


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


20070807000366520 1/11 \$41.00
Shelby Cnty Judge of Probate, AL
08/07/2007 08:21:20AM FILED/CERT

STATE OF ALABAMA)

SHELBY COUNTY)

**OUTPARCEL DECLARATION
OF RESTRICTIVE COVENANTS**

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 "Seller 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, the Seller Property is subject to that certain Declaration of Restrictive Covenants and Operating Agreement executed of even date herewith and filed in the Office of the Judge of Probate of Shelby County, Alabama on 8.7, 2007 at Instrument No. # 2007 08 07 000 3665 10 (the "Master Covenants"); and

WHEREAS, of even date herewith, Double J & O has sold to **SUPERIOR BANK**, a Federal Savings Bank ("Superior"), subject to the Master Covenants, a portion of the Seller Property, which is shown on the site plan attached hereto as Exhibit "B" and more particularly described on Exhibit "B-1", attached hereto (the "Superior Property"); and

WHEREAS, the parties are desirous of establishing the restrictive covenants, conditions, restrictions and limitations contained herein (hereinafter sometimes collectively called "Outparcel Covenants"), and imposing them on the Superior Property so as to assure that the use of the Superior Property is compatible with the use of Seller Property.

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

1. **Master Covenants.** Superior hereby acknowledges that it shall be bound by and its ownership of the Superior Property shall be subject to the terms and conditions of the Master Covenants

2. **Improvements to Superior Property.**

(a) **Initial Construction and Alteration and Subsequent Alterations and Additions.** Superior shall construct the most recent prototype of a Superior Bank retail bank branch on the Superior Property in accordance with the Master Covenants, all applicable laws, rules and regulations, which shall be completed and open for business within twenty-four (24) months after the date hereof. Any subsequent alterations or additions to the Superior 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, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, no improvements on the Superior Property shall exceed thirty-five (35) feet in height.

(b) **Maintenance.** Superior covenants and agrees to maintain and keep all improvements to the Superior 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.

(c) **Failure to Complete Initial Construction.** If Superior shall fail to complete construction and open for business as required herein (the "Construction Default"), Double J & O shall have the option to repurchase the Superior Property, including improvements thereto, from Superior for the "fair market value". The "fair market value" shall mean: (i) that amount agreed to by Double J & O and Superior within the fifteen (15) day period after Double J & O gives notice of its intent to exercise this option to recapture or (ii) in the event that the parties cannot agree, then that amount determined by the majority vote of three (3) M.A.I. appraisers, one of whom shall be chosen by Double J & O, one of whom shall be chosen by Superior and the third to be selected by the appraisers chosen by Double J & O and Superior. If any party shall fail to select an appraiser within ten (10) days following notice from the other party, the party giving such notice may choose an appraiser on behalf of the other party. Each party shall be responsible for the cost of the appraiser selected by (or for) it and one-half of the cost of the third appraiser.

(d) **Inspection and Closing.** Double J & O shall have the right to inspect the Superior Property and the improvements thereto before deciding whether to exercise its purchase option. If Double J & O elects to exercise such option, Double J & O shall give written notice of such intent to Superior at any time following the Construction Default. The closing of the transaction shall occur no later than sixty (60) days from the date Double J & O provides such notice. The purchase price shall be paid in full at closing by wire transfer. Superior shall convey title at closing by statutory warranty deed, subject only to easements, covenants, restrictions and other matters of record existing as of the date hereof or otherwise approved by Double J & O and Superior shall pay the costs of the title insurance policy issued in connection with the aforementioned commitment, preparation of the deed and one-half of the escrow closing fee. Double J & O will pay all other costs associated with the closing.

4. **Owner's Association.** Superior hereby agrees to take such further actions and to execute such further documents as are necessary to effect the formation of the Owner's Association, as described in the Master Covenants, and the enforceability of rules and regulations promulgate by the Owner's Association.

5. **Superior's Indemnity.** Superior agrees to defend, indemnify and hold harmless Double J & O and its employees, agents and tenants from all damages, liens, claims, actions, 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 Superior.

Double J & O agrees to defend, indemnify and hold harmless Superior and its employees, agents and tenants from all damages, liens, claims, actions, proceedings and costs incurred (including reasonable attorneys' fees and costs of suit) resulting from the performance of any construction or maintenance activities on the Seller Property.

6. **Entire Agreement.** The Master Covenants and this agreement, including the Exhibits hereto, sets forth the entire understanding and agreement of Double J & O and Superior with respect to the Superior Property.

7. **No Third Party Benefits.** Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

8. **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.

9. **Prevailing Party.** In the event either party shall institute any action or proceeding against the other party relating to the provisions of this agreement, or to any default hereunder, or to collect any amounts owing hereunder, or in the event an arbitration proceeding is commenced by agreement of the parties to any dispute, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for costs and expenses incurred by the successful litigant in connection with such action or proceeding and any appeals therefrom, including reasonable attorney's fees and court costs.

10. **Amendment.** This agreement may only be amended: (i) with the written consent Superior and Double J & O; or (ii) if Double J & O has transferred its rights and obligations hereunder to the Owner's Association (defined in the Master Covenants), with the written consent of Superior and the Owner's Association.

11. **Term.** The Outparcel Covenants contained herein shall run with the land and shall be binding on the Superior, its successors and assigns and all future owners of the Superior Property, or any part thereof, until 11:49 P.M. on August 3, 2032.

12. **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.



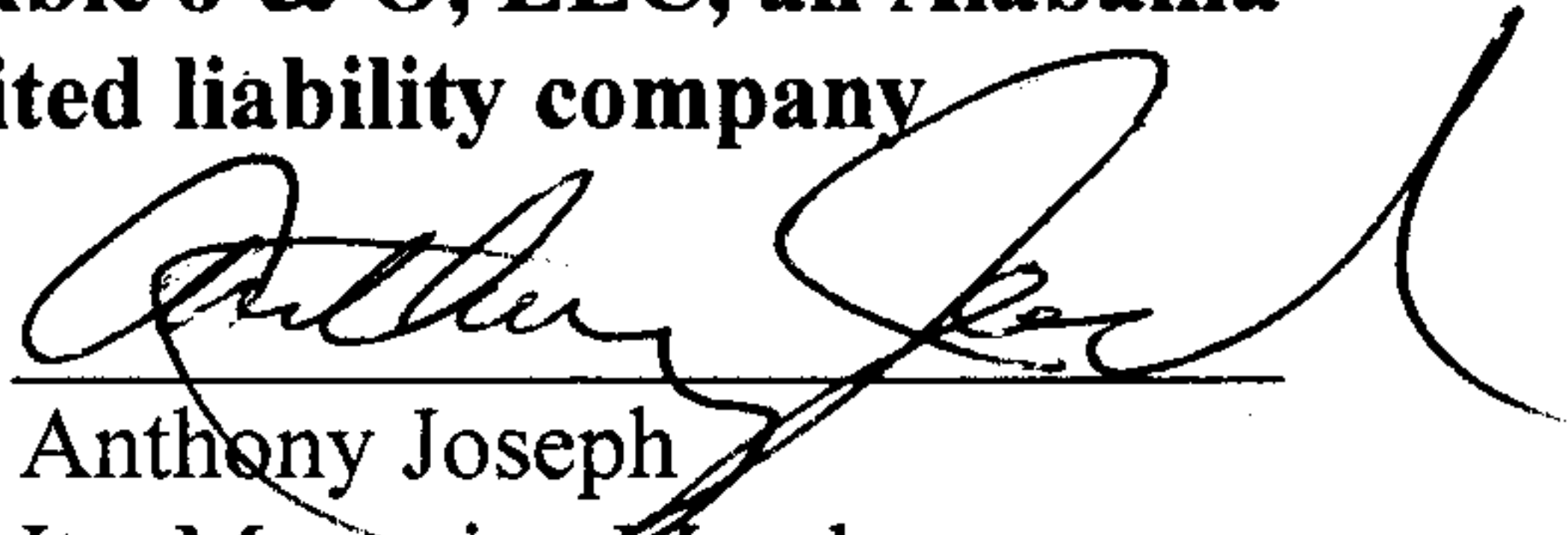
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IN WITNESS WHEREOF, the parties have caused this instrument to be executed by its member who is thereunto duly authorized on this 1st day of August, 2007.


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 1st day of August, 2007.

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 **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 1st 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 1st day of August, 2007.

Glenn B. Bradley
Notary Public

My Commission Expires:

My Commission Expires 01-10-2010

WITNESS OR ATTEST:

Norman B. Fries

Wendy Cope

SUPERIOR:

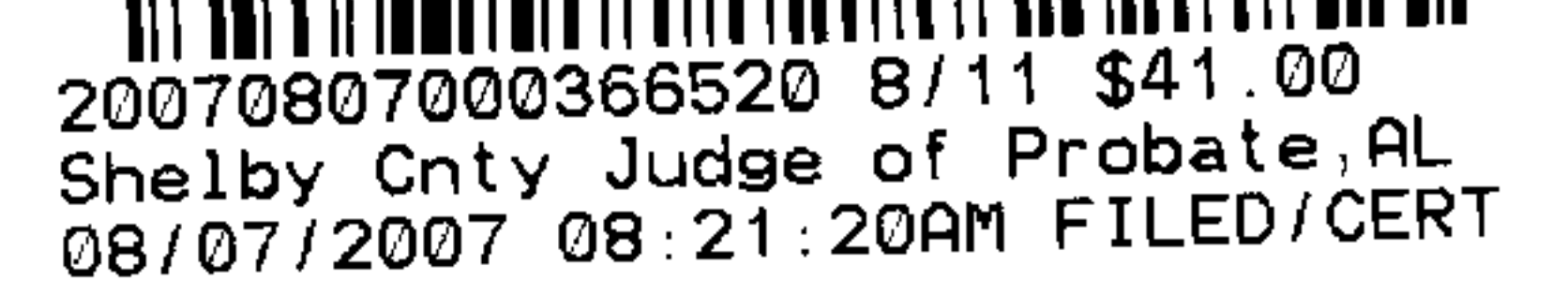
Superior Bank, a Federal Savings
Bank

By: Rick Gardner
Name: Rick Gardner
Its: Chief Operating Officer

STATE OF ALABAMA)
)
 COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Rick Gardner, whose name as COO of **Superior Bank**, a Federal Savings Bank, 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/she, as such COO and with full authority, executed the same voluntarily for and as the act of said Federal Savings Bank.

Given under my hand this the 3 day of August, 2007.
Jane M. Dotson
Notary Public
My Commission Expires:
10-25-08

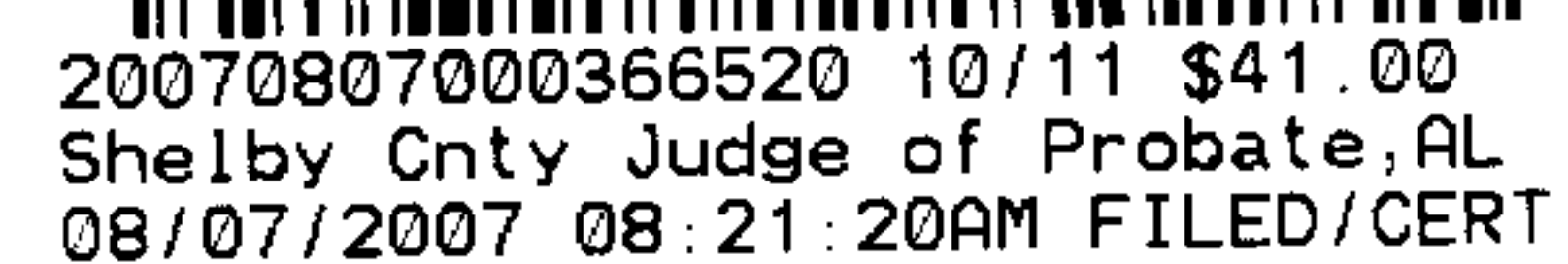




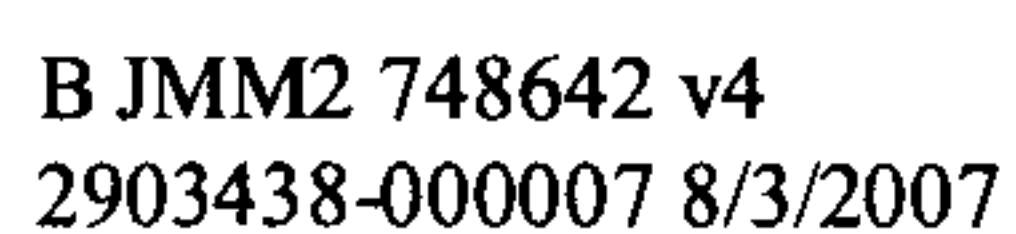
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Exhibit "A-1"
Legal Description of Seller Property

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



Depiction of Superior Property





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Exhibit "B-1"
Description of Superior Property

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