

This instrument prepared by
and upon recording return to:
Murphy McMillan, Esq.
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
420 North 20th Street, Suite 1600
Birmingham, AL 35203

STATE OF ALABAMA)

SHELBY COUNTY)

**DECLARATION OF RESTRICTIVE COVENANTS
AND OPERATING AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned, **DOUBLE J & O, LLC**, an Alabama limited liability company (the "Double J & O"), is the owner of certain real property (the "Double J & O Property") shown on the site plan attached hereto as Exhibit "A", said Property being more particularly described on Exhibit "A-1", attached hereto; and

WHEREAS, Double J & O is desirous of establishing the restrictive covenants, conditions, restrictions and limitations contained herein (hereinafter sometimes collectively called "Covenants"), and imposing them on the Double J & O Property and each owner of all or any part of the Double J & O Property (each an "Owner").

NOW, THEREFORE, for and in consideration of the premises, Double J & O does hereby expressly declare, establish and adopt the following covenants, conditions, restrictions and limitations which shall apply in their entirety on the Double J & O Property as a covenant running with the land.

1. Restricted Uses. The Double J & O Property shall not be used or occupied or developed for any of the following prohibited uses:

- Any use which emits an obnoxious odor, noise or sound;
- Any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
- Any "second hand" store, "surplus" store, or pawn shop;
- Any free-standing business specializing in auto title loans (which restriction shall not be applicable to any retail bank or other financial institution);
- Any mobile home park, trailer court, labor camp, junkyard, or stockyard;
- Any dumping, disposing, incineration or reduction of garbage;

Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer;

Any automobile, truck, trailer or recreational vehicle body shop repair operation;

Any mortuary or funeral home;

Any establishment selling or exhibiting "obscene" material;

Any establishment selling or exhibiting illicit and/or illegal drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff;

Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall;

A retail self-storage business that uses metal construction for the exterior siding of its improvements and/or provides outside storage for boats and/or recreational vehicles; provided, however, that no other type of self-storage facility shall specifically be prohibited hereby.

Any use that would cause an unreasonable nuisance to any tenant or owner of the any part of the Double J & O Property.

2. **Signage Area.** Double J & O has reserved the signage area, depicted on Exhibit "B", attached hereto and made a part hereof (the "Signage Area"), for future retail signage that Double J & O may elect to construct (the "Retail Sign") to benefit each Owner. In the event that Double J & O elects to construct the Retail Sign, the Retail Sign shall be constructed, kept and maintained by Double J & O in a manner determined by Double J & O, in its sole but reasonable discretion, and otherwise in compliance with all laws, statutes, ordinances and regulations of all federal, state and local government agencies and this agreement. Each Owner shall pay its prorata share of all costs and expenses of designing, constructing, repairing, rebuilding, keeping and maintaining the Retail Sign and the Signage Area, including but not limited to all taxes, governmental assessments and other charges, which pro rata share shall be calculated by multiplying the total costs and expenses of designing, constructing, repairing, rebuilding and maintaining the Retail Sign and the Signage Area, including but not limited to all taxes and other governmental assessments and all additional costs incurred by Double J & O with respect to keeping and maintaining the Retail Sign and/or the Signage Area, by a fraction, the numerator of which shall be the square footage of the total usable signage area to be used by each Owner (including each Owner's tenants) and the denominator of which shall be the total usable signage area of the Retail Sign (the "Signage Expenses"). Notwithstanding the foregoing, if any Owner shall elect not to have space on the Retail Sign, such Owner shall be required to contribute a maximum of \$2,000.00 for the cost of the initial design and construction and/or cost of design and rebuilding of the Retail Sign and \$100.00 per calendar year thereafter for repair and maintenance of the Retail Sign and the Signage Area (the "Non-participating Signage Expenses"). Within thirty (30) business days of written demand (including providing copies of invoices reflecting costs), each Owner shall reimburse Double J & O for such Owner's pro rata share of the Signage Expenses or for the Non-participating Signage Expenses, as the case may be. Such expenses not paid when due shall accrue interest at that rate of twelve percent (12%) per annum.

3. **Main Access Road.** The main access to the Double J & O Property is over and through the easement granted in the Declaration of Easements between MJM Chelsea, LLC and Double J & O, LLC, dated April 13, 2006 and recorded in Instrument #20060421000186980 in the Office of the Judge of Probate of Shelby County Alabama (the "Access Easement"), which Access Easement is included within Chelsea Point Drive (together, the "Main Access Road") and which Main Access Road is depicted on Exhibit "C", attached hereto and made a part hereof. Double J & O shall be responsible for the initial construction of the Main Access Road over the Double J & O Property in accordance with all applicable laws, rules and regulations. Unless and until publicly dedicated, the Main Access Road shall be kept and maintained by Double J & O in accordance with the Main Access Road Declaration, in compliance with all laws, statutes, ordinances and regulations of all federal, state and local government agencies and, otherwise, in a manner determined by Double J & O, in its sole but reasonable discretion. Each Owner shall pay its prorata share of keeping and maintaining the Main Access Road in accordance with the provisions hereof, which pro rata share shall be calculated by multiplying all costs and expenses of maintaining and keeping the Main Access Road, including but not limited to all taxes and other governmental assessments and all additional costs incurred by Double J & O with respect to keeping and maintaining the Main Access Road and/or the real property of which it is a part, by a fraction, the numerator of which shall be the square footage of the real property owned by each Owner and the denominator of which shall be the total square footage of the Double J & O Property (the "Road Maintenance Expenses"). Within thirty (30) business days of written demand (including providing copies of invoices reflecting costs), each Owner shall reimburse Double J & O for such Owner's pro rata share of the Road Maintenance Expenses. Such expenses not paid when due shall accrue interest at that rate of twelve percent (12%) per annum.

4. **Improvements to the Double J & O Property.**

(a) Initial Construction and Alteration and Subsequent Alterations and Additions. Prior to the commencement of construction of any improvement on any part of the Double J & O Property, each Owner shall submit plans and specifications for such improvements to Double J & O for its prior review and written approval. Each Owner shall design, construct and maintain improvements to such Owner's real property accordance with the following: (i) all utilities serving such real property must be extended entirely under ground and there shall be no lines, services, poles, wires or other utility facilities, whether similar or dissimilar, which shall be constructed or permitted to remain above ground level; (ii) decorative screening and/or landscaping will be provided as necessary in order to obscure from public view all trash rooms, trash holding receptacles, loading and service areas, mechanical and electrical equipment, storage facilities and bins, and other building appurtenances which may be aesthetically undesirable; and (iii) appropriate screening shall be provided to screen roof-mounted equipment, roof vents and other appurtenances from public view.

Any subsequent alterations or additions to each Owner's real property shall be of character and quality commensurate with first class neighborhood retail centers in the area in the area in which the Property is located and shall be subject to Double J & O's review and approval.

(b) Maintenance. Each Owner shall maintain and keep all improvements to such Owner's real property in a first-class condition and state of repair, normal wear and tear

excepted, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions hereof. Each Owner further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible, and to arrange for regular removal of such trash or garbage.

(c) Casualty and Condemnation. In the event any improvements to any Owner's real property are damaged by fire or other casualty (whether insured or not), such Owner shall promptly remove the debris resulting from such event and provide a sightly barrier and within a reasonable time thereafter shall either (i) repair or restore such improvements so damaged, such repair or restoration to be performed in accordance with the provisions of this Agreement, or (ii) erect other building improvements in such location, in accordance with plans and specifications subject to Double J & O's approval as set forth herein, or (iii) demolish such improvements and restore the area to an attractive condition. Each Owner shall have the option to choose which of the foregoing alternatives to perform, but shall be obligated to perform one of such alternatives and shall give notice to Double J & O within sixty (60) days from the date of such casualty of which alternative such Owner has selected.

In the event of a taking of a portion of an Owner's real property by right of eminent domain or sale in lieu thereof that results in a loss of all or any portion of the improvements thereto, such Owner shall, within ninety (90) days of such taking or sale in lieu thereof, restore such improvements as nearly as possible to the condition existing prior to the taking or sale in lieu thereof.

5. Owner's Association. Upon or at any time prior to Double J & O's sale of all of the Double J & O Property, Double J & O may cause an owner's association (the "Owner's Association") to be formed, which Owner's Association shall consist of all of the Owners of the Double J & O Property. Such owners shall have the right to vote in the Owner's Association proportionate to the percentage that the square footage of each Owner's property bears to the total square footage of the Double J & O Property, and all matters shall be determined by majority vote except an amendment of this agreement, which shall require a seventy-five percent (75%) affirmative vote, as set forth below. Double J & O shall have the right transfer title to the Signage Area and that part of the Double J & O Property comprising the Main Access Road, unless and until publicly dedicated, to the Owner's Association and to assign to the Owner's Association all of Double J & O's rights and obligations under this Agreement, including but not limited to Double J & O's rights to enforce the terms and conditions of this Agreement and Double J & O's obligations to maintain the Signage Area and Retail Sign, if and when constructed, and the Main Access Road. Upon such transfer, the Owner's Association shall have the right to enact such commercially reasonable rules and regulations governing the Double J & O Property as will assist all Owners in the orderly operation and preservation of the value of their properties, including but not limited to the following: (a) designation of an architectural review committee to oversee the character and quality of improvements to be constructed, repaired or re-built; (b) provide for liens against the property of all owners to assure compliance with the terms and provisions hereof; provided that such liens shall be subordinate to the liens of any first mortgage; (c) elect a board of directors for the Owner's Association; (d) enact rules and regulations concerning rebuilding improvements on the properties after casualty or

condemnation; and (e) provide for the enforceability of the rules and regulations by all property owners.

Each Owner shall take such further actions and execute such further documents as are necessary to effect the formation of the Owner's Association and the enforceability of rules and regulations promulgated by the Owner's Association.

6. **Owner's Indemnity.** Each Owner shall defend, indemnify and hold harmless Double J & O, its successors and assigns, and their employees, agents and tenants from all damages, liens, claims, actions and proceedings and costs incurred (including reasonable attorneys' fees and costs of suit) resulting from the performance of any construction or maintenance activities performed or authorized by such Owner.

7. **Enforcement.** This agreement shall be (i) enforceable in any court of competent jurisdiction by way of damages and injunctive relief by Double J & O, its successors and assigns, including the Owner's Association, and (ii) governed by the laws of the State of Alabama.

8. **Amendment.** This agreement may only be amended: (i) with the written consent of all Owners of the Double J & O Property; or (ii) if Double J & O has transferred its rights and obligations hereunder to the Owner's Association, by an affirmative vote of at least seventy-five percent (75%) of the votes of the Owner's Association. Notwithstanding the foregoing, such restrictions on the amendment of this agreement shall not work to relieve any Owner from the obligation to take such further actions and execute such further documents as are necessary to effect the enforceability of rules and regulations promulgated by the Owner's Association, as set forth in Section 4, above, including an amendment hereto.

9. **Term.** This agreements set forth herein shall run with the land and shall be binding on each Owner, its successors and assigns and all future owners of the Double J & O Property, or any part thereof, until 11:49 P.M. on August 3, 2032.

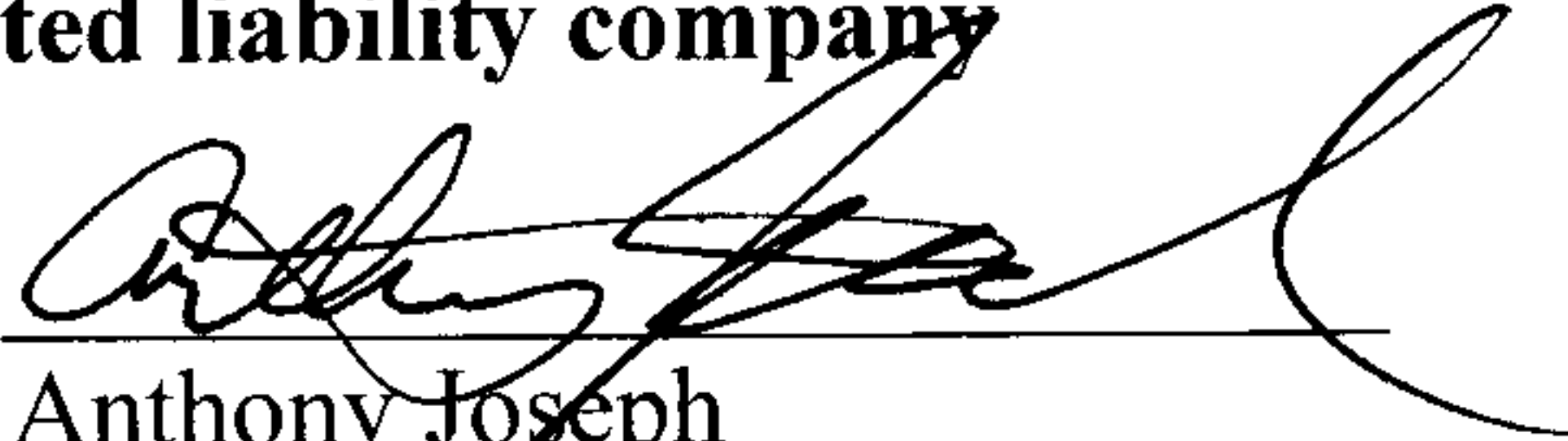
10. **Severability.** Invalidation of any one or more of the provisions of this agreement by judgment or court order shall in no way affect any of the other agreements contained herein, which shall remain in full force and effect.

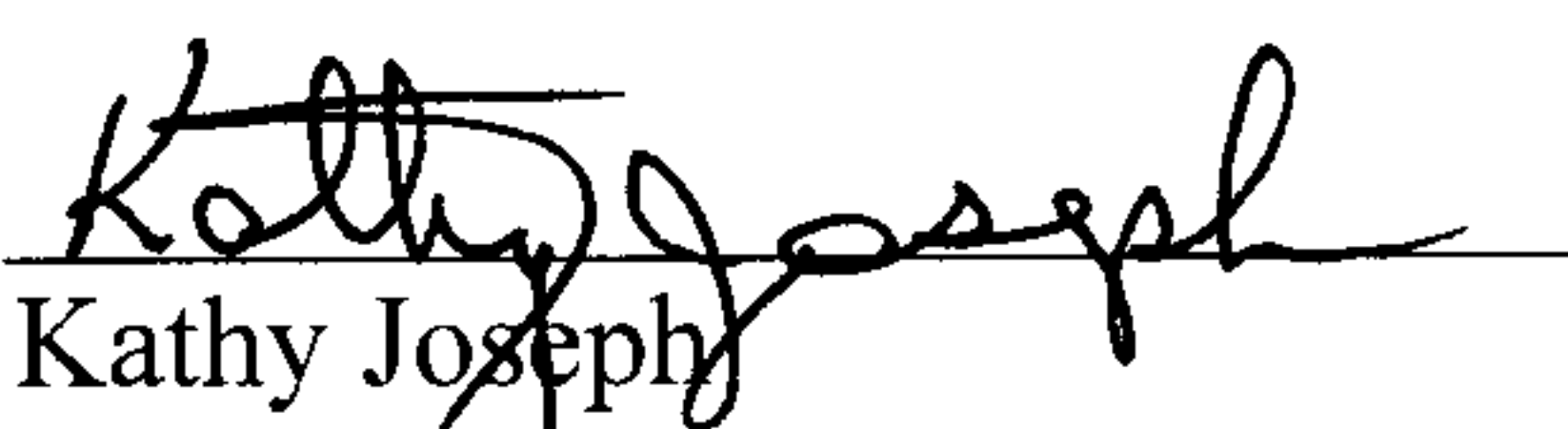
IN WITNESS WHEREOF, the parties have caused this instrument to be executed by its member who is thereunto duly authorized on this 2nd day of August, 2007.

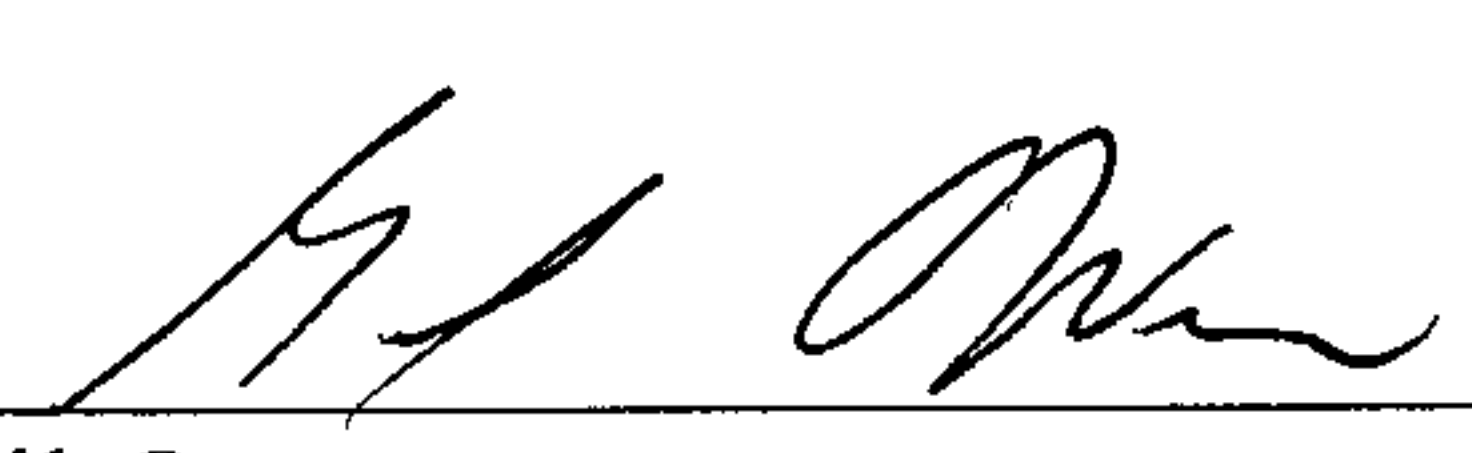
WITNESS:

DOUBLE J & O:

**Double J & O, LLC, an Alabama
limited liability company**

By: 
Anthony Joseph
Its: Managing Member


By: 
Kathy Joseph
Its: Managing Member

By: 
Gail Owen
Its: Managing Member

STATE OF ALABAMA)
)
Shelby COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Anthony Joseph**, whose name as Managing Member of **Double J & O, 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 such instrument, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 2nd day of August, 2007.


Notary Public
My Commission Expires:
My Commission Expires 01-10-2010

20070807000366510 7/11 \$41.00
Shelby Cnty Judge of Probate, AL
08/07/2007 08:21:19AM FILED/CERT

STATE OF ALABAMA)
Shelby COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Kathy Joseph**, whose name as Managing Member of **Double J & O, 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 such instrument, she, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 2nd day of August, 2007.

Glenn B. Bradley
Notary Public

My Commission Expires:

My Commission Expires 01-10-2010

STATE OF ALABAMA)
Shelby COUNTY)

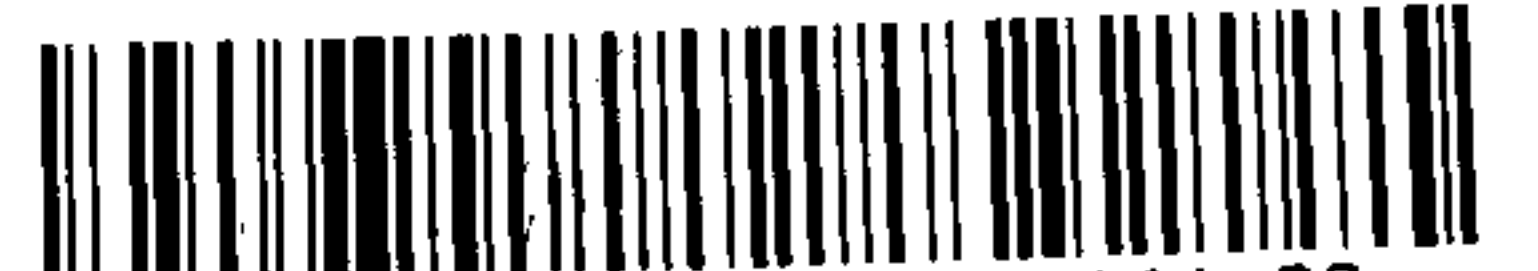
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Gail Owen**, whose name as Managing Member of **Double J & O, LLC**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 2nd day of August, 2007.

Glenn B. Bradley
Notary Public

My Commission Expires:

My Commission Expires 01-10-2010



20070807000366510 8/11 \$41.00
Shelby Cnty Judge of Probate, AL
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Exhibit "A"
Depiction of Double J & O Property

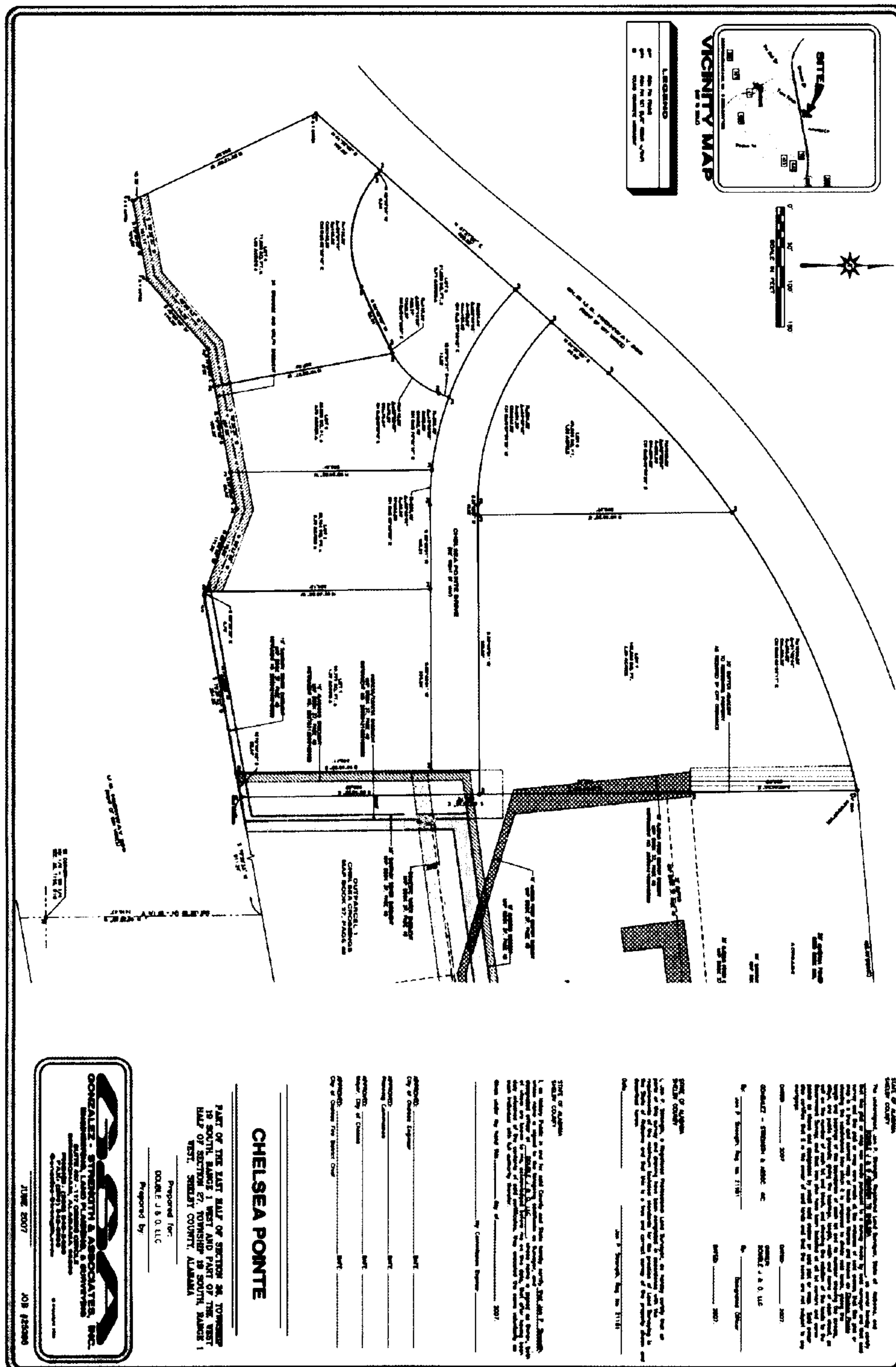
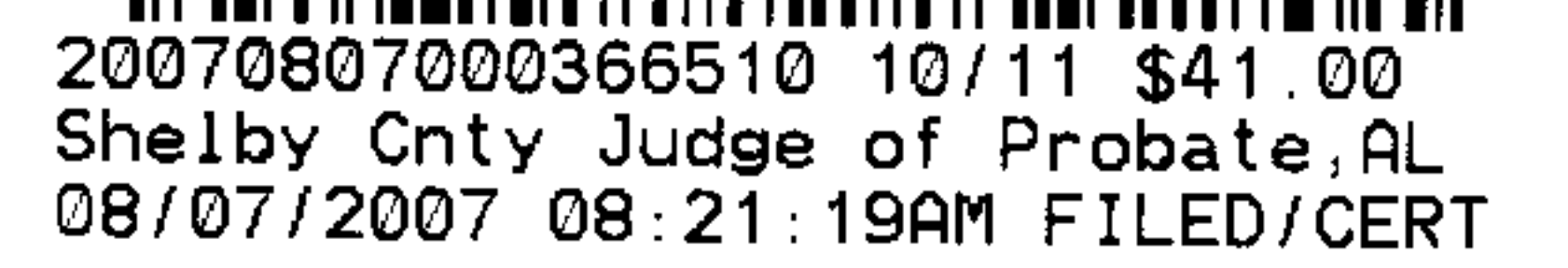


Exhibit "A-1"
Legal Description of Double J & O Property

Lots 1 through 7 according to the Amended Map of Chelsea Pointe, as recorded in Map Book 38,
Page 146 in the Probate Office of Shelby County, Alabama.



U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

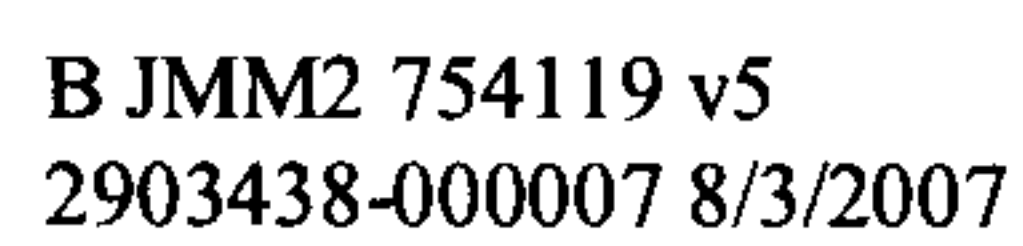


Exhibit "C"
Main Access Road

