

20110613000173700 1/11 \$42.00  
Shelby Cnty Judge of Probate, AL  
06/13/2011 01:20:43 PM FILED/CERT

When recorded return to:

Superior Bank, N.A.  
4350 W. Cypress Street, Suite 102  
Tampa, Florida 33607  
Attention: Michael S. Strobl

STATE OF ALABAMA                    )  
  )  
SHELBY COUNTY                        )

**ASSIGNMENT OF SECURITY INSTRUMENTS  
AND OTHER LOAN DOCUMENTS**

KNOW ALL PERSONS BY THESE PRESENTS: That **FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as Receiver for Superior Bank, FSB (“Assignor”)**, by virtue of its appointment by the Office of Thrift Supervision as receiver to liquidate and distribute the assets of Superior Bank, FSB as set forth in that certain Notice of Appointment of a Receiver dated April 15, 2011, and Acceptance of Appointment as Receiver also dated April 15, 2011 (which are attached hereto as Exhibit A), and for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)**, and other good and valuable consideration received from or on behalf of **SUPERIOR BANK, national association (“Assignee”)**, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto Assignee all of Assignor’s rights, title and interest in and to all those certain Mortgages, Security Deeds, Deeds to Secure Debt, Deeds of Trust, Assignments of Leases and Rents, UCC Financing Statements, judgment liens, and all such other instruments and security agreements securing loans owned by Superior Bank, FSB and held of record by Superior Bank FSB or any of its predecessors as of April 15, 2011, in the Public Records of the counties of the State of Alabama and all modifications, extensions, amendments and renewals thereto (collectively, the “**Security Instruments**”), however, expressly excluding from the definition of Security Instruments all Mortgages, Security Deeds, Deeds to Secure Debt, Deeds of Trust and such other instruments registered under or by use of Mortgage Electronic Registrations Systems, Inc. regardless of Superior Bank, FSB’s ownership or beneficial interest therein.

Assignor does further grant, bargain, sell, assign, transfer and set over unto Assignee all of Assignor’s rights, title and interest in and to the promissory notes, loan documents and all other indebtedness secured by the Security Instruments, as evidenced by related promissory notes, any and all loan agreements, pledges, security agreements and UCC Financing Statements and all modifications, extensions, amendments and renewals to said documents and instruments together with any and all other loan documents, title policies and casualty insurance policies evidencing, securing or relating to any of the foregoing, all of which have been delivered to the Assignee.

For purposes of clarification, it is the intent of Assignor to convey to Assignee all interest of Superior Bank, FSB in all Security Instruments existing of record as of April 15, 2011, and held by Assignor as receiver for Superior Bank, FSB.

**TO HAVE AND TO HOLD** the same unto Assignee and its legal representatives, successors and assigns forever. This assignment is made as-is, without recourse, warranty or representation of any kind whatsoever, whether express or implied.

**IN WITNESS WHEREOF**, this assignment of Security Instruments is executed this the 11th day of May, to be deemed effective as of the 15th day of April, 2011.

Signed, sealed and delivered in our presence:

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for Superior  
Bank, FSB

Jackie Golden  
Print Name: Jackie Golden

By: Cynthia Bush, VP  
Print Name: Cynthia Bush, VP  
Its: Attorney-In-Fact

Terri Dillard  
Print Name: Terri Dillard

**ACKNOWLEDGEMENT**

STATE OF ALABAMA                   )  
  )  
JEFFERSON COUNTY                )

I, Carol S. Murckis, a notary public, in and for said County in said State, hereby certify that Cynthia Bush, whose name as Attorney-in-Fact for Federal Deposit Insurance Corporation, as Receiver for Superior Bank, FSB, 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, such individual, in his capacity as such attorney-in-fact, executed the same voluntarily on the day the same bears date.


GIVE UNDER MY HAND this the 15th day of May, 2011.

Carol S. Murckis  
Notary Public  
My commission expires: 10-6-14

This instrument prepared by:

Christopher P. Couch, Esq.  
Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P.  
1819 5th Avenue North  
Suite 1100 - One Federal Place  
Birmingham, Alabama 35203

**Exhibit A**

  
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**Office of Thrift Supervision**  
Department of the Treasury

1475 Peachtree Street, N.E., Atlanta, GA 30309 • Telephone: (404) 974-9620  
P.O. Box 105217, Atlanta, GA 30348-5217 • Fax: (404) 974-9802

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*Southeast Region*

Hand Delivered

April 15, 2011

OTS No. 18010

Superior Bank  
17 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

Re: Notice of Appointment of a Receiver

Dear Sir/Madam:

This is to notify you that the Acting Director, Office of Thrift Supervision, by Order Number 2011-29, dated April 15, 2011, appointed the Federal Deposit Insurance Corporation as receiver (Receiver) for Superior Bank, Birmingham, Alabama (Association), and authorized the undersigned to deliver notice of such appointment.


The Receiver is now taking possession of the Association pursuant to the terms of its appointment as set forth in Order No. 2011-29, a copy of which is attached. In connection with the appointment of the Receiver, we respectfully call your attention to Section 5(d)(4) of the Home Owners' Loan Act, 12 U.S.C. § 1464(d)(4), which establishes criminal penalties for refusal to comply with the Receiver's demand for possession of the property, business and assets of an association in receivership.

Please countersign a copy of this letter and indicate the time and date of your receipt of the letter and attachment in the space provided on the following page and return such copy to me.

Sincerely,

Lazaro Barreiro  
Field Manager II

Attachment

  
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Received by: CHARLES M. SCOTT CEO  
Print Name and Title

At 4:58, P.M., C.D.T., on Friday, April 15, 2011

Signature: Charles M. Scott

Accepting Appointment of FDIC as Receiver for Superior Bank, Birmingham, Alabama:

BARRY GUNAW Receiver In Charge  
Print Name and Title

At 4:58, P.M., C.D.T., on Friday, April 15, 2011

Signature: Barry Gunaw

## **OFFICE OF THRIFT SUPERVISION**

### **Receivership of a Federal Savings Association**

**Date:** April 15, 2011  
**Order No.:** 2011-29  
**OTS No.:** 18010

The Acting Director of the Office of Thrift Supervision (OTS), or his designee, in cooperation with the Federal Deposit Insurance Corporation (FDIC), has determined to appoint the FDIC as receiver of Superior Bank, Birmingham, Alabama (Institution).

### **GROUND FOR APPOINTMENT OF FDIC AS RECEIVER FOR THE INSTITUTION**

The Acting Director, or his designee, based upon the administrative record, finds and determines the following:

- (i) The Institution is in an unsafe and unsound condition to transact business;
- (ii) The Institution, by resolution of its board of directors, has consented to the appointment of a receiver;
- (iii) The Institution is critically undercapitalized; and
- (iv) The Institution has substantially insufficient capital.

The Institution is a federally chartered stock savings association, the accounts of which are insured by the Deposit Insurance Fund. The Institution's home office is in Birmingham, Alabama, and the Institution has seventy-three branches, located in Alabama and Florida. The Institution is a wholly owned subsidiary of Superior Bancorp (Holding Company).

The Institution's Thrift Financial Report (TFR) for December 31, 2010, reported approximately \$3.04 billion in assets, \$2.99 billion in liabilities, and a net loss for calendar year 2010 of approximately \$232.2 million. At December 31, 2010, the Institution reported tangible, tier 1 (core), and total risk-based capital of 1.41 percent, 1.41 percent, and 3.49 percent, respectively. Based on the tangible capital ratio in the Institution's December 31, 2010, TFR, the Institution is critically undercapitalized under OTS's Prompt Corrective Action (PCA) regulation.<sup>1</sup>

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<sup>1</sup> 12 C.F.R. § 565.4(b)(5) (2011).



### **DISCUSSION OF GROUNDS FOR APPOINTMENT OF A RECEIVER FOR THE INSTITUTION**

Section 5(d)(2)(A) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(d)(2)(A), provides that OTS may appoint a receiver for any insured savings association if OTS determines that one or more grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1821(c)(5), exist.

#### **Unsafe or Unsound Condition to Transact Business**

Under section 11(c)(5)(C) of the FDIA, OTS may appoint a receiver for a savings association if it is in an unsafe or unsound condition to transact business. An unsafe or unsound condition has been identified as one where a savings association is operated in a manner that causes an unacceptable risk to its depositors' funds. See Franklin Savings Association v. Director, OTS, 934 F.2d 1127, 1145 (10th Cir. 1991), cert. denied, 503 U.S. 937 (1992).

The Institution is in an unsafe and unsound condition due to its capital deficiency, asset quality problems, and significant losses. As of December 31, 2010, the Institution reported tangible, tier 1 (core) and total risk-based capital of 1.41 percent, 1.41 percent and 3.49 percent, respectively. The Institution is therefore critically undercapitalized as defined in OTS's PCA Regulations. The Institution has significant asset quality problems. As of December 31, 2010, total adversely classified assets equaled \$605 million, or 19.92 percent of total assets, and 589.8 percent of tier 1 (core) capital plus the allowance for loan and lease losses (ALLL). The Institution's ratio of classified assets to tier 1 (core) capital plus ALLL is the highest among all currently existing OTS-regulated savings associations. The Institution continues to have a high concentration of high-risk assets located in geographic areas severely impacted by declining real estate prices. Additional declines in asset values are likely, thereby further depleting capital and jeopardizing the Institution's operations. Further, the Institution's deteriorating loan portfolio has materially affected the Institution's earnings, resulting in operating losses. Losses for calendar years 2008, 2009 and 2010 totaled approximately \$161.7 million, \$15.3 million and \$232.2 million. Preliminary reports indicate that for the two months ended February 28, 2011, the Institution lost approximately \$7.4 million.

Therefore, the Acting Director, or his designee, concludes that the Institution is in an unsafe and unsound condition to transact business.

#### **Consent**

Under section 11(c)(5)(I) of the FDIA, OTS may appoint a receiver if a savings association, by resolution of its board of directors, consents to the appointment. The Acting Director, or his designee, finds that the board of directors of the Institution, by resolution dated April 13, 2011, consented to the appointment of a conservator or receiver by OTS and, on April 13, 2011, the Institution entered into a Consent agreement with OTS for such an appointment.



### **Critically Undercapitalized**

Under section 11(c)(5)(L)(i) of the FDIA, OTS may appoint a receiver for a savings association if it is critically undercapitalized, as defined in 12 U.S.C. § 1831o(b). Under section 1831o(b), a depository institution is critically undercapitalized if it fails to meet any level of capital specified under section 1831o(c)(3)(A) of the FDIA. Section 1831o(c)(3)(A) provides for the appropriate banking agency to set a ratio of tangible equity to total assets at which a savings association is critically undercapitalized. OTS has promulgated 12 C.F.R. § 565.4(b)(5), which defines an institution as critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than two percent. As of December 31, 2010, the Institution reported a tangible capital ratio of 1.41 percent. Thus, the Acting Director, or his designee, concludes that the Institution is critically undercapitalized.

### **Substantially Insufficient Capital**

Under section 11(c)(5)(L)(ii) of the FDIA, OTS may appoint a receiver for a savings association if it has substantially insufficient capital. Pursuant to the authority granted in sections 5(t)(1)(A)(i) and 5(t)(2)(A) of the HOLA, OTS has promulgated 12 C.F.R. Part 567, requiring all savings associations that are not "1" rated to maintain a minimum tier 1 (core) capital ratio of 4 percent and all savings associations to maintain a minimum total risk-based capital ratio of 8 percent of the savings association's risk-based assets, as defined. OTS has concluded previously that failure to maintain at least two-thirds of any capital required by 12 C.F.R. Part 567 constitutes a substantial capital insufficiency within the meaning of 12 U.S.C. § 1821(c)(5)(L)(ii). *See, e.g.*, OTS Orders No. 2009-21 (April 17, 2009) and No. 2008-33 (September 19, 2008).

The Institution is not "1" rated and had a tier 1 (core) capital ratio and a total risk-based capital ratio of 1.41 percent and 3.49 percent, respectively, as of December 31, 2010. Accordingly, the Institution's tier 1 (core) capital ratio and total risk-based capital ratio both are less than two-thirds of the applicable capital requirements. Therefore, the Acting Director, or his designee, concludes that the Institution has substantially insufficient capital.

The Acting Director, or his designee, therefore, has determined that grounds for the appointment of a receiver for the Institution exist under section 5(d)(2) of the HOLA, and sections 11(c)(5)(C), (I), (L)(i), and (L)(ii) of the FDIA, 12 U.S.C. §§ 1821(c)(5)(C), (I), (L)(i), and (L)(ii).

## **ACTIONS ORDERED OR APPROVED**

### **Appointment of a Receiver**

The Acting Director, or his designee, hereby appoints the FDIC as receiver for the Institution, for the purpose of liquidation or winding up the affairs of the Institution, pursuant to section 5(d)(2) of the HOLA, 12 U.S.C. § 1464(d)(2), and section 11(c)(6)(B) of the FDIA, 12 U.S.C. § 1821(c)(6)(B).





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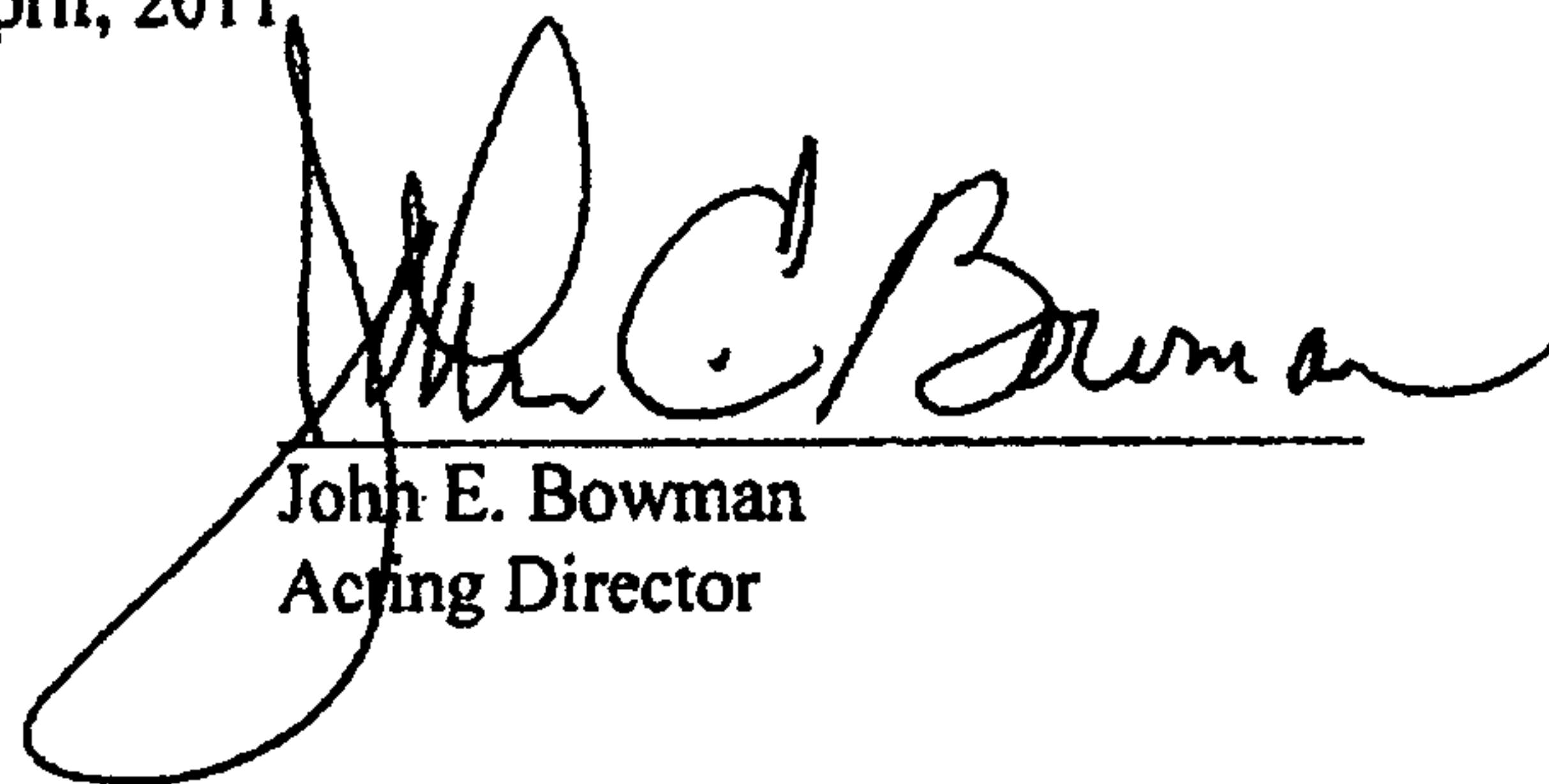
Order No. 2011-29  
Page 4

### **Delegation of Authority to Act for OTS**

The Acting Director, or his designee, hereby authorizes the OTS Southeast Regional Director, or his designee, and the Deputy Chief Counsel for Business Transactions of the Chief Counsel's Office, or his designee, to: (i) certify orders; (ii) sign, execute, attest, or certify other documents of OTS issued or authorized by this Order; (iii) designate the persons or entity that will give notice of the appointment of a receiver for the Institution and serve the Institution with a copy of this Order pursuant to 12 C.F.R. § 558.2; and (iv) perform such other functions of OTS necessary or appropriate for implementation of this Order. All documents to be issued under the authority of this Order must be first approved, in form and content, by the Chief Counsel's Office. In addition, the Acting Director, or his designee, hereby authorizes the Deputy Chief Counsel for Business Transactions, or his designee, to make any subsequent technical corrections, that might be necessary, to this Order, or any documents issued under the authority of this Order.

By Order of the Acting Director of OTS, or his designee, effective: (a) as to the above matters regarding the delegation of authority, immediately upon signature; and (b) as to the above matters regarding the appointment of the FDIC as receiver, immediately upon service of this Order on the Institution.

Executed this 15th day of April, 2011



John E. Bowman  
Acting Director

**Office of Thrift Supervision**  
**Department of the Treasury**



**I certify that annexed hereto is a true copy of the document described below made from records of the Office of Thrift Supervision, Department of the Treasury.**

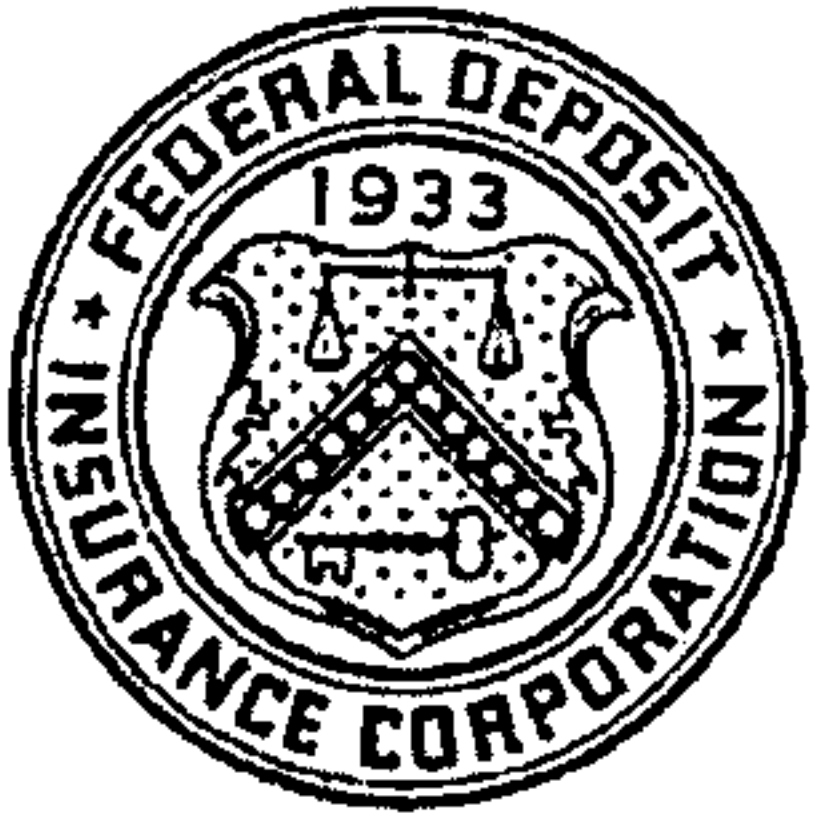
**Copy of the Office of Thrift Supervision Order Number 2011-29, executed on April 15, 2011, appointing a receiver for Superior Bank, Birmingham, Alabama, consisting of four (4) pages.**

**Signed this 15th day of April, 2011**

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**Lazaro Barreiro**  
**Field Manager II**  
**Office of Thrift Supervision**





**FDIC**

**Division of Resolutions and Receiverships**  
**East Coast Temporary Satellite Office**  
7777 Baymeadows Way West  
Jacksonville, Florida 32256

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(904) 256-3351

April 15, 2011

Office of Thrift Supervision  
1475 Peachtree Street NE  
Atlanta, Georgia 30309

Subject: Superior Bank  
Birmingham, Alabama – In Receivership  
Acceptance of Appointment as Receiver

Dear Sir or Madam:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the captioned depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

FEDERAL DEPOSIT INSURANCE CORPORATION

By: Mark B. Gilman  
Name: Mark B. Gilman  
Title: Receiver-in-Charge