

This Instrument prepared by:
Marjorie O. Dabbs, Esq.
King, Drummond & Dabbs, P.C.
100 Centerview Drive, Suite 180
Birmingham, Alabama 35216

Send Tax Notice to:
AmSouth Bank
Properties Department
3000 Galleria Tower, Suite 1600
Birmingham, Alabama 35244

STATE OF ALABAMA)
COUNTY OF SHELBY) **STATUTORY WARRANTY DEED
AND
OPTION, RESTRICTION & COVENANT AGREEMENT**

The purpose of this Statutory Warranty Deed and Restrictive Covenant is to (a) effect the conveyance of certain real property by the hereafter defined Grantor to the hereafter defined Grantee; (b) restrict the use of certain other real property owned by the Grantor and Helena Marketplace, L.L.C., an Alabama limited liability company ("Helena Marketplace"); and (c) provide remedies or a purchase option in favor of Grantor in the event Grantee fails to complete its improvements on the real property or desires to sell the real property prior to construction of its improvements, respectively.

KNOW ALL MEN BY THESE PRESENTS, that in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, to the undersigned Grantor, in hand paid by the Grantee herein, the receipt whereof is acknowledged, the undersigned, HELENA PROPERTIES, LLC, an Alabama limited liability company ("Grantor") does hereby grant, bargain, sell and convey unto AMSOUTH BANK, an Alabama state banking corporation ("Grantee"), its successors and assigns, the real estate described below, together with any and all buildings, improvements, fixtures, and appurtenances thereon or appertaining thereto. This conveyance is made subject to those items set forth in Exhibit A.

Lot 2-A, according to the Survey of Helena Marketplace Phase II, as recorded in Map Book 27, page 145, in the Probate Office of Shelby County, Alabama (the "Property").

TOGETHER WITH any rights granted to Grantor of subject property, its successors and assigns as set out in the Declaration of Covenants and Easements recorded in Instrument #1997/37151 (the "Declaration").

TO HAVE AND TO HOLD to the said Grantee, its successors and assigns. And Grantor does for itself, and its successors and assigns, covenant with the said Grantee, its successors and assigns, that Grantor is lawfully seized in fee simple of said premises; that they are free from all encumbrances, arising by, through, or under Grantor, unless otherwise noted above; that Grantor has a good right to sell and convey the same as aforesaid; that Grantor will and the successors and assigns of Grantor shall warrant and defend the same to the said Grantee, its successors and assigns forever, against the lawful claims of all persons, arising by, through, or under Grantor.

11/01/2001-47096
02:21 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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Inst. # 2001-47096

In consideration of good and valuable consideration paid to the Grantor and to Helena Marketplace, the receipt of which is hereby acknowledged, the Grantor and Helena Marketplace agree that the real property described as Lot 1 according to the Plat of Helena Marketplace as recorded as Instrument #1998-49934 in Map Book 24, Page 141, in the Probate Office of Shelby County, Alabama (less and except the premises currently leased to Winn-Dixie as set forth below) and as Lot 2, according to the Survey of Helena Marketplace Phase II, as recorded in Map Book 27, Page 145, in the Probate Office of Shelby County, Alabama shall be prohibited from being used as a branch banking facility or similar type of financial institution, which restriction shall specifically include the use of an automated teller machine owned or operated by entities affiliated with major banks (major banks being defined as banks with assets exceeding \$15 billion) but specifically excluding the use of an automated teller machine owned or operated by non-affiliated entities. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE RESTRICTION ON USE DESCRIBED HEREIN SHALL NOT APPLY TO THE PREMISES OR ANY EXPANSION THEREOF CURRENTLY OWNED BY HELENA MARKETPLACE AND CURRENTLY UNDER LEASE TO WINN-DIXIE MONTGOMERY, INC., AS EVIDENCED BY THAT CERTAIN SHORT FORM LEASE RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA AS INSTRUMENT #1997-37152.**

No building, sign or other improvement shall be erected, remodeled, expanded, repainted or altered on the Property without plans, specifications, and architectural designs therefor (including but not limited to a description of parking areas, signage, curb cuts, landscaping, building height and building areas) (the "Plans") having been first submitted to and approved by Grantor (or any successor owner of the Shopping Center now known as The Shoppes of Helena of which the Property is an outparcel) in writing prior to commencement of construction, which approval shall not be unreasonably withheld so long as the improvements proposed for the Property are of at least the same quality (in materials and construction), and are architecturally compatible with (in color and design) the improvements located on the Shopping Center property and so long as they comply with the terms of the Declaration, as amended.

Grantee has agreed to complete construction of its improvements on the Property within eighteen (18) months from the date hereof (subject to force majeure delays as provided below) and such agreement constitutes one of the considerations for Grantor's agreement to sell the Property to Grantee. If construction of Grantee's improvements on the Property is not completed within eighteen (18) months from the date hereof subject to force majeure delays (such time period to be extended commensurate with any such force majeure delay), Grantor shall be entitled to seek specific performance or, if the court rules that specific performance is not available, compensatory damages (which shall in no event exceed \$75,000) resulting from Grantee's default and, if Grantor is the prevailing party, Grantee shall reimburse Grantor for Grantor's costs and expenses in connection therewith, including without limitation its attorney's fees.

Grantee has further agreed as one of the considerations for Grantor's agreement to sell the Property to Grantee that in the event prior to the construction of Grantee's improvements Grantee desires to transfer title to the Property, Grantor shall have the option for a period of sixty (60) days from receipt of written notice from Grantee (the "Notice") to purchase the Property for the original purchase price paid to Grantor, less the broker's commission paid by Grantor in connection with the sale of the Property to

Grantee. Grantor shall be deemed to have exercised Grantor's option on the date Grantor gives written notification thereof to Grantee, such notification being deemed given upon personal delivery to Grantee or three days after depositing same in the United States mail, postage prepaid, return receipt requested, properly addressed to Grantee at Grantee's address shown in the Notice. Closing of the re-purchase shall take place within sixty days thereafter at the time and place in Birmingham, Alabama appointed by Grantor. All reasonable and customary closing costs (except any broker commissions payable to any agent representing Grantor or any costs related to Grantor's financing) (which shall in no event exceed \$10,000) in connection therewith shall be borne by Grantee, who shall provide Grantor with a title policy and deliver title to the Property to Grantor free and clear of all liens and encumbrances except those set forth on Exhibit A hereto. All taxes and assessments shall be prorated to the date of Closing. Grantee shall also provide to Grantor all surveys, engineering, environmental, soil and other investigations and reports (the "Reports") obtained by Grantee on the Property, at no cost to Grantor. Such Reports shall be delivered to Grantor without any representation by Grantee of accuracy, completeness, fitness for a particular purpose, or any other kind.

The undersigned, Helena Marketplace and Grantee, hereby join in this instrument for the sole purpose of acknowledging their agreement with the respective covenants set forth herein.

IN WITNESS WHEREOF, Grantor and Helena Marketplace and Grantee have each caused this instrument to be executed by their duly authorized representatives as of the 29th day of October, 2001.

"GRANTOR:"

HELENA PROPERTIES, LLC, an Alabama
liability company

By: James A. Bruno
James A. Bruno
Its: Manager

"HELENA MARKETPLACE:"

HELENA MARKETPLACE, L.L.C., an
Alabama limited liability company

By: SRC Realty, L.L.C., an Alabama limited
liability company, Managing Member

By: E. Paul Strempel, Jr.
E. Paul Strempel, Jr.
Its Member

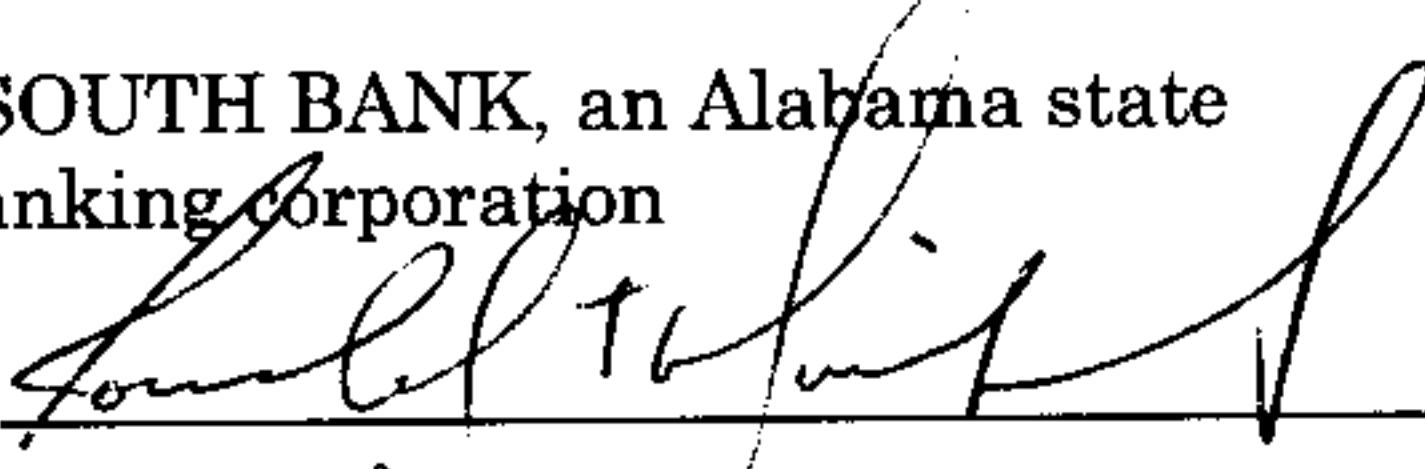
By: Rick L. Griffith
Rick L. Griffith
Its Member

By: SOUTHMARK PROPERTIES, L.L.C., an
Alabama limited liability company,
Managing Member


By: 
James A. Bruno
Its Managing Member

"GRANTEE:"

AMSOUTH BANK, an Alabama state
banking corporation

By: 
Its: Vice President

ATTEST:

By: 
Its: Finance Officer

STATE OF ALABAMA)
:
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James A. Bruno, whose name as Manager of HELENA PROPERTIES, LLC, 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 said instrument, he as such Manager 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 official seal this 29th day of October, 2001.


Notary Public

My Commission Expires ~~Jan 3, 2004~~
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
:
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that E. Paul Stempel, Jr., as a Member of SRC Realty, L.L.C., an Alabama limited liability company, in its capacity as a Member of HELENA MARKETPLACE, L.L.C., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company in its capacity as a Member of Helena Marketplace, L.L.C., on the day the same bears date.

Given under my hand and official seal this 29th day of October, 2001.


Notary Public

[NOTARIAL SEAL]

My Commission Expires ~~Jan 3, 2004~~
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Rick L. Griffith, as a Member of SRC Realty, L.L.C., an Alabama limited liability company, in its capacity as a Member of HELENA MARKETPLACE, L.L.C., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company in its capacity as a Member of Helena Marketplace, L.L.C., on the day the same bears date.

Given under my hand and official seal this 29th day of October, 2001.



Notary Public

[NOTARIAL SEAL]

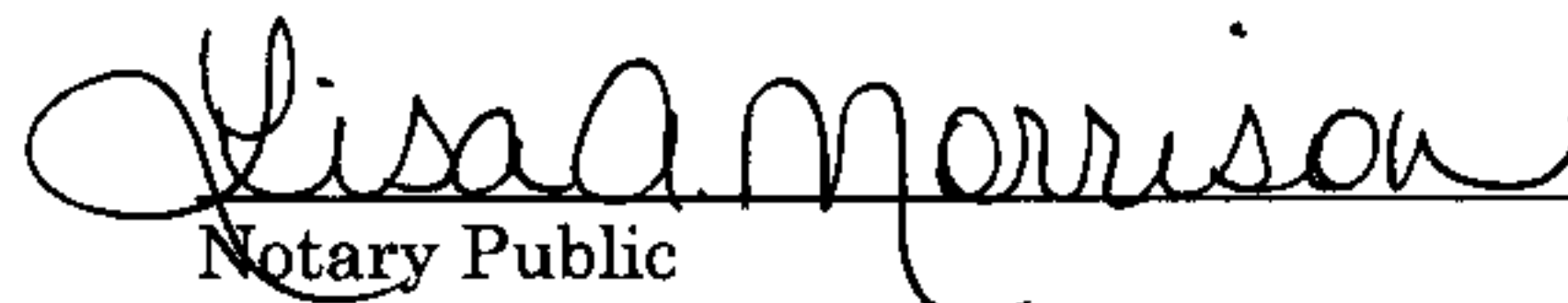
My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 3, 2004
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James A. Bruno, as Managing Member of Southmark Properties, L.L.C., an Alabama limited liability company, in its capacity as a Member of HELENA MARKETPLACE, L.L.C., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company in its capacity as a Member of Helena Marketplace, L.L.C., on the day the same bears date.

Given under my hand and official seal this 29th day of October, 2001.



Notary Public

[NOTARIAL SEAL]

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 3, 2004
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ronald Whisenhunt, whose name as Vice President of AMSOUTH BANK, an Alabama state banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, (s)he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this 29th day of October, 2001.

Kay H Bains
Notary/Public

[NOTARIAL SEAL]

My Commission Expires: 10/10/04

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Tammy Stewart, whose name as Finance officer of AMSOUTH BANK, an Alabama state banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, (s)he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this 29th day of October, 2001.

Kay H Bains
Notary/Public

[NOTARIAL SEAL]

My Commission Expires: 10/10/04

EXHIBIT A

This conveyance is made subject to the following:

1. Taxes and assessments for the year 2002, and subsequent years, which are not yet due and payable.
2. Restrictions appearing of record in Instrument #1997-37151 and Instrument #2001-12331, in the Probate Office of Shelby County, Alabama.
3. Right of way for Shelby County Road 17 granted to Shelby County recorded in Deed Book 154, page 384, in the Probate Office of Shelby County, Alabama.
4. Easement for Alabama Power Company recorded in Real 1, page 332, in the Probate Office of Shelby County, Alabama.
5. Less and except any part of subject property lying within a road right of way.
6. Coal, oil, gas and other mineral interests in, to or under the land herein described which are not owned by Grantor.

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