any lot; however, limited home occupations shall be permitted subject to the following restrictions and limitations:

- (a) Prior to commencing any home occupation on any lot, the owner shall furnish to the Developer a written description of such home occupation. In the event the Developer in its sole discretion, deems such home occupation to be non-detrimental to the properties or to other owners, written permission to conduct such home occupation shall be given to such owner. Such written permission shall always be subject to revocation upon thirty (30) days written notice and the owner shall thereupon cease such home occupation. In no event will permission be granted for (i) wholesale or retail selling from inventory located or exhibited at the premises, (ii) rental of equipment or personal property stored or exhibited at the premises, (iii) medical, dental or related health care services, (iv) automobile or other vehicle repair services;

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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- (b) The home occupation shall be incidental and subordinate to the principal use of the premises and not more than twenty-five percent (25%) of the floor area of anyone floor of the living unit shall be utilized for a home occupation;
- (c) All materials or equipment used in the home occupation shall be stored within an enclosed structure;
- (d) No alteration of the exterior of the living unit shall be made which changes the character thereof as residence;
- (e) No signs shall be permitted;
- (f) At least one person occupying such living unit as his or her residence shall be engaged in such home occupation;
- (g) No equipment shall be utilized that creates a nuisance due to noise or electrical interference;
- (h) In no event shall fewer than two (2) off-street parking spaces be provided; and,
- (i) The Developer may, at its sole discretion, assign to the Home Owners Association to be formed, the rights, duties and obligations under this Section of this Declaration.

Section 13. Care and appearance of premises: The structure and grounds on each lot shall be maintained in a neat and attractive manner. All sidewalks and driveways shall be kept clear of snow and ice, which shall be removed as soon as possible. The Developer shall have the right (upon ten (10) days notice to the Owner of the lot involved, setting forth the action intended to be taken, and if at the end of such time such action has not been taken by the owner), at the expense of the Owner, to remove snow or ice, trash or rubbish, and to cut grass, weeds and vegetation and to trim or prune, any hedge or other planting that in the opinion of the Developer to keep such property in neat and good order, all at the cost and expense of the Owner. Such costs and expenses incurred by the Developer shall be paid to the Developer upon demand and if not paid within ten (10) days thereof then they shall become a lien upon the property affected.

## **ARTICLE XXII YARD LIGHTS REQUIRED**

No residence upon any of the lots hereby restricted shall be occupied until a yard light has been erected and installed in the front of each residence. Yard lights shall be maintained in good working order.

## **ARTICLE XXIII UTILITY EASEMENTS**

Section 1. Easements. Any provision in this Declaration to the contrary notwithstanding, easements and rights-of-way are hereby expressly reserved to the Developer and, as appropriate and necessary, to the Association, their agents, designees, successors and assigns, in, on, over and under the easement area of each Lot and the Common Area as designated on the filed plat of the subdivision for the following purposes:

- (a) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments and appurtenant structures in connection with the transmission of electricity, telephone, traffic signals, fire alarm systems, communication systems, television cables and other utilities and similar facilities;
- (b) the erection, installation, construction and maintenance of storm water drains, land drains, public and private sewers, grinder pumps, pipelines for supplying water and heat, and for any other public or quasi-public facility, service or function, and appurtenant structures whether above ground or underground;
- (c) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by the Developer or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (d) landscape purposes, including the right to require Owners of Lots affected by the Landscape Easements set forth on the filed plat of the subdivision to plant and maintain such area in accordance with Rules and Regulations of the Home Owners' Association;

Section 2. Installation. Developer reserves unto itself, its assignees, successors and designees, the right, power and authority to direct and control, in cooperation with a public authority or any utility company which will install or own, operate and maintain the respective facilities, or both, which utilities and drainage services (as provided for herein) shall be installed in and occupy any specific easement, Within any easements, no improvement, planting or other material or improvement shall be placed or permitted

Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

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to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the directional flow of drainage channels in the easement, or which may alter, obstruct or retard the flow of water through drainage channels within the easement areas, or which may change or prevent the intended use of any easement.

Section 3. Owner Rights and Obligations. Subject to all of the other restrictions contained in this Declaration, each Owner shall have the right to use the Easement Areas of his lot in any manner not inconsistent with the purposes for which such easement areas are reserved, and the area within any easement area and all improvements within the bounds of such easement areas shall be maintained continuously by the Owner of the said Lot, except for such improvements for which a public authority or utility company is or may become responsible for maintenance. Notwithstanding anything herein to the contrary, each owner of a Lot covenants and agrees that, in cooperation with the Developer, each Owner shall execute all grants of easements, grants of right-of-way or any other similar grant or conveyance documentation required to be executed by an Owner in order to grant and convey to any public authority or utility company their assigns or lessees, the right, privilege and easement to lay, construct, maintain, alter, inspect, repair, replace, protect, relocate, change the size of, operate and remove all utility lines, service taps, distribution facilities, valves) regulators, pressure sewer systems (including the force mains, grinder pump units and appurtenances) and other equipment appurtenant to and necessary for providing any and all of the utility and drainage services as provided herein.

#### **ARTICLE XXIV AMENDMENTS**

Unless specifically prohibited herein, and except as to Supplemental Declaration, this Declaration may be amended from time to time by an instrument of agreement signed by the owners of the fee simple title to more than fifty percent (50%) of the front feet of all of said lots and which is duly acknowledged and filed for record in the office of the Recorder of Deeds of Clay County, Missouri. Provided, however, that no amendment may be effected without the express written consent of the Developer until Developer has sold and conveyed all of the lots in the District.

#### **ARTICLE XXV ENFORCEMENT**

The Developer or any Owner shall have the right to enforce these covenants and restrictions by any proceeding at any law or in equity against person or persons violating or attempting to violate any covenant or restriction, either to restrain violation of the covenant or restriction or to recover damages against the applicable lot and Owner; and failure by the Developer or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Where litigation occurs to enforce these covenants and restrictions or to recover damages, the

**Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri**

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prevailing party in said litigation shall' be entitled to recover court costs and reasonable attorney's fees, including court costs, and reasonable attorneys' fees in any appellate proceeding.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has set his hand and seal to this document the date first above written.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**



Declaration of Covenants, Conditions and Restrictions of  
Rock Creek, a subdivision in Clay County, Missouri

A & I DEVELOPMENT, LLC

  
James Ingle, Managing Member


  
Jarrett Archdekin, Member

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF                )

On this day of December in the year 2004 before me, a Notary Public in and for said state, personally appeared James Ingle, Managing Member, A & I Development, LLC, known to me to be the person who executed the within document in behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.



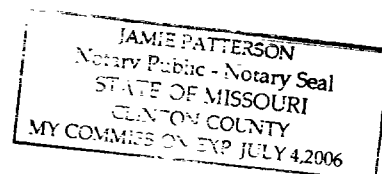
STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF                )

  
Notary Public.  
My Commission Expires: July 4, 2006  
JAMIE PATTERSON  
Notary Public - Notary Seal  
STATE OF MISSOURI  
CLINTON COUNTY  
MY COMMISSION EXPIRES JULY 4, 2006

On this day of December in the year 2004 before me, a Notary Public in and for said state, personally appeared Jarrett Archdekin, Member, A & I Development, LLC, known to me to be the person who executed the within document in behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.



  
Notary Public  
My Commission Expires: July 4, 2006



Recorded in Clay County, Missouri

Date and Time: 05/19/2006 at 12:09:25 PM

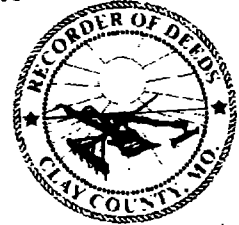
Instrument Number: 2006021107

Book: 5377 Page: 163

Instrument Type REST

Page Count 12

Recording Fee \$57.00 S



Robert T Sevier, Recorder



Grantor A & I DEVELOPMENT  
Grantee A & I DEVELOPMENT

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## HOMES ASSOCIATION DECLARATION

OF

## ROCK CREEK

## A SUBDIVISION IN CLAY COUNTY, MISSOURI

**Date:** December 30, 2004

**Grantor:** A & I Development, LLC  
9709 S. 169 Highway  
Agency, MO 64401

**Grantee:** A & I Development, LLC  
9709 S; 169 Highway  
Agency, MO 64401

**Legal Description:**

Part of the west half of the southwest quarter of Section 2, Township 53 North, Range 33 West, Smithville, Clay County, Missouri, said tract being described as follows: Commencing at the northwest corner of the southwest quarter of Section 2, Township 53 North, Range 33 West, Clay County, Missouri; thence with the north line of the southwest quarter of said section north 89 degrees 42 minutes 11 seconds east, 564.90 feet to the Point of Beginning; thence continuing along said line north 89 degrees 42 minutes 11 seconds east, 732.09 feet; thence departing from said line south 00 degrees 17 minutes 35 seconds west, 2652.74 feet; thence south 89 degrees 15 minutes 34 seconds west, 1288.30 feet to the eastern right-of-way line of Missouri Highway 169; thence along said right-of-way line the following courses and distances: North 00 degrees 59 minutes 04 seconds east, 1593.75 feet; thence 125.72 feet by arc distance along a curve to the right having a radius of 2824.79 feet and a chord bearing of north 02 degrees 15 minutes 51 seconds east, 125.71 feet; thence south 86 degrees 27 minutes 38

## Rock Creek Homes Association Declaration

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seconds east, 15.00 feet; thence 294.24 feet by arc distance along a curve to the right having a radius of 2809.79 feet and a chord bearing of north 06 degrees 32 minutes 21 seconds east, 294.11 feet; thence north 80 degrees 27 minutes 38 seconds west, 15.00 feet; thence 375.45 feet by arc distance along a curve to the right having a radius of 2824.79 feet and a chord bearing of north 13 degrees 20 minutes 49 seconds east, 375.17 feet; thence departing from said right-of-way line south 89 degrees 59 minutes 39 seconds east, 418.90 feet; thence 24.58 feet by arc distance along a curve to the right having a radius of 936.15 feet and a chord bearing north 01 degrees 02 minutes 58 seconds west, 24.58 feet; thence north 00 degrees 17 minutes 49 seconds west, 249.99 feet to the Point of Beginning. The above-described tract of land contains 73.36 acres, more or less, inclusive of public road right-of-way, exclusive of Missouri Highway 169 right-of-way, and is subject to all recorded and unrecorded easements, restrictions, and right-of-ways.

This Declaration is made by A & I Development, LLC, a Missouri limited liability company, ("Developer") of Buchanan County, Missouri, the owner of a tract of land described above.

WHEREAS, the DEVELOPER desires to subject the property and the lots shown in the Plat to the covenants, conditions and restrictions set forth below which are for the purpose of protecting the value and desirability of the property and the lots and are for the purpose of distributing among the lot owners the cost of maintaining and operating the common areas located within the property and any improvements constructed on the common areas; and

WHEREAS, the DEVELOPER hereby declares that the property shall be held, sold and conveyed subject to the covenants, conditions and restrictions set forth below:

### **1. DEFINITION OF TERMS USED**

- A. The term "district" as used in this Declaration means all of the above described property.
- B. "Common area" means the area of land designated on the recorded subdivision plat of the property as "common area" intended to be owned by the Association and devoted to the common use and enjoyment of the owners of the lots.
- C. "Landscape Easement" means that area of land designated on the recorded subdivision plat of the property as "Landscape Easement".

## Rock Creek Homes Association Declaration

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- D. "Utility Easement" means that area of land designated on the recorded subdivision plat of the property as "Utility Easement".
- E. "Developer" means A & I Development, LLC - and any successor or assign thereof to whom it shall convey or otherwise transfer all of the rights, title and interest in the property then owned by it, and to whom it shall expressly transfer and assign all of its rights, title and interest under this Declaration and any amendment or modification of this Declaration.
- F. "Home Association Property" means all common areas together with all improvements or landscaping which may be situated thereon, the use of which is to be conveyed to the Rock Creek Homes Association (hereinafter referred to as "Association") for all of the owners within the district.
- G. "Owner" means the person or legal entity, or the combination thereof, including contract sellers, holding the record fee simple title to a lot in the property, as the lot is now or may from time to time hereafter be created or established. If more than one person or other legal entity or any combination thereof, holds the record title to any lot, all of them shall be deemed a single record owner and shall be a single member of the Association by virtue of their ownership of the lot. The term "owner" shall not mean any contract purchaser nor shall it include any mortgagee, the holder of any Deed of Trust or other person or legal entity holding "an interest in a lot as security for the performance of an obligation.
- H. "Lot" means any plot of ground shown upon any recorded subdivision, surveyor map of the hereinabove described property.
- I. "Property" means all the land located in the residential tract as shown on the Final Plat of ROCK CREEK as hereinabove legally described.
- J. "Assessable Unit" shall mean a lot within the district as subdivided and platted, title to which has passed from the Developer to the purchaser or any subsequent-holder of fee simple title to the property.
- K. "Association" as used herein shall mean the Rock Creek Homes Association. "
- L. "Member" means the "Owner" of each "lot" within the district as subdivided and platted. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of the lot. "Owners" of more than one lot shall be allotted as

## Rock Creek Homes Association Declaration

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many memberships as lots owned and shall be entitled to one vote for each lot owned.

### **2. MANAGEMENT AND MEMBERSHIP**

All "Homes Association Property" shall be under the management and control of the "Association", which shall be incorporated under the General Not For Profit Corporation Law of Missouri, subject to that had and exercised by the City of Smithville, County of Clay, State of Missouri, or any of them. The membership of the Association shall be limited to the owners of the lots within the district subdivided and platted.

### **3. ORGANIZATION**

The Association is to be composed of the members as hereinbefore defined, and shall be incorporated under the "General Not For Profit Corporation Law of Missouri".

The governing body of the Association contemplated by the terms of this Declaration shall be a Board of Directors. There shall be three directors elected by the membership of the Association. The three elected directors shall by lot: determine the terms of their office, which shall be respectively one, two, and three years. At each annual meeting thereafter, one director shall be elected to hold office for three years. Each member shall be entitled to one vote for each lot owned, provided, however, until completion of the construction of all of the lots in the district or until Developer has sold and conveyed all of the lots in the district, whichever occurs sooner, the Developer shall appoint the said directors.

### **4. POWERS AND DUTIES OF THE ASSOCIATION**

The Association shall have the power and authority:

- A. To enact rules, regulations and restrictions applicable to the use of the common areas, utility easements and landscape easements, as these rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the utility easements and common areas and for the maintenance, care, appearance and good order of the landscape easements.
- B. To enforce, either in its own name or in the name of any owner within the district, any and all covenants, conditions and restrictions which may have been heretofore or may hereafter be imposed upon any of the land in said district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement

## Rock Creek Homes Association Declaration

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shall not serve to prevent such changes, releases or modifications as are permissible in the Declaration of Covenants, Conditions and Restrictions of ROCK CREEK or this Declaration. To appoint a committee known as an Architectural Control Committee to assure that all proposed uses and any construction or alteration of any structure which takes place on any lot or to any living unit or any other property affected by this Declaration shall be performed in conformity with the Declaration of Covenants, Conditions and Restrictions of ROCK CREEK and to approve any variance to the Covenants, Conditions and Restrictions which the Developer or Home Owners' Association may properly approve. Any Architectural Control Committee shall be composed of a minimum of three members and shall be appointed by the Board of the Association.

- C. To provide for the maintenance, construction, improvement, operation and appearance of the common areas, utility easements and landscape easements, including, but not limited to, storm retention areas and street islands, and also the payment of taxes on the common areas, except to the extent that proportionate shares of such public charges and assessments on the common areas may be levied against all lots on the property and by the tax collecting authority so that the same are payable directly by the owners in the same manner as real property taxes assessed or assessable against the lot(s) and insurance on the common areas.

### **5. COMMON AREA**

- A. DEVELOPER shall grant and convey to the Association, and the latter shall take and accept from the DEVELOPER, the common areas as shown on a subdivision plat of land which is subject to this Declaration, not later than the date the first lot shown on the subdivision plat which is improved by a dwelling is conveyed to an owner. At the time of the conveyance, the common areas shall be free of any mortgage, judgment liens, or similar liens or encumbrances. The Association shall hold the common areas conveyed to it subject to the following:
  - (1 ) The reservation to the DEVELOPER, its successors and assigns, of the right to lay, install, construct and maintain, on, over, under or in those strips across land designated on the subdivision plat, as "drainage and utility easements, sewer easements, drainage and sewer easements, open space", any area reserved for future road, or otherwise designated as an easement area, or on, over, under, or any portion of any common areas, pipes, drains, main conduits, lines and other facilities for water, storm sewer, sanitary sewer,

## Rock Creek Homes Association Declaration

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gas, electric, telephone, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any lot laid out or established now or in the future on the property, or the area in which the same is located, together with tile right and privilege of entering upon the common areas for such purposes and making openings and excavations therein.

- (2) The reservations of the DEVELOPER, its successors and assigns, of the right to enter upon any common areas conveyed to the Association for the purpose of construction or completing the construction of improvements and the landscaping of the common areas.
- B. The common areas conveyed to the Association will be deemed property and facilities for the use, benefit, enjoyment in common of each owner. The common areas may be graded and trees, shrubs or other plants may be placed and maintained on the common areas for the use, comfort, and enjoyment of the owners. No portion of any common areas may be used exclusively by any owner for personal gardens or other private uses without the prior written approval of the Association.
- C. No obnoxious or offensive activity shall be carried on upon any common areas nor shall anything be done thereon which would become an annoyance or nuisance to the neighborhood.
- D. The Association shall improve, develop, supervise and manage, operate, examine, inspect, care for, repair, replace, restore and maintain the common areas as from time to time improved, all at its own cost and expense.
- E. The right of each owner to use the common areas shall be subject to the terms, conditions, and provisions as set forth in this Declaration and to any rule or regulation adopted by the Association now or in the future for the safety, care, maintenance, good order and cleanliness of the Common areas. All such terms, conditions, provisions, rules and regulations shall inure to the benefit of and be enforceable by the Association and the DEVELOPER or either of them their respective successors and assigns, against any owner, or any other person, violating or attempting to violate the same, either by action of law for damages or a suit in equity to enjoin a breach or violation, or to enforce performance of any term, conditions, provisions, rule or regulation. The Association and the DEVELOPER shall each have the right; summarily, to abate and remove any breach or violation by any owner at the cost and expense of the owner.

## Rock Creek Homes Association Declaration

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- F. The rights, privileges and easements of the owners are at all times subject to the right of the Association to dedicate or transfer all or any part of any common areas to any public agency, authority or utility for such purposes and subject to such conditions that may be agreed upon by the Association; provided, however that no such dedication or transfer shall be effective unless approved by two-thirds vote of members of the Association voting in person or by proxy at a meeting called for such purpose, and the same shall have been consented to by the agency, authority or utility accepting the dedication or transfer.

### **6. COVENANT FOR ASSESSMENT**

- A. The DEVELOPER, for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to him, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (i) annual assessments or charges; and (ii) special assessments or charges for improvements, such annual and special assessments and charges to be established and collected as provided in this Declaration. The annual and special assessments or charges, together with interest at the rate of TEN PERCENT (10%) per annum accruing from their due date until payment is made, and the costs of collection and reasonable attorney's fees shall be a charge on, and continuing lien upon, each Lot against which an assessment is made. Each assessment or charge, together with interest at the rate of TEN PERCENT (10%) per annum accruing as set forth above, and costs and reasonable attorney's fees incurred or expended by the Association in collection, shall also be the personal obligation of the owner of the lot. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorney's fees, however, shall not pass to the owner's successors in title, unless expressly assumed by them.
- B. The assessments and charges levied by the Association shall be used exclusively for promoting the recreation, health safety, and welfare of the residents of the property, and in particular for the improvement, operation and maintenance of the common areas, utility easements and landscape easements, including, but not limited to, storm retention areas and street islands, and also the payment of taxes (except to the extent that proportionate shares of such public charges and assessments on the common areas may be levied against all lots on the property by the tax collecting authority so that the same are payable directly by the owners in



## Rock Creek Homes Association Declaration

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the same manner as real property taxes assessed or assessable against the lots) and insurance on the common areas.

- C. The first annual assessment shall be set at a meeting of the Association called for the purpose of determining the first annual assessment. The initial annual assessment shall not exceed the sum One Hundred Fifty Dollars (\$150.00) per lot for that year. Thereafter the maximum permissible annual assessment shall increase each year by Ten Percent (10%) of the maximum permissible annual assessment for the previous year or by the Federal Consumer Price Index adjustment for the previous year, whichever is greater, and the increase may be effected without the necessity of a vote of the membership of the Association if so effected. The maximum permissible annual assessment may be increased above the Ten percent (10%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of the members of the Association, - voting in person or by proxy, at a meeting called for such purpose. The Board of Directors of the Association may fix the annual assessment against each lot at any amount not in excess of the maximum permissible annual assessment applicable to that year without the necessity of a vote of the membership of the Association.

Notwithstanding anything elsewhere set forth in this Declaration, the DEVELOPER' shall not be liable for any assessments or charges made or levied against any lot(s) owned by it. Upon conveyance by the DEVELOPER, the lot shall be subject to assessments and charges as provided herein.

- D. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy in any year, a special assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any improvement located on any common areas, or for other unusual or extraordinary costs or expenses of the Association, provided that such assessment shall be first approved by two-thirds (2/3) of the members of the Association voting in person or by proxy at a meeting called for such purpose.
- E. Except as provided in subsection "c" of paragraph "6", and in subparagraph "g" of this paragraph "6", annual assessments must be fixed at uniform rate for all lots.
- F. Written notice of any meetings of the Association called for the purpose of taking any action authorized under subparagraphs "c" or "d" of this

## Rock Creek Homes Association Declaration

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paragraph "6" shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first meeting, the presence of members, or of proxies, entitled to cast fifty-one percent (51 %) of all of the votes of members entitled to be cast at the meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- G. The first annual assessment shall be made for the balance of the calendar year and shall become due and, payable on the date fixed for the commencement. The amount of the assessment for the first year shall be an amount which bears the same relationship to the annual assessment provided for in the first sentence of subparagraph "c" of this paragraph "6" as the remaining number of months in that year bear to twelve. The annual assessments for any year after the first year shall be on a calendar year basis and become due and payable on the first day of February of that year. The due date under any special assessment under subparagraph "0" of this paragraph "6" shall be fixed in the resolution authorizing the special assessment; however, such due date shall be at least forty-five (45) days after the date of such resolution.
- H. The Board of Directors of the Association shall fix the date of commencement and the amount of the annual assessment against each lot for each assessment period at least one month in advance of the due date for the payment of the assessment and shall, at that time, prepare a roster of the lots and assessments applicable to the lots which shall be kept in the office of the Association and shall be open to inspection by any owner. If an annual or special assessment is not paid on the due date, the assessment shall be delinquent and shall bear interest from the date of delinquency at the rate of TEN PERCENT (10%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the lot for such assessment, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the Court together with the costs of the action. Each owner of a lot shall by accepting title to the lot be deemed to have assented to the passage of a decree for the foreclosure of any lien upon his lot which

## Rock Creek Homes Association Declaration

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results from his failure to pay an assessment on the due date of the assessment.

- I. The lien of the assessments provided for in this Declaration shall be subordinate to any mortgage or deed of trust hereafter placed upon the lot subject to assessment; provided, however, that the sale or transfer of any lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall only extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by nonuse of the common areas or abandonment of his lot, or for any other reason.

### **7. GENERAL PROVISIONS**

- A. Invalidity of anyone of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.
- B. The covenants and restrictions of this Declaration shall run with and bind the property, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless, prior to the expiration of the then current term, a written instrument shall be executed by the then owners of sixty percent (60%) of the lots stating that this Declaration shall expire at the end of the then current term. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than sixty percent (60%) of the lots, and thereafter by an instrument signed by the owners of not less than sixty percent (60%) of the lots. Provided, however, that no amendment may be effected without the express written consent of the Developer until Developer has sold and conveyed all of the lots in the District. Any amendment must be recorded among the records of the jurisdiction referred to in the Recitals to this Declaration.
- C. The Association shall notify all owners of lots in the district as it may exist from time to time, insofar as the address of such owners are listed with said Association, of the official address of said Association, as to what place and time regular meetings of the Association shall be held, designating the place where payments shall be made and any other

## Rock Creek Homes Association Declaration

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business in connection with said Association may be transacted, and in case of any change of such address, the Association shall notify all the owners of the land in this district, insofar as their addresses are listed with the Association, of the change, notifying them of its new address.

- D. No member of the Board, officer of the Association, member of the Architectural Control Committee, member of any committee of the Association, whether such committee is specifically described in this Declaration or hereafter created by the Association or Manager, if any, or the Developer shall be personally liable to any Owner, Member, or to any other party for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, failure to act, or negligence of any such Board to Developer, officer or committee member of the Architectural Control Committee and, further, neither the Architectural Control Committee nor any member thereof shall be liable to the Association, prejudice suffered by or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work upon the property, (c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, or (d) any other act, action or conduct of such party. Such limitation of liability shall apply in all cases, provided that such person has, on the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.
- E. The Association shall at all times observe the State, County and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. Each of the various provisions of this Agreement and of the covenants, restrictions, rights, duties and obligations herein created or imposed are each separate and distinct of the others. The invalidity or unenforceability of any part hereof shall not affect the remainder.
- F. All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding upon the DEVELOPER and upon its successors, assigns, transferees and grantees, who, by subsequently accepting title to land within the district, agree hereto.

Rock Creek Homes Association Declaration

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

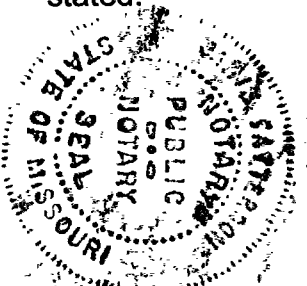
A & I DEVELOPMENT, LLC

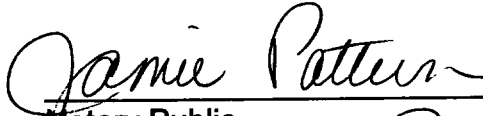
  
James Ingle, Managing Member

  
Jarrett Archdekin, Member

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF                )

On this day of December in the year 2004 before me, a Notary Public in and for said state, personally appeared James Ingle, Managing Member, A & I Development, LLC, known to me to be the person who executed the within document in behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.



  
Notary Public

My Commission Expires: July 4 2006

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF                )

JAMIE PATTERSON  
Notary Public - Notary Seal  
STATE OF MISSOURI  
CLINTON COUNTY  
MY COMMISSION EXP JULY 4, 2006

On this day of December in the year 2004 before me, a Notary Public in and for said state, personally appeared Jarrett Archdekin, Member, A & I Development, LLC, known to me to be the person who executed the within document in behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.



  
Notary Public

My Commission Expires: July 4 2006

JAMIE PATTERSON  
Notary Public - Notary Seal  
STATE OF MISSOURI  
CLINTON COUNTY  
MY COMMISSION EXP JULY 4, 2006

Date and Time: 04/17/2009 at 03:07:16 PM

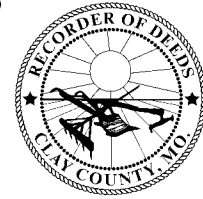
Instrument Number: 2009012826

Book: 6163 Page: 15

Instrument Type: REST

Page Count: 5

Recording Fee: \$36.00 S



Electronically Recorded

Robert T. Sevier, Recorder

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS OF ROCK CREEK, A SUBDIVISION IN CLAY COUNTY, MISSOURI**

DATE: This 17<sup>th</sup> day of April, 2009

GRANTOR: A& I DEVELOPMENT, LLC  
9709 S. 169 Highway  
Agency, MO 64401

GRANTEE: A& I DEVELOPMENT, LLC  
9709 S. 169 Highway  
Agency, MO 64401

SEE ATTACHED EXHIBIT "A"

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROCK CREEK, A SUBDIVISION IN CLAY COUNTY, MISSOURI**

THIS AMENDMENT made this 17<sup>th</sup> day of April, 2009, by A&I Development, LLC, a Missouri Limited Liability Company, referred herein as the "Declarant" and/or "Owner" and/or "Developer".

WITNESSETH:

WHEREAS, A&I Development, LLC did file of record in the Clay County Recorder of Deeds Office Covenants, Conditions, and Restrictions of ROCK CREEK, a subdivision in Clay County, Missouri, dated December 30, 2004, and recorded in the Recorder of Deeds Office on May 19, 2006, under Instrument 2006021106 at Book 5377 and Page 162; and Homes Association Declaration of Rock Creek dated December 30, 2004 and recorded in the Recorder of Deeds Office on May 19, 2006, as Instrument Number 2006021107 at Book 5377, Page 163; and

WHEREAS, A&I Development, LLC is now selling real estate generally known as Phase 2, Rock Creek Subdivision, to the Catholic Diocese of Kansas City-St. Joseph for the purposes of the construction of a church and related facilities, a copy of said legal description is attached hereto as **Exhibit "A"** and incorporated herein by reference; and

WHEREAS, this real estate (**Exhibit "A"**) shall no longer be used as a residential subdivision nor is it any longer necessary for said land to be subject to the covenants, conditions, restrictions, and Homes Association Declaration of Rock Creek; and

WHEREAS, the Declarant is the Owner of the real estate as described herein and has the full right and authority, pursuant to the original filed Declarations of Covenants, Conditions, and Restrictions to make this Amendment as the Owner of more than fifty (50) percent of all property currently contained in the Rock Creek subdivision and particularly as to "Rock Creek II";

NOW, THEREFORE, in considerations of the premises herein, Declarant hereby states that the property legally described in **Exhibit "A"** and generally known as Rock Creek II, being currently undeveloped and containing no residential properties, is hereby removed from, and, therefore, shall no longer be subject to the Declarations of Covenants, Conditions, and Restrictions of Rock Creek, a subdivision in Clay County, Missouri, or the Homes Association Declaration of Rock Creek.

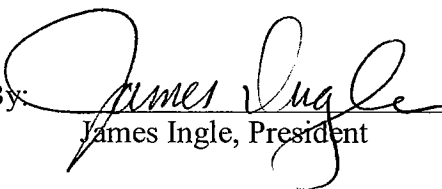
This Amendment shall be recorded in the Office of the Recorder of Deeds of Clay County, Missouri at Liberty prior to the filing of the General Warranty Deed transferring title to

said tract of land from A&I Development, LLC to the Catholic Diocese of Kansas City-St. Joseph.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has executed this document the date and year first above written on behalf of A&I Development, LLC, by James Ingle, Managing Member and Jarrett Archdekin, Member.

A&I DEVELOPMENT, LLC  
PARTY OF THE FIRST PART

JIM INGLE CONSTRUCTION, INC.

By:   
James Ingle, President

EARTHWORKS EXCAVATION, CO.

By:   
Jarrett Archdekin, President

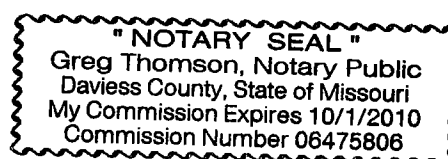
STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF CLAY     )

On this 17<sup>th</sup> day of April in the year 2009 before me, a Notary Public in and for said state, personally appeared James Ingle, President of Jim Ingle Construction, Inc., known to me to be the person who executed the within document on behalf of said corporation and said LLC and acknowledged to me that he executed the same for the purposes therein stated.

  
Notary Public

My Commission Expires:

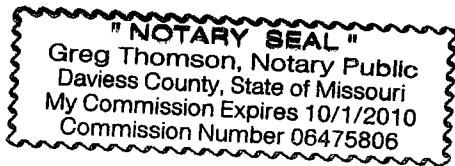
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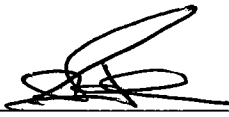




STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF CLAY         )

On this 17<sup>th</sup> day of April in the year 2009 before me, a Notary Public in and for said state, personally appeared Jarrett Archdekin, President of Earthworks Excavation, Co., known to me to be the person who executed the within document on behalf of said corporation and LLC and acknowledged to me that he executed the same for the purposes therein stated.



  
\_\_\_\_\_  
Notary Public

My Commission Expires:

10-01-2010

PROPERTY DESCRIPTION:

ALL THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 53 NORTH, RANGE 33 WEST OF THE FIFTH PRINCIPAL MERIDAN, LOCATED IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 2; THENCE NORTH 89°42'11" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 247.61 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN TO BE DESCRIBED, SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF MISSOURI STATE HIGHWAY ROUTE NUMBER 169; THENCE CONTINUING ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, NORTH 89°42'11" EAST, A DISTANCE OF 1049.38 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 00°17'35" WEST ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1450.25 FEET TO THE NORTHEASTERLY CORNER OF ROCK CREEK PLAT 1, A SUBDIVISION OF LAND LOCATED IN SMITHVILLE, CLAY COUNTY, MISSOURI; THENCE NORTH 74°40'07" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 241.27 FEET; THENCE NORTH 80°10'44" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 570.95 FEET; THENCE NORTH 18°57'53" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 166.23 FEET; THENCE NORTH 80°36'20" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 423.46 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MISSOURI STATE HIGHWAY ROUTE NUMBER 169; THENCE ALONG A CURVE TO THE RIGHT, HAVING A CHORD BEARING OF NORTH 02°15'51" EAST, A LENGTH OF 125.71 FEET AND A RADIUS OF 2824.79 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 86°27'38" EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 15.00 FEET; THENCE BEGINNING A CURVE TO THE RIGHT, HAVING A CHORD BEARING OF NORTH 06°32'21" EAST, A LENGTH OF 294.24 FEET AND A RADIUS OF 2809.79 ALONG SAID EASTERLY RIGHT-OF-WAY LINE; THENCE NORTH 80°27'38" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 15.00 FEET; THENCE BEGINNING A CURVE TO THE RIGHT, HAVING A CHORD BEARING OF NORTH 16°17'42" EAST, A LENGTH OF 666.16 FEET AND A RADIUS OF 2824.79 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINS 34.9 ACRES MORE OR LESS AND IS SUBJECT TO RESTRICTIONS, RESERVATIONS, EASEMENTS AND RIGHT-OF-WAYS NOT FOUND IN THE PUBLIC RECORDS, IF ANY.

**EXHIBIT "A"**

Date and Time: 09/14/2011 at 10:32:08 AM

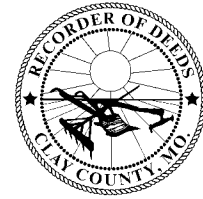
Instrument Number: 2011028991

Book: 6683 Page: 70

Instrument Type: REST

Page Count: 16

Recording Fee: \$69.00 S



Electronically Recorded

Jay Lawson, Recorder

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AMENDMENT AND RESTATEMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF

**ROCK CREEK**

a Subdivision in Clay County, Missouri

Date: December 30, 2004 Revised May 2011

Grantor: A&I Development, LLC  
315 South Hwy. 169, P.O. Box 164  
Gower, MO 64454

Grantee: A&I Development, LLC  
315 South Hwy. 169, P.O. Box 164  
Gower, MO 64454

Reference: 5377-162

Legal Description:

ALL OF LOTS 67 THROUGH 156 INCLUSIVE OF PHASES 1 AND 2, ROCK CREEK, A SUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 53 NORTH, RANGE 33 WEST, CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI.

CLINTON COUNTY LAND TITLE CO.  
211060830

THIS AMENDMENT AND RESTATEMENT is hereby made this 29<sup>th</sup> day of June, 2011, by the all of the Owners of the Lots 67 through 156 as described herein.

WITNESSETH:

WHEREAS, those certain Restrictive Covenants dated December 30, 2004, affecting Lots 67 through 156 in Rock Creek, (the "Lots") are recorded in Book 5377, Page 162 in the Recorder's Office of Clay County, Missouri (the "Declaration of Covenants, Conditions, and Restrictions"); and

WHEREAS, the developer is the owner of all of Lots 67 through 156 and has agreed to further amend and restate the Declaration of Covenants, Conditions, and Restrictions, by entering into this Amendment and Restatement which deletes and substitutes in its entirety, said Declarations previously recorded at Book 5377, Page 162 in the Recorder's Office of Clay County, Missouri; and

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions has previously been amended by a document dated April 17, 2009, and recorded at Book 6163, Page 15 in the Recorder's Office of Clay County, Missouri, which is not affected by this document; and

WHEREAS, the Homes Association Declaration of Rock Creek, (the "Association"), has not yet been created under the laws of the state of Missouri, as the developer, A&I Development, LLC, has not yet assigned or transferred its rights to the same, although the Homes Association Declarations of Rock Creek has been recorded at Book 5377, Page 163 in the Recorder's Office of Clay County, Missouri. Said Homes Association Declarations is not effected by this document; and

WHEREAS, the Developer and all of the Owners of Lots 67 through 156 in Rock Creek desire to provide for the preservation of the value of the Lots and the homes located thereon and for the continued efficient administration of the subdivision by further amending and restating the Declaration of Covenants, Conditions and Restriction of Rock Creek.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions are hereby further amended and restated in their entirety and the developer and all of the Owners of said Lots 67 through 157 substitute in lieu thereof the following Declaration of Covenants, Conditions and Restrictions as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1. "Street" shall mean any street, road, drive or avenue of whatever name, as shown on said plat of Rock Creek.

Section 2. "Outbuilding" shall mean an enclosed, covered or uncovered structure, not directly attached to the residential structure to which it is appurtenant.

Section 3. "Lot" may mean either any lot as platted, or any tracts or tracts of land as conveyed, which many consist of one or more lots, or part or parts of one or more lots, as platted, and upon which a single dwelling may be erected thereon in accordance with this Declaration herein, or as set forth in the individual deeds from the Declarant, or from its successors and assigns.

Section 4. "Residence", "building" or "house" shall mean a building designed exclusively for residential occupancy.

Section 5. "Family" shall mean an individual or two (2) or more persons related by blood, marriage or adoption.

Section 6. "Building line" shall mean a line parallel to the front street line between which line and the front street line no part of a building shall project, except as otherwise provided herein. The building line is established by the recorded plat of Rock Creek.

Section 7. "Enclosed floor area" is defined in Article VI, Section 2.

Section 8. Words not otherwise defined shall have their common meaning. Words used in the singular number include the plural, plural the singular, and present tense includes the future, unless the context clearly implies otherwise.

## **ARTICLE II**

### **PERSONS BOUND BY THESE RESTRICTIONS**

All persons, firms, partnerships and corporations who may own or shall hereafter acquire any fee simple title or ownership in the above-described lots hereby restricted agree and covenant with the Declarant and owners of lots herein, and with their successors and assigns, grantees and heirs, to conform to and observe the following covenants, conditions and restrictions, as to the use thereof and the construction of residences and improvements thereon for a period of time ending twenty (20) years from the date hereof, provided, however, that each of said restrictions shall be renewable in the manner hereinafter set forth.

## **ARTICLE III**

### **USAGE**

Section 1. All Lots may be improved, used or occupied for private single-family residential purposes, and no flat or apartment house, duplex or other structure other than a single-family house though intended for residential purposes, may be built thereon. Any residence

erected or maintained on any of the land hereby restricted shall be designed for occupancy, and only occupied by a single family.

Section 2. No noxious or offensive activity shall be carried on upon any portion of the properties nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood.

Section 3. The Developer reserves the right to maintain on a lot or lots one or more real estate sales offices which may be in a model or an office upon any of the herein restricted lots owned by it for the purpose of promoting, advertising for sale, showing or selling lots, either improved or unimproved, within Rock Creek.

#### **ARTICLE IV**

##### **REQUIRED HEIGHT OF RESIDENCES**

Any residence erected on any of the lots hereby restricted shall not be more than two (2) stories in height, provided, however, that a residence of more than two (2) stories in height may be erected thereon with prior consent in writing of the Developer.

#### **ARTICLE V**

##### **SETBACK OF RESIDENCES FROM THE STREET**

Section 1. No part of any residence or fence, except as hereinafter provided, may be erected or maintained on any of the lots herein, which extends beyond and in front of the front building line or side building line as shown on said plat. However, the Developer reserves the right, during any sale and conveyance of any of said lots, to change and alter any building line shown thereon, and may, at any time, with the written consent of the then record owners of the fee simple title to any such lots, change any such building line which is shown on said plat, on any such lot or lots, or which may in such sale and conveyance be established by it.

Section 2. No fences or walls more than two (2) feet high may be erected beyond and in front of the front building line of the house as erected.

#### **ARTICLE VI**

##### **REQUIRED SQUARE FOOT SIZE OF RESIDENCE AND OTHER RESTRICTIONS TO LOTS**

Section 1. Any residence erected in Rock Creek shall contain not less than minimum of one thousand two hundred fifty (1,250) square feet enclosed floor area and any residential structure one and one-half (1½) stories shall have a minimum nine hundred (900) square feet of such enclosed floor area on the first floor thereof, and any two story residential structure erected

on any of said lots shall contain a minimum of nine hundred (900) square feet of such enclosed floor area on the first floor thereof.

Section 2. The words "enclosed floor area" as used herein shall mean and include those areas on the first and second floor of the residence enclosed finished for all year occupancy computed on outside measurements of the residence and shall not mean nor include any areas, including, but not limited to basements, garages, porches or attics, even if such space is finished.

Section 3. The Developer reserves the absolute and incontestable right to approve plans and specifications for any residential structure to be erected herein and the absolute and incontestable right to determine whether the enclosed floor area of any residence meets the minimum requirements provided for herein and such determination shall be final.

Section 4. Structures meeting the definition of "earth berm", "earth shelter", "earth contact", or "earth house", or other structures of the like in meaning shall be prohibited.

## **ARTICLE VII**

### **RIGHT TO APPROVE PLANS AND OTHER APPROVALS REQUIRED BY DEVELOPER**

Section 1. The rights to approve all plans and specifications as aforesaid and the rights to approve all other variances from these restrictions where the restrictions allow for such variance with the approval of the Developer shall be vested in the Developer which is hereby defined to be the Developer or its successors and assigns. Any and all such approvals of which the Developer issues to the plans and specifications or variations from these restrictions, where allowable, shall be issued by the Developer in writing and shall not be effective unless and until such approval is issued in writing. Developer may assign its right to approve plans and specifications and variances to an "Architectural Control Committee" which may be created as part of a Home Owners Association which shall be formed concurrently herewith or at a later date.

Section 2. No building shall be erected, placed or altered on any lot or building plot in Rock Creek until and unless the building plans, specifications and plot plan showing the location of such building has been approved in writing by the Developer as to conformity and harmony of exterior design with existing residences in the Addition.

Section 3. For these purposes, as well as for the purpose of enforcing all other rights and restrictions herein contained, the Developer may transfer said rights to a Homes Association to be formed for said subdivision, the same to be composed of the owners of all lots in said subdivision. If said authority to approve plans, as well as to otherwise enforce the provisions of these restrictions, is not sooner assigned or relegated by the Developer to approve plans and make other approvals as herein described, it shall, in any event, cease when Developer has sold all lots within said Addition.

Section 4. Upon a written request for approval of plans, the party requesting such approval shall submit simultaneously with said request the following documentations:

- (a) Exterior elevation delineating front elevation;
- (b) A site plan of the residence;
- (c) Floor plan;
- (d) A list of all exterior materials to be used which will include roof, masonry, siding and windows.
- (e) A schedule of exterior colors to be used; and,
- (f) Mailbox style and location.

The documentation listed above is intended only as a minimum requirement and the Developer has the continuing authority to request any and all other documentation that said Developer, in its sole discretion, deems necessary. All such documentation shall be submitted in duplicate and shall be signed by the party requesting its approval. If disapproval is given within thirty (30) days of receipt of documents, no construction will be allowed on that lot until and only until an approval is given. However, in the event said Developer, or its designated representative, takes no action to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no lawsuit to enjoin the erection of said building or the making of such alterations has been commenced prior to substantial completion thereof, such approval will not be required and this provision will be deemed to have been fully complied with.

Section 5. Neither the Developer nor its successor as the Architectural Control Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

Section 6. Anything in this Declaration to the contrary notwithstanding, the Developer, its successor and assigns, shall have, and do hereby reserve the right to determine the location of all buildings upon the respective lot or lots and the relocation of the top of the foundation thereof to the street level, except as may be prohibited by City ordinance.

Section 7. No residence shall be permitted on any lot which replaces the original residence and improvements constructed thereon unless such residence and improvements are at least of similar size and type as the residence destroyed or removed, subject, however, to the requirements and approval of the Developer as referred to herein.



## **ARTICLE VIII**

### **REQUIRED BUILDING MATERIALS**

Section 1. All driveways and sidewalks shall be constructed of concrete and no asphalt or asphaltic material shall be permitted.

Section 2. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in damaged condition longer than four (4) months. Any owner of the building in violation of this Section may, in the sole discretion of the Developer, be assessed money damages for the Developer ranging from one (\$1.00) Dollar to One Hundred (\$100.00) Dollars per day for every day the violation continues. Said damages are liquidated damages since actual damages are difficult to ascertain and determine.

Section 3. If the money damages due herein for any violation are not paid when due and upon written demand, it shall become a lien upon the real estate upon which the structure in violation of this section is located, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereinafter be placed upon said real estate. Said liquidated damages shall be due thirty (30) days from the date of notification of the then record owner of any lot upon which the violation occurs, and if not paid within said thirty (30) day period, shall bear interest at the rate of fifteen percent (15%) per annum until paid. Any such interest accruing shall so be a lien upon the Developer in any court and such all liens may be enforced by the Clay County, Missouri Court having jurisdiction of suit for the enforcement of such items. Also, Developer shall be entitled to receive reasonable attorneys fees and costs for the filing of the lien and collection of money due.

## **ARTICLE IX**

### **ENTRANCE MARKERS**

No building shall be erected on the land area of less than one lot, as shown by the original subdivision plat of dedication, unless specific permission in writing has been granted by Developer, its successors and assigns, provided however, that this restriction shall not be construed as preventing the erection of a dwelling on more than one (1) lot where the owner thereof has purchased a tract consisting of more than one (1) lot.

## **ARTICLE X**

Any Home Owners Association shall be required to maintain the entrance markers for said subdivision.

## **ARTICLE XI**

### **OBSTRUCTION OF TRAFFIC**

No fence, wall, tree, hedge or shrub planting shall be maintained in such a manner as to obstruct site lines for vehicular traffic.

## **ARTICLE XII**

### **OUTBUILDING PROHIBITED**

Section 1. No building or other detached structures appurtenant to the residence, including but not limited to gazebos, arbors or trellises, may be erected or placed on any of the lots hereby restricted without the consent in writing of the Developer.

Section 2. Garages shall be attached or a part of the main residence and shall have at least a two (2) car capacity for all single family residences. No garage shall be converted for use as living area; no vehicular garage door shall be removed except to be replaced by another door similarly providing vehicular access. No parking of vehicles shall be permitted except on driveways to garages and no parking will be permitted anywhere else. No separate parking areas such as on slab, patios, driveways which do not lead to a garage, etc. are permitted, without prior approval of Developer.

## **ARTICLE XIII**

### **FENCES, WALLS, SHRUBS AND TREES**

Section 1. No fence, wall, shrub or hedge shall be erected, constructed, planted or maintained upon any of the lots hereby restricted without written approval as to material, design, shape, location, species and height by the Developer and said Developer shall have complete sole discretion with regard to such approval, provided, however, that said Developer not approve any fence, wall, hedge or shrub that violates Article XI hereof. The standard fence design shall be staggered security cedar not to exceed six (6) feet in height.

Section 2. All residences shall have at least one (1) shade tree in the front yard. All shade trees are to be nursery stock at least two (2) inches in diameter.

## **ARTICLE XIV**

### **SWIMMING POOLS**

No above ground swimming pool is permitted. Swimming pools allowed may be covered with flat storage covers to protect the pools from leaves, animals, etc., when the pools are

operable. No pool enclosures commonly referred to as glass, plastic, aluminum, metal, or fiber enclosures or air structures, air bubbles or air covers shall be allowed at any time unless approved by the Developer. No pool enclosures, fences and appurtenant structures shall be permitted which the Developer deems unsightly or objectionable to other lot owners in the Addition. Any pool permitted shall be properly cleaned at all times, shall be attractively maintained, and shall be surrounded by a fence at least three (3) feet in height or in accordance with applicable City Code.

## **ARTICLE XV**

### **OIL TANKS AND FLAMMABLES PROHIBITED**

Section 1. No tank for the storage of fuel may be maintained above or below the surface of the ground on any of the lots hereby restricted, without the consent in writing of the Developer.

Section 2. No flammable, combustible, or explosive fluid or chemical substance shall be kept in any home or on any lot except such as are required for normal household use, or use with portable gas barbecue grill, and same shall be kept within the home, except for a portable gas barbecue grill.

Section 3. No lot owner shall permit or suffer anything to be done or kept in his or upon his lot which will increase the cost of insurance for other lot owners or as to their lots of the Association as to the common properties.

## **ARTICLE XVI**

### **POWER LINES**

No power, telephone, information service or cable TV distribution or service connection lines or any other lines of any sort for any purpose may be erected or maintained above the surface of the ground, on any of said lots.

## **ARTICLE XVII**

### **ELECTRICAL REQUIREMENTS**

All lots upon which a residence is constructed shall have and maintain in good operating condition a unit commonly known as an "electric heat pump" heating and cooling unit. In the alternative each said residence shall have "All Electric" service and shall not use gas for its heating and cooling requirements. Nothing in this restriction shall prohibit a residence with a heat pump from also having gas service for supplementary heating.

## **ARTICLE XVIII**

### **LIVESTOCK AND POULTRY**

No hogs, cows, horses, chickens, poultry, birds, livestock, pit bull dogs or animals of any kind other than house pets (except house pets with vicious propensities) shall be brought onto or kept on the properties; and no more than two (2) dogs, cats or other such pets may be kept, bred or maintained for any commercial purpose or as a steady hobby of the owner. Pets shall be confined and not allowed to run at large.

## **ARTICLE XIX**

### **BILLBOARDS AND SIGNS**

Section 1. The construction or maintenance of signs (including for rent or for sale signs), billboards, or advertising structures of any kind on any lot is prohibited, except that Developer or its designated successor, reserves the right to locate and construct signs of any size for temporary sales purposes during such period as sales are offered.

Section 2. Political signs shall only be allowed in Rock Creek within the reasonable restrictions of this section. Political signs (whether for a candidate, issue, or other matter) shall be allowed beginning one month prior to the scheduled election date and shall be removed within one week after said election date. No political sign shall exceed two square feet in area on a side and shall have no more than two sides. There shall be no more than three political signs per Lot. No political signs shall be placed on common areas of Rock Creek.

## **ARTICLE XX**

### **AUTOMOBILE REPAIRING AND STORAGE OF AUTOMOBILES, BOAT, TRAILERS, ETC.**

Section 1. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any of the lots hereby restricted except that automotive repairs on a non-commercial basis and not for hire may be conducted only in any enclosed garage built on said premises and permitted under provisions of this restriction.

Section 2. No motor vehicles, including trucks, trailers, buses, campers, boats, recreation vehicles, motorhomes, vans, boat trailers, trailers, motorcycles or other apparatus, except automobiles, shall be left or stored on said property except in an enclosed garage, nor shall any of the aforesaid vehicles be parked on the street; provided however, one (1) recreational vehicle may be parked for a period not to exceed twenty- four (24) hours for the purpose of loading or unloading and shall be forthwith removed thereafter.

Section 3. No non-operating motor vehicles shall be kept on any lot except in an enclosed garage.

Section 4. Parking on the street is prohibited by the residents of Rock Creek. Parking of tractor trailers, semi-tractors, etc. is prohibited anywhere within the boundaries of the subdivision.

Section 5. Guest parking is permissible for no longer than forty-eight (48) hours. Residents' motor vehicles must at all times be parked on the driveway portions of said property.

Section 6. No person shall park a vehicle so as to obstruct or otherwise any resident's use of ingress or egress to any driveway.

## **ARTICLE XXI**

### **MISCELLANEOUS PROVISIONS**

Section 1. Antennas, satellite dish and solar panels: No television or radio antenna, satellite dish or solar panels shall be placed on the exterior of any residence or constructed separately unless approved by Developer.

Section 2. Clotheslines: No clothesline or apparatus for laundry shall be installed on any lot. No garments, rugs, etc., shall be hung from the windows or doorways of the residence.

Section 3. Christmas lights: Christmas lights and/or decorations may not be erected or maintained on any of the lots hereby restricted except during the period of time from November 1 until January 15 of each calendar year. Any music or amplified sound shall not emanate from the Lot upon which said display is located.

Section 4. Dogs running at large: Dogs shall be confined. All dogs shall be confined within the property boundaries of the owner. No dog runs or dog pens shall be permitted.

Section 5. Basketball goals. Basketball goals may be placed on a free standing pole only.

Section 6. Mailboxes. No mailbox or standard therefore or replacement of same shall be erected without the prior written approval of the style, construction, and location being granted by the Developer.

Section 7. Trash, garbage and other materials: No burning of trash shall be allowed except during time periods as provided from time to time by the City Code of Smithville, Missouri. No storage of trash, garbage, refuse or other materials shall be permitted on any lot outside of the residence except that garbage and trash only may be set out the evening before the trash pick-up. The owner will remove any material that was set out for pick-up but was not picked up that day.

Section 8. Firewood: Firewood shall not be stored or stacked except in the rear of the residence and it must be stacked neatly.

Section 9. Sidewalks: Sidewalks required in front of all finished residences and the installation, maintenance and upkeep shall be the responsibility of the owner.

Section 10. Trampolines: No trampolines, rebound devices, or other athletic, exercise or play devices shall be kept on the outside of the premises except in the back yards.

Section 11. Hot Tubs: No outdoor hot tubs, spas or soaking tubs or the like will be permitted except after submission of plans, specifications, screening plans and location have been approved by the Developer.

Section 12. No business structure: No business structure shall be erected on any lot; however, limited home occupations shall be permitted subject to the following restrictions and limitations:

- (a) Prior to commencing any home occupation on any lot, the owner shall furnish to the Developer a written description of such home occupation. In the event the Developer, in its sole discretion, deems such home occupation to be non-detrimental to the properties or to other owners, written permission to conduct such home occupation shall be given to such Owner. Such written permission shall always be subject to revocation upon thirty (30) days written notice and the owner shall thereupon cease such home occupation. In no event will permission be granted for (i) wholesale or retail selling from inventory located or exhibited at the premises, (ii) rental of equipment or personal property stored or exhibited at the premises, (iii) medical, dental or related health care services, (iv) automobile or other vehicle repair services;
- (b) The home occupation shall be incidental and subordinate to the principal use of the premises and not more than twenty-five percent (25%) of the floor area of any one floor of the living unit shall be utilized for a home occupation;
- (c) All materials or equipment used in the home occupation shall be stored within an enclosed structure;
- (d) No alteration of the exterior of the living unit shall be made which changes the character thereof as residence;
- (e) No signs shall be permitted;
- (f) At least one person occupying such living unit as his or her residence shall be engaged in such home occupation;
- (g) No equipment shall be utilized that creates a nuisance due to noise or electrical interference;

- (h) In no event shall fewer than two (2) off-street parking spaces be provided; and,
- (i) The Developer may, at its sole discretion, assign to the Home Owners Association to be formed, the rights, duties and obligations under this Section of this Declaration.

Section 13. Care and appearance of premises: The structure and grounds on each lot shall be maintained in a neat and attractive manner. All sidewalks and driveways shall be kept clear of snow and ice, which shall be removed as soon as possible. The Developer shall have the right (upon ten (10) days notice to the Owner of the lot involved, setting forth the action intended to be taken, and if at the end of such time such action has not been taken by the owner), at the expense of the Owner, to remove snow or ice, trash or rubbish, and to cut grass, weeds and vegetation and to trim or prune, any hedge or other planting that in the opinion of the Developer to keep such property in neat and good order, all at the cost and expense of the Owner. Such costs and expenses incurred by the Developer shall be paid to the Developer upon demand and if not paid within ten (10) days thereof then they shall become a lien upon the property affected.

## **ARTICLE XXII**

### **YARD LIGHTS REQUIRED**

No residence upon any of the lots hereby restricted shall be occupied until a yard light has been erected and installed in the front of each residence. Yard lights shall be maintained in good working order.

## **ARTICLE XXIII**

### **UTILITY EASEMENTS**

Section 1. Easements. Any provision in this Declaration to the contrary notwithstanding, easements and right-of-way are hereby expressly reserved to the Developer and, as appropriate and necessary, to the Association, their agents, designees, successors and assigns, in, on, over and under the easement area of each Lot and the Common Area as designated on the filed plat of the subdivision for the following purposes:

- (a) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments and appurtenant structures in connection with the transmission of electricity, telephone, traffic signals, fire alarm systems, communication systems, television cables and other utilities and similar facilities;
- (b) the erection, installation, construction and maintenance of storm water drains, land drains, public and private sewers, grinder pumps, pipelines for supplying

water and heat, and for any other public or quasi-public facility, service or function, and appurtenant structures whether above ground or underground;

- (c) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by the Developer or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (d) landscape purposes, including the right to require Owners of Lots affected by the Landscape Easements set forth on the filed plat of the subdivision to plant and maintain such area in accordance with Rules and Regulations of the Home Owners' Association;

Section 2. Installation. Developer reserves unto itself, its assignees, successors and designees, the right, power and authority to direct and control, in cooperation with a public authority or any utility company which will install or own, operate and maintain the respective facilities, or both, which utilities and drainage services (as provided for herein) shall be installed in and occupy any specific easement, within any easements, no improvement, planting or other material or improvement shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the directional flow of drainage channels in the easement, or which may alter, obstruct or retard the flow of water through drainage channels within the easement areas, or which may change or prevent the intended use of any easement.

Section 3. Owner Rights and Obligations. Subject to all of the other restrictions contained in this Declaration, each Owner shall have the right to use the Easement Areas of his lot in any manner not inconsistent with the purposes for which such easement areas are reserved, and the area within any easement area and all improvements within the bounds of such easement areas shall be maintained continuously by the Owner of the said Lot, except for such improvements for which a public authority or utility company is or may become responsible for maintenance. Notwithstanding anything herein to the contrary, each owner of a Lot covenants and agrees that, in cooperation with the Developer, each Owner shall execute all grants of easements, grants of right-of-way or any other similar grant or conveyance documentation required to be executed by an Owner in order to grant and convey to any public authority or utility company their assigns or lessees, the right, privilege and easement to lay, construct, maintain, alter, inspect, repair, replace, protect, relocate, change the size of, operate and remove all utility lines, service taps, distribution facilities, valves, regulators, pressure sewer systems (including the force mains, grinder pump units and appurtenances) and other equipment appurtenant to and necessary for providing any and all of the utility and drainage services as provided herein.



## ARTICLE XXIV

### AMENDMENTS

Unless specifically prohibited herein, and except as to Supplemental Declaration, this Declaration may be amended from time to time by an instrument of agreement signed by the owners of the fee simple title to more than fifty percent (50%) of the front feet of all of said lots and which is duly acknowledged and filed for record in the office of the Recorder of Deeds of Clay County, Missouri. Provided, however, that no amendment may be effected without the express written consent of the Developer until Developer has sold and conveyed all of the lots in the District.

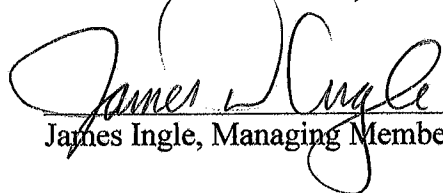
## ARTICLE XXV

### ENFORCEMENT

The Developer or any Owner shall have the right to enforce these covenants and restrictions by any proceeding at any law or in equity against person or persons violating or attempting to violate any covenant or restriction, either to restrain violation of the covenant or restriction or to recover damages against the applicable lot and Owner; and failure by the Developer or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Where litigation occurs to enforce these covenants and restrictions or to recover damages, the prevailing party in said litigation shall be entitled to recover court costs and reasonable attorneys' fees, including court costs, and reasonable attorneys' fees in any appellate proceeding.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has set his hand and seal to this document the date first above written.

A& I DEVELOPMENT, LLC

  
James Ingle, Managing Member

STATE OF MISSOURI )

COUNTY OF BUCHANAN )

On this 29<sup>th</sup> day of June, 2011, before me a Notary Public in and for said state, appeared James Ingle, Managing Member of A&I Development, LLC, known to me to be the person described herein, who executed the above and foregoing as his free act and deed and in his capacity so stated.

My Commission Expires:

July 4 2014

Jamie Patterson  
Notary Public



JAMIE PATTERSON  
My Commission Expires  
July 4, 2014  
Clinton County  
Commission #10399910

Date and Time: 09/14/2011 at 10:32:08 AM

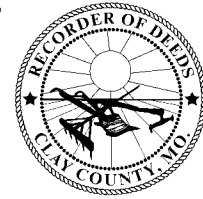
Instrument Number: 2011028992

Book: 6683 Page: 71

Instrument Type: REST

Page Count: 4

Recording Fee: \$33.00 S



Electronically Recorded

Jay Lawson, Recorder

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FIRST AMENDMENT TO HOMES ASSOCIATION DECLARATION OF

**ROCK CREEK**

A Subdivision in Clay County, Missouri

Date: December 30, 2004 Revised May 2011

Grantor: A&I Development, LLC  
315 South 169 Hwy., P.O. Box 164  
Gower, MO 64454

Grantee: A&I Development, LLC  
315 South 169 Hwy., P.O. Box 164  
Gower, MO 64454

Reference:

5377-163

CLINTON COUNTY LAND TITLE CO.

211060830

Legal Description:

Part of the West half of the Southwest Quarter of Section 2, Township 53 North, Range 33 West, Smithville, Clay County, Missouri, said tract being described as follows: Commencing at the Northwest Corner of the Southwest Quarter of Section 2, Township 53 North, Range 33 West, Clay County, Missouri; thence with the North line of the Southwest Quarter of said Section North 89 degrees 42 minutes 11 seconds East, 564.90 feet to the Point of Beginning; thence continuing along said line North 89 degrees 42 minutes 11 seconds East, 732.09 feet; thence departing from said line South 00 degrees 17 minutes 35 seconds West, 2652.74 feet; thence South 89 degrees 15 minutes 34 seconds West, 1288.30 feet to the Eastern right-of-way line of Missouri Highway 169; thence along said right-of-way line the following courses and distances: North 00 degrees 59 minutes 04 seconds East, 1593.75 feet; thence 125.72 feet by arc distance along a curve to the right having a radius of 2824.79 feet and a chord bearing of North 02 degrees 15 minutes 51 seconds East, 125.71 feet; thence South 86 degrees 27 minutes 38

seconds East, 15.00 feet; thence 294.24 feet by arc distance along a curve to the right having a radius of 2809.79 feet and a chord bearing of North 06 degrees 32 minutes 21 seconds East, 294.11 feet; thence North 80 degrees 27 minutes 38 seconds West, 15.00 feet; thence 375.45 feet by arc distance along a curve to the right having a radius of 2824.79 feet and a chord bearing of North 13 degrees 20 minutes 49 seconds East, 375.17 feet; thence departing from said right-of-way line South 89 degrees 59 minutes 39 seconds East 418.90 feet; thence 24.58 feet by arc distance along a curve to the right having a radius of 936.15 feet and a chord bearing North 01 degrees 02 minutes 58 seconds West, 24.58 feet; thence North 00 degrees 17 minutes 49 seconds West, 249.99 feet to the Point of Beginning. The above described tract of land contains 73.36 acres, more or less, inclusive of public road right-of-way, exclusive of Missouri Highway 169 right-of-way, and is subject to all recorded and unrecorded easements, restrictions and right-of-ways.

THIS FIRST AMENDMENT is hereby made this 29<sup>th</sup> day of JUNE, 2011, by A&I Development, LLC, a Missouri limited liability company, which is the owner of Lots 67 through 156, Phase I, as described herein.

W I T N E S S E T H:

WHEREAS, A&I Development, LLC, has filed the Homes Association Declaration of Rock Creek, a subdivision in Clay County, Missouri, at Book 5377, Page 163, dated December 30, 2004, but recorded on May 19, 2004;

WHEREAS, A&I Development, LLC, has sold real estate generally known as Phase 2, Lots 1 through 66 of Rock Creek subdivision to the Catholic Diocese of Kansas City-St. Joseph for the purposes of construction of a church and related facilities, a copy of said legal description is attached hereto as Exhibit A, and incorporated herein by reference;

WHEREAS, A&I Development, LLC, intends that the real property described on Exhibit A, the portion sold to the Catholic Diocese of Kansas City-St. Joseph, no longer be subject to the Homes Association Declaration as the real property will not be developed as residential real property;

WHEREAS, the Rock Creek Homes Association Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than sixty percent (60%) of the lots, and thereafter by the Owners of not less than sixty percent (60%);

NOW THEREFORE, in consideration of the premises herein, A&I Development, LLC, states and declares the following:

1. The property legally described on Exhibit A hereto and generally known as Rock Creek II, having been sold to the Catholic Diocese of Kansas City-St. Joseph, is hereby removed from and, therefore, shall no longer be subject to those Homes Association Declaration of Rock Creek, recorded at Book 5377, Page 163, dated December 30, 2004 and recorded on May 19, 2004.

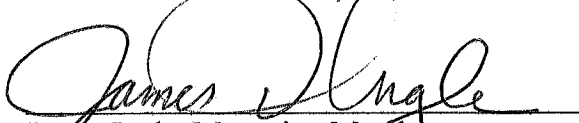
2. A&I Development, LLC, is the owner of more than sixty percent of the owners of lots contained within Rock Creek, a subdivision in Clay County, Missouri.

3. This amended is completed within twenty years of the formation of the Homes Association of Rock Creek.

4. This Amendment shall be recorded in the Office of the Recorder of Deeds of Clay County, Missouri.

IN WITNESS WHEREOF, the undersigned has executed this document on the day and year first above written on behalf of A&I Development, LLC, by James Ingle, Managing Member.

A&I DEVELOPMENT, LLC

  
James Ingle, Managing Member

STATE OF MISSOURI )

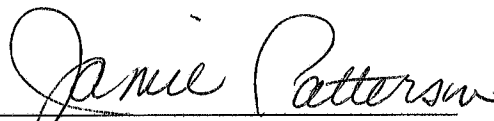
COUNTY OF BUCHANAN )

On this 27th day of June, 2011, before me a Notary Public in and for said state, appeared James Ingle, Managing Member of A&I Development, LLC, known to me to be the person described herein, who executed the above and foregoing as his free act and deed and in his capacity so stated.

My Commission Expires:

July 4, 2014

Notary Public

  
Jamie Patterson

JAMIE PATTERSON  
My Commission Expires  
July 4, 2014  
Clinton County  
Commission #10305616



EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY EXCLUDED

ALL THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 53 NORTH, RANGE 33 WEST OF THE FIFTH PRINCIPAL MERIDAN, LOCATED IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 2; THENCE NORTH 89°42'11" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 247.61 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN TO BE DESCRIBED, SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF MISSOURI STATE HIGHWAY ROUTE NUMBER 169; THENCE CONTINUING ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 2, NORTH 89°42'11" EAST, A DISTANCE OF 1049.38 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 00°17'35" WEST ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1450.25 FEET TO THE NORTHEASTERLY CORNER OF ROCK CREEK PLAT 1, A SUBDIVISION OF LAND LOCATED IN SMITHVILLE, CLAY COUNTY, MISSOURI; THENCE NORTH 74°40'07" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 241.27 FEET; THENCE NORTH 80°10'44" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 570.95 FEET; THENCE NORTH 18°57'53" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 166.23 FEET; THENCE NORTH 80°36'20" WEST ALONG THE NORTH LINE OF SAID ROCK CREEK PLAT 1, A DISTANCE OF 423.46 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MISSOURI STATE HIGHWAY ROUTE NUMBER 169; THENCE ALONG A CURVE TO THE RIGHT, HAVING A CHORD BEARING OF NORTH 02°15'51" EAST, A LENGTH OF 125.71 FEET AND A RADIUS OF 2824.79 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 86°27'38" EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 15.00 FEET; THENCE BEGINNING A CURVE TO THE RIGHT, HAVING A CHORD BEARING OF NORTH 06°32'21" EAST, A LENGTH OF 294.24 FEET AND A RADIUS OF 2809.79 ALONG SAID EASTERLY RIGHT-OF-WAY LINE; THENCE NORTH 80°27'38" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 15.00 FEET; THENCE BEGINNING A CURVE TO THE RIGHT, HAVING A CHORD BEARING OF NORTH 16°17'42" EAST, A LENGTH OF 666.16 FEET AND A RADIUS OF 2824.79 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINS 34.9 ACRES MORE OR LESS AND IS SUBJECT TO RESTRICTIONS, RESERVATIONS, EASEMENTS AND RIGHT-OF-WAYS NOT FOUND IN THE PUBLIC RECORDS, IF ANY.

Recorded in Clay County, Missouri

Date and Time. 09/27/2012 at 09:24:18 AM

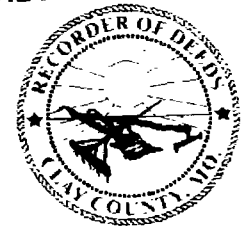
Instrument Number. 2012038195

Book: 6937 Page: 23

Instrument Type REST

Page Count 20

Recording Fee \$81 00 S



Jay Lawson, Recorder



Grantor A&I DEVELOPMENT  
Grantee A&I DEVELOPMENT

**SECOND AMENDMENT AND RESTATEMENT  
OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF**

**ROCK CREEK**

a Subdivision in Clay County, Missouri

Date: December 30, 2004, First Revised May 2011,  
Second Revised September 21, 2012.

Grantor: A&I Development, LLC  
315 South Hwy. 169,  
P.O. Box 164 Gower, MO 64454

Grantee: A&I Development, LLC  
315 South Hwy. 169  
P.O. Box 164 Gower, MO 64454

*Reference Book & Page* Book 5377 Page 162 and Book 6683 Page 70

Legal Description: ALL OF LOTS 67 THROUGH 156 INCLUSIVE OF  
PHASES 1 AND 2, ROCK CREEK, A SUBDIVISION  
IN THE WEST HALF OF THE SOUTHWEST  
QUARTER OF SECTION 2, TOWNSHIP 53 NORTH,  
RANGE 33 WEST, CITY OF SMITHVILLE, CLAY  
COUNTY, MISSOURI, which is more particularly  
described as follows: Part of the West half of the  
Southwest Quarter of Section 2, Township 53 North,  
Range 33 West, Smithville, Clay County, Missouri, said  
tract being described as follows: Commencing at the  
Northwest Corner of the Southwest Quarter of Section 2,  
Township 53 North, Range 33 West, Clay County,  
Missouri; thence with the North line of the Southwest

Jim Ingle Construction

P.O. Box 164

RL- Gower mo 64454

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Quarter of said Section North 89 degrees 42 minutes 11 seconds East, 564.90 feet to the Point of Beginning; thence continuing along said line North 89 degrees 42 minutes 11 seconds East, 732.09 feet; thence departing from said line South 00 degrees 17 minutes 35 seconds West, 2652.74 feet; thence South 89 degrees 15 minutes 34 seconds West, 128830 feet to the Eastern right-of-way line of Missouri Highway 169; thence along said right-of-way line the following courses and distances: North 00 degrees 59 minutes 04 seconds East, 1593.75 feet; thence 125.72 feet by arc distance along a curve to the right having a radius of 2824.79 feet and a chord bearing of North 02 degrees 15 minutes 51 seconds East, 125.71 feet; thence South 86 degrees 27 minutes 39 seconds East, 15.00 feet; thence 29424 feet by arc distance along a curve to the right having a radius of 2809.79 feet and a chord bearing of North 06 degrees 32 minutes 21 seconds East, 294.11 feet; thence North 80 degrees 27 minutes 38 seconds West, 15.00 feet; thence 375.45 feet by arc distance along a curve to the right having a radius of 2824.79 feet and a chord bearing of North 13 degrees 20 minutes 49 seconds East, 375.17 feet; thence departing from said right-of-way line South 89 degrees 59 minutes 39 seconds East 418.90 feet; thence 24.58 feet by arc distance along a curve to the right having a radius of 936.15 feet and a chord bearing North 01 degrees 02 minutes 58 seconds West, 24.58 feet; thence North 00 degrees 17 minutes 49 seconds West, 249.99 feet to the Point of Beginning. The above described tract of land contains 73.36 acres, more or less, inclusive of public road right-of-way, exclusive of Missouri Highway 169 right-of-way, and is subject to all recorded and unrecorded easements, restrictions and right-of-ways.



THIS AMENDMENT AND RESTATEMENT is hereby made this 21st day of September, 2012, by the all of the Owners of the Lots 67 through 156 as described above.

WITNESSETH:

WHEREAS, those certain Restrictive Covenants dated December 30, 2004, affecting Lots 67 through 156 in Rock Creek, (the "Lots") are recorded in Book 5377, Page 162 in the Recorder's Office of Clay County, Missouri (the "Declaration of Covenants, Conditions, and Restrictions"); and

WHEREAS, the Developer is the owner of all of Lots 67 through 156 and has agreed to further amend and restate the Declaration of Covenants, Conditions, and Restrictions, by entering into this Second Amendment and Restatement which amends and restates in its entirety those Declarations previously recorded at Book 5377, Page 162 in the Recorder's Office of Clay County, Missouri; and

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions has previously been amended by a document dated June 29, 2011, and recorded at Book 6683, Page 70 in the Recorder's Office of Clay County, Missouri, which is not affected by this document; and

WHEREAS, the Homes Association Declaration of Rock Creek, (the "Association"), has not yet been created under the laws of the state of Missouri, as the developer, A&I Development, LLC, has not yet assigned or transferred its rights to the same, although the Homes Association Declarations of Rock Creek has been recorded at Book 5377, Page 163 in the Recorder's Office of Clay County, Missouri. Said Homes Association Declarations is not affected by this document; and

WHEREAS, the Developer and all of the Owners of Lots 67 through 156 in Rock Creek desire to provide for the preservation of the value of the Lots and the homes located thereon and for the continued efficient administration of the subdivision by further amending and restating the Declaration of Covenants, Conditions and Restriction of Rock Creek.

NOW, THEREFORE, the Declaration of Covenants, Conditions and

Restrictions are hereby further amended and restated in their entirety and the developer and all of the Owners of said Lots 67 through 157 substitute in lieu thereof the following Declaration of Covenants, Conditions and Restrictions as follows:

## **ARTICLE I DEFINITIONS**

Section 1. "Street" shall mean any street, road, drive or avenue of whatever name, as shown on said plat of Rock Creek.

Section 2. "Outbuilding" shall mean an enclosed, covered or uncovered structure, not directly attached to the residential structure to which it is appurtenant.

Section 3. "Lot" may mean either any lot as platted, or any tracts or tracts of land as conveyed, which many consist of one or more lots, or part or parts of one or more lots, as platted, and upon which a single dwelling may be erected thereon in accordance with this Declaration herein, or as set forth in the individual deeds from the Declarant, or from its successors and assigns.

Section 4. "Residence", "building" or "house" shall mean a building designed exclusively for residential occupancy.

Section 5. "Single family" shall mean (i) an individual, (ii) two (2) or more persons related by blood, marriage or adoption, or (iii) unrelated persons occupying a residence not exceeding in number one (1) person per bedroom.

Section 6. "Building line" shall mean a line parallel to the front street line between which line and the front street line no part of a building shall project except as otherwise provided herein, consistent with the recorded plat of Rock that was approved by the City of Smithville, Missouri, as amended from time to time.

Section 7. "Enclosed floor area" is defined in Article VI, Section 2.

Section 8. Words not otherwise defined shall have their common meaning. Words used in the singular number include the plural, plural the singular, and present tense includes the future, unless the context clearly implies otherwise.

## **ARTICLE II PERSONS BOUND BY THESE RESTRICTIONS**

All persons, firms, partnerships and corporations who may own or shall hereafter acquire any fee simple title or ownership in the above-described lots hereby restricted agree and covenant with the Developer and owners of lots herein, and with their successors and assigns, grantees and heirs, to conform to and observe the following covenants, conditions and restrictions, as to the use thereof and the construction of residences and improvements thereon for a period of time ending twenty (20) years from the date hereof provided, however, that each of said restrictions shall be renewable in the manner hereinafter set forth.

## **ARTICLE III USAGE**

Section 1. All Lots may be improved, used or occupied for private single-family residential purposes, and no flat or apartment house, duplex or other structure other than a single-family house though intended for residential purposes, may be built thereon Any residence erected or maintained on any of the land hereby restricted shall be designed for occupancy, and only occupied by a single family.

Section 2. No noxious or offensive activity shall be carried on upon any portion of the properties nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood.

Section 3. The Developer reserves the right to maintain on a lot or lots one or more real estate sales offices which may be in a model or an office upon any of the herein restricted lots owned by it for the purpose of promoting, advertising for sale, showing or selling lots, either improved or unimproved, within Rock Creek.

## **ARTICLE IV REQUIRED HEIGHT OF RESIDENCES**

Any residence erected on any of the lots hereby restricted shall not be more than two (2) stories in height, provided, however, that a residence of more than two (2) stories in height may be erected thereon with prior consent in writing of

the Developer.

## **ARTICLE V SETBACK OF RESIDENCES FROM THE STREET**

Section 1. No part of any residence or fence, except as hereinafter provided, may be erected or maintained on any of the lots herein, which extends beyond and in front of the front building line or side building line as shown on said plat. However, the Developer reserves the right, during any sale and conveyance of any of said lots, to change and alter any building line shown thereon, and may, at any time, with the written consent of the then record owners of the fee simple title to any such lots, change any such building line which is shown on said plat, on any such lot or lots, or which may in such sale and conveyance be established by it.

Section 2. No fences or walls more than two (2) feet high may be erected beyond and in front of the front building line of the house as erected.

## **ARTICLE VI REQUIRED SQUARE FOOT SIZE OF RESIDENCE AND OTHER RESTRICTIONS TO LOTS**

Section 1. Any residence erected in Rock Creek shall contain not less than minimum of one thousand two hundred fifty (1,250) square feet enclosed floor area and any residential structure one and one-half (1-1/2) stories shall have a minimum nine hundred (900) square feet of such enclosed floor area on the first floor thereof, and any two story residential structure erected on any of said lots shall contain a minimum of nine hundred (900) square feet of such enclosed floor area on the first floor thereof.

Section 2. The words "enclosed floor area" as used herein shall mean and include those areas on the first and second floor of the residence enclosed finished for all year occupancy computed on outside measurements of the residence and shall not mean nor include any areas, including, but not limited to basements, garages, porches or attics, even if such space is finished.

Section 3. The Developer reserves the absolute and incontestable right to approve plans and specifications for any residential structure to be erected herein and the absolute and incontestable right to determine whether the enclosed floor

area of any residence meets the minimum requirements provided for herein and such determination shall be final.

Section 4. Structures meeting the definition of "earth berm", "earth shelter", "earth contact", or "earth house", or other structures of the like in meaning shall be prohibited.

## **ARTICLE VII RIGHT TO APPROVE PLANS AND OTHER APPROVALS REQUIRED BY DEVELOPER**

Section 1. The rights to approve all plans and specifications as aforesaid and the rights to approve all other variances from these restrictions where the restrictions allow for such variance with the approval of the Developer shall be vested in the Developer which is hereby defined to be the Developer or its successors and assigns. Any and all such approvals of which the Developer issues to the plans and specifications or variations from these restrictions, where allowable, shall be issued by the Developer in writing and shall not be effective unless and until such approval is issued in writing. Developer may assign its right to approve plans and specifications and variances to an "Architectural Control Committee" which may be created as part of a Home Owners Association which shall be formed concurrently herewith or at a later date.

Section 2. No building shall be erected, placed or altered on any lot or building plot in Rock Creek until and unless the building plans, specifications and plot plan showing the location of such building has been approved in writing by the Developer as to conformity and harmony of exterior design with existing residences in the Addition.

Section 3. For these purposes, as well as for the purpose of enforcing all other rights and restrictions herein contained, the Developer may transfer said rights to a Home Association to be formed for said subdivision, the same to be composed of the owners of all lots in said subdivision. If said authority to approve plans, as well as to otherwise enforce the provisions of these restrictions, is not sooner assigned or relegated by the Developer to approve plans and make other approvals as herein described, it shall, in any event, cease when Developer has sold all lots within said Addition.

Section 4. Upon a written request for approval of plans, the party requesting such approval shall submit simultaneously with said request the following documentation:

- a. Exterior elevation delineating front elevation;
- b. A site plan of the residence;
- c. Floor plan;
- d. A list of all exterior materials to be used which will include roof, masonry, siding and windows.
- e. A schedule of exterior colors to be used; and
- f. Mailbox style and location.

The documentation listed above is intended only as a minimum requirement and the Developer has the continuing authority to request any and all other documentation that said Developer, in its sole discretion, deems necessary. All such documentation shall be submitted in duplicate and shall be signed by the party requesting its approval. If disapproval is given within thirty (30) days of receipt of documents, no construction will be allowed on that lot until and only until an approval is given. However, in the event said Developer, or its designated representative, takes no action to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no lawsuit to enjoin the erection of said building or the making of such alterations has been commenced prior to substantial completion thereof; such approval will not be required and this provision will be deemed to have been fully complied with.

Section 5. Neither the Developer nor its successor as the Architecture Control Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

Section 6. Anything in this Declaration to the contrary notwithstanding, the Developer, and its successors and assigns, shall have and do hereby reserve the

right to determine the location of all buildings upon the respective lot or lots and the relocation of the top of the foundation thereof to the street level, except as may be prohibited by City ordinance.

Section 7. No residence shall be permitted on any lot which replaces the original residence and improvements constructed thereon unless such residence and improvements are at least of similar size and type as the residence destroyed or removed, subject, however, to the requirements and approval of the Developer as referred to herein.

Section 8. The Developer, and its successors and assigns, shall not publish any proprietary building plans submitted for review to the Architectural Control Committee, or the Developer and its successors and assigns, or use such building plans for construction of a residence elsewhere, without the express, written permission of the owner of the proprietary building plans.

## **ARTICLE VIII REQUIRED BUILDING MATERIALS**

Section 1. All driveways and sidewalks shall be constructed of concrete and no asphalt or asphaltic material shall be permitted.

Section 2. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other casualty, no building shall be permitted to remain in damaged condition longer than twelve (12) months. Any owner of the building in violation of this Section may, in the sole discretion, of the Developer, be assessed money damages for the Developer ranging from one (\$1.00) Dollar to One Hundred (\$100.00) Dollars per day for every day the violation continues. Said damages are liquidated damages since actual damages may be difficult, if not impossible, to ascertain.

Section 3. If the money damages due herein for any violation are not paid when due and upon written demand, it shall become a lien upon the real estate upon which the structure in violation of this section is located, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereinafter be placed upon said real estate.

Said liquidated damages shall be due thirty (30) days from the date of notification of the then record owner of any lot upon which the violation occurs, and if not paid within said thirty (30) day period, shall bear interest at the rate of fifteen percent (15%) per annum until paid. Any such interest accruing shall so be a lien upon the Developer in any court and such all liens may be enforced by the Clay County, Missouri Court having jurisdiction of suit for the enforcement of such items. Also, Developer shall be entitled to receive reasonable attorneys fees and costs for the filing of the lien and collection of money due.

## **ARTICLE IX ENTRANCE MARKERS**

No building shall be erected on the land area of less than one lot, as shown by the original subdivision plat of dedication, unless specific permission in writing has been granted by Developer, its successors and assigns; provided however, that this restriction shall not be construed as preventing the erection of a dwelling on more than one (1) lot where the owner thereof has purchased a tract consisting of more than one (1) lot.

## **ARTICLE X**

Any Home Owners Association shall be required to maintain the entrance markers for said subdivision.

## **ARTICLE XI OBSTRUCTION OF TRAFFIC**

No fence, wall, tree, hedge or shrub planting shall be maintained in such a manner as to obstruct site lines for vehicular traffic.

## **ARTICLE XII OUTBUILDING PROHIBITED**

Section 1. No building or other detached structures appurtenant to the residence, including but not limited to gazebos, arbors or trellises, may be erected or placed on any of the lots hereby restricted without the consent in writing of the Developer.



Section 2. Garages shall be attached or a part of the main residence and shall have at least a two (2) car capacity for all single family residences. No garage shall be converted for use as living area; no vehicular garage door shall be removed except to be replaced by another door similarly providing vehicular access. No parking of vehicles shall be permitted except on driveways to garages and no parking will be permitted anywhere else. No separate parking areas such as on slab, patios, driveways which do not lead to a garage, etc. are permitted, without prior approval of Developer.

### **ARTICLE XIII FENCES, WALLS, SHRUBS AND TREES**

Section 1. No fence, wall, shrub or hedge shall be erected, constructed, planted or maintained upon any of the lots hereby restricted without written approval as to material, design, shape, location, species and height by the Developer and said Developer shall have complete sole discretion with regard to such approval, provided, however, that said Developer not approve any fence, wall, hedge or shrub that violates Article XI hereof. The standard fence design shall be staggered security cedar not to exceed six (6) feet in height.

Section 2. All residences shall have at least one (1) shade tree in the front yard. All shade trees are to be nursery stock at least two (2) inches in diameter.

### **ARTICLE XIV SWIMMING POOLS**

No above ground swimming pool is permitted. Swimming pools allowed may be covered with flat storage covers to protect the pools from leaves, animals, etc., when the pools are operable. No pool enclosures commonly referred to as glass, plastic, aluminum, metal, or fiber enclosures or air structures, air bubbles or air covers shall be allowed at any time unless approved by the Developer. No pool enclosures, fences and appurtenant structures shall be permitted which the Developer deems unsightly or objectionable to other lot owners in the Addition. Any pool permitted shall be properly cleaned at all times, shall be attractively maintained, and shall be surrounded by a fence at least three (3) feet in height or in accordance with applicable City Code.

## **ARTICLE XV OIL TANKS AND FLAMMABLES PROHIBITED**

Section 1. No tank for the storage of fuel may be maintained above or below the surface of the ground on any of the lots hereby restricted, without the consent in writing of the Developer.

Section 2. No flammable, combustible or explosive fluid or chemical substance shall be kept in any borne or on any lot except such as are required for normal household use, or use with portable gas barbecue grill, and same shall be kept within the home, except for a portable gas barbecue grill.

Section 3. No lot owner shall permit or suffer anything to be done or kept in his or upon his lot which will increase the cost of insurance for other lot owners or as to their lots of the Association as to the common properties.

## **ARTICLE XVI POWER LINES**

No power, telephone, information service or cable TV distribution or service connection lines or any other lines of any sort for any purpose may be erected or maintained above the surface of the ground, on any of said lots.

## **ARTICLE XVII ELECTRICAL REQUIREMENTS**

All lots upon which a residence is constructed shall have and maintain in good operating condition a unit commonly known as an "electric heat pump" heating and cooling unit. In the alternative each said residence shall have "All Electric" service and shall not use gas for its heating and cooling requirements. Nothing in this restriction shall prohibit a residence with a heat pump from also having gas service for supplementary heating.

## **ARTICLE XVIII LIVESTOCK AND POULTRY**

No hogs, cows, horses, chickens, poultry, birds, livestock, pit hull dogs or

animals of any kind other than house pets (except house pets with vicious propensities) shall be brought onto or kept on the properties; and no more than two (2) dogs, cats or other such pets may be kept, bred or maintained for any commercial purpose or as a steady hobby of the owner. Pets shall be confined and not allowed to run at large.

## **ARTICLE XIX BILLBOARDS AND SIGNS**

Section 1. The construction or maintenance of signs, billboards, or advertising structures of any kind on any lot is prohibited; provided, however, that a temporary "for rent" or "for sale" sign may be placed on a lot if it does not exceed four (4) square feet in area. Notwithstanding the foregoing, the Developer or its designated successor, reserves the right to locate and construct signs of any size for temporary sales purposes during such period as sales are offered.

Section 2. Political signs shall only be allowed in Rock Creek within the reasonable restrictions of this section. Political signs (whether for a candidate, issue, or other matter) shall be allowed beginning one month prior to the scheduled election date and shall be removed within one week after said election date. No political sign shall exceed two square feet in area on a side and shall have no more than two sides. There shall be no more than three political signs per Lot. No political signs shall be placed on common areas of Rock Creek.

## **ARTICLE XX AUTOMOBILE REPAIRING AND STORAGE OF AUTOMOBILES, BOAT, TRAILERS, ETC.**

Section 1. No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any of the lots hereby restricted except that automotive repairs on a non-commercial basis and not for hire may be conducted only in any enclosed garage built on said premises and permitted under provisions of this restriction.

Section 2. No motor vehicles, including trucks, trailers, buses, campers, boats, recreation vehicles, motor homes, vans, boat trailers, trailers, motorcycles or other apparatus, except automobiles, shall be left or stored on said property except

in an enclosed garage, nor shall any of the aforesaid vehicles be parked on the street; provided however, one (1) recreational vehicle may be parked for a period not to exceed twenty- four (24) hours for the purpose of loading or unloading and shall be forthwith removed thereafter.

Section 3. No non-operating motor vehicles shall be kept on any lot except in an enclosed garage.

Section 4. Parking on the street is prohibited by the residents of Rock Creek. Parking of tractor trailers, semi-tractors, etc. is prohibited anywhere within the boundaries of the subdivision.

Section 5. Guest parking is permissible for no longer than forty-eight (48) hours. Residents' motor vehicles must at all times be parked on the driveway portions of said property.

Section 6. No person shall park a vehicle so as to obstruct or otherwise any resident's use of ingress or egress to any driveway.

## **ARTICLE XXI MISCELLANEOUS PROVISIONS**

Section 1. Antennas, satellite dish and solar panels: A satellite dish not larger than 30 inches in diameter may be placed on the roof of a residence so that it will not be conspicuous from the street. No other television or radio antenna, or solar panels shall be placed on the exterior of any residence or constructed separately unless approved by Developer.

Section 2. Clotheslines: No clothesline or apparatus for laundry shall be installed on any lot No garments, rugs, etc., shall be hung from the windows or doorways of the residence.

Section 3. Christmas lights: Christmas lights and/or decorations may not be erected or maintained on any of the lots hereby restricted except during the period of time from November 1 until January 15 of each calendar year. Any music or amplified sound shall not emanate from the Lot upon which said display is located.

Section 4. Dogs running at large: Dogs shall be confined. All dogs shall be confined within the property boundaries of the owner. No dog runs or dog pens shall be permitted.

Section 5. Basketball goals. Basketball goals may be placed on a free standing pole only.

Section 6. Mailboxes. No mailbox or standard therefore or replacement of some shall be erected without the prior written approval of the style, construction, and location being granted by the Developer.

Section 7. Trash, garbage and other materials: No burning of trash shall be allowed except during time periods as provided from time to time by the City Code of Smithville, Missouri. No storage of trash, garbage, refuse or other materials shall be permitted on any lot outside of the residence except that garbage and trash only may be set out the evening before the trash pick-up. The owner will remove any material that was set out for pick-up but was not picked up that day.

Section 8. Firewood: Firewood shall not be stored or stacked except in the rear of the residence and it must be stacked neatly.

Section 9. Sidewalks: Sidewalks required in front of all finished residences and the installation, maintenance and upkeep shall be the responsibility of the owner.

Section 10. Trampolines: No trampolines, rebound devices, or other athletic, exercise or play devices shall be kept on the outside of the premises except in the back yards.

Section 11. Hot Tubs: No outdoor hot tubs, spas or soaking tubs or the like will be permitted except after submission of plans, specifications, screening plans and location have been approved by the Developer.

Section 12. No business structure: No business structure shall be erected on any lot; however, limited home occupations shall be permitted subject to the following restrictions and limitations:

Prior to commencing any home occupation on any lot, the owner shall furnish to the Developer a written description of such home occupation. In the event the Developer, in its sole discretion, deems such home occupation to be non-detrimental to the properties or to other owners, written permission to conduct such home occupation shall be given to such Owner. Such written permission shall always be subject to revocation upon thirty (30) days written notice and the owner shall thereupon cease such home occupation. In no event will permission be granted for (i) wholesale or retail selling from inventory located or exhibited at the premises, (ii) rental of equipment or personal property stored or exhibited at the premises, (iii) medical, dental or related health care services, (iv) automobile or other vehicle repair services;

- a. The home occupation shall be incidental and subordinate to the principal use of the premises and not more than twenty-five percent (25%) of the floor area of any one floor of the living unit shall be utilized for a home occupation;
- b. All materials or equipment used in the home occupation shall be stored within an enclosed structure;
- c. No alteration of the exterior of the living unit shall be made which changes the character thereof as residence;
- d. No signs shall be permitted;
- e. At least one person occupying such living unit as his or her residence shall be engaged in such home occupation;
- f. No equipment shall be utilized that creates a nuisance due to noise or electrical interference;
- g. In no event shall fewer than two (2) off-street parking spaces be provided; and,
- h. The Developer may, at its sole discretion, assign to the Home Owners Association to be formed, the rights, duties and obligations under this Section of this Declaration.

Section 13. Care and appearance of premises: The structure and grounds on each lot shall be maintained in a neat and attractive manner. All sidewalks and driveways shall be kept clear of snow and ice, which shall be removed as soon as possible. The Developer shall have the right (upon ten (10) days notice to the Owner of the lot involved, setting forth the action intended to be taken, and if at the end of such time such action has not been taken by the owner), at the expense of the Owner, to remove snow or ice, trash or rubbish, and to cut grass, weeds and vegetation and to trim or prune, any hedge or other planting that in the opinion of the Developer to keep such property in neat and good order, all at the cost and expense of the Owner. Such costs and expenses incurred by the Developer shall be paid to the Developer upon demand and if not paid within ten (10) days thereof then they shall become a lien upon the property affected.

## **ARTICLE XXII YARD LIGHTS REQUIRED**

No residence upon any of the lots hereby restricted shall be occupied until an electric yard light shall have been erected and installed in the front of each residence. For purposes of the foregoing sentence, "yard light" shall not include solar powered lights. Yard lights shall be maintained in good working order.

## **ARTICLE XXIII UTILITY EASEMENTS**

Section 1. Easements. Any provision in this Declaration to the contrary notwithstanding, easements and rights-of-way are hereby expressly reserved to the Developer and, as appropriate and necessary, to the Association, their agents, designees, successors and assigns, in, on, over and under the easement area of each Lot and the Common Area as designated on the filed plat of the subdivision for the following purposes:

- a. the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments and appurtenant structures in connection with the transmission of electricity, telephone, traffic signals, fire alarm systems, communication systems, television cables and other utilities and

similar facilities;

- b. the erection, installation, construction and maintenance of storm water drains, land drains, public and private sewers, grinder pumps, pipelines for supplying water and heat, and for any other public or quasi-public facility, service or function, and appurtenant structures whether above ground or underground;
- c. slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by the Developer or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- d. landscape purposes, including the right to require Owners of Lots affected by the Landscape Easements set forth on the filed plat of the subdivision to plant and maintain such area in accordance with Rules and Regulations of the Home Owners' Association;

Section 2. Installation. Developer reserves unto itself, its assignees, successors and designees, the right, power and authority to direct and control, in cooperation with a public authority or any utility company which will install or own, operate and maintain the respective facilities, or both, which utilities and drainage services (as provided for herein) shall be installed in and occupy any specific easement, within any easements, no improvement, planting or other material or improvements shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the directional flow of drainage channels in the easement, or which may alter, obstruct or retard the flow of water through drainage channels within the easement areas, or which may change or prevent the intended use of any easement.

Section 3. Owner Rights and Obligations. Subject to all of the other restrictions contained in this Declaration, each Owner shall have the right to use the Easement Areas of his lot in any manner not inconsistent with the purposes for which such easement areas are reserved, and the area within any easement area and all improvements within the bounds of such easement areas shall be



maintained continuously by the Owner of the said Lot, except for such improvements for which a public authority or utility company is or may become responsible for maintenance. Notwithstanding anything herein to the contrary, each owner of a Lot covenants and agrees that, in cooperation with the Developer, each Owner shall execute all grants of easements, grants of right-of-way or any other similar grant or conveyance documentation required to be executed by an Owner in order to grant and convey to any public authority or utility company their assigns or lessees, the right, privilege and easement to lay, construct, maintain, alter, inspect, repair, replace, protect, relocate, change the size of, operate and remove all utility lines, service taps, distribution facilities, valves, regulators, pressure sewer systems (including the force mains, grinder pump units and appurtenances) and other equipment appurtenant to and necessary for providing any and all of the utility and drainage services as provided herein.

#### **ARTICLE XXIV AMENDMENTS**

Unless specifically prohibited herein, and except as to Supplemental Declaration, this Declaration may be amended from time to time by an instrument of agreement signed by the owners of the fee simple title to more than fifty percent (50%) of the front feet of all of said lots and which is duly acknowledged and filed for record in the office of the Recorder of Deeds of Clay County, Missouri; provided, however, that no amendment may be effected without the express written consent of the Developer until Developer has sold and conveyed all of the lots in the District.

#### **ARTICLE XXV ENFORCEMENT**

The Developer or any Owner shall have the right to enforce these covenants and restrictions by any proceeding at any law or in equity against person or persons violating or attempting to violate any covenant or restriction, either to restrain violation of the covenant or restriction or to recover damages against the applicable lot and Owner, and failure by the Developer or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Where litigation occurs to enforce these covenants and restrictions or to recover damages, the prevailing party in said litigation shall

be entitled to recover court costs and reasonable attorneys' fees, including court costs and reasonable attorneys' fees in any appellate proceeding.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has set its hand and seal to this document the date first above written.

A & I DEVELOPMENT, LLC

By: 

James Ingle, Managing Member

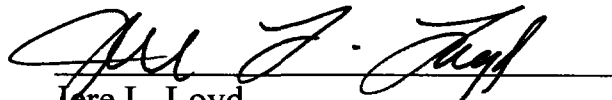
STATE OF MISSOURI )

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COUNTY OF BUCHANAN )

On this 21st day of September, 2012, before me, a Notary Public in and for said state, appeared James Ingle, Managing Member of A&I Development, LLC, known to me to be the person described herein, who executed the above and foregoing as his free act and deed and in his capacity so stated.

My Commission Expires:  
April 22, 2015

  
Jere L. Loyd

Notary Public

