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**GRAND KEY "RIVERSIDE"  
A PLANNED UNIT DEVELOPMENT  
FIRST AMENDMENT TO DECLARATION OF RIGHTS, COVENANTS,  
RESTRICTIONS, AFFIRMATIVE OBLIGATIONS AND CONDITIONS**

This First Amendment to the Declaration of Rights, Covenants, Restrictions, Affirmative Obligations and Conditions (the "Declaration") of Grand Key "Riverside" is made this 22 day of October, 1996, by GRAND KEY ASSOCIATES, INC., an Alabama corporation (the "Developer",

**W I T N E S S E T H**

WHEREAS, Developer is the developer of Grand Key "Riverside," a planned unit development (the "Development"), located on Alabama Highway No. 182 in the Municipality of Orange Beach in Baldwin County, Alabama, more particularly described in the Declaration made the 25th day of October, 1993 and recorded on the same date in Misc. Book 75, Pages 1488 et seq. of the records in the Office of the Judge of Probate of Baldwin County, Alabama; and

WHEREAS, Section 12.1 of the Declaration provides, among other things, that until the time when control of the Development is transferred to all Owners of Lots in the Development as provided in Section 13(d) of the Declaration, the Developer may, by written instrument duly recorded, at any time amend the Declaration by filing the same of record in the Probate Court of Baldwin County, Alabama, provided that no such amendment shall permit the improvement, use or occupancy of any Lot in the Development for other than residential purposes; and

WHEREAS, control of the Development has not been transferred to all Lot Owners, and remains in Developer; and

WHEREAS, pursuant to the rights reserved by it in the Declaration, as aforesaid, Developer wishes to amend the Declaration as hereinafter provided;

NOW, THEREFORE, Developer hereby amends the Declaration, as follows:

1. The following definition is hereby added as Subsection (e) of Section 1.1 of the Declaration:

"(e) "Dwelling Unit" means one or more rooms in the same structure, connected together and constituting a separate, independent housekeeping unit for residential occupancy and with

facilities for sleeping and cooking".

Former Subsections (e) and (f) of Section 1.1 of the Declaration are hereby renumbered as Subsections (f) and (g) thereof, respectively.

The following definition is hereby added as Subsection (h) of Section 1.1 of the Declaration:

"(h) "Person" means and includes any individual or group or combination of individuals, corporation, partnership, association, trust, estate or other legal entity".

Former Subsections (g) and (h) of Section 1.1 of the Declaration are hereby renumbered as Subsections (i) and (j) thereof, respectively.

The following definition is hereby added as Subsection (k) of Section 1.1 of the Declaration:

"(k) "Time-Sharing Plan" means any arrangement, plan, or similar device, whether by deed, agreement between owners, membership agreement, lease, use agreement or other means, whereby the purchaser acquires the right to occupy a property or any of several properties during separated time periods over a period of more than one year, including renewal options, whether or not coupled with an undivided fee simple interest in the property or properties".

2. Subsection (e) of Section 3.13 of the Declaration is hereby amended to read in its entirety as follows:

"(e) Upon the termination of the period of Developer control, the Owners shall elect a Board of a least three members, all of whom shall be Owners".

3. Former Section 4.5 of the Declaration is hereby renumbered so as to become Section 4.4 (the number "4.4" having been inadvertently omitted in numbering the Sections of Article IV of the Declaration), and all references to former Section 4.5 are hereby changed to Section 4.4 wherever appearing in the Declaration.

4. Subsections (c) and (d) of Section 4.3 of the Declaration [in which Developer reserves the right to construct a pier or marina (which Developer has since constructed) in Ole River along the waterfront of the Development and other rights] are amended to read in their entirety as follows:

"(c) The right to construct a marina in Ole River adjacent to the Development for use by the Members and their guests and other persons authorized by the Developer to use the marina

pursuant to Section 4.4 as hereby amended (formerly Section 4.5), and to number the boat slips and designate the boat slip or boat slips that may be used by each Member and each other person so authorized by the Developer. One (1) boat slip (a "Member boat slip") shall be reserved for use by the Owner or Owners of each Lot (regardless of the number of persons owning the Lot). The reservation of a Member boat slip for use by the Owner or Owners of any Lot shall be a reservation of and assignment to use the boat slip, but shall not convey title to the boat slip to the Lot Owner or Owners. Such reservation and assignment shall run with the land (the Lot) and shall automatically be transferred to subsequent grantees of the Lot, but shall not be otherwise assignable by the Owner or Owners of the Lot. The Member boat slips currently reserved for use by the present Owners of Lots are as follows:

<u>Lot No.</u>	<u>Boat Slip No.</u>
1	11
2	10
7	37
9	34
10	4
11	40
12	3
13	5
14	6
18	15
19	8
20	14
21	21
22	7
23	1
25	30
26	31
27	9

The Member boat slip assigned to each Lot first sold by the Developer in the future may be specified in the deed to the Lot or in a separate instrument. An amendment to this Declaration shall not be necessary to perfect such reservation and assignment.

All of the boat slips not reserved for the Members ("Non-Member boat slips") shall be reserved for use by other persons (including Members) authorized by the Developer to use the Non-Member boat slips pursuant to Section 4.4 as hereby amended (formerly Section 4.5). The Developer reserves the right to change the designation of the boat slips reserved for the Members and Non-Members, provided, however, that no such change shall be made as to a Member boat slip then reserved for a Member (unless such Member shall consent to such change). The Developer further reserves the right to add to the marina and to increase or decrease the number, size and location of the boat slips (other than the size or

location of a Member boat slip then assigned to a Member) so long as the location of such addition to the marina does not include the permanent placement of any structure within the projected side lines (extended into Ole River) of any waterfront Lot (other than a Lot owned by the Developer) that substantially interferes with the Lot Owner's right of use and enjoyment of such Lot. The marina and the rights of use appurtenant thereto shall be subject to all applicable laws and the limitations and provisions of all permits issued by the U. S. Corps of Engineers' and other governmental agencies.

"(d) The right to,

(i) add real estate to the Development, including, without limitation, additions to the pier or marina;

(ii) to create Lots or Common Elements within or appurtenant to the Development or any addition thereto;

(iii) to subdivide or combine Lots or convert Lots into Common Elements;

(iv) to withdraw real estate from the Development or any addition thereto; and

(v) to sell, lease or otherwise dispose of in time shares pursuant to a Time-Sharing Plan all or any of the Lots owned by Developer, together with the improvements thereon".

5. The last two paragraphs of Section 4.3 of the Declaration are hereby amended to read in their entirety as follows:

"All of the above rights and interests reserved by the Developer may be exercised by the Developer without the consent or concurrence of the Association or any Member. If the Developer exercises all or any of its rights reserved under this Section, the Developer shall prepare, execute, and record an amendment to this Declaration, if required, reallocating all allocated interests among all Lots in any reasonable manner prescribed by the Developer which does not discriminate in favor of Lots owned by the Developer or an affiliate of the Developer.

"At such time as the Developer no longer owns any Lot or holds any interest in any Lot, then, and except as provided in Section 4.5 as hereby amended, the rights hereby reserved to the Developer shall pass to the Association without any further act or documentation".

6. Section 4.4 of the Declaration (formerly Section 4.5) is amended to read in its entirety as follows:

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"4.4 Use of Common Elements by Other Persons. The Developer reserves unto itself, its successors and assigns, the right to grant to persons who are not Members of the Association, for the use and benefit of themselves and their guests, from time to time and for such period of time as the Developer, in its sole discretion, shall determine on a case by case basis, the right to use and enjoy all or any of the Recreational Facilities, including, without limitation, the right to use a Non-Member boat slip, and for ingress and egress to and from the marina and the other Recreational Facilities over and across the Common Elements, and to grant to Members the right to use Non-Member boat slips upon the same terms and conditions (other than payment of the assessments provided for in this Section) as shall apply to a Non-Member authorized by Developer to use a Non-Member boat slip. If any such right is granted, each person authorized by the Developer to use the Recreational Facilities (excluding each Member authorized to use any Non-Member boat slip) shall pay therefor his prorata share of any and all regular assessments and "Special Recreational Facilities Assessments" (as hereinafter defined) made by the Association, upon the same terms and conditions as an Owner, and shall be subject to the same rights of suspension and termination of the use and enjoyment thereof upon non-payment as an Owner. The Developer shall not be subject to such assessments by virtue of the rights herein reserved by it (or for any other reason). Such assessments shall apply only to persons who are not Members (each a "Non-Member") to whom the Developer grants the right to use and enjoy any or all of the Recreational Facilities (including a Non-Member boat slip). As used herein, "Special Recreational Facilities Assessments" means any special assessment made by the Association against the Members for the maintenance, repair or improvement of the Recreational Facilities. If a special assessment is made by the Association for the maintenance, repair or improvement of the Common Elements, only the portion thereof allocable to the Recreational Facilities shall be included as a Special Recreational Facilities Assessment for the purposes of this Section.

"For the purposes of this Section, the prorata share of the assessment of each Non-Member authorized by the Developer to use all or any part of the Recreational Facilities (including a Non-Member boat slip) (each such Non-Member being hereinafter referred to as an "Authorized Person"), shall be an amount equal to fifty (50%) percent of the monthly or quarterly installment of the regular annual assessment made by the Association against an Owner, plus fifty (50%) percent of each Special Recreational Facilities Assessment made by the Association against an Owner, prorated in each case for the period during which such Non-Member is an Authorized Person. Such assessments shall be the same whether any such Authorized Person has the right to use all or only part of the Recreational Facilities (including a Non-Member boat slip). If any Authorized Person liable for any such assessment ceases using the boat slip or other Recreational Facilities in respect of which such assessment is made, and so notifies the Secretary in writing of his

discontinuance of the use thereof, he shall be entitled to a refund of the unearned portion of such assessment at the time of his discontinuance of such use. Once an Authorized Person discontinues his use of any Non-Member boat slip or other Recreational Facilities that he is authorized to use pursuant to this Section, he shall not have the right to later resume the use thereof unless such use is then authorized by the Developer. If any Authorized Person discontinues his use of any Non-Member boat slip or any other Recreational Facilities that he is authorized to use, and thereby receives a refund of the unearned portion of any Special Recreational Facilities Assessment paid by him, he cannot again become an Authorized Person unless he first pays to the Association the full amount of such assessment whether or not then due (excluding the portion thereof previously paid and not refunded), with interest at the rate specified in Section 5.9, unless payment thereof is waived by the Board. If any Non-Member is authorized by the Developer to use more than one Non-Member boat slip, he shall be treated as a separate Authorized Person for each Non-Member boat slip assigned to him, and his prorata share of the regular monthly or quarterly assessment and Special Recreational Facilities Assessments due by him as an Authorized Person shall be multiplied by the number of Non-Member boat slips assigned to him by the Developer pursuant to this Section.

8. The following new Section is hereby to Article IV as Section 4.5:

"4.5 All rights reserved by the Developer in Sections 4.3 and 4.4 as hereby amended (formerly Sections 4.3 and 4.5) are reserved and shall remain in effect for as long as these covenants, as amended from time to time, shall remain in effect (but not beyond the maximum period permitted by law), at which time such rights shall pass to the Association without any further act or determination".

9. Article VI of the Declaration is hereby amended to read in its entirety as follows:

**"ARTICLE VI  
ALLOWED USE**

"6.1 Single-Family Residential Use. All lots shall be used for single-family residential purposes only. The terms "single-family residential purposes," "single-family residential use" and similar terms as used in this Declaration refer to the character of the dwellings in the Development and not to the number of persons that may own or occupy the main dwelling or any guest house on any lot; provided, however, that no such structure shall contain more than one Dwelling Unit. Nothing contained in this Declaration shall restrict any Owner (including Developer as long as it is an Owner) from renting his property to other persons for residential purposes, whether on a long-term or short-term basis, or from

selling, leasing or otherwise disposing of his property in time shares pursuant to a Time-Sharing Plan".

10. Article VII of the Declaration is amended to read in its entirety as follows:

**"ARTICLE VII  
SETHACK RESTRICTIONS**

"7.1 Location of Buildings. All buildings and other structures on each Lot must be located so as to comply with all building setback lines as shown on the recorded plat of the Development as from time to time amended. For the purposes of these restrictions, the rear setback line of each Lot on Ole River shall be measured from the South Margin of Ole River, and the exterior decks and steps of a building shall not be considered as part of the building".

11. Subsection (b) of Section 9.1 of the Declaration is hereby amended to read in its entirety as follows:

"(b) No flat, duplex, apartment or other structure containing more than one Dwelling Unit, though intended for residential use, may be erected on any Lot".

12. Article XII of the Declaration is hereby amended to read in its entirety as follows:

**"ARTICLE XII  
ADDITIONS AND AMENDMENTS**

"12.1 Developer reserves the right to add one or more additional phases or units to the Development, which, if added, shall be subject to these covenants and restrictions, and all amendments thereto, unless different covenants and restrictions applicable to any such additional phase are adopted by the Developer and recorded in the Probate Court of Baldwin County, Alabama at such time. Until the time when control of the Development is transferred to all Owners as provided in Section 3.13(d) Developer may, by written instrument duly recorded, at any time amend these covenants and restrictions, and any amendments thereto, by filing the same of record in the Probate Court of Baldwin County, Alabama, provided, however, that no such amendment shall (a) permit the improvement, use or occupancy of any Lot for other than residential purposes, (b) restrict the rights of any Owner (including Developer as long as it is an Owner) under Section 6.1 as hereby amended, (c) restrict the rights of Developer or any Member or Non-Member under Sections 4.3(c) or 4.4 as hereby amended, or (d) restrict the rights of Developer reserved by or granted to Developer elsewhere in this Declaration, provided, however, that notwithstanding the foregoing or termination of the period of Developer control, all rights reserved by Developer in

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Sections 4.3 and 4.4 as hereby amended shall continue and may be exercised by Developer for as long as these covenants, as amended from time to time, shall remain in effect (but not beyond the maximum period permitted by law). Subject to the foregoing, after control of the Development is transferred to all Owners as provided in Section 3.13(d) the Owners (including Developer if it is still an Owner) of a majority of the total Lots in, or planned for, the Development (including all planned additional phases) may, by written instrument duly recorded, as aforesaid, exercise the foregoing right of amendment subject to the foregoing restrictions".

13. Except as hereby amended, the Declaration shall remain unchanged unless subsequently amended in the manner provided therein.

14. All provisions of this First Amendment to the Declaration shall be severable.

IN WITNESS WHEREOF, Grand Key Associates, Inc., an Alabama corporation, has cause these presents to be executed by its duly authorized officer hereunto appearing, effective the date first above written.

GRAND KEY ASSOCIATES, INC.,  
an Alabama corporation

By: *F. Rutherford Smith, Jr.*  
As Its President

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STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned Notary Public in and for said State and County, do hereby certify that Rutherford Smith, whose name as President of GRAND KEY ASSOCIATES, INC., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily for and as the act of said corporation, on the day the same bears date.

Given under my hand and notarial seal on this, the 22<sup>nd</sup> day of October, 1996.

*James M. Elander*  
Notary Public

My Commission Expires 5/19/99



This Instrument Was Prepared By:

THOMAS E. TWITTY, JR.  
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