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RECORDER OF DEEDS

**DECLARATION OF CONDITIONS AND RESTRICTIONS
FOR PLAT OF RIVER KEY SUBDIVISION, PLAT NO. 2
WHICH PLAT OF SUBDIVISION IS RECORDED
IN BOOK 45 OF PLATS ON PAGE 53**

The undersigned, RIVER KEY CONSTRUCTION, INC. as Declarant and Developer (Developer), being the owner of Plat No. 1 and Plat No. 2 of River Key Subdivision, situated in Winnebago County, Illinois, being a Subdivision in part of the SE 1/4 of Section 24, T45N, R1E, of the 3rd P.M., Township 45 North, Range 2 East of the Third Principal Meridian, the Plat of which Subdivision is recorded in Book 45 of Plats on page 53 in the Recorder's Office of Winnebago County, Illinois, pursuant to a general plan for the development of such Subdivision, and to promote the sale of the lots therein, hereby acknowledges that it holds the premises subject to the following conditions and restrictions:

1. COVENANTS AND RESTRICTIONS

- a. Lots Sixty- Three through One Hundred and Five (63-105) of such Subdivision shall be used in accordance with the R-1 Residential District Zoning Ordinance of the Village of Machesney Park in force on the date hereof.
- b. No lot shall be re-subdivided except that Developer before an initial sale or owners of adjacent lots may re-subdivide with the approval of the Village of Machesney Park.
- c. Only one single-family residential dwelling with a minimum three-car attached garage shall be placed on any lot in the subdivision.
- d. No single family residence shall be constructed on a lot that does not meet the following minimum construction requirements:

- (1) Countryside Lots 85 through 105:
 - Single story dwelling - 1450 square feet
 - Tri-level dwelling - 1500 square feet
 - Multi-story dwelling - 1100 square feet on the ground floor
- (2) Channel Lots 63 through 84:
 - Single story dwelling - 1700 square feet
 - Tri-level dwelling - 1700 square feet
 - Multi-story dwelling - 1200 square feet on the ground floor

The square footage requirement shall not include attached garages or open porches.

e. No building shall be erected or altered upon any building lot in this Subdivision until the building plans and a plot plan showing the location of the building on the lot and the building design have been submitted to and approved by the Developer, River Key Construction, Inc., its designee, successor or assign. Approval shall be the exclusive right and in the complete discretion of the Developer to ensure that the subdivision is developed in conformity with the general harmony, topography, and development of the subdivision. The Developer may grant a variance from the conditions and restrictions if in its sole and exclusive discretion such variance is reasonable and will be in conformity with the general plan for the development of the subdivision. If the Developer fails to approve or disapprove such plans within thirty (30) days after such plans have been submitted, approval shall be waived but in no event shall any other restriction contained herein be deemed to be waived.

f. No structure shall be occupied as a residence until completed including the exterior. Construction must be completed within one-year of commencement. Driveways shall be hard-surfaced and completed within three (3) months of the issuance of an occupancy permit. Landscaping shall be completed within six (6) months of occupancy. All lot owners shall install silt fences along the rear and front lot lines until a viable grass turf has been established to prevent soil erosion.

g. Any residence erected shall comply with the building setback lines and utility easements as indicated on the recorded plat and side lot line requirements of the Machesney Park Zoning Ordinance.

h. No boat, trailer, commercial vehicle, recreational vehicle, motor home, or inoperable vehicle shall be parked or stored on the premises unless in an attached garage. No accessory buildings may be placed on the premises without obtaining approval from the Developer in accordance with subparagraph e above.

i. No fence shall be erected between the street and the front of the residence. No chain link fences shall be erected on the premises. Any fence erected shall not exceed five (5) feet in height and shall be approved as to design and location by the Developer prior to its erection. No above ground swimming pools are permitted on any lot.

j. Easements for the installation and maintenance of drainage facilities and public utilities are reserved as shown on the recorded plat. Within these easements, no structure shall be erected which may interfere with the installation and maintenance of public utilities. No structure or landscaping shall be erected or installed which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. No owner shall alter the grade of any lot so as to interfere with the rate or direction of flow of water from any swales, ditches or drainage areas. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which the public authority or public utility company is responsible.

k. Each lot shall be maintained by the owner thereof with weeds to be cut at least twice each summer. No trash, garbage, or unsightly material shall be allowed to accumulate on any lot.

l. Household pets may be kept on the premises subject to such rules and regulations as may be adopted by the Association; provided, however, they shall not be kept, bred or maintained for commercial purposes.

m. No piers, docks, or other improvements for launching, securing or landing boats shall be constructed or installed except at the locations designated by the Developer. Developer shall approve the size and design of all such improvements before installation. All piers or docks shall be stored in areas designated by Developer and not on the owner's lot.

n. After March 1, 2030, responsibility for approval of plans pursuant to subparagraph e above and other matters requiring Developer's approval shall be the responsibility of the Board of Directors of the Owners Association as hereinafter provided for unless Developer elects to transfer such responsibility prior to that date.

o. No owner of a lot abutting the channel shall alter the grade of the lot or construct any improvements on the lot which adversely impacts other lots or the channel. The Developer or the Owners Association shall be entitled to dredge the channel at any time in order to maintain the shoreline in accordance with the line designated on the recorded plat. A 20 foot easement has been reserved against lots 63 - 84 for the purpose of maintaining and dredging the channel, such easement being designated on the plat of subdivision. No lot owner shall restrict that easement from usage of its intended purpose.

p. Neither the Developer nor the Owners Association shall be liable for any damage to channel or shoreline lots caused by erosion. Any shoreline owner materially affected by erosion shall be entitled to submit a shoreline restoration proposal to the Developer or Owners Association. Such proposal shall include engineered drawings supporting the proposal together with a professional opinion that such restoration shall not adversely impact any other shore lot. All restoration expenses shall be the responsibility of the lot owner or owners whose shoreline property is directly affected by such restoration.

q. No structure shall be constructed within the 100 year floodway (regulatory floodway) as shown on the recorded plat.

r. Each channel lot owner shall be responsible for the reconstruction and maintenance of the existing sea wall along the length of the lot's shoreline. All lot owners must comply with the development requirements of state and federal environmental agencies and specifically must comply with U.S. Army Corps of Engineers permit. (See Exhibit A for a copy of the U.S. Army Corps of Engineers permit which Exhibit is incorporated herein by reference.)

2. RIVER KEY OWNERS ASSOCIATION

a. Each lot owner shall be a member of the River Key Owners Association entitled to one (1) vote per lot. The Developer shall appoint the first Board of Directors which Board shall serve until the first meeting of the unit owners. Thereafter, the Association shall meet annually prior to the first day of March of each year to elect a Board of Directors of not less than three nor more than five members one of which must be an owner of a channel lot. The Board of Directors shall elect three officers to include a President, Secretary, and Treasurer, with the Officers and the Board of Directors to serve a one (1) year term expiring as of the next annual meeting. Written notice of the Association's annual meeting and any special meeting shall be delivered to owners not less than at least ten days prior to the meeting.

b. The Association shall hold title to the Channel (Out Lot "A") and to Lot 45 Plat 1 and shall be responsible for the enforcement of covenants and restrictions as contained herein and for the management and maintenance, including construction of boat launch and additional improvements on Lot 45 Plat 1, being the lot designated for the private use of the lot owners. The Association shall be responsible for the maintenance of the subdivision sign located at the entrance to the subdivision and the boat storage facility.

c. Assessments.

(1) Each lot owner by the acceptance and recording of a deed to such lot, agrees to be bound by the terms and provisions of this Declaration and agrees to pay an annual assessment to cover the cost of taxes, insurance, and maintenance and repair of Lot 45 Plat 1 including the boat launch, the subdivision sign and boat storage facility. Each lot owner further agrees to pay any special assessment established by the Association.

(2) In addition to the obligations set forth above, owners of lots abutting the channel (Lots 9-32 Plat 1 and Lots 63-84 Plat 2) shall be responsible for the maintenance and dredging of the channel to Rock River which shall be used for the private benefit of the owners of those designated lots, their immediate family, guests and invitees. Each designated lot owner agrees to pay an additional annual assessment which shall be held separate and apart from the Association's general fund described in subparagraph one above for the exclusive and express purpose of maintaining and dredging the channel. All channel lot owners shall belong to a standing Channel Committee of the Association which shall have the exclusive authority to direct the Board of Directors on matters solely pertaining to expenditures of funds for channel maintenance and dredging. All channel lot owners further agree to pay any special assessment established by the Association for the sole purpose of maintaining and dredging the channel. The Channel Committee may also suggest to the Board reasonable rules for the use of the channel which shall be applicable to all boats using the channel access to Rock River. Such rules shall include but shall not be limited to a "no wake" rule.

d. Lot 45 Plat 1 shall be used only for the private benefit of the owners of lots in River Key Subdivision, their immediate family and invited guests accompanied by a lot owner or member of the lot owner's immediate family. Rules and regulations with regard to usage of Lot 45 Plat 1 shall be established by the Board of Directors. Developer, at its option, shall upon the sale of all of the lots be entitled to the same privileges as a lot owner with regard to the use of Lot 45 Plat 1 provided it pays the same annual assessment as an owner of a lot other than Lots 9-32 Plat 1 and Lots 63-85 Plat 2 (channel lots).

e. Reasonable regulations regarding the usage of the channel, Lot 45 Plat 1, the storage of boats and trailers and piers and docks may be made and amended from time to time by the Board. Copies of such regulations and amendments thereto shall be furnished by the Board to all Owners.

f. The Board of Directors shall adopt a budget prior to the annual meeting and copies of the budget shall be included with the meeting notice to the membership. The annual assessment for each calendar year shall be determined at the annual meeting and shall be payable on or before May 1 of each year; provided, however upon the initial sale of the lots, the annual general assessment shall be in the sum of \$100.00 and the special channel assessment shall be an additional \$50.00 payable May 1 following the date of closing.

g. Management and control of the Association shall be the responsibility of the Developer until the first annual meeting of the Association and the initial assessments shall be payable to the Developer for the benefit of the Association. The Developer shall not be responsible for the payment of an annual assessment on any lots owned by the Developer until at least thirty (30) lots in Plat 1, twenty-two (22) lots in Plat 2 and 51% of lots in subsequent Plats are sold by the Developer. Upon the sale of thirty (30) lots in Plat 1, twenty-two (22) lots in Plat 2 and 51% of lots in the subsequent Plats or sooner, at the election of the Developer, the Developer shall convey Lot 45 Plat 1 and the channel to the Association. The Association shall establish a reserve for capital improvements and major repairs payable as a part of the annual assessment.

h. A majority of lot owners present and voting at any annual or special meeting shall elect officers and directors and establish the annual assessment. A two-thirds majority of those lot owners voting at any such meeting shall be required to approve a special assessment. Written proxies directed to an officer of the Association may be voted by such officer pursuant to the direction or authority granted by the owner granting such option or upon the officers direction provided the proxy contains such authorization.

i. There shall be a late payment penalty of \$25.00 or more as determined by the Board of Directors in the event the annual assessment is not received within 30 days of its due date. A lien shall arise against any lot on which assessments are delinquent.

j. Legal expenses and court costs incurred in enforcing the covenants and restrictions contained in this document and in collecting amounts due and owing for annual or special assessments or in filing liens or in enforcing the rules and regulations adopted by the Association shall be payable by the lot owner in default or in violation of the provisions of this Declaration.

k. Developer, after the recording of this Declaration, may cause to be incorporated under the laws of the State of Illinois a not-for-profit corporation.

3. **INDEMNIFICATION.** The members of the Board or of the Association shall not be liable to the lot owners for any mistake of judgment or any acts or omissions made in good faith as such members or officers. Such members or officers shall have no personal liability with respect to any contract made by them on behalf of the lot owners or the Association. Nor shall such members or officers be held personally liable with respect to any claims and demands, including reasonable attorneys fees and costs arising out of the maintenance of the channel or its usage by channel lot owners, their immediate family, guests or invitees. Each agreement made by such members or officers on behalf of the lot owners of the Association shall be executed by such officers or the managing agent, as the case may be, of the Association or for the Board. Developer shall likewise be indemnified and held harmless by the lot owners for its acts while it is responsible for the management and control of the Association.

4. **AMENDMENT.** The provisions of this Declaration except for the provisions of Paragraph 1 may be amended by an instrument in writing setting forth such amendment approved by at least 2/3 of the lot owners in all recorded Plats. Prior to the sale of all of the lots of Plat 1, Plat 2 and all subsequent Plats the Developer reserves the right to make such amendments as are not materially detrimental to owners. Any such amendment shall become effective upon recording the amendment in the Office of the Winnebago County Recorder of Deeds.

5. **INITIAL RIGHTS OF DEVELOPER.** Until such time as Developer has consummated the sale of all of the lots in Plat 1, Plat 2 and all lots in subsequent Plats of the Subdivision the Developer shall have all of the rights, powers and duties of the Board of Directors and the Association unless Developer elects to transfer the administration of the Association prior to that date.

6. **ASSIGNMENT.** The rights, privileges and powers retained by the Developer shall be assignable to and shall inure to the benefit of its designee successor or assign.

7. **COVENANTS RUN WITH THE LAND.** The provisions of this Declaration shall be construed as covenants running with the land and shall be binding on all grantees and heirs, devisees, successors and assigns until March 1, 2030 after which they shall be automatically renewed for successive 20 year terms unless terminated by a vote of two-thirds of the lot owners.

8. **ENFORCEMENT.** In the event of violation of any of the provisions contained in this

Declaration, the Developer or any person holding record title to any lot in the Subdivision or the Association may maintain an action to enforce the provisions hereof.

9. PARTIAL INVALIDITY. Invalidation of any of these conditions and restrictions by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

Dated this 10th day of JUNE, 2005.

RIVER KEY CONSTRUCTION, INC.

By: 

Paul Stabaugh

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