

STATE OF ALABAMA)
 :
MADISON COUNTY)

**DECLARATION OF RESTRICTIONS, CONDITIONS, AND COVENANTS FOR
TERRACE LAKE GARDENS
MADISON COUNTY, ALABAMA**

WHEREAS, the undersigned, **DILTINA DEVELOPMENT CORPORATION, an Alabama Corporation, SOUTHBank, A Federal Savings Bank, and RONALD D. SCOTT AND MARTHA F. SCOTT** are the owners of certain lands located in Madison County, Alabama, and have caused the same to be surveyed, subdivided and platted into a subdivision known as **TERRACE LAKE GARDENS** map or plat of which is of record in the Office of the Judge of Probate of Madison County, Alabama, in Plat Book 41, page 32 and

WHEREAS, it is desired by the said owners, before any of the lots or parcels of land in said subdivision are sold or conveyed, to fix and establish restrictions, conditions, covenants as to the use and enjoyment of the lots or parcels of land located in **TERRACE LAKE GARDENS** as said lots are shown on the map or plat thereof recorded in Plat Book 41, page 32, in the Office of the Judge of Probate of Madison County, Alabama, and to make such restrictions, conditions, covenants, easements and minimum building lines shown on said map or plat a part of the dedication of the streets, alleys and public ways so dedicated to the public by the filing of such map or plat, and thereby protect any persons, organization, firm or corporation that may in the future become the owners of said lots or parcels of land, or any part thereof. Lands adjacent to this subdivision owned by the owner of this subdivision are not to be affected by these restrictions, conditions and covenants;

NOW, THEREFORE, the undersigned, **DILTINA DEVELOPMENT CORPORATION, an Alabama Corporation, SOUTHBANK, A Federal Savings Bank and RONALD D. SCOTT AND MARTHA F. SCOTT**, do, by these presents, establish and fix restrictions, conditions, protective covenants and limitations as to the future use of the lots or parcels of land embraced in said map or plat, and do grant to the Architectural Control Committee ("Committee"), the public and to the future owners of any part of the land embraced in said map or plat as a part of the enjoyment of the properties that may be acquired in said subdivision, the right to enforce such restrictions, conditions, covenants and limitations and rights as follows, except as reserved an specified herein:

1. ARCHITECTURAL CONTROL COMMITTEE APPROVAL REQUIRED PRIOR TO ANY CONSTRUCTION - No building, structure, or in-ground installed swimming pool shall be erected, altered, placed, or permitted to remain on any residential lot until:

(a) Two (2) complete copies of the final building or construction plans, specifications and plot plan, showing the location of each building, structure or pool, have been submitted to and approved by the Architectural Control Committee as to conformity and harmony of external design and color with the existing or planned structures in said subdivision, and as to location of the building, structure or pool with respect to location on the lot and the topography and finished grounds elevation; one complete copy to be returned to owner upon approval.

(b) Such Committee shall have indicated its approval by causing one (1) copy of said building or construction plans, specifications and plot plan showing the location of such building, structure, or pool to be endorsed to such effect and signed by a majority of said Committee.

(c) The Committee's approval or disapproval, as required in these covenants, shall be in writing. In the event the Committee fails to approve or disapprove within thirty (30) days after complete copies of the final building or construction plans, specifications and plot plan, as required in paragraph 1

(a), have been submitted to it, and if no suit to enjoin the construction has been commenced prior to the completion thereof, provided the construction takes at least thirty (30) days to complete, approval pertaining to the approval of such building or construction plans, specifications and plot plan will not be required and the related covenants pertaining to the approval shall be deemed to have been fully complied with provided such structure, building or addition meets the neighborhood standards. Neighborhood standards shall mean comparable to other houses or like buildings or structures in the subdivision, and more specifically the quality of the average of those houses or like building on the next five lots in all directions from the lot in question. The Architectural Control Committee shall be the sole authority to determine whether such structure, building or addition meets the neighborhood standards test. Any re-submittal of plans for change will allow the Architectural Control Committee an additional 30 days to approve or disapprove said changes.

(d) All plans and specifications must meet the minimum standards of the Southern Building Code and all building codes, regulations and requirements of all governmental agencies which have any jurisdiction over the property or construction which are in force at the time of any such construction on the property. The Architectural Control Committee assumes no responsibility to assure that the above provisions are complied with. However, it has the authority to require full compliance therewith, during construction or at any time after construction has been completed.

(e) A building permit shall be obtained from the appropriate governmental agency or agencies having jurisdiction over the property when such is required. It shall be the sole responsibility of the property owner to ascertain if such is required and to obtain same if required.

(f) Paragraph 1 (c) is not intended to prevent the removal, by court action if necessary, of any structure, building or addition which fails to meet building codes, zoning ordinances or minimum building or property standards of any governmental agency or if such structure, building or addition fails to meet the neighborhood standards. The Architectural Control Committee may require the property owner to bring the structure, building or addition up to neighborhood standards or require same to be removed by the property owner.

2. **EASEMENTS** - Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

3. **NO TEMPORARY STRUCTURES USED AS RESIDENCE** - No structure of a temporary character, motor home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently.

4. **NO OIL DRILLING, MINING, ETC.** - No oil drilling, oil development operations, oil pumping, oil refining, quarrying, mining operations or mineral extractions of any kind shall be permitted upon or in any lot, nor shall oil wells, storage tanks (except for heat or cooking purposes), tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring or drilling for oil, natural gas or water shall be erected, maintained or permitted upon any lot.

5. **ANIMALS, LIVESTOCK, POULTRY, ETC.** - No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that a maximum aggregate combination of two (2) dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and provided further that they, or either of them, do not become an annoyance or nuisance to the neighborhood. Pets will not be allowed to run loose in neighborhood. No wild animals of any kind, even if raised or trained as a household pet, shall be

allowed on any lot at any time.

6. **NO OBSTRUCTION OF STREET INTERSECTIONS** - No wall, hedge or shrub planting or other objects which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner the line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

7. **LAWN CARE MAINTENANCE FEES; LIEN ON REAL ESTATE.** - A monthly fee shall be due and payable by each lot owner for lawn care maintenance, landscaping and upkeep of each lot in the subdivision. The initial fee shall be Eighty-Five and No/100 (\$85.00) Dollars per month. This monthly fee shall be determined annually by the Architectural Control Committee, based on the budget necessary to accomplish the work. Said fee shall be due and payable by the fifth day of the month to **DILTINA DEVELOPMENT CORPORATION, 1955 BLAKE BOTTOM ROAD, HUNTSVILLE, ALABAMA 35806**, or its successor in interest. The monthly fee, together with any applicable interest and attorney fees, shall be the obligation of the person who was the owner of such property at the time when the fee came due and shall constitute a lien on said property. Any fee not paid within thirty (30) days after the due date shall bear late charges from the date due at the rate of twelve percent (12%) per annum. **DILTINA DEVELOPMENT CORPORATION**, or its successors shall be entitled to recover its collection costs and expenses, including actual attorney fees, in the event of a legal action. **DILTINA DEVELOPMENT CORPORATION** or its successors in interest may bring an action at law to collect payments over thirty (30) days past due. All fees due hereunder shall constitute a lien against the lot owners real estate located within said subdivision. The lien shall be subordinate to the lien of any purchase money first mortgage. The sale or transfer of any lot shall not relieve the seller of liability for delinquent fees. However, the sale or transfer of any lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien (but not the debt) as to payments which became due prior to such sale or transfer. The Architectural Control Committee shall have the right to change the billing procedure for payment of the lawn care fees.

8. **FENCES** - The erection location and maintenance of fences on each lot shall be predetermined by the Developer. The request to erect a fence other than those determined by the Developer must be approved by the Architectural Control Committee. Any changes in material or types of fences in the future to be approved by the Architectural Control Committee.

(a) **GATES** - The Architectural Control Committee shall approve any Gates and the material and location of the same.

9. **SIGNS** - No sign of any kind shall be displayed to the public view on any lot, except one professional sign of not more than one (1) square foot, and one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used to advertise the property during the construction and sales period. All signs must be approved by the Architectural Control Committee.

10. **NO TRASH, RUBBISH, HAZARDOUS WASTE, ETC.** - No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste material shall not be kept on any lot except in sanitary containers. All garbage cans and other equipment for the storage or disposal of such material shall be kept in a clean, sanitary condition and shall not be kept or maintained so as to be visible from the streets.

(a) No hazardous waste, hazardous material, explosives,

incendiaries or gasoline, except in Underwriters Laboratories, Inc. approved containers, in quantities of five (5) gallons or less or in motor vehicles gas tanks shall be placed or maintained on or in any lot. No substances or devise shall be placed, remain or be maintained on or in any lot which emits or gives off any unpleasant, hazardous or noxious odors, sounds, lights, smoke, gases, liquids or other substances.

(b) No building materials, supplies, equipment of any kind or other items may be placed, stored or allowed to remain on any lot, except that building materials and equipment may be placed or stored upon any such lot during construction of houses thereon or during approved additions, modifications or repairs thereon.

(c) No incinerators or other devises used for the burning of trash, rubbish, garbage or other waste shall be placed, maintained or used on or in any lot.

(d) Garbage containers to comply with city or county requirements.

11. **NUISANCES, ETC.** - No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

12. **SINGLE FAMILY RESIDENTIAL USE ONLY** - No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling and garage not to exceed one storey in height, exclusive of basements, with a private double garage for not more than three cars. Storage building and other buildings incidental to the residential use of the lot must be approved by the Architectural Control Committee.

13. **MINIMUM BUILDING SIZE** - No dwelling shall have a living area of less than 1,800 square feet, exclusive of garages, carports and storage rooms. Any dwelling with less than 1,800 square footage requires unanimous consent, in writing, of the Architectural Control Committee.

14. **VEHICLE PARKING, STORAGE, REPAIRS, ETC.** - No on-street or right-of-way parking shall be allowed at any time. No parking of vehicles shall be allowed on any lot except on designated concrete slabs. No parking shall be allowed on the grassy, dirt or graveled area on any right-of-way or any lot except on designated concrete slabs on the lot. No commercial vehicle of any type shall be parked or stored on any lot or on any street or right-of-way in the subdivision except as used to go to and from work. Any vehicle larger than one ton must be approved by the Architectural Control Committee. No motor home or trailer shall be parked, stored or remain on any lot, street or right-of-way, for period not to exceed seven (7) days, without the express written consent of the Architectural Control Committee. The Architectural Control Committee may attach any conditions it deems appropriate to its consent to park motor homes or trailers on any lot. The failure of the Architectural Control Committee to act upon a request for a variance or waiver of or to enforce this provision shall not constitute a waiver to act thereon or to enforce any of these restrictions, conditions, protective covenants or limitations or to rescind any previous consent or approval at a later time.

(a) No wrecked, damaged, disabled, partially dismantled, or inoperable, junked vehicle or parts thereof or other motor vehicles may be parked or stored on any lot. No automobile or other motor vehicle which does not have a properly displayed current tag or license plate may be parked or stored on any lot.

(b) No automobile maintenance or repairs of any type may be made on any lot or in the street in the subdivision except that "minor" repairs or service may be made in the garage or carport.

(c) No boats or marine recreational watercraft to be visible from the street.

15. **MAILBOXES** - Mailbox design must be approved by the Architectural Control Committee.

16. **REPAINTING OR CHANGING OF HOME EXTERIOR** - A change in the exterior color of the house must be approved by the Architectural Control Committee.

(a) The exterior of the house may not be changed, altered or modified without the approval of the Architectural Control Committee.

17. **NO RE-SUBDIVIDING OF LOTS** - No lot shall be divided or re-subdivided or reduced in size without the express approval of the Architectural Control Committee, in writing. However, any purchaser of two (2) or more adjacent lots may erect a residential building or structure in the middle (or thereabouts) of said lots so long as the covenants, terms, restrictions, conditions, and limitations herein contained are otherwise complied with. The aforesaid is not intended to prevent the sale or exchange of a portion of any lot to correct an inadvertent encroachment or zoning violation on an adjacent lot.

18. **WINDOW AIR CONDITIONING UNITS** - No window air conditioning units shall be visible from the street.

19. **RADIO TRANSMITTERS AND ANTENNAS, SATELLITE DISHES** - No ham radios, short wave radios, other type radio or TV transmission or other electronic devices which emit or transmit electronic signals, including satellite transmission will be permitted on any lot unless such transmission equipment is used totally for personal non-commercial reasons and is properly shielded to prevent interference with incoming TV and radio singles. Any personal computers which interfere with incoming TV and radio signals will not be permitted on any lot. No transmitting antennas of any type may be erected or maintained on any lot at any time, without the EXPRESS WRITTEN consent of the Architectural Control Committee which Committee may place such conditions as it deems appropriate on such approval or consent such as requiring the antennas to be placed in the attic of the house. In the event such consent is given, it may be revoked or withdrawn at any time at the discretion of the Architectural Control Committee. No hearing or prior notice of the action of the Architectural Control Committee in the revocation or withdrawal of the prior consent shall be required since the original consent was also a discretionary and conditional act by the Architectural Control Committee. Satellite Dishes shall not be allowed which exceed 18 inches in diameter.

20. **CLOTHES LINES USE RESTRICTED** - Clothes lines may be permanently erected on the outside provided they are behind the house and do not extend to within six (6) feet of each end of the house. Clothes lines shall be neat and well maintained. Efforts shall be made to prevent the clothes lines from being seen from the street. The Architectural Control Committee must approve the location of clothes lines and the materials of which it is constructed. If any clothes lines become, in the opinion of the Architectural Control Committee, an "eyesore," unsightly or a nuisance to the neighborhood, the Architectural Control Committee shall have the power and authority to require the clothes lines to be taken down, relocated, constructed of different materials or take other actions as it deems appropriate.

21. **ARCHITECTURAL CONTROL COMMITTEE** - The Architectural Control Committee is composed of **MICHAEL W. FRIDAY AND MELISSA FRIDAY**. A majority of the committee may designate a representative to act for it, however, such representation can only investigate matters for the Committee and make recommendations to the Committee. The Architectural Control Committee must make all final decisions. In the event of the death or resignation of any member of this committee, the remaining member shall have full authority to designate a successor. Neither the members of the Committee, compensation for services performed pursuant to

these restrictions, covenants and conditions. The owners and developers of the subdivision have designated the initial Architectural Control Committee and they or the successors they select shall remain the sole members of the Architectural Control Committee until houses have been erected on all lots in the subdivision and all house sales have been closed by a permanent buyer. Although the Architectural Control Committee or the successors they select shall continue to serve after houses have been erected on all lots and the sale of all such houses have been closed to a permanent owner, the then record owners of a majority of the lots in said subdivision shall have the power and authority through a duly recorded written instrument to remove any or all of the Architectural Control Committee members and to replace the Architectural Control Committee with persons such owners may elect. A majority of the lot owners may, in a like manner, change the number of members of the Architectural Control Committee or withdraw from or restore to the Committee any of its powers and duties, or change the rules governing the Architectural Control Committee except as provided for herein.

(a) Notwithstanding paragraph 1 (c), the Architectural Control Committee, or any property owner in the subdivision, or public agency may commence any legal action against any property owner for violations or noncompliance of fence requirements or other restrictions, conditions, protective covenants, terms and limitations, as provided herein, regardless of how long the fence or other violations or noncompliance has been installed or in existence nor how long the nonconformity complained of has been in existence. The 30 day limitation or waiver or failure to commence a suit to enjoin shall apply only to new house construction or additions to the house such as adding a room, enclosing a carport, converting a garage, installing an in-ground swimming pool or other major modifications to the house which requires a building permit. Although the Architectural control Committee or other property owners shall be barred and stopped from forcing the removal of the aforesaid improvements after they have been completed, the Architectural Control Committee may require the exterior of such structures, additions, etc. to conform to the neighborhood standards. If the owner fails or refuses to comply with the Architectural Control Committee's neighborhood standard requirements, the Architectural Control committee may proceed in court to seek such compliance or in the alternative to have the structure or addition removed or seek damages for such failure on behalf of other property owners whose property may be damaged from the noncompliance. Any other matters, even if a building permit is required, such as improvements, changes, repainting with a color change, construction of a storm shelter, fallout shelter or accessory building or any other items requiring approval by the Architectural Control Committee will not be waived by the passage of time, nor will the Architectural Control Committee, other property owners in said subdivision or public agencies be stopped or barred from the enforcement of these restrictions, covenants, conditions and limitations, at any time, regardless of the period of time the alleged violation, noncompliance or nonconformance has been in existence.

(b) Any one or all of the covenants, terms, conditions, restrictions, and/or limitations hereinabove set forth may be totally annulled, vacated, voided, amended, modified or waived at any time by an instrument executed by the Architectural Control Committee. The Architectural Control Committee shall have and possess the same powers and authorities as one hundred (100) percent of the owners of said lots or parcels would have pertaining to amending, modifying or waiving any or all of these restrictions, conditions and covenants except that the Architectural Control Committee shall not possess the power to totally annul, vacate or void these restrictions, conditions and covenants, as one single act, such powers being expressly reserved to a majority of the owners of the lots after houses have been built on all lots in the subdivision and all houses have been sold and all house sales closed with permanent buyer as stated above. Any actions of the Architectural Control Committee shall be binding upon all property owners, their

heirs, executors, administrators, successors or assigns, to the same degree and extent that one hundred (100) percent of all property owners could do or have done except that it cannot totally annul, vacate or void all of these covenants, terms, conditions and restrictions as one single act. The Architectural Control Committee shall not be required to give any notice prior to taking any of the aforesaid actions. Specifically, the Architectural Control Committee shall have the power and authority to waive violations of minimum building lines or to vacate the minimum building line and to establish a new minimum building line nearer to the street than the minimum building line shown on the recorded map or plat or to simply waive the enforcement of the minimum building line as to any encroachment by a structure into or over the minimum building line as specified herein or as shown on the recorded plat of said subdivision as long as such actions are not in conflict with the requirements of the prevailing governmental entity. Any such actions by the requisite number of the property owners or by the Architectural Control Committee shall be evidenced by an instrument in writing which shall be acknowledged by each of the persons signing the same and shall be filed for record in the Office of the Judge of Probate of Madison County, Alabama, provided however, that no modification shall place an additional burden or restriction on any lot in said subdivision for which the owner of said lot does not join in said amending instrument except as provided herein.

(c) The Architectural Control Committee shall be the primary party to interpret and enforce these restrictions, conditions, protective covenants, terms and limitations pertaining to this subdivision. In the performance of its duties, the Architectural Control Committee and its individual members shall be free from any claims or damages to any lot owner in the subdivision resulting from the enforcement of or attempted enforcement of any or all of the restrictions, conditions, protective covenants, terms and limitations pertaining to this subdivision even if said Architectural Control Committee is not successful in its attempts to enforce said restrictions, conditions, protective covenants, terms and limitations. All of the lot or property owners in said subdivision agree that as a part of a the consideration for the purchase of their lot or parcel of land in the subdivision, they agree that the rchitectural Control Committee may proceed against them for alleged violations of the restrictions, conditions, protective covenants, terms and limitations pertaining to this subdivision and they each agree to indemnify and hold the Architectural Control Committee and its individual members harmless from any and all claims or damages arising from their duties in the interpretation and/or enforcement of or attempted enforcement of any or all of said restrictions, conditions, protective covenants, terms and limitations and said lot or parcel owners further agree to indemnify said Architectural Control Committee and its individual members against any losses or damages they may sustain in the enforcement of or the attempted enforcement of the said restrictions, conditions, protective covenants, terms and limitations including all costs and attorney fees.

The owners and developers of said subdivision believe that the waivers of claims against the Architectural Control Committee and the hold harmless and indemnity provisions contained herein are fair and reasonable because the Architectural Control Committee represents all property owners collectively, and its actions are for the benefit of collective property owners, including those who may from time-to-time be in violation of some of the restrictions, conditions, protective covenants, terms and limitations.

22. These restrictions, conditions and covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these restrictions, conditions and protective covenants are recorded, after which time said restrictions, conditions and protective covenants shall be automatically extended for successive periods of ten (10) years unless by an instrument signed by a majority of the then owners

of the lots has been recorded terminating, altering or amending them.

23. Enforcement shall be by proceeding by the Architectural Control Committee, any property owner or public agency in the court of law or in equity against any persons violating or attempting to violate any restrictions, conditions or covenants, either to restrain violation thereof, or to recover damages or to otherwise enforce any restrictions, conditions or covenants.

24. Invalidation of any of these restrictions, conditions and covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, **MICHAEL W. FRIDAY as President of DILTINA DEVELOPMENT CORPORATION**, _____ as _____ of **SOUTHBank, A Federal Savings Bank**, and **Ronald D. Scott and Marth F. Scott** have executed this instrument with full authority and as the act of said **DILTINA DEVELOPMENT CORPORATION and SOUTHBank, A Federal Savings Bank** on this the _____ day of _____, 2003.

**DILTINA DEVELOPMENT CORPORATION
an Alabama Corporation**

**By: MICHAEL W. FRIDAY
Its: President**

SOUTHBank, A Federal Savings Bank

**By:
Its:**

Ronald D. Scott

Martha F. Scott:

STATE OF ALABAMA

MADISON COUNTY

I, the undersigned, a Notary Public in and for said county and state, hereby certify that **MICHAEL W. FRIDAY** whose name is signed as **PRESIDENT of DILTINA DEVELOPMENT CORPORATION, an Alabama Corporation** to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of this instrument, he executed the same voluntarily as and for the act of said corporation on the day the same bears date.

Given under my hand and seal this _____ day of _____, 2003.

**Notary Public:
My Commission Expires:**

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said county and state, hereby certify that _____ whose name is signed as _____ of **SOUTHBank, A Federal Savings Bank** to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of this instrument, he executed the same voluntarily as and for the act of said corporation on the day the same bears date.

Given under my hand and seal this _____ day of _____, 2003.

Notary Public:
My Commission Expires:

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said county and state, hereby certify that **Ronald D. Scott and Martha F. Scott** whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this date that, being informed of the contents of this conveyance, they executed the same voluntarily on the day the same bears date.

THIS the _____ day of _____, **2003.**

NOTARY PUBLIC -
COMMISSION EXPIRES:

THIS INSTRUMENT PREPARED BY:
Keith S. Jones, Wolfe, Jones & Boswell
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