

**DECLARATION OF ALABAMA BEACH MOUSE PROTECTIVE COVENANTS
FOR THE DUNES**

This Declaration of Alabama Beach Mouse Protective Covenants (hereinafter referred to as "these Alabama Beach Mouse Covenants"), is made and declared as the 27 day of June, 1996, by SAGE DEVELOPMENT, L.L.C., an Alabama limited liability company ("Declarant").

RECITALS:

A. Declarant is the Owner of the Property, as described in Section 1.30 below.

B. Declarant desires to develop, improve, lease and sell the Property for residential housing purposes subject to these Alabama Beach Mouse Covenants in order to protect the value and desirability of the Property, to have a flexible and reasonable method for the administration and maintenance of the Property and to comply with certain governmental requirements.

C. Declarant has heretofore caused the Master Association, as defined in Section 1.20 below to be formed as an Alabama nonprofit corporation for the purpose of (among other things) making the Alabama Beach Mouse Assessments, as defined in Section 1.3 below, and otherwise taking all action that the Master Association is authorized to undertake hereunder.

D. The Property is located on the Fort Morgan Peninsula and is adjacent to the Gulf of Mexico.

E. The Property encompasses pristine beach areas whose ecosystem requires particular protection in order to allow it to be developed in a way that preserves and protects the existing ecosystem and its natural beauty.

F. A portion of the Property (the "Critical Habitat", as defined in Section 1.7 below) is also designated critical habitat for the Alabama Beach Mouse ("*Peromyscus polinotus annobates*") a species that has been designated as an endangered species by the United States of America. The designation as an endangered species is set forth in the Title 50 Code of Federal Regulations Section 17.11(h) and the establishment of a critical habitat is set forth in Title 50 Code of Federal Regulations Section 17.95.

G. In order to engage in construction and development activities on the Property, Declarant applied for and received a permit from the Department of the Interior, U.S. Fish & Wildlife Service, under the authority of Title 16 U.S.C. Section 1539 (a)(1)(b) and the Regulations promulgated thereunder set forth at Title 50 Code of Federal Regulations Section 17.22 (the "Permit"), a copy of which is attached hereto as Exhibit B that permits Declarant and its authorized agents, pursuant to the terms and conditions of the Permit, to take the Alabama Beach Mouse incidental to construction of a Planned Unit Development on the Property.

H. As a condition to the issuance of the Permit, Declarant has agreed and is required to adopt the provisions of the habitat conservation plan (the "Plan") developed by Declarant in its application for the Permit and make them binding upon the Owners.

NOW, THEREFORE, subject to the conditions and limitations described below, Declarant does hereby proclaim that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject

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located on any portion of the Development (other than such areas located solely within the boundary lines of any Lot or Dwelling), (f) all utility lines, pipes, ducts, conduits, equipment, machinery, and other apparatus and appurtenances that are located in or serve any portion of the Common Areas, (g) all parks, nature trails, recreational facilities and areas and (h) all easements and easement areas within the Development (other than such areas located solely within the boundary lines of any Lot or Dwelling) and any other areas or Improvements on or within the Development that are designated as Common Areas by Declarant or the Master Association Board from time to time. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment thereof or any other rights, licenses or benefits therein.

SECTION 1.6 Covenants. The term "Covenants" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions of The Dunes dated of even date herewith and recorded in the Probate Office of Baldwin County, Alabama in Miscellaneous Book 89, Page 51, as the same maybe amended from time to time.

SECTION 1.7 Critical Habitat. The term "Critical Habitat" shall mean and refer to that certain real property situated in Baldwin County, Alabama, which is more particularly described on Exhibit C attached hereto and incorporated herein by reference and owned by Declarant that has been designated as Critical Habitat for the Alabama Beach Mouse in Title 50 Code of Federal Regulations Section 17.95.

SECTION 1.8 Critical Habitat Lots. The term "Critical Habitat Lots" or singularly a "Critical Habitat Lot" shall mean and refer to those Lots (or a Lot) a portion of which is located in the Critical Habitat.

SECTION 1.9 Declarant. The term "Declarant" shall mean Sage Development, L.L.C., an Alabama limited liability company, its successors and/or assigns.

SECTION 1.10 Dune Drive. The term "Dune Drive" shall mean and refer to those certain roadways situated within the Property, as generally depicted on the master plan of the Development, and all improvements and alterations thereto that may be made to such roadways from time to time.

SECTION 1.11 Dwelling. The term "Dwelling" shall mean and refer to any improved Lot intended for use for residential housing, including, but not limited to, single family detached houses, duplexes, townhomes and residential units in a condominium. Wherever any of the phrases "Lot or Dwelling", "Lots or Dwellings", "Lot and Dwelling" or "Lots and Dwellings" appear herein, the term "Dwelling" or "Dwellings" in those instances shall include the Lot or Lots upon which such Dwelling or Dwellings are constructed.

SECTION 1.12 FWS. The term "FWS" shall mean and refer to the Department of the Interior, U.S. Fish and Wildlife Service, an instrumentality of the government of the United States of America.

SECTION 1.13 Governmental Authority. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

SECTION 1.14 House Cat. The term "House Cat" shall mean and refer to *Felis domesticus*.

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SECTION 1.21 Master Association Board. The term "Master Association Board" shall mean and refer to as the Board of Directors of the Master Association and their duly elected successors as may be provided in the Master Association Articles of Incorporation and the Master Association Bylaws.

SECTION 1.22 Master Association Bylaws. The term "Master Association Bylaws" shall mean and refer to the bylaws of the Master Association, as the same may be amended from time to time.

SECTION 1.23 Member. The term "Member" shall mean and refer to a member of the Master Association as determined by the articles of incorporation of the Master Association and the Master Association Bylaws.

SECTION 1.24 Mortgage. The term "Mortgage" shall mean and refer to any mortgage, deed of trust, or other security device encumbering a Lot or Dwelling or any interest therein and that shall have been duly and properly recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

SECTION 1.25 Mortgages. The term "Mortgages" shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgages.

SECTION 1.26 Occupant. The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling within the Property. All actions or omission of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

SECTION 1.27 Owner. The term "Owner" shall mean and refer to the recorded Owner, including Declarant, of fee simple title to any Lot or Dwelling, whether a corporate, partnership, proprietorship, association, or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of lease, contract, installment contract or other agreement.

SECTION 1.28 Permit. The term "Permit" shall mean and refer to that certain permit defined in Recital G above.

SECTION 1.29 Plan. The term "Plan" shall mean and refer to that habitat conservation plan developed by Declarant and submitted to FWS in connection with its application for the Permit, as approved in said Permit.

SECTION 1.30 Property. The term "Property" shall mean and refer to that certain real property situated in Baldwin County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to these Alabama Beach Mouse Covenants pursuant to Section 2.2 hereof.

SECTION 1.31 Rules and Regulations. The term "Rules and Regulations" shall mean and refer to the rules and regulations adopted by the Master Association pursuant to the terms of these Alabama Beach Mouse Covenants for the purpose of expanding, clarifying, modifying, imposing additional or

**ARTICLE 3
EASEMENTS**

SECTION 3.1 Grant of Access Easements for Monitoring Compliance with Covenants. Declarant does hereby establish and reserve for itself and the Master Association, their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of providing ingress to and egress from each Lot and Dwelling to (a) conduct the trapping requirements set forth in Section 4.2(b) below, (b) inspect each Lot and Dwelling and any Improvements thereon to determine compliance with the provision of these Alabama Beach Mouse Covenants, and (c) perform the respective duties of Declarant and the Master Association hereunder, including, without limitation, taking any action required or permitted to be taken by Declarant and/or the Master Association pursuant to any of the terms or provisions of these Alabama Beach Mouse Covenants, the Plan, the Rules and Regulations or the Master Association Bylaws; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours, and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot or Dwelling directly affected thereby.

SECTION 3.2 Easement for Access to Beach. (a) Declarant does hereby establish and reserve for itself, the Master Association, and their respective successors and assigns, and Declarant does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of a permanent and perpetual easement appurtenant over, across, through and upon a strip of land 18.0 feet in width, the location of which is or will be set forth on the recorded plat of The Dunes subdivision, in common with Declarant, the Master Association, their successors and assigns, and all other Owners and occupants, for the purpose of providing, pedestrian access to the Gulf of Mexico and the beach easement established pursuant to Section 3.12 of the Covenants via the use of a dune walkover boardwalk to be located thereon.

(b) Declarant does hereby establish and reserve for itself, the Master Association, and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land 18.0 feet in width, the location of which is or will be set forth on the recorded plat of The Dunes subdivision, for the purpose of constructing, installing, maintaining, repairing, operating, replacing dune walkover boardwalk and the signs described in Section 4.1(h).

SECTION 3.3 Easement to Governmental Authorities for Monitoring of Permit Requirements. Subject to the provisions of the Covenants that generally limits access to Dune Drive, Declarant does hereby grant to each branch, bureau, department and agency of any Governmental Authority and its respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon Dune Drive and all of the private roadways within the Development forming a part of the Common Areas for the purposes of performing such duties and activities related to monitoring compliance with the Permit, including, but not limited to trapping of the Alabama Beach Mouse; provided, however, such access shall only be allowed during reasonable hours and at reasonable intervals, unless an emergency exists. In addition, FWS is hereby granted a license during the term of the Permit to enter the Property at reasonable times and at reasonable hours for the general purposes specified in Part 50

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(d) Flood Lighting. Any street light or other illumination device installed along the southerly right-of-way of Dune Drive where such right-of-way abuts a Critical Habitat Lot shall be shielded in such a manner as to prevent, to the extent possible, the illumination of the area lying south of Dune Drive. All flood lights or other outdoor lighting placed on the Critical Habitat Lots shall be located on or north of a line parallel to the Northern most exterior outside wall of the Dwelling constructed on a Critical Habitat Lot. Any such flood lights or other outdoor lighting shall be configured such that the light produced by such lights shall be projected northwardly and the southern side of such lights shall be shielded or otherwise configured to prevent the illumination of the area of the Critical Habitat Lot south of the lighting apparatus.

(e) Landscaping. In addition to the other requirements of the Covenants concerning landscaping, no Owner may use any plant species other than those that are listed as indigenous species on the attached Exhibit C; provided, however, other plant species may be used by Declarant or the Master Association in the Common Area that constitutes the main entrance to the Property. Requests for variances or exceptions to this requirement for street side landscaping and landscaping within the designated footprint for the location of Improvements on the Critical Habitat Lots may be made to the FWS, and if approved, such variance or exception shall be deemed allowed hereunder unless prohibited by the Design Review Board created pursuant to the Covenants.

(f) No Construction in Critical Habitat. Other than the construction and maintenance of (i) a dune walkover boardwalk located on the easement created pursuant to Section 3.2 above, (ii) private dune walkover boardwalks constructed and maintained by Owner's of Critical Habitat Lots and located where indicated pursuant to the footprint delineation provided for in Section 4.1(g) below, and (iii) erosion control activities within the primary dune line and the secondary dune line, neither any Owner, the Master Association or Declarant shall conduct or allow anyone to conduct any construction activities of any type in the Critical Habitat. In addition to complying with these Alabama Beach Mouse Covenants, any construction of Improvements in the Critical Habitat must also be permitted or approved by the Alabama Department of Environmental Management to the extent such construction of Improvements is to occur within the delineated coastal construction zone established on the Critical Habitat Lots.

(g) Construction and Clearing on Critical Habitat Lots. Declarant or the Master Association, or their respective agents, successors or assigns, shall delineate the precise footprint for all Improvements to be located on the Critical habitat Lots. By acceptance of a deed to such a Critical Habitat Lot, each Owner agrees that no clearing, landscaping or construction of any Improvements shall be permitted on any part of a Critical Habitat Lot outside of the delineated area, except as provided in (f) above. A deed to a Critical Habitat Lot shall contain a restriction on the clearing landscaping or construction or Improvements on such Lots for the propose of insuring compliance with this provision.

(h) Signs. The Master Association shall install and maintain a sign at the entrance to the dune walkover boardwalk located pursuant to Section 3.2 above describing the Alabama Beach Mouse, its habitat and the need for its conservation. Funds from the Alabama Beach Mouse Fund shall be used for purposes of preparing such brochures and updating such signs.

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monthly surveys no longer indicate the presence of House Cats on the Property. A report shall be provided to the FWS within 20 days of the completion of the survey. The cost of such remediation efforts shall be paid from the Alabama Beach Mouse Fund.

(c) Annual Report to FWS. By May 30th of each year after the date hereof, the Master Association shall prepare and submit a report to the FWS outlining and describing the implementation of the Plan and shall note any non-compliance with the Permit or these Alabama Beach Mouse Covenants and shall describe measures undertaken to remediate any such non-compliance. The report shall address the following items in particular: (a) the control of House Mice; (b) the control of House Cats; (c) garbage and refuse containment; (d) educational and informational programs; (e) sand dune integrity and status of the dune walkover boardwalk; (f) landscaping controls; (g) lighting regulations and controls; (h) integrity of the Critical Habitat; (i) dune restoration and maintenance efforts; (j) status of and any changes or amendments to the Covenants of the Alabama Beach Mouse Covenants or the Rules and Regulations Governing the Property or any part thereof; (k) Status of construction on residential structures on the Critical Habitat Lots; (l) financial report and accounting of Alabama Beach Mouse Fund; (m) status of any employee or contractor training that took place during the report period; (n) suggestions for corrective measures or other changes that would improve the efficacy of the Plan.

ARTICLE 5 SPECIAL ASSESSMENT FOR PLAN PURSUANT TO PERMIT

SECTION 5.1 Assessments and Creation of Lien. In addition to any other assessments required under the Covenants or any other agreements, each Owner of Lot or Dwelling, by acceptance of a deed or other instruments conveying any interest therein, regardless of whether such deed or instrument contains a reference to these Alabama Beach Mouse Covenants, is hereby deemed to covenant and agree to pay to the Master Association an Alabama Beach Mouse Assessment, as established and to be collected as provided in Section 5.3 below. The Alabama Beach Mouse Assessment, together with late charges and interest as provided in Section 5.5(a) below, and all court costs and attorneys' fees incurred by the Master Association to enforce or collect such Alabama Beach Mouse Assessment, shall be an equitable charge and a continuing lien upon each Lot and Dwelling of which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 5.5(c) below. Each Owner shall be personally liable for the payment of all Alabama Beach Mouse Assessments coming due while he, she or it is the Owner of any Lot or Dwelling and such Owners grantees shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to the Master Association that were the legal obligations of such grantor. All Alabama Beach Mouse Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 5.5(a) below, court costs and attorney's fees incurred with respect thereto by the Master Association, shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Alabama Beach Mouse Assessments and other costs and charges were assessed or incurred. If there is co-Ownership of any Lot or Dwelling, all of the co-Owners shall be jointly and severally liable for the entire amount of such Alabama Beach Mouse Assessment. The Alabama Beach Mouse Assessment shall be paid in such manner and on such dates as may be fixed by the Master Association. All Alabama Beach Mouse Assessments shall be payable in all events without offset, diminution or abatement by reason of

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charge upon each Lot or Dwelling for Alabama Beach Mouse Assessments as provided above shall also include all late charges, interest at the Applicable Rate and all Attorneys' fees, court costs and all other expenses paid or incurred by the Master Association in attempting to collect any unpaid Alabama Beach Mouse Assessments.

(b) If any Alabama Beach Mouse Assessments or other amounts due to the Master Association are not paid by any Owner when the same because due, then in addition to all other rights and remedies provided at law or in equity, the Master Association, acting through its Master Association Board or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(1) The Master Association may commence and maintain a suit at law against any Owner to enforce such charges and obligations for Alabama Beach Mouse Assessments and any such judgment rendered in any such action all include the late charge and interest at the Applicable Rate, as specified in Section 5.5(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Master Association in collecting such unpaid Alabama Beach Mouse Assessments; and/or

(2) The Master Association may enforce the lien created pursuant to Section 5.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, that secures the payment to the Master Association of any and all Alabama Beach Mouse Assessments, levied against and upon such Lot or Dwelling, all late charges and interest at the Applicable Rate assessed pursuant to Section 5.5(a) above and all attorneys fees, court costs and all other expenses paid or incurred by the Master Association in collecting any Alabama Beach Mouse Assessments. If any Alabama Beach Mouse Assessments remain unpaid for more than sixty days, then the Master Association, through its Master Association Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Master Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board of the Master Association or any officer of the Master Association, contain the following information and be recorded in the Probate Office of Baldwin County, Alabama:

(1) The name of the delinquent Owner;

(2) The legal description and street address of the Lot or Dwelling upon which the lien claim is made;

(3) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorney's fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and

(4) A statement that the claim of lien is made by the Master Association pursuant to these Alabama Beach Mouse Covenants and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

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responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Alabama Beach Mouse Assessments stated therein.

ARTICLE 6 ENFORCEMENT

SECTION 6.1 Authority and Enforcement. In addition to the provisions of Section 5.5 above, if any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of these Alabama Beach Mouse Covenant, the Rules and Regulations adopted by the Master Association Board from time to time, the Master Association Board shall have the power to (i) impose reasonable monetary fines that shall constitute an equitable charge and continuing lien upon the Lot and Dwelling and shall be a personal obligation of such owner that is guilty of such violation, or (ii) suspend an Owner's or Occupant's rights (and the right of such Owner's or Occupant's family member, guests and tenants) to use any of the facilities located in or upon the Common Areas, and the Master Association Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

SECTION 6.2 Procedure. If any of the terms or provisions of these Alabama Beach Mouse Covenants or any Rules or Regulations of the Master Association are violated by an Owner or Occupant, or the respective agent, contractors or invitees of any Owner or Occupant, the Master Association Board shall not suspend or infringe upon or suspend any other rights pursuant to Section 6.1 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

- (a) The alleged violation;
- (b) The action required to abate such violation; and

(c) A time period of not less than two days during which the violation may be abated without further sanction (if such violation is a continuing one), or (if the violation is not a continuing one, a statement that any further violation of the same provision of these Alabama Beach Mouse Covenants or any of the Alabama Beach Mouse Rules and Regulations may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 6.1 above concerning suspension of use rights and shall not apply to the exercise of any of the rights and remedies specified in any other provisions of these Alabama Beach Mouse Covenants.

SECTION 6.3 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in these Alabama Beach Mouse Covenants, the authority, enforcement and procedural rights set forth in this Article 6 are in addition to and shall not be deemed to limit the other rights and remedies set forth in these Alabama Beach Mouse Covenants or which the Master Association, acting through the Master Association Board, would have the right to exercise at law or in equity.

ARTICLE 7 TERM AND AMENDMENTS

SECTION 7.1 Term. The terms, covenant, conditions and restrictions set forth in these Alabama Beach Mouse Covenants shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representative, administrators,

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(a) At any annual or special meeting of the Members of the Master Association, an amendment to these Alabama Beach Mouse covenants may be proposed by either the Master Association Board or by any members present in person at such meeting. Any such proposed amendment must be approved by the Members holding at least two thirds of the total votes in the Master Association; provided, however that (i) for so long as Declarant owns a Lot or Dwelling within the Property, or until such earlier date as Declarant elects, in Declarant's sole discretion Declarant must approve such proposed amendment and (ii) to the extent the proposed amendment affects any of the matters described in Section 7.4 below, then the provisions of Section 7.4 below shall be applicable to such proposed amendment.

(b) Any and all amendments approved in accordance with the provisions of Section 7.3(a) above shall be executed by all parties whose consent to the same is required, including the Members holding at least two-thirds of the total votes in the Master Association; provided, however, that in the alternative, the sworn statement of the President of the Master Association or by the Chairman of the Master Association Board stating unequivocally that the agreement of the requisite number of Members was lawfully obtained may be attached to and incorporated into such amendment without the written consent of any Member. Any such amendment shall be effective upon recording of the same in the Probate Office of Baldwin County, Alabama.

SECTION 7.4 Restrictions on Amendment. Notwithstanding anything provided in these Alabama Beach Mouse Covenants to the contrary, in no event will any amendment to Articles 2, 3, 4, 5, 6, 7, or 8 of these Alabama Beach Mouse covenants be effective unless Declarant and the Master Association consents in writing to any such amendment. The consent of Declarant or the Master Association to any such proposed amendment may be withheld in the sole discretion of Declarant or the Master Association without any reason.

ARTICLE 8
AMENDMENTS TO THE PLAN: RULES AND REGULATIONS

SECTION 8.1 Amendment of the Plan. To allow the Master Association to comply with changing conditions as contemplated by the Plan and to allow flexibility in compliance with the Permit, each Owner by acceptance of a deed, agrees that the Master Association may amend, modify, clarify, expand the scope of, limit the scope of, or otherwise change the Plan.

SECTION 8.2 Rules and Regulations. The Master Association Board may establish and enforce the Rules and Regulations governing the use of all Lots and Dwellings, including, without limitation, Rules and Regulations that govern the enforcement of all the provisions of these Alabama Beach Mouse Covenants, the Permit and the Plan. Each such rule and regulation shall be binding upon all Owner and Occupants until and unless any such rule or regulation is specifically overruled, canceled or modified by the Master Association Board; provided, however, that no such rule or regulation may be overruled, canceled, or modified unless such action is also approved by Declarant for so long as Declarant owns any portion of the Property or until such earlier date as Declarant elects in Declarant's sole discretion, to relinquish such right.

Section 9.8 Interpretation. In all cases, the provisions set forth and provided for in these Alabama Beach Mouse Covenants shall be construed together and given that interpretation or construction that, in the opinion of Declarant, or the Master Association, as the case may be, will best effect the intent of the general plan of development for the Property and the protection and conservation of the Alabama Beach Mouse and the Critical Habitat and to prevent violation of the Permit. If there is any direct conflict between the requirements of these Alabama Beach Mouse Covenants and the requirements of the Permit, the requirements of the Permit shall prevail and these Alabama Beach Mouse Covenants shall be deemed to prevent such conflict. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of these Alabama Beach Mouse Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. The effective date of these Alabama Beach Mouse Covenants shall be the date hereof. These Alabama Beach Mouse Covenants shall be construed under and in accordance with the laws of the State of Alabama.

Section 9.9 Right of Third Parties. These Alabama Beach Mouse Covenants shall be recorded for the benefit of Declarant, the Master Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or the Development or the operation and continuation of either, in the enforcement of any of the provisions of these covenants or the right to consent to or approve any amendment or modification to these Alabama Beach Mouse Covenants.

Section 9.10 No Trespass. Whenever the Master Association, Declarant, the Governmental Agencies and their respective agents, employees, representatives, successors and assigns, are permitted by these Alabama Beach Mouse Covenants to enter upon or correct, repair, clean, maintain, monitor or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

Section 9.11 No Partition. Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property or the Development.

Section 9.12 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Declarant to a third party shall constitute or be deemed a transfer of any of the rights reserved herein to Declarant unless reference is made in such instrument of conveyance to the specific rights created in these Alabama Beach Mouse Covenants that Declarant is transferring to any such party.

Section 9.13 Standards for Review. Whenever in these Alabama Beach Mouse Covenants Declarant or the Master Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Declarant or the Master Association, as the case may be.

Section 9.14 Oral Statements. Oral statements or representations by Declarant or the Master Association or any

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IN WITNESS WHEREOF, Declarant has caused these Alabama Beach Mouse covenants to be duly executed as of the day and year first above written.

SAGE DEVELOPMENT, L.L.C.
an Alabama Limited Liability Company

By: W. Kennedy Striplin (SEAL)
W. Kennedy Striplin, its Managing Member

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned notary public in and for the said state and county, hereby certify that W. Kenndey Striplin, whose name as Managing Member of SAGE DEVELOPMENT, L.L.C., an Alabama Limited Liability Company, 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 the instrument, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company on the day the same bears date.

GIVEN under my hand and seal this 27 day of July, 1996.

Thomas W. Klyce (SEAL)
NOTARY PUBLIC
My commission expires: 10/26/97



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This instrument was prepared by:

Thomas W. Klyce

Thomas W. Klyce, P. C.
Attorney at Law
Post Office Box 2301
Gulf Shores, Alabama 36547

RECORDED FOR \$5.00
STATE OF ALABAMA
BALDWIN COUNTY
CERTIFY THIS INSTRUMENT WAS
FILED AND TO BE COLLECTED ON
JUN 27 1 56 PM '96
DATE FILED: June 29, 1996
JUDGE OF PROBATE

CONTINUATION OF EXHIBIT "A"

PARCEL V:

Lot 73 in Resubdivision "A" of Gulf Beach as per plat thereof recorded in Map Book 1, page 142, of the records in the Office of the Judge of Probate of Baldwin County, Alabama.

PARCEL VI:

A non-exclusive easement for ingress, egress and utilities over and across the following described property, to-wit:

Commencing at the Northeast corner of Lot 1 of Gulf Beach Fort Morgan Subdivision as recorded in Map Book 3, page 26, Probate Records, Baldwin County, Alabama; run thence North 88 degrees 04 minutes 43 seconds East for 10.99 feet to the Point of Beginning; run thence North 01 degrees 30 minutes 11 seconds West for 144.58 feet; run thence North 56 degrees 28 minutes 18 seconds West for 14.32 feet; run thence North 88 degrees 12 minutes 44 seconds East for 82.87 feet; run thence South 51 degrees 24 minutes 27 seconds West 13.97 feet; run thence South 01 degrees 30 minutes 11 seconds East for 144.36 feet; run thence South 88 degrees 04 minutes 43 seconds West for 60.0 feet to the Point of Beginning.

307 WOODBRIDGE CIRCLE
DAPHNE, ALABAMA 36526
PHONE: 334/626-8123
PRT-811416

- E. The Permittee owns a ±25.7-acre tract on the Fort Morgan Peninsula, Baldwin County, Alabama and plans a real estate development called The Dunes on the site (Project). This permit authorizes incidental taking of *Peromyscus polionotus ammobates* on all of the Project's lands north and outside of the designated *Peromyscus polionotus ammobates* critical habitat as described in Title 50 Code of Federal Regulations § 17.92. For an area within the critical habitat of the project, encompassing approximately 8 acres, incidental taking of *Peromyscus polionotus ammobates* is restricted to only those reasonable activities associated with construction and maintenance of (one) dune walkover. Incidental take as described above is authorized for construction activities and subsequent human habitation of the project for a period of 30 years, subject to the continued validity of the permit.
- F. The nature of the project is such that the Permittee is eventually transferring titles and control of the Project to properly constituted Homeowners' Association, Incorporated (Association). The permittee shall assign the permit to the Association, using The Declaration (see Condition G.3 below), of their real property as described in this permit. All conditions of this permit automatically shall be assigned and transferred to each Owner and the Association and shall run with the real property encompassed by the Project. The permittee shall be defined as those entities which hold fee simple title to any portion of the real property identified in the HCP and this permit over the duration of the permit.
- G. The following measures will be implemented by the Permittee to ensure that *Peromyscus polionotus ammobates* take is minimized and fully mitigated:
1. For an approximately 8-acre area within *Peromyscus polionotus ammobates* designated critical habitat, the Permittee shall limit any disturbances to that reasonably expected to occur during construction of the Project's one elevated boardwalks. No vehicular equipment is allowed to operate within critical habitat for construction of the Project's boardwalk. Withstanding this exception, the permittee shall not disturb, nor grant permission to any person, firm, or entity which would result in a disturbance to this 8-acre area.
 2. The Permittee shall permit the U.S. Fish and Wildlife Service personnel, State of Alabama Department of Conservation personnel or other properly permitted and qualified persons designated by either agency to enter the Project boundaries at reasonable hours and times for the general purposes specified in Part 50 Code of Federal Regulations § 13.21(d)(2).

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G. 3. b. (Continued)

vi. Identification of the requirements of establishing and maintaining a special assessment to fund and monitor the implementation of the requirements of this permit.

vii. For those thirteen (13) planned lots located immediately adjacent to the designated critical habitat (lots 26-38), incorporation of the requirements of Condition G.6., below.

viii. No nails, or building materials may be allowed to be kept, stored, or building materials during home construction, or materials may be placed in any area of the site under any circumstances.

ix. Common site plan for the Project (approved on the 7/2/1979) Project site plan scaled at 1/4" = 60 feet) shall not be altered by construction, landscaping, or other development activity associated with the Project.

4. Within 60 days of the effective date of this permit, the permittee shall establish an account for purposes of funding the monitoring and special requirements of this permit (Sections K and L below). The permittee shall initially deposit \$5,000 (Five Thousand) in good funds and annually assess each dwelling unit \$100 (One Hundred) per year. This annual assessment will stop when the account reaches \$25,000 (Twenty-five Thousand), at which time the assessments shall temporarily cease. At such time thereafter, as the fund balance falls below \$10,000 (Ten Thousand), the \$100 per year per dwelling unit assessment will resume and will continue until the fund balance again reaches \$15,000 to ensure the permit conditions are successfully implemented. The Declaration must identify that the special assessment for implementation of the permit cannot be dissolved under any procedures or circumstances outlined in the Declaration.

5. Within 60 days of the effective date of this permit, the permittee shall deposit, in a federally chartered bank or other financial institution acceptable to the U.S. Fish and Wildlife Service, \$50,000 (Fifty Thousand) in good funds. These monies will be used to acquire property of quantity and quality sufficient to compensate for unavoidable and minimize impacts in the project area, and may include pre-acquisition expenses. These funds may also be used for other purposes consistent with the conservation and recovery of *Peromyscus polionotus annobates*. The U.S. Fish and Wildlife Service will direct the permittee on appropriate expenditures for this condition. The U.S. Fish and Wildlife Service must approve all fund expenditures.

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G. 6. (Continued)

f. After completion of the habitable structure on each lot, the respective owner shall restore an area not within the footprint with native landscaping. Upon approval and completion of construction, this area shall be surveyed and recorded on the individual lots as a preserve area for *Peromyscus polionotus imitator*. A certified survey, as well as a Dune Restoration Plan for each lot's construction and associated Dune Restoration Plan shall be provided to the U.S. Fish and Wildlife Service in the Permittee's annual reporting.

7. The Permittee shall notify the U.S. Fish and Wildlife Service of the construction of the boardwalk and those dune features impacting the beach. The Permittee must notify the U.S. Fish and Wildlife Service prior to any construction activities. To ensure that the Permittee meets the requirements for compliance with the Alabama Department of Environmental Management permit (ADEM), the Permittee shall notify the U.S. Fish and Wildlife Service simultaneous to notification of ADEM. The U.S. Fish and Wildlife Service and the Permittee shall meet on-site to discuss the requirements and performance standards for this condition. The U.S. Fish and Wildlife Service must approve all requirements and standards of the restoration effort described in this condition. The objective of this condition is to ensure that the damaged or disturbed area is restored. The Permittee shall also provide a funding source for implementation of the Dune Restoration Plan, which is independent of the funding as described in Items G.4. and G.5. of this permit.

8. The permittee shall prepare a specific lighting plan for the Project (Lighting Plan). The Lighting Plan must be incorporated into the project's construction plan. The goals of the Lighting Plan will be: 1) No outdoor light sources will illuminate the wet beach or primary dune line; 2) All exterior lighting will be recessed or shielded so light will not fall on adjacent undeveloped areas; and 3) Interior lighting should be reduced using tinted glass on structures abutting critical habitat.

Impact reduction methodologies should follow those outlined in attached document (*Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtle Nesting Beaches*) which is incorporated as a technical appendix to this permit. The U.S. Fish and Wildlife Service must approve the Lighting Plan.

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I. (Continued)

2. Simultaneous with the monitoring program as outlined in I.1., above, the permittee shall conduct a census for the presence or absence of free roaming cats (*Felis domesticus*) within the Project. The survey shall be performed by qualified and permitted agents of the permittee, approved by the U.S. Fish and Wildlife Service. Walking transects shall be established to also provide census coverage of 100 percent of the Project's total area. Track and occurrence data should be recorded. If available information on free-roaming cats obtained by residents should also be summarized in this report. Should the surveys or other reports document presence of free roaming cats, the permittee shall immediately institute a trapping program. All animals shall be transported to the nearest animal shelter or adoption facility. Once the species has been trapped, the trapping program shall be employed until weekly trapping indicates the absence of free-roaming cats in the Project.
3. Within 45 days after the completion of the trapping effort, the permittee shall provide a report to the U.S. Fish and Wildlife Service. The report will include the results of the sampling efforts and describe the status and progress of the competitor control program, if necessary. Information collected as a result of the activities in I.1. and I.2. must also be provided to the U.S. Fish and Wildlife Service during each annual reporting period.

J. For each year the permit is valid, the permittee shall submit an annual report to U.S. Fish and Wildlife Service by May 30. The annual report shall outline and describe implementation and success of minimization measures. The permittee shall identify non-compliance and measures employed to remediate the non-compliance. The annual report shall address the following:

1. Control of *Mus musculus*.
2. Free-roaming cat control.
3. Garbage and refuse control.
4. Establishment of educational/informational materials and signage.
5. Dune integrity and status of the common dune crossovers.
6. Progress on landscaping requirements of the Project.
7. The Lighting Plan.

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L. Upon locating a dead, injured, or sick *Peromyscus poliopterus*, nesting sea turtles, or any other endangered or threatened species, initial notification must be made immediately to the U.S. Fish and Wildlife Service, Law Enforcement Office, Arsenal Building, Room 819, 474 South Court Street, Montgomery, Alabama 36194. The phone number is 334/266-7228. Notification should also be made (by the next work day) to the local U.S. Fish and Wildlife Service, address and telephone number noted in Condition M below. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured endangered species or preservation of biological materials from a dead animal, the permittee should take responsible steps to ensure that the site is not unnecessarily disturbed.

M. For purposes of this permit, the permittee shall comply with the conditions of this permit, including unforeseen circumstances, the contact number of local U.S. Fish and Wildlife Service office is:

U.S. Fish and Wildlife Service
P.O. Drawer 190
Daphne, Alabama 36526
Telephone: 334/441-5181

N. Copies of annual reports and any other documentation submitted in response to the operation and management of this permit shall also be provided to:

Endangered and Threatened Species Permits
U.S. Fish and Wildlife Service (AES/TE/P)
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Telephone: 404/679-7110

O. Copies of annual reports and any other documentation submitted in response to the operation and management of this permit shall also be provided to:

Field Supervisor
U.S. Fish and Wildlife Service
6578 Dogwood View Parkway, Suite A
Jackson, Mississippi 39213
Telephone: 601/965-4900

END