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**SUPR 10-Q 9/30/2008**

**Section 1: 10-Q (FORM 10-Q)**

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**FOR THE QUARTERLY PERIOD ENDED September 30, 2008**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_**

**Commission File number 0-25033**

**Superior Bancorp**

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

63-1201350

(IRS Employer Identification No.)

17 North 20th Street, Birmingham, Alabama 35203  
(Address of Principal Executive Offices)

(205) 327-1400

(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

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Class	Outstanding as of September 30, 2008
Common stock, \$.001 par value	10,064,941

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## PART I FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**SUPERIOR BANCORP AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION**  
(Dollars in thousands, except per share data)

	September 30, 2008	December 31, 2007
	(UNAUDITED)	
<b>ASSETS</b>		
Cash and due from banks	\$ 88,035	\$ 52,983
Interest-bearing deposits in other banks	6,564	6,916
Federal funds sold	3,038	3,452
Investment securities available for sale	334,502	361,171
Tax lien certificates	18,877	15,615
Mortgage loans held for sale	15,292	33,408
Loans, net of unearned income	2,219,041	2,017,011
Less: Allowance for loan losses	(27,670)	(22,868)
Net loans	2,191,371	1,994,143
Premises and equipment, net	104,003	104,799
Accrued interest receivable	15,188	16,512
Stock in FHLB	24,965	14,945
Cash surrender value of life insurance	47,789	45,277
Goodwill and other intangibles	184,442	187,520
Other assets	69,611	48,684
<b>TOTAL ASSETS</b>	<b>\$ 3,103,677</b>	<b>\$ 2,885,425</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Deposits:		
Noninterest-bearing	\$ 220,553	\$ 207,602
Interest-bearing	2,004,976	1,993,009
<b>TOTAL DEPOSITS</b>	<b>2,225,529</b>	<b>2,200,611</b>
Advances from FHLB	440,327	222,828
Federal funds purchased and security repurchase agreements	5,989	17,075
Note payable	10,000	9,500
Subordinated debentures	60,940	53,744
Accrued expenses and other liabilities	19,019	31,625
<b>TOTAL LIABILITIES</b>	<b>2,761,804</b>	<b>2,535,383</b>
<b>STOCKHOLDERS' EQUITY</b>		
Common stock, par value \$.001 per share; authorized 15,000,000 shares; shares issued 10,391,748 and 10,380,658, respectively; outstanding 10,064,941 and 10,027,079, respectively	10	10
Surplus	331,860	329,232
Retained earnings	28,586	33,557
Accumulated other comprehensive (loss) income	(6,441)	174
Treasury stock, at cost — 321,485 and 347,536 shares, respectively	(11,370)	(12,309)
Unearned ESOP stock	(487)	(622)
Unearned restricted stock	(285)	—
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>341,873</b>	<b>350,042</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 3,103,677</b>	<b>\$ 2,885,425</b>

See Notes to Condensed Consolidated Financial Statements.

**SUPERIOR BANCORP AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**  
(Amounts in thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2008	2007	2008	2007
<b>INTEREST INCOME</b>				
Interest and fees on loans	\$ 36,664	\$ 40,486	\$ 110,717	\$ 109,783
Interest on taxable securities	4,106	4,271	12,302	12,805
Interest on tax-exempt securities	430	276	1,291	543
Interest on federal funds sold	17	91	114	373
Interest and dividends on other investments	663	875	2,039	2,304
Total interest income	<u>41,880</u>	<u>45,999</u>	<u>126,463</u>	<u>125,808</u>
<b>INTEREST EXPENSE</b>				
Interest on deposits	16,010	21,410	52,972	57,659
Interest on other borrowed funds	3,290	3,617	9,098	9,636
Interest on subordinated debentures	954	1,066	2,887	3,062
Total interest expense	<u>20,254</u>	<u>26,093</u>	<u>64,957</u>	<u>70,357</u>
<b>NET INTEREST INCOME</b>	<u>21,626</u>	<u>19,906</u>	<u>61,506</u>	<u>55,451</u>
Provision for loan losses	2,305	1,179	10,143	2,884
<b>NET INTEREST INCOME AFTER PROVISION FOR LOAN LOSSES</b>	<u>19,321</u>	<u>18,727</u>	<u>51,363</u>	<u>52,567</u>
<b>NONINTEREST INCOME</b>				
Service charges and fees on deposits	2,425	2,090	6,721	5,774
Mortgage banking income	820	970	3,117	3,052
Investment securities (loss) gain	(8,541)	—	(7,072)	242
Change in fair value of derivatives	141	202	773	169
Increase in cash surrender value of life insurance	583	481	1,689	1,381
Gain on extinguishment of liabilities	—	—	2,918	—
Other income	1,359	1,181	4,247	2,931
<b>TOTAL NONINTEREST INCOME</b>	<u>(3,213)</u>	<u>4,924</u>	<u>12,393</u>	<u>13,549</u>
<b>NONINTEREST EXPENSES</b>				
Salaries and employee benefits	12,379	10,724	36,577	30,959
Occupancy, furniture and equipment expense	4,434	3,506	12,614	9,650
Amortization of core deposit intangibles	896	494	2,688	1,102
Loss on extinguishment of debt	—	1,469	—	1,469
Merger-related costs	—	103	118	530
Loss on termination of ESOP	—	158	—	158
Other expenses	6,199	4,836	17,449	13,504
<b>TOTAL NONINTEREST EXPENSES</b>	<u>23,908</u>	<u>21,290</u>	<u>69,446</u>	<u>57,372</u>
(Loss) income before income taxes	(7,800)	2,361	(5,690)	8,744
<b>INCOME TAX (BENEFIT) EXPENSE</b>	<u>(1,292)</u>	<u>911</u>	<u>(719)</u>	<u>3,027</u>
<b>NET (LOSS) INCOME</b>	<u>\$ (6,508)</u>	<u>\$ 1,450</u>	<u>\$ (4,971)</u>	<u>\$ 5,717</u>
<b>BASIC NET (LOSS) INCOME PER COMMON SHARE</b>				
	<u>\$ (0.65)</u>	<u>\$ 0.15</u>	<u>\$ (0.50)</u>	<u>\$ 0.64</u>
<b>DILUTED NET (LOSS) INCOME PER COMMON SHARE</b>				
	<u>\$ (0.65)</u>	<u>\$ 0.15</u>	<u>\$ (0.50)</u>	<u>\$ 0.63</u>
Weighted average common shares outstanding	10,023	9,693	10,017	8,975
Weighted average common shares outstanding, assuming dilution	10,023	9,770	10,017	9,092

See Notes to Condensed Consolidated Financial Statements.

**SUPERIOR BANCORP AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW (UNAUDITED)**  
**(Dollars in thousands)**

	Nine Months Ended September 30,	
	2008	2007
NET CASH PROVIDED BY OPERATING ACTIVITIES	\$ 28,439	\$ 1,515
CASH FLOWS FROM INVESTING ACTIVITIES:		
Net decrease in interest-bearing deposits in other banks	352	3,932
Net decrease in federal funds sold	414	21,849
Proceeds from sales of securities available for sale	37,633	18,378
Proceeds from maturities of investment securities available for sale	100,906	63,345
Purchases of investment securities available for sale	(129,229)	(47,772)
Purchase (redemption) of tax lien certificates	(3,262)	2,378
Net increase in loans	(233,613)	(146,015)
Net cash received in business combinations	—	1,231
Purchases of premises and equipment	(10,193)	(9,839)
Proceeds from sale of premises and equipment	7,637	5,535
Proceeds from sale of repossessed assets	5,522	2,492
Increase in stock in FHLB	(10,020)	(3,206)
Other investing activities, net	(1,090)	1,455
Net cash used by investing activities	(234,943)	(86,237)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Net increase in deposits	24,760	33,872
Net increase in FHLB advances and other borrowed funds	206,296	53,642
Payments made on notes payable	(9,500)	(6,045)
Proceeds from notes payable	10,000	9,268
Proceeds from issuance of subordinated debenture	10,000	22,680
Principal payment of subordinated debenture	—	(16,495)
Purchase of treasury stock	—	(9,223)
Proceeds from sale of common stock	—	639
Net cash provided by financing activities	241,556	88,338
Net increase in cash and due from banks	35,052	3,616
CASH AND DUE FROM BANKS AT BEGINNING OF PERIOD	52,983	49,783
CASH AND DUE FROM BANKS AT END OF PERIOD	\$ 88,035	\$ 53,399

See Notes to Condensed Consolidated Financial Statements.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

### Note 1 — Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with the instructions for Form 10-Q, and therefore do not include all information and footnotes necessary for a fair presentation of financial position, results of operations and cash flows in conformity with generally accepted accounting principles. For a summary of significant accounting policies that have been consistently followed, see Note 1 to the Consolidated Financial Statements included in Superior Bancorp's ("the Corporation's") Annual Report on Form 10-K for the year ended December 31, 2007. It is management's opinion that all adjustments, consisting of only normal and recurring items necessary for a fair presentation, have been included in these condensed consolidated financial statements. Operating results for the three- and nine-month periods ended September 30, 2008, are not necessarily indicative of the results that may be expected for the year ending December 31, 2008.

The Condensed Consolidated Statement of Financial Condition at December 31, 2007, presented herein, has been derived from the financial statements audited by Grant Thornton LLP, independent registered public accountants, as indicated in their report, dated March 14, 2008, included in the Corporation's Annual Report on Form 10-K. The Condensed Consolidated Financial Statements do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements.

#### *Restatement to Reflect 1-for-4 Reverse Stock Split*

All disclosures, in this quarterly report, regarding common stock and related earnings per share have been retroactively restated for all periods presented to reflect a 1-for-4 reverse stock split effective April 28, 2008 (see Note 9).

### Note 2 — Recent Accounting Pronouncements

#### *Statement of Financial Accounting Standards No. 157*

In September 2006, the Financial Accounting Standards Board ("FASB") issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. The Corporation adopted SFAS 157 on January 1, 2008 and the impact of this adoption is included in Note 10.

#### *Statement of Financial Accounting Standards No. 159*

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 would allow the Corporation to make an irrevocable election to measure certain financial assets and liabilities at fair value, with unrealized gains and losses on the elected items recognized in earnings at each reporting period. The fair value option may only be elected at the time of initial recognition of a financial asset or financial liability or upon the occurrence of certain specified events. The election is applied on an instrument by instrument basis, with a few exceptions, and is applied only to entire instruments and not to portions of instruments. SFAS 159 also provides expanded disclosure requirements regarding the effects of electing the fair value option on the financial statements. SFAS 159 is effective prospectively for fiscal years beginning after November 15, 2007. The Corporation evaluated SFAS 159 and determined that the fair value option would not be elected for any financial asset or liability reported on the Corporation's consolidated statement of financial condition as of January 1, 2008 (date of adoption), nor has the Corporation applied the provisions of SFAS 159 to any financial asset or liability recognized during the nine-month period ended September 30, 2008.

#### *Statement of Financial Accounting Standards No. 141(R)*

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations — a replacement of FASB No. 141* ("SFAS 141R"). SFAS 141R replaces SFAS 141, *Business Combinations* and applies to all transactions and other events in which one entity obtains control over one or more other businesses. SFAS 141R requires an acquirer, upon initially obtaining control of another entity, to recognize the assets, liabilities and any non-controlling interest in the acquiree at fair value as of the acquisition date. Contingent consideration is required to be recognized and measured at fair value on the date of acquisition rather than at a later date when the amount of that consideration may be determinable beyond a reasonable doubt. This fair value approach replaces the cost-allocation process required under SFAS 141 whereby the cost of an

**Note 2 — Recent Accounting Pronouncements — (Continued)**

acquisition was allocated to the individual assets acquired and liabilities assumed based on their estimated fair value. SFAS 141R requires acquirers to expense acquisition-related costs as incurred rather than allocating such costs to the assets acquired and liabilities assumed, as was previously the case under SFAS 141. Under SFAS 141R, the requirements of SFAS 146, *Accounting for Costs Associated with Exit or Disposal Activities* would have to be met in order to accrue for a restructuring plan in purchase accounting. Pre-acquisition contingencies are to be recognized at fair value, unless it is a non-contractual contingency that is not likely to materialize, in which case, nothing should be recognized in purchase accounting and, instead, that contingency would be subject to the probable and estimable recognition criteria of SFAS 5, *Accounting for Contingencies*. SFAS 141R is expected to have an impact on the Corporation's accounting for business combinations, if any, closing on or after January 1, 2009.

*Staff Accounting Bulletin No. 109*

In November 2007, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 109, *Written Loan Commitments Recorded at Fair Value Through Earnings* ("SAB 109"). SAB 109 supersedes SAB 105, *Application of Accounting Principles to Loan Commitments* and indicates that the expected net future cash flows related to the associated servicing of the loan should be included in the measurement of all written loan commitments that are accounted for at fair value through earnings. SAB 109 became effective beginning January 1, 2008 and did not have a material effect on the Corporation's financial position, results of operations or cash flows.

*Statement of Financial Accounting Standards No. 161*

In March 2008, the FASB issued SFAS No. 161, *Disclosures About Derivative Instruments and Hedging Activities, an Amendment of FASB Statement No. 133* ("SFAS 161"). SFAS 161 amends SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* ("SFAS 133") to amend and expand the disclosure requirements of SFAS 133 to provide greater transparency about (i) how and why an entity uses derivative instruments, (ii) how derivative instruments and related hedge items are accounted for under SFAS 133 and its related interpretations, and (iii) how derivative instruments and related hedged items affect an entity's financial position, results of operations and cash flows. To meet those objectives, SFAS 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of gains and losses on derivative instruments and disclosures about credit-risk-related contingent features in derivative agreements. SFAS 161 will become effective for the Corporation on January 1, 2009 and is not expected to have a significant impact on the Corporation's financial position, results of operations or cash flows.

**Note 3 — Acquisitions**

The Corporation completed the acquisition of 100% of the outstanding stock of People's Community Bancshares, Inc. ("People's"), of Sarasota, Florida on July 27, 2007 in exchange for 1,658,781 shares (restated to reflect 1-for-4 reverse stock split) of the Corporation's common stock valued at approximately \$73,982,000. The shares were valued by using the average of the closing prices of the Corporation's stock for several days prior to and after the terms of the acquisition were agreed to and announced. The total purchase price, which includes certain direct acquisition costs, was \$76,429,000. As a result of the acquisition, the Corporation now operates three banking locations in Sarasota and Manatee Counties, Florida. This area is a significant addition to the Corporation's largest market, which was expanded in 2006 by the acquisition of Kensington Bankshares, Inc., in Tampa, Florida.

The People's transaction resulted in \$47,313,000 of goodwill allocated to the Florida reporting unit and \$9,810,000 of core deposit intangibles. The goodwill acquired is not tax-deductible. The amount allocated to the core deposit intangible was determined by an independent valuation and is being amortized over an estimated useful life of ten years based on the undiscounted cash flow.



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### Note 3 — Acquisitions — (Continued)

#### *Pro forma Results of Operations*

The results of operations of People's subsequent to its acquisition date are included in the Corporation's consolidated statements of operations. The following pro forma information for the nine months ended September 30, 2007 reflects the Corporation's pro forma consolidated results of operations as if the acquisition of People's occurred at January 1, 2007, unadjusted for potential cost savings.

<b>(Dollars in thousands, except per share data)</b>	<b>Nine Months Ended September 30, 2007</b>
Pro forma net interest income and noninterest income	\$72,585
Pro forma net income	6,226
Pro forma earnings per common share — basic	\$ 0.60
Pro forma earnings per common share — diluted	0.60

### Note 4 — Investment Securities

The following table presents the carrying value of the securities we held at the dates indicated.

	<b>Available for Sale</b>		
	<b>September 30, 2008</b>	<b>December 31, 2007</b>	<b>Percent Change</b>
	<b>(Dollars in thousands)</b>		
U.S. agencies	\$ 6,743	\$ 94,215	(92.84)%
State and political subdivisions	39,301	40,587	(3.17)
Mortgage-backed securities (MBS)	262,438	191,378	37.13
Corporate debt and other securities	26,020	34,991	(25.64)
Total investment securities	<u>\$ 334,502</u>	<u>\$ 361,171</u>	<u>(7.38)%</u>

	<b>Net Unrealized Gain (Loss)</b>		
	<b>September 30, 2008</b>	<b>December 31, 2007</b>	<b>Dollar Change Pre-tax</b>
	<b>(Dollars in thousands)</b>		
U.S. agencies	\$ 111	\$ 1,011	\$ (900)
State and political subdivisions	(2,097)	(173)	(1,924)
Mortgage-backed securities (MBS)	(4,302)	194	(4,496)
Corporate debt and other securities	(5,003)	(1,892)	(3,111)
Net unrealized loss	<u>\$ (11,291)</u>	<u>\$ (860)</u>	<u>\$ (10,431)</u>

At September 30, 2008, a net unrealized after-tax loss of \$6,441,000 on the investment securities portfolio was reflected in net accumulated other comprehensive loss, an element of the Corporation's capital. This compares to a net unrealized after-tax loss of \$542,000 at December 31, 2007.

Changes in current market conditions, such as interest rates and the economic uncertainties in the mortgage, housing and banking industries, have severely constricted the structured securities market. The secondary market for various types of securities has been limited and has negatively impacted securities values. Quarterly, the Corporation reviews each investment security segment noted in the table below to determine the nature of the decline in the value of investment securities and evaluates if any of the underlying securities has experienced other-than-temporary impairment ("OTTI"). The following table provides further detail of the investment securities portfolio at September 30, 2008.

**Note 4 — Investment Securities — Continued**

(Dollars in thousands)	Amortized Cost	Fair Value	Unrealized Gain (Loss)
<b>September 30, 2008</b>			
U.S. agency and agency MBS — AAA rated	\$ 244,144	\$ 244,004	\$ (140)
Municipal securities	41,398	39,301	(2,097)
Non-agency MBS — AAA rated	27,574	23,521	(4,053)
Non-agency MBS — A and B2 rated	1,656	1,656	—
Bank and pooled trust preferred securities	24,399	19,650	(4,749)
Corporate securities	6,059	5,807	(252)
Fannie Mae and Freddie Mac preferred stock	563	563	—
Total	<u>\$ 345,793</u>	<u>\$ 334,502</u>	<u>\$ (11,291)</u>

The unrealized losses associated with the U.S. agency and agency MBS securities are caused by changes in interest rates and are not considered credit-related since the contractual cash flows of these investments are backed by the full faith and credit of the U.S. government. Unrealized losses that are related to the prevailing interest rate environment will decline over time and recover as these securities approach maturity.

The unrealized losses in the municipal securities portfolio are due to widening credit spreads caused by concerns about the bond insurers associated with these securities. In addition, municipal securities were adversely impacted by changes in interest rates. This portfolio segment is not experiencing any credit problems at September 30, 2008. The Corporation currently believes that all contractual cash flows will be received on this portfolio.

The non-agency MBS securities portfolio has experienced various levels of price declines during 2008. The AAA rated non-agency MBS securities have experienced price declines due to the current market environment and the currently limited secondary market for such securities. No losses are expected in this portfolio at September 30, 2008. The Corporation currently believes all contractual cash flows on these securities will be received. During the third quarter of 2008, the Corporation recognized a \$314,000, net of tax, non-cash OTTI charge on a non-agency MBS which experienced a significant rating downgrade.

The bank and pooled trust preferred securities prices continue to decline due to reduced demand for these securities as their average lives have lengthened and from the increased supply due to forced liquidations from some market participants. Additionally, there has been little secondary market trading for these types of securities. At September 30, 2008, the Corporation believes that the credit quality of these securities remains adequate to absorb further economic declines, and these securities remain investment grade. As a result, the Corporation currently believes all contractual cash flows will be received on this portfolio.

The unrealized losses in the corporate securities portfolio are associated with the widening spreads in the financial sector of the corporate bond market. At September 30, 2008, all of the securities are current as to principal and interest payments, and the Corporation currently expects them to remain so in the foreseeable future.

On September 7, 2008, the U.S. Treasury, the Federal Reserve and the Federal Housing Finance Agency (FHFA) announced that FHFA was placing Fannie Mae and Freddie Mac under conservatorship. At September 30, 2008, the Corporation held in its available-for-sale investment portfolio preferred securities issued by Fannie Mae and Freddie Mac with a cost basis of \$8,611,000. After the conservatorship, these securities currently trade at five to seven percent of par value. The Corporation does not hold any common stock or other equity securities issued by Fannie Mae or Freddie Mac. In light of the significant decline in the market value of these securities due to the takeover of Fannie Mae and Freddie Mac, and as it is unclear at this time if the value of the securities will improve, the Corporation recognized a \$7,387,000, net of tax, non-cash OTTI charge on these investments during the third quarter of 2008. Under federal tax law that was in effect at September 30, 2008, the losses recognized on the Fannie Mae and Freddie Mac preferred stock were considered capital losses rather than ordinary losses (See Note 8 below). As such, only the amount of these losses that could be offset by recognized capital gains was included in the third quarter of 2008 income tax benefit.

**Note 4 — Investment Securities — Continued**

For further details regarding investment securities at December 31, 2007, refer to Notes 1 and 3 of the Consolidated Financial Statements in the Corporation's Form 10-K for the year ended December 31, 2007. The Corporation will continue to evaluate the investment ratings in the securities portfolio, severity in pricing declines, market price quotes along with timing and receipt of amounts contractually due. Based upon these and other factors, the securities portfolio may experience further impairment. At September 30, 2008, management currently has the intent and ability to retain investment securities with unrealized losses until the decline in value has been recovered.

**Note 5 — Segment Reporting**

The Corporation has two reportable segments, the Alabama Region and the Florida Region. The Alabama Region consists of operations located throughout Alabama. The Florida Region consists of operations located primarily in the Tampa Bay area and the panhandle region of Florida. The Corporation's reportable segments are managed as separate business units because they are located in different geographic areas. Both segments derive revenues from the delivery of financial services. These services include commercial loans, mortgage loans, consumer loans, deposit accounts and other financial services. Administrative and other banking activities include the results of the Corporation's investment portfolio, mortgage banking division, brokered deposits and borrowed funds positions.

The Corporation evaluates performance and allocates resources based on profit or loss from operations. There are no material inter-segment sales or transfers. Net interest income is used as the basis for performance evaluation rather than its components, total interest income and total interest expense. The accounting policies used by each reportable segment are the same as those discussed in Note 1 to the Consolidated Financial Statements included in the Corporation's Form 10-K for the year ended December 31, 2007. All costs, except corporate administration and income taxes, have been allocated to the reportable segments. Therefore, combined amounts agree to the consolidated totals (in thousands).

	<u>Alabama Region</u>	<u>Florida Region</u>	<u>Total Alabama and Florida</u>	<u>Administrative and Other</u>	<u>Superior Bancorp Combined</u>
<b>Three months ended September 30, 2008</b>					
Net interest income	\$ 8,726	\$ 9,687	\$ 18,413	\$ 3,213	\$ 21,626
Provision for loan losses	1,175	1,145	2,320	(15)	2,305
Noninterest income	1,984	465	2,449	(5,662)	(3,213)
Noninterest expense	7,834	5,238	13,072	10,836	23,908
Operating profit (loss)	<u>\$ 1,701</u>	<u>\$ 3,769</u>	<u>\$ 5,470</u>	<u>\$ (13,270)</u>	<u>(7,800)</u>
Income tax benefit					(1,292)
Net loss					<u>\$ (6,508)</u>
Total assets	<u>\$1,085,022</u>	<u>\$1,168,301</u>	<u>\$ 2,253,323</u>	<u>\$ 850,354</u>	<u>\$3,103,677</u>
<b>Three months ended September 30, 2007</b>					
Net interest income	\$ 9,614	\$ 10,593	\$ 20,207	\$ (301)	\$ 19,906
Provision for loan losses	1,794	837	2,631	(1,452)	1,179
Noninterest income	1,851	490	2,341	2,583	4,924
Noninterest expense	6,116	3,962	10,078	11,212	21,290
Operating profit (loss)	<u>\$ 3,555</u>	<u>\$ 6,284</u>	<u>\$ 9,839</u>	<u>\$ (7,478)</u>	<u>2,361</u>
Income tax expense					911
Net income					<u>\$ 1,450</u>
Total assets	<u>\$1,026,579</u>	<u>\$1,126,161</u>	<u>\$ 2,152,740</u>	<u>\$ 750,051</u>	<u>\$2,902,791</u>

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**Note 5 — Segment Reporting — (Continued)**

	<u>Alabama Region</u>	<u>Florida Region</u>	<u>Total Alabama and Florida</u>	<u>Administrative and Other</u>	<u>Superior Bancorp Combined</u>
<b>Nine Months ended September 30, 2008</b>					
Net interest income	\$ 24,353	\$28,415	\$ 52,768	\$ 8,738	\$ 61,506
Provision for loan losses	2,977	2,663	5,640	4,503	10,143
Noninterest income	5,587	1,405	6,992	5,401	12,393
Noninterest expense	22,928	16,129	39,057	30,389	69,446
Operating profit (loss)	<u>\$ 4,035</u>	<u>\$11,028</u>	<u>\$ 15,063</u>	<u>\$ (20,753)</u>	(5,690)
Income tax benefit					(719)
Net loss					<u>\$ (4,971)</u>
<b>Nine Months ended September 30, 2007</b>					
Net interest income	\$ 28,010	\$27,145	\$ 55,155	\$ 296	\$ 55,451
Provision for loan losses	2,832	1,187	4,019	(1,135)	2,884
Noninterest income	5,262	1,152	6,414	7,135	13,549
Noninterest expense	18,483	10,060	28,543	28,829	57,372
Operating profit (loss)	<u>\$ 11,957</u>	<u>\$17,050</u>	<u>\$ 29,007</u>	<u>\$ (20,263)</u>	8,744
Income tax expense					3,027
Net income					<u>\$ 5,717</u>

**Note 6 — Net (Loss) Income per Common Share**

The following table shows the computation of basic and diluted net (loss) income per common share (in thousands, except per share amounts):

	<u>Three Months Ended September 30,</u>		<u>Nine Months Ended September 30,</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
<b>Numerator:</b>				
For basic and diluted, net (loss) income	<u>\$ (6,508)</u>	<u>\$ 1,450</u>	<u>\$ (4,971)</u>	<u>\$ 5,717</u>
<b>Denominator:</b>				
For basic, weighted average common shares outstanding	10,023	9,693	10,017	8,975
Effect of dilutive stock options and restricted stock	—	77	—	117
Average diluted common shares outstanding	<u>10,023</u>	<u>9,770</u>	<u>10,017</u>	<u>9,092</u>
Basic net (loss) income per common share	<u>\$ (.65)</u>	<u>\$ .15</u>	<u>\$ (.50)</u>	<u>\$ .64</u>
Diluted net (loss) income per common share	<u>\$ (.65)</u>	<u>\$ .15</u>	<u>\$ (.50)</u>	<u>\$ .63</u>

Diluted net income per common share takes into consideration the pro forma dilution assuming certain outstanding unvested restricted stock, unexercised stock option awards and warrants were exercised into common shares. For the three- and nine-month periods ending September 30, 2008, these common stock equivalents totaling 92,086 and 55,494 shares, respectively, were not included in computing diluted earnings per share, because their effects were antidilutive.

**Note 7 — Comprehensive (Loss) Income**

Total comprehensive (loss) income was \$(9,811,000) and \$(11,586,000) for the three- and nine-month periods ended September 30, 2008, respectively, and \$3,358,000 and \$6,201,000 for the three- and nine-month periods ended September 30, 2007, respectively. Total comprehensive (loss) income consists of net (loss) income and the unrealized gain or loss on the Corporation's available-for-sale investment securities portfolio arising during the period.

**Note 8 — Income Taxes**

The effective tax rate decreased in the three- and nine-month periods ended September 30, 2008 primarily as a result of lower levels of pre-tax income. The difference in the effective tax rate in the three- and nine-month periods ended September 30, 2008 and 2007, and the blended federal statutory rate of 34% and state tax rates of 5% and 6% is due primarily to tax-exempt income from investments and insurance policies. In addition, under federal tax law that was in effect at September 30, 2008 the losses recognized on the Fannie Mae and Freddie Mac preferred stock (discussed in Note 4 above) were considered capital losses. As such, only the amount of this loss that could be offset by recognized capital gains was included in the third quarter 2008 as a deferred tax benefit, with the remaining deferred tax benefit offset by a valuation allowance. As enacted on October 3, 2008, the Emergency Economic Stabilization Act of 2008 (“EESA”) included a section which changed these losses from capital to ordinary for federal income tax purposes. This change will allow Superior Bank to recognize approximately \$2,300,000 in deferred tax benefit in the fourth quarter of 2008.

The Corporation adopted the provisions of FIN 48 as of January 1, 2007, the effect of which is described below.

*FASB Interpretation No. 48*

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (“FIN 48”). This interpretation clarifies the accounting for uncertainty in income taxes recognized in a company’s financial statements in accordance with Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes*. Specifically, the pronouncement prescribes a recognition threshold and a measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The interpretation also provides guidance on the related recognition, classification, interest and penalties, accounting for interim periods, disclosure and transition of uncertain tax positions. The interpretation was effective for fiscal years beginning after December 15, 2006.

The Corporation adopted FIN 48 on January 1, 2007. As a result of the adoption, the Corporation recognized a charge of approximately \$554,000 to the January 1, 2007 retained earnings balance. As of the adoption date, the Corporation had unrecognized tax benefits of \$459,000, all of which, if recognized, would affect the effective tax rate. Also, as of the adoption date, the Corporation had accrued interest expense related to the unrecognized tax benefits of approximately \$145,000. Accrued interest related to unrecognized tax benefits is recognized in income tax expense. Penalties, if incurred, will be recognized in income tax expense as well.

The Corporation and its subsidiaries are subject to U.S. federal income tax as well as to Alabama and Florida income taxes. The Corporation has concluded all U.S. federal income tax matters for years through 2004, including acquisitions.

All state income tax matters have been concluded for years through 2001. The Corporation has received notices of proposed adjustments relating to state taxes due for the years 2002 and 2003, which include proposed adjustments relating to income apportionment of a subsidiary. Management anticipates that these examinations may be finalized in the foreseeable future. However, based on the status of these examinations, and the protocol of finalizing audits by the taxing authority, which could include formal legal proceedings, it is not possible to estimate the impact of any changes to the previously recorded uncertain tax positions. There have been no significant changes to the status of these examinations during the nine-month period ended September 30, 2008.

**Note 9 — Stockholders’ Equity**

*1-for-4 Reverse Stock Split*

On April 28, 2008, the Corporation completed a 1-for-4 reverse split of its common stock, reducing the number of authorized shares of common stock from 60,000,000 to 15,000,000 and the number of common shares outstanding from 40,211,230 to 10,052,808. This action brings the Corporation’s authorized common shares and common shares outstanding more nearly in line with peer community banks. All disclosures in this quarterly report regarding common stock and related per share information have been retroactively restated for all periods presented to reflect the reverse stock split. The 1-for-4 reverse stock split was effective in the market as of the opening of trading on April 28, 2008.

**Note 9 — Stockholders' Equity — (Continued)**

*Issuance of Subordinated Debt and Related Warrant*

On September 17, 2008, the Corporation's subsidiary, Superior Bank, entered into an Agreement to Purchase Subordinated Notes (the "Agreement") with Durden Enterprises, LLC (the "Purchaser"). Pursuant to the terms of the Agreement, Superior Bank issued to the Purchaser a \$10,000,000 principal amount 9.5% Subordinated Note due September 15, 2018 (the "Note"), and the Corporation issued to the Purchaser a warrant (the "Warrant") to purchase up to 1,000,000 shares of the Corporation's common stock, \$.001 par value per share, at a price of \$7.53 per share. The exercise price for the Warrant was based on the average of the closing prices of the Corporation's common stock for the ten trading days immediately preceding September 17, 2008. Interest on the Note is payable quarterly. The Purchaser may, subject to regulatory approval, accelerate the payment of principal and interest if there is an event of default under the terms of the Note. Events of default are limited to the commencement of voluntary or involuntary bankruptcy or similar proceedings with respect to Superior Bank. Beginning on September 15, 2013, Superior Bank may redeem all or a portion of the Note on any interest payment date at a price equal to 100% of the principal amount of the redeemed portion of the Note plus accrued but unpaid interest.

The fair value of the Warrant of \$2,553,000 was determined using the Black-Scholes option-pricing model. The value of the Warrant is being amortized into interest expense over the term of the Agreement. The Warrant is exercisable at any time prior to the close of business on September 15, 2013. The Corporation agreed to register with the Securities and Exchange Commission the stock that would be issued to the Purchaser upon the exercise of the Warrant. Superior Bank also granted to the Purchaser an option to purchase up to \$10,000,000 in additional subordinated notes and receive additional warrants in the future on similar terms and conditions with such changes as are necessary to reflect market conditions at that time. K. Earl Durden, the managing member of the Purchaser, is a retired director of the Corporation and Superior Bank.

*Stock Incentive Plan*

The Corporation established the Third Amended and Restated 1998 Stock Incentive Plan (the "1998 Plan") for directors and certain key employees that provides for the granting of restricted stock and incentive and nonqualified options to purchase up to 625,000 (restated for 1-for-4 reverse stock split) shares of the Corporation's common stock of which substantially all available shares have been granted. The compensation committee of the Board of Directors determines the terms of the restricted stock and options granted. All options granted have a maximum term of ten years from the grant date, and the option price per share of options granted cannot be less than the fair market value of the Corporation's common stock on the grant date. Some of the options granted under the plan in the past vested over a five-year period, while others vested based on certain benchmarks relating to the trading price of the Corporation's common stock, with an outside vesting date of five years from the date of grant. More recent grants have followed this benchmark-vesting formula.

In April 2008, the Corporation's stockholders approved the Superior Bancorp 2008 Incentive Compensation Plan (the "2008 Plan") which succeeded the 1998 Plan. The purpose of the 2008 Plan is to provide additional incentive for our directors and key employees to further the growth, development and financial success of the Corporation and its subsidiaries by personally benefiting through the ownership of the Corporation's common stock, or other rights which recognize such growth, development and financial success. The Corporation's Board also believes the 2008 Plan will enable it to obtain and retain the services of directors and employees who are considered essential to its long-range success by offering them an opportunity to own stock and other rights that reflect the Corporation's financial success. The maximum aggregate number of shares of common stock that may be issued or transferred pursuant to awards under the 2008 Plan is 300,000 (restated for 1-for-4 reverse stock split) shares, of which no more than 90,000 shares may be issued for "full value awards" (defined under the 2008 Plan to mean any awards permitted under the 2008 Plan that are neither stock options nor stock appreciation rights). Only those employees and directors who are selected to receive grants by the administrator may participate in the 2008 Plan.

During the first quarter of 2005, the Corporation granted 422,734 options to the new management team. These options have exercise prices ranging from \$32.68 to \$38.52 per share and were granted outside of the stock incentive plan as part of the inducement package for new management. These shares are included in the table below.

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### Note 9 — Stockholders' Equity — (Continued)

The fair value of each option award is estimated on the date of grant based upon the Black-Scholes pricing model that uses the assumptions noted in the following table. The risk-free interest rate is based on the implied yield on U.S. Treasury zero-coupon issues with a remaining term equal to the expected term of the underlying options. Expected volatility has been estimated based on historical data. The expected term has been estimated based on the five-year vesting date and change of control provisions. The Corporation used the following weighted-average assumptions for the nine-month periods ended September 30, 2008 and 2007:

	2008	2007
Risk free interest rate	3.62%	4.49%
Volatility factor	34.77%	29.11%
Weighted average life of options (in years)	5.00	5.00
Dividend yield	0.00%	0.00%

A summary of stock option activity as of September 30, 2008 and changes during the nine months then ended is shown below:

	Number	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Under option, January 1, 2008	802,048	\$ 32.28		
Granted	84,875	10.88		
Forfeited	(15,375)	32.52		
Under option, September 30, 2008	871,548	\$ 30.93	6.34	\$ —
Exercisable at end of period	678,528	\$ 31.78	4.34	\$ —
Weighted-average fair value per option of options granted during the period	\$ 3.94			

As of September 30, 2008, there was \$806,000 of total unrecognized compensation expense related to the unvested awards. This expense will be recognized over the next two-to 33-month period unless the options vest earlier based on achievement of benchmark trading price levels. During the three- and nine-month periods ended September 30, 2008, the Corporation recognized approximately \$170,000 and \$491,000, respectively, in compensation expense related to options granted. During the three- and nine-month periods ended September 30, 2007, the Corporation recognized approximately \$164,000 and \$308,000, respectively, in compensation expense related to options granted.

In January 2008, members of the Corporation's management received restricted common stock grants totaling 26,788 shares. These grants exclude certain senior executive management who received cash under the short-term management incentive plan in lieu of restricted stock. The grant date fair value of this restricted common stock is equal to \$18.56 per share, or \$497,000 in the aggregate, which will be recognized over a 24-month period, as 50% of the stock vests on January 22, 2009 with the remaining 50% vesting on January 22, 2010. During the three- and nine-month periods ended September 30, 2008, the Corporation recognized approximately \$87,000 and \$212,000, respectively, in compensation expense related to restricted stock. The outstanding shares of restricted common stock are included in the diluted earnings per share calculation, using the treasury stock method, until the shares vest. Once vested, the shares become outstanding for basic earnings per share. If an executive's employment terminates prior to a vesting date for any reason other than death, disability or a change in control, the unvested stock is forfeited pursuant to the terms of the restricted common stock agreement. Unvested restricted common stock becomes immediately vested upon death, disability or a change in control. Under the restricted common stock agreements, the restricted stock may not be sold or assigned in any manner during the vesting period, but the executive will have the rights of a shareholder with respect to the stock (i.e. the right to vote, receive dividends, etc), prior to vesting.

### Note 10 — Fair Value Measurements

In September 2006, the FASB issued SFAS 157 (see Note 2 above) which replaces multiple existing definitions of fair value with a single definition, establishes a consistent framework for measuring fair value and expands financial statement disclosures regarding fair value



**Note 10 — Fair Value Measurements — (Continued)**

measurements. SFAS 157 applies only to fair value measurements that already are required or permitted by other accounting standards and does not require any new fair value measurements. In February 2008, the FASB issued FASB Staff Position No. 157-2 (“FSP No. 157-2”), which delayed until January 1, 2009, the effective date of SFAS 157 for nonfinancial assets and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis.

The adoption of SFAS 157 in the first quarter of 2008 did not have a material impact on the Corporation’s financial position or results of operations. The Corporation’s nonfinancial assets and liabilities that meet the deferral criteria set forth in FSP No. 157-2 include goodwill, core deposit intangibles, net property and equipment and other real estate, which primarily represents collateral that is received through troubled loans. The Corporation does not expect that the adoption of SFAS 157 for these nonfinancial assets and liabilities will have a material impact on its financial position or results of operations.

On October 10, 2008, the FASB issued FSP No. 157-3 with the objective of clarifying the application of SFAS 157 in a market that is not active and to provide an example to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. Effective immediately for the Corporation’s interim financial statements as of September 30, 2008, the implementation of FSP No. 157-3 did not have a material impact on financial position or results of operations.

In accordance with the provisions of SFAS 157, the Corporation measures fair value at the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. SFAS 157 prioritizes the assumptions that market participants would use in pricing the asset or liability (the “inputs”) into a three-tier fair value hierarchy. This fair value hierarchy gives the highest priority (Level 1) to quoted prices in active markets for identical assets or liabilities and the lowest priority (Level 3) to unobservable inputs in which little or no market data exists, requiring companies to develop their own assumptions. Observable inputs that do not meet the criteria of Level 1, and include quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets and liabilities in markets that are not active, are categorized as Level 2. Level 3 inputs are those that reflect management’s estimates about the assumptions market participants would use in pricing the asset or liability, based on the best information available in the circumstances. Valuation techniques for assets and liabilities measured using Level 3 inputs may include methodologies such as the market approach, the income approach or the cost approach, and may use unobservable inputs such as projections, estimates and management’s interpretation of current market data. These unobservable inputs are only utilized to the extent that observable inputs are not available or cost-effective to obtain.

*Assets and Liabilities Recorded at Fair Value on a Recurring Basis*

The table below presents the assets and liabilities measured at fair value on a recurring basis categorized by the level of inputs used in the valuation of each asset (in thousands).

	Fair Value at September 30, 2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Available for sale securities	\$ 334,502	\$ 563	\$ 312,420	\$ 21,519
Derivative assets	199	—	199	—
<b>Total recurring basis measured assets</b>	<b>\$ 334,701</b>	<b>\$ 563</b>	<b>\$ 312,619</b>	<b>\$ 21,519</b>
Derivative liabilities	\$ 139	\$ —	\$ 139	\$ —
<b>Total recurring basis measured liabilities</b>	<b>\$ 139</b>	<b>\$ —</b>	<b>\$ 139</b>	<b>\$ —</b>

*Valuation Techniques — Recurring Basis*

*Securities Available for Sale.* When quoted prices are available in an active market, securities are classified as Level 1. These securities include investments in Fannie Mae and Freddie Mac preferred stock. For securities reported at fair value utilizing Level 2 inputs the Corporation obtains fair value measurements from an independent pricing service. These fair value measurements consider observable market data that may include benchmark yield curves, reported trades, broker/dealer quotes, issuer spreads and credit information, among other inputs. In certain cases where there is limited activity, securities are classified as Level 3 within the valuation hierarchy. These securities include primarily bank and pooled trust preferred securities.



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**Note 10 — Fair Value Measurements — (Continued)**

*Derivative financial instruments.* Derivative financial instruments are measured at fair value based on modeling that utilizes observable market inputs for various interest rates published by leading third-party financial news and data providers. This is observable data that represents the rates used by market participants for instruments entered into at that date; however, they are not based on actual transactions so they are classified as Level 2.

*Changes in Level 3 fair value measurements*

The tables below include a roll-forward of the Condensed Consolidated Statement of Financial Condition amounts for the nine months ended September 30, 2008, including changes in fair value for financial instruments within Level 3 of the valuation hierarchy. Level 3 financial instruments typically include unobservable components, but may also include some observable components that may be validated to external sources. The gains or (losses) in the following table may include changes to fair value due in part to observable factors that may be part of the valuation methodology.

*Level 3 assets measured at fair value on a recurring basis*

(in thousands)	Available for Sale Securities
Balance at January 1, 2008 (date of adoption)	\$ —
Transfer into Level 3 during third quarter 2008	25,956
Total net losses for the year-to-date included in other comprehensive loss	(4,437)
Balance at September 30, 2008	\$ 21,519
Net realized losses included in net loss for the year-to-date relating to Level 3 assets held at September 30, 2008	\$ —

*Assets Recorded at Fair Value on a Nonrecurring Basis*

The table below presents the assets measured at fair value on a nonrecurring basis categorized by the level of inputs used in the valuation of each asset (in thousands).

	Fair Value at September 30, 2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Mortgage loans held for sale	\$ 15,292	\$ —	\$ 15,292	\$ —
Impaired loans, net of specific allowance	43,071	—	—	43,071
Total nonrecurring basis measured assets	\$ 58,363	\$ —	\$ 15,292	\$ 43,071

*Valuation Techniques — Nonrecurring Basis*

*Mortgage Loans Held for Sale.* Mortgage loans held for sale are recorded at the lower of aggregate cost or fair value. Fair value is generally based on quoted market prices of similar loans and is considered to be Level 2 in the fair value hierarchy.

*Impaired Loans.* Impaired loans are evaluated and valued at the time the loan is identified as impaired, at the lower of cost or fair value. Fair value is measured based on the value of the collateral securing these loans and is classified at a Level 3 in the fair value hierarchy. Collateral typically includes real estate and/or business assets including equipment. The value of real estate collateral is determined based on

**Note 10 — Fair Value Measurements — (Continued)**

appraisals by qualified licensed appraisers approved and hired by the Corporation. The value of business equipment is determined based on appraisals by qualified licensed appraisers approved and hired by the Corporation, if significant. Appraised and reported values may be discounted based on management's historical knowledge, changes in market conditions from the time of valuation, and/or management's expertise and knowledge of the client and client's business. Impaired loans are reviewed and evaluated on at least a quarterly basis for additional impairment and adjusted accordingly, based on the same factors identified above.

**Note 11 — Gain on Extinguishment of Liabilities**

During the second quarter of 2008, the Corporation recognized two separate gains from the extinguishment of approximately \$5,800,000 in liabilities. The first gain related to a settlement of a retirement agreement with a previous executive officer under which the Corporation had a remaining unfunded obligation to pay approximately \$6,200,000 in benefits over a 17-year period. This obligation was settled through a cash settlement payment of \$3,000,000 with a recognized pre-tax gain of \$574,000. The second gain related to a forfeiture of benefits owed to a former executive officer under the Community Bancshares, Inc. Benefit Restoration Plan (see Note 20 to the Consolidated Financial Statements included in the Corporation's 2007 Form 10-K) that resulted in a pre-tax gain of \$2,344,000.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Basis of Presentation

The following is a discussion and analysis of our September 30, 2008 condensed consolidated financial condition and results of operations for the three- and nine-month periods ended September 30, 2008 and 2007. All significant intercompany accounts and transactions have been eliminated. Our accounting and reporting policies conform to generally accepted accounting principles applicable to financial institutions.

This information should be read in conjunction with our unaudited condensed consolidated financial statements and related notes appearing elsewhere in this report and the audited consolidated financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing in our Annual Report on Form 10-K for the year ended December 31, 2007.

### Recent Developments

During October 2008, the U. S. Treasury unveiled its TARP voluntary Capital Purchase Program. We believe we are eligible for participation in this program, and have filed an application for approximately \$70 million. This program is targeted at healthy banks and is designed to support economic recovery by encouraging both prudent lending and consolidation within the banking industry.

On April 28, 2008, we completed a 1-for-4 reverse split of our common stock, reducing the number of authorized shares of common stock from 60,000,000 to 15,000,000 and the number of common shares outstanding from 40,211,230 to 10,052,808 (10,064,941 at September 30, 2008). This action brings our authorized common shares and common shares outstanding more nearly in line with peer community banks. All disclosures in this quarterly report regarding common stock and related per share information have been retroactively restated for all periods presented to reflect the reverse stock split. The 1-for-4 reverse stock split was effective in the market as of the opening of trading on April 28, 2008.

### Overview

The banking environment in 2008 is as difficult as any our management has seen in their banking careers. Our management believes that the likelihood of a protracted recession at the national level has increased dramatically, particularly due to the frozen credit markets of the past quarter. Management has been encouraged by the passage of the legislation designed to "unfreeze" the credit markets, is pleased at the initial response of the credit markets to these measures and hopes that the national and international markets will continue to improve on the path toward greater stability and normality in coming months. In the meantime, we are able to support our customers in Alabama and Florida, to fund loans and finance growth for financially viable customers and projects, and to serve the needs of our customers.

Our principal subsidiary is Superior Bank (the "Bank"), a federal savings bank headquartered in Birmingham, Alabama, which operates 76 banking offices from Huntsville, Alabama to Venice, Florida and 22 consumer finance company offices in Alabama. Our Florida franchise currently has 32 branches. The Bank has completed its de novo branch strategy with 20 planned branches opened in key Alabama and Florida markets since September 2006. The Bank invested approximately \$25 to \$30 million toward its de novo expansion program.

Our third quarter 2008 net loss was \$(6.5 million), or \$(0.65) per share, compared to net income of \$841,000 for the second quarter of 2008 and \$1.45 million for the third quarter of 2007. Third quarter 2008 net loss includes the effect of \$7.7 million, net of tax, or \$0.77 per share, in investment security impairment losses (See Note 4 to the Condensed Consolidated Financial Statements).

Our third quarter 2008 net interest income increased to \$21.6 million, or 1.0%, from \$21.4 million for the second quarter 2008 and increased by 8.7% from \$19.9 million for the third quarter of 2007. Net interest margin declined to 3.33% compared to 3.39% for the second quarter of 2008.

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Our total assets were \$3.1 billion at September 30, 2008, an increase of \$218 million, or 7.6%, from \$2.9 billion as of December 31, 2007. Our total deposits at September 30, 2008 remained level at \$2.2 billion from June 30, 2008 and December 31, 2007, which reflects management's decision to reduce our levels of customer time deposits as a result of significant market pressure on rates (See "Financial Condition — Deposits" for additional information on deposits). Total deposits increased 3.5% from September 30, 2007.

Loans increased to \$2.2 billion at September 30, 2008, an increase of 10.0% from December 31, 2007 and 8.8% from September 30, 2007. Loan growth occurred across all of our Alabama and Florida markets, with the primary expansion occurring in the commercial, mortgage and commercial real estate sectors of our loan portfolio. In addition, we purchased a pool of seasoned residential mortgage loans with a balance of approximately \$52 million during the second quarter of 2008.

At September 30, 2008, non-performing loans ("NPLs") were 2.77% of total loans compared to 1.83% at June 30, 2008 and 1.26% at December 31, 2007, which is in line with management's expectations. The \$22.2 million NPL increase during the third quarter of 2008 from the second quarter of 2008 was predominantly located in Florida and includes real estate relationships primarily secured by residential properties in various stages of development. Of total NPLs, \$15.8 million is in Alabama and \$45.2 million is in Florida.

Loans in the 30-89 days past due (DPD) category decreased to 0.89% of total loans at September 30, 2008 from 2.05% of total loans at June 30, 2008. Past-due loans that were 90 DPD and still accruing increased during the third quarter, moving to 0.37% at September 30, 2008 from 0.09% as of June 30, 2008 (loans in this category are included in NPLs).

Net loan charge-offs decreased to 0.34% as a percentage of average loans during the third quarter of 2008, compared to 0.38% during the second quarter of 2008. Of the \$1.9 million net charge-offs in the third quarter of 2008, the Bank's charge-offs were \$1.5 million, or 0.26% of consolidated average loans, and the consumer finance company charge-offs were \$425,000, or 0.08% of consolidated average loans. Of the Bank's charge-offs, 37.4% related to 1-4 family mortgages and 46.3% related to real estate construction.

The provision for loan losses was \$2.3 million in the third quarter of 2008, maintaining the allowance for loan losses at 1.25% of net loans, or \$27.7 million, at September 30, 2008, compared to 1.27% of net loans, or \$27.2 million, at June 30, 2008. Most of the increases in NPL and other real estate that occurred in the third quarter came from previously identified problem loans, which is potentially indicative of a slowing of deterioration of credit quality among our customer base. Management has taken a proactive approach to monitor these loans and will continue to maintain an active role in the management of these credits to minimize loss.

During the third quarter of 2008, the Bank raised \$10 million in additional capital through a private placement of a subordinated note with detached warrant to purchase our common stock. This financing has allowed us to continue growth in our markets, including that attributable to dislocations associated with merger activities among major competitors.

The Bank continues to be well-capitalized under regulatory guidelines, with a total risk-based capital ratio of 10.10%, a Tier I core capital ratio of 7.20% and a Tier I risk based capital ratio of 8.70% as of September 30, 2008.

Short-term liquid assets (cash and due from banks, interest-bearing deposits in other banks and federal funds sold) increased \$34.3 million, or 54.1%, to \$97.6 million at September 30, 2008 from \$63.3 million at December 31, 2007. At September 30, 2008, short-term liquid assets comprised 3.2% of total assets, compared to 2.2% at December 31, 2007. Management continually monitors our liquidity position and will increase or decrease short-term liquid assets as necessary. Our principal sources of funds are deposits, principal and interest payments on loans, federal funds sold and maturities and sales of investment securities. In addition to these sources of liquidity, we have access to a minimum of \$250 million in additional funding from traditional sources. Management believes it has established sufficient sources of funds to meet its anticipated liquidity needs.

### **Fair Value Measurements**

In September 2006, the FASB issued SFAS 157 (see Note 2 to the Condensed Consolidated Financial Statements), which replaces multiple existing definitions of fair value with a single definition, establishes a consistent framework for measuring fair value and expands financial statement disclosures regarding fair value measurements. SFAS 157 applies only to fair value measurements that already are required or permitted by other accounting standards and does not require any new fair value measurements. In February 2008, the FASB issued FASB Staff Position No. 157-2 ("FSP No. 157-2"), which delayed until January 1, 2009, the effective date of SFAS 157 for nonfinancial assets

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and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis.

Our nonfinancial assets and liabilities that meet the deferral criteria set forth in FSP No. 157-2 include goodwill, core deposit intangibles, net property and equipment and other real estate, which primarily represents collateral that is received in satisfaction of troubled loans. We do not expect that the adoption of SFAS 157 for these nonfinancial assets and liabilities will have a material impact on its financial position or results of operations.

On October 10, 2008, the FASB issued FSP No. 157-3 with the objective of clarifying the application of SFAS 157 in a market that is not active and to provide an example to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. Effective immediately for our interim financial statements as of September 30, 2008, the implementation of FSP No. 157-3 did not have a material impact on our financial position or results of operations.

In accordance with the provisions of SFAS 157, we measure fair value at the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. SFAS 157 prioritizes the assumptions that market participants would use in pricing the asset or liability (the “inputs”) into a three-tier fair value hierarchy. This fair value hierarchy gives the highest priority (Level 1) to quoted prices in active markets for identical assets or liabilities and the lowest priority (Level 3) to unobservable inputs in which little or no market data exists, requiring companies to develop their own assumptions. Observable inputs that do not meet the criteria of Level 1, and include quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets and liabilities in markets that are not active, are categorized as Level 2. Level 3 inputs are those that reflect management’s estimates about the assumptions market participants would use in pricing the asset or liability, based on the best information available in the circumstances. Valuation techniques for assets and liabilities measured using Level 3 inputs may include methodologies such as the market approach, the income approach or the cost approach, and may use unobservable inputs such as projections, estimates and management’s interpretation of current market data. These unobservable inputs are only utilized to the extent that observable inputs are not available or cost-effective to obtain.

At September 30, 2008 we had \$64.6 million, or 16.4% of total assets valued at fair value that are considered Level 3 valuations using unobservable inputs. As shown below, available-for-sale securities with a carrying value of \$26 million at January 1, 2008 were transferred during the third quarter of 2008 from the Level 2 classification into the Level 3 assets category measured at fair value on a recurring basis. These securities consist primarily of bank and pooled trust preferred securities and have a fair value of \$21.5 million at September 30, 2008. As the market for these securities became less active and pricing less reliable, management determined that these securities should be transferred to the Level 3 category. The remaining Level 3 assets totaling \$43.1 are loans which have been impaired under SFAS 114 and are valued on a nonrecurring basis based on the underlying collateral.

### *Assets and Liabilities Recorded at Fair Value on a Recurring Basis*

The table below presents the assets and liabilities measured at fair value on a recurring basis categorized by the level of inputs used in the valuation of each asset (in thousands).

	Fair Value at September 30, 2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Available for sale securities	\$ 334,502	\$ 563	\$ 312,420	\$ 21,519
Derivative assets	199	—	199	—
<b>Total recurring basis measured assets</b>	<b>\$ 334,701</b>	<b>\$ 563</b>	<b>\$ 312,619</b>	<b>\$ 21,519</b>
Derivative liabilities	\$ 139	\$ —	\$ 139	\$ —
<b>Total recurring basis measured liabilities</b>	<b>\$ 139</b>	<b>\$ —</b>	<b>\$ 139</b>	<b>\$ —</b>

*Securities Available for Sale.* When quoted prices are available in an active market, securities are classified as Level 1. These securities include investments in Fannie Mae and Freddie Mac preferred stock. For securities reported at fair value utilizing Level 2 inputs we obtained fair value measurements from an independent pricing service. These fair value measurements consider observable market data that may include benchmark yield curves, reported trades, broker/dealer quotes, issuer spreads and credit information, among other inputs. In certain cases where there is limited activity, securities are classified as Level 3 within the valuation hierarchy. These securities include primarily bank and pooled trust preferred securities.

*Derivative financial instruments.* Derivative financial instruments are measured at fair value based on modeling that utilizes observable market inputs for various interest rates published by leading third-party financial news and data providers. This is observable data that represents

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the rates used by market participants for instruments entered into at that date; however, they are not based on actual transactions so they are classified as Level 2.

### *Changes in Level 3 fair value measurements*

The tables below include a roll forward of the Condensed Consolidated Statement of Financial Condition amounts for the nine months ended September 30, 2008, including changes in fair value for financial instruments within Level 3 of the valuation hierarchy. Level 3 financial instruments typically include unobservable components, but may also include some observable components that may be validated to external sources. The gains or (losses) in the following table may include changes to fair value due in part to observable factors that may be part of the valuation methodology.

### *Level 3 assets measured at fair value on a recurring basis*

<b>(in thousands)</b>	<b>Available for Sale Securities</b>
Balance at January 1, 2008 (date of adoption)	\$ —
Transfer into Level 3 during third quarter 2008	25,956
Total net losses for the year-to-date included in other comprehensive loss	(4,437)
Balance at September 30, 2008	\$ 21,519
Net realized losses included in net loss for the year-to-date relating to level 3 assets held at September 30, 2008	\$ —

### *Assets Recorded at Fair Value on a Nonrecurring Basis*

The table below presents the assets measured at fair value on a nonrecurring basis categorized by the level of inputs used in the valuation of each asset (in thousands).

	Assets Measured at Fair Value at September 30, 2008	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Mortgage loans held for sale	\$ 15,292	\$ —	\$ 15,292	\$ —
Impaired loans, net of specific allowance	43,071	—	—	43,071
Total nonrecurring basis measured assets	\$ 58,363	\$ —	\$ 15,292	\$ 43,071

### *Valuation Techniques — Nonrecurring Basis*

*Mortgage Loans Held for Sale.* Mortgage loans held for sale are recorded at the lower of aggregate cost or fair value. Fair value is generally based on quoted market prices of similar loans and is considered to be Level 2 in the fair value hierarchy.

*Impaired Loans.* Impaired loans are evaluated and valued at the time the loan is identified as impaired, at the lower of cost or fair value. Fair value is measured based on the value of the collateral securing these loans and is classified at a Level 3 in the fair value hierarchy. Collateral typically includes real estate and/or business assets, including equipment. The value of real estate collateral is determined based on appraisals by qualified licensed appraisers hired by our management. The value of business equipment is based on an appraisal by qualified licensed appraisers hired by our management, if significant. Appraised and reported values may be discounted based on our management's historical knowledge, changes in market conditions from the time of valuation, and/or our management's expertise and knowledge of the client and client's business. Impaired loans are reviewed and evaluated on at least a quarterly basis for additional impairment and adjusted accordingly, based on the same factors identified above.

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**Results of Operations**

The following table sets forth key earnings data for the periods indicated:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2008</b>	<b>2007</b>	<b>2008</b>	<b>2007</b>
	(Dollars in thousands, except per share data)			
Net (loss) income	\$(6,508)	\$1,450	\$(4,971)	\$5,717
Net (loss) income per common share (diluted)	(0.65)	0.15	(0.50)	0.63
Net interest margin	3.33%	3.38%	3.26%	3.43%
Net interest spread	3.16%	3.03%	3.03%	3.10%
Return on average assets	(0.85)%	0.21%	(0.22)%	0.30%
Return on average tangible assets	(0.90)%	0.22%	(0.24)%	0.32%
Return on average stockholders' equity	(7.44)%	1.75%	(1.90)%	2.60%
Return on average tangible equity	(15.88)%	3.58%	(4.04)%	5.00%
Book value per share	\$ 33.97	\$34.49	\$ 33.97	\$34.49
Tangible book value per share	15.64	15.89	15.64	15.89

The decrease in our net income during the third quarter and first nine months of 2008 compared to the third quarter and first nine months of 2007 is primarily the result of investment security impairment losses and increases in the provision for loan losses. See "Financial Condition — Investment Securities" for more information on security impairment losses. The increase in provision for loan losses reflects the effect of the current credit cycle and the overall economic environment. See "Financial Condition — Allowance for Loan Losses" for additional discussion.

*Net Interest Income.* Net interest income is the difference between the income earned on interest-earning assets and interest paid on interest-bearing liabilities used to support such assets. The following table summarizes the changes in the components of net interest income for the periods indicated:

	<b>Increase (Decrease) in</b>					
	<b>Third Quarter 2008 vs 2007</b>			<b>First Nine Months of 2008 vs 2007</b>		
	<b>Average Balance</b>	<b>Income/ Expense</b>	<b>Yield/ Rate</b>	<b>Average Balance</b>	<b>Income/ Expense</b>	<b>Yield/ Rate</b>
	(Dollars in thousands)					
<b>ASSETS</b>						
Interest-earning assets:						
Loans, net of unearned income	\$257,467	\$ (3,822)	(1.64)%	\$372,911	\$ 934	(1.40)%
Investment securities						
Taxable	(17,384)	(165)	0.09	(18,043)	(503)	0.08
Tax-exempt	13,944	233	0.15	22,915	1,134	0.22
Total investment securities	(3,440)	68	0.14	4,872	631	0.16
Federal funds sold	(3,784)	(74)	(3.04)	(3,836)	(259)	(2.60)
Other investments	7,681	(212)	(2.50)	3,241	(266)	(1.13)
Total interest-earning assets	<u>\$257,924</u>	<u>(4,040)</u>	<u>(1.36)</u>	<u>\$377,161</u>	<u>1,040</u>	<u>(1.10)</u>
Interest-bearing liabilities:						
Demand deposits	\$ 11,764	(2,511)	(1.70)	\$104,617	(2,988)	(1.21)
Savings deposits	106,968	735	0.54	54,703	1,114	0.69
Time deposits	45,941	(3,624)	(1.33)	106,818	(2,813)	(0.74)
Other borrowings	122,916	(327)	(1.95)	100,088	(538)	(1.77)
Subordinated debentures	2,145	(112)	(1.11)	7,206	(175)	(1.61)
Total interest-bearing liabilities	<u>\$289,735</u>	<u>(5,839)</u>	<u>(1.49)</u>	<u>\$373,432</u>	<u>(5,400)</u>	<u>(1.03)</u>
Net interest income/net interest spread		1,799	<u>0.13%</u>		6,440	<u>(0.07)%</u>
Net yield on earning assets			<u>(0.05)%</u>			<u>(0.17)%</u>
Taxable equivalent adjustment:						
Investment securities		79			385	
Net interest income		<u>\$ 1,720</u>			<u>\$ 6,055</u>	



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The following table depicts, on a taxable equivalent basis for the periods indicated, certain information related to our average balance sheet and our average yields on assets and average costs of liabilities. Average yields are calculated by dividing income or expense by the average balance of the corresponding assets or liabilities. Average balances have been calculated on a daily basis.

	Three Months Ended September 30,					
	2008			2007		
	<u>Average Balance</u>	<u>Income/ Expense</u>	<u>Yield/ Rate</u>	<u>Average Balance</u>	<u>Income/ Expense</u>	<u>Yield/ Rate</u>
	(Dollars in thousands)					
<b>ASSETS</b>						
Interest-earning assets:						
Loans, net of unearned income (1)	\$2,201,719	\$ 36,664	6.62%	\$1,944,252	\$ 40,486	8.26%
Investment securities						
Taxable	309,201	4,106	5.28	326,585	4,271	5.19
Tax-exempt (2)	40,582	651	6.38	26,638	418	6.23
Total investment securities	349,783	4,757	5.41	353,223	4,689	5.27
Federal funds sold	3,008	17	2.25	6,792	91	5.29
Other investments	55,617	663	4.74	47,936	875	7.24
Total interest-earning assets	2,610,127	42,101	6.42	2,352,203	46,141	7.78
Noninterest-earning assets:						
Cash and due from banks	64,435			44,921		
Premises and equipment	104,032			91,727		
Accrued interest and other assets	301,776			272,138		
Allowance for loan losses	(27,302)			(21,813)		
Total assets	<u>\$3,053,068</u>			<u>\$2,739,176</u>		
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>						
Interest-bearing liabilities:						
Demand deposits	\$ 611,420	\$ 3,290	2.14%	\$ 599,656	\$ 5,801	3.84%
Savings deposits	161,780	1,000	2.46	54,812	265	1.92
Time deposits	1,245,947	11,720	3.74	1,200,005	15,344	5.07
Other borrowings	396,495	3,290	3.30	273,579	3,617	5.25
Subordinated debentures	54,660	954	6.94	52,515	1,066	8.05
Total interest-bearing liabilities	2,470,302	20,254	3.26	2,180,567	26,093	4.75
Noninterest-bearing liabilities:						
Demand deposits	218,861			197,977		
Accrued interest and other liabilities	15,945			32,723		
Stockholders' equity	347,960			327,909		
Total liabilities and stockholders' equity	<u>\$3,053,068</u>			<u>\$2,739,176</u>		
Net interest income/net interest spread		21,847	<u>3.16%</u>		20,048	<u>3.03%</u>
Net yield on earning assets			<u>3.33%</u>			<u>3.38%</u>
Taxable equivalent adjustment:						
Investment securities (2)		221			142	
Net interest income		<u>\$ 21,626</u>			<u>\$ 19,906</u>	

(1) Nonaccrual loans are included in loans, net of unearned income. No adjustment has been made for these loans in the calculation of yields.

(2) Interest income and yields are presented on a fully taxable equivalent basis using a tax rate of 34%.



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The following table sets forth, on a taxable equivalent basis, the effect that the varying levels of interest-earning assets and interest-bearing liabilities and the applicable rates have had on changes in net interest income for the three-month periods ended September 30, 2008 and 2007.

	Three Months Ended September 30, 2008 vs. 2007 (1)		
	Increase (Decrease)	Changes Due To	
		Rate	Volume
(Dollars in thousands)			
Increase (decrease) in:			
Income from interest-earning assets:			
Interest and fees on loans	\$ (3,822)	\$ (8,724)	\$ 4,902
Interest on securities:			
Taxable	(165)	71	(236)
Tax-exempt	233	10	223
Interest on federal funds	(74)	(38)	(36)
Interest on other investments	(212)	(336)	124
Total interest income	<u>(4,040)</u>	<u>(9,017)</u>	<u>4,977</u>
Expense from interest-bearing liabilities:			
Interest on demand deposits	(2,511)	(2,623)	112
Interest on savings deposits	735	93	642
Interest on time deposits	(3,624)	(4,187)	563
Interest on other borrowings	(327)	(1,620)	1,293
Interest on subordinated debentures	(112)	(154)	42
Total interest expense	<u>(5,839)</u>	<u>(8,491)</u>	<u>2,652</u>
Net interest income	<u>\$ 1,799</u>	<u>\$ (526)</u>	<u>\$ 2,325</u>

- (1) The change in interest due to both rate and volume has been allocated to rate and volume changes in proportion to the relationship of the absolute dollar amounts of the changes in each.

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	Nine Months Ended September 30,					
	2008			2007		
	Average Balance	Income/ Expense	Yield/ Rate	Average Balance	Income/ Expense	Yield/ Rate
	(Dollars in thousands)					
<b>ASSETS</b>						
Interest-earning assets:						
Loans, net of unearned income (1)	\$2,142,254	\$110,717	6.90%	\$1,769,343	\$109,783	8.30%
Investment securities:						
Taxable	309,938	12,302	5.30	327,981	12,805	5.22
Tax-exempt (2)	40,613	1,956	6.43	17,698	823	6.21
Total investment securities	350,551	14,258	5.43	345,679	13,628	5.27
Federal funds sold	5,300	114	2.87	9,135	373	5.47
Other investments	50,428	2,039	5.40	47,214	2,304	6.53
Total interest-earning assets	2,548,533	127,128	6.66	2,171,371	126,088	7.76
Noninterest-earning assets:						
Cash and due from banks	60,953			43,965		
Premises and equipment	103,370			93,975		
Accrued interest and other assets	292,824			242,629		
Allowance for loan losses	(24,749)			(19,871)		
Total assets	<u>\$2,980,931</u>			<u>\$2,532,069</u>		
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>						
Interest-bearing liabilities:						
Demand deposits	\$ 650,082	\$ 12,146	2.50%	\$ 545,465	\$ 15,134	3.71%
Savings deposits	102,222	1,618	2.11	47,519	504	1.42
Time deposits	1,242,690	39,208	4.21	1,135,872	42,021	4.95
Other borrowings	342,331	9,098	3.55	242,243	9,636	5.32
Subordinated debentures	53,996	2,887	7.14	46,790	3,062	8.75
Total interest-bearing liabilities	2,391,321	64,957	3.63	2,017,889	70,357	4.66
Noninterest-bearing liabilities:						
Demand deposits	218,419			185,704		
Accrued interest and other liabilities	20,845			33,946		
Stockholders' equity	350,346			294,530		
Total liabilities and stockholders' equity	<u>\$2,980,931</u>			<u>\$2,532,069</u>		
Net interest income/net interest spread		62,171	<u>3.03%</u>		55,731	<u>3.10%</u>
Net yield on earning assets			<u>3.26%</u>			<u>3.43%</u>
Taxable equivalent adjustment:						
Investment securities (2)		665			280	
Net interest income		<u>\$ 61,506</u>			<u>\$ 55,451</u>	

- (1) Nonaccrual loans are included in loans, net of unearned income. No adjustment has been made for these loans in the calculation of yields.
- (2) Interest income and yields are presented on a fully taxable equivalent basis using a tax rate of 34%.

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The following table sets forth, on a taxable equivalent basis, the effect that the varying levels of interest-earning assets and interest-bearing liabilities and the applicable rates have had on changes in net interest income for the nine-month periods ended September 30, 2008 and 2007.

	Nine Months Ended September 30, 2008 vs. 2007 (1)		
	Increase (Decrease)	Changes Due To	
		Rate	Volume
(Dollars in thousands)			
Increase (decrease) in:			
Income from interest-earning assets:			
Interest and fees on loans	\$ 934	\$ (20,243)	\$ 21,177
Interest on securities:			
Taxable	(503)	199	(702)
Tax-exempt	1,134	30	1,104
Interest on federal funds	(259)	(138)	(121)
Interest on other investments	(266)	(417)	151
Total interest income	<u>1,040</u>	<u>(20,569)</u>	<u>21,609</u>
Expense from interest-bearing liabilities:			
Interest on demand deposits	(2,988)	(5,551)	2,563
Interest on savings deposits	1,114	331	783
Interest on time deposits	(2,813)	(6,601)	3,788
Interest on other borrowings	(538)	(3,806)	3,268
Interest on subordinated debentures	(175)	(611)	436
Total interest expense	<u>5,400</u>	<u>(16,238)</u>	<u>10,838</u>
Net interest income	<u>\$ 6,440</u>	<u>\$ (4,331)</u>	<u>\$ 10,771</u>

- (1) The change in interest due to both rate and volume has been allocated to rate and volumes changes in proportion to the relationship of the absolute dollar amounts of changes in each.

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*Noninterest income.* The components of noninterest income for the third quarter and first nine-months of 2008 and 2007 consisted of the following:

	Three Months Ended September 30,		
	2008	2007	% Change
	(Dollars in thousands)		
Service charges and fees on deposits	\$ 2,425	\$ 2,090	16.0%
Mortgage banking income	820	970	(15.5)
Investment securities loss	(8,541)	—	—
Change in fair value of derivatives	141	202	(30.2)
Increase in cash surrender value of life insurance	583	481	21.2
Other noninterest income	1,359	1,181	15.1
Total	<u>\$ (3,213)</u>	<u>\$ 4,924</u>	<u>(165.3)%</u>

	Nine Months Ended September 30,		
	2008	2007	% Change
	(Dollars in thousands)		
Service charges and fees on deposits	\$ 6,721	\$ 5,774	16.4%
Mortgage banking income	3,117	3,052	2.1
Investment securities (loss) gain	(7,072)	242	—
Change in fair value of derivatives	773	169	357.4
Increase in cash surrender value of life insurance	1,689	1,381	22.3
Gain on extinguishment of liabilities	2,918	—	—
Other noninterest income	4,247	2,931	44.9
Total	<u>\$ 12,393</u>	<u>\$ 13,549</u>	<u>(8.5)%</u>

The increase in service charges and fees on deposits is primarily attributable to an increased customer base resulting from our acquisitions and new branch locations. The increase in mortgage banking income during the first nine months of 2008 is the result of an increase in the volume of originations; however, the slight decline during the third quarter of 2008 from the third quarter of 2007 is primarily the result of a decrease in production due to market fluctuations. The increase in other noninterest income is primarily due to increases in brokerage commissions and ATM network fees. The increase in brokerage commissions is the result of increased volume in our investment subsidiary, and the increase in ATM network fees is the result of increased volume related to new customers and additional ATM locations, acquired through acquisitions or new branch locations. The investment securities loss is the result of an impairment charge related to preferred stock in Freddie Mac and Fannie Mae. See “Financial Condition — Investment Securities” for additional discussion.

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*Noninterest expenses.* Noninterest expenses increased \$2.6 million, or 12.3%, to \$23.9 million for the third quarter of 2008 from \$21.3 million for the third quarter of 2007. This increase is primarily due to the People's acquisition, and the opening of new branch locations. Our new branch locations added approximately \$2.1 million to noninterest expenses during the third quarter of 2008 compared to \$771,000 in the third quarter of 2007.

However, increases in the volume of net interest income and noninterest income are expected to begin offsetting these costs. Noninterest expenses included the following for the third quarters of 2008 and 2007:

	<b>Three Months Ended September 30,</b>		
	<b>2008</b>	<b>2007</b>	<b>% Change</b>
	(Dollars in thousands)		
<b>Noninterest Expenses</b>			
Salaries and employee benefits	\$ 12,379	\$ 10,724	15.4%
Occupancy, furniture and equipment expense	4,434	3,506	26.5
Amortization of core deposit intangibles	896	494	81.4
Loss on extinguishment of debt	—	1,469	(100.0)
Merger-related costs	—	103	(100.0)
Loss on termination of ESOP	—	158	(100.0)
Professional fees	756	529	42.8
Insurance expense	1,038	646	60.7
Postage, stationery and supplies	447	508	(12.0)
Communications expense	604	489	23.5
Advertising expense	843	536	57.2
Other operating expense	2,511	2,128	18.0
Total	<u>\$ 23,908</u>	<u>\$ 21,290</u>	<u>12.3%</u>
<b>Selected Key Ratios</b>			
Noninterest expense to average assets (1)	2.98%	2.76%	
Efficiency ratio (1)	84.66	77.77	

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Noninterest expenses increased \$12.1 million, or 21.1%, to \$69.5 million for the first nine months of 2008 from \$57.4 million for the first nine months of 2007. This increase is primarily due to the People's acquisition, and the opening of new branch locations. Our new branch locations added approximately \$6.3 million to noninterest expenses during the first nine months of 2008 compared to \$3.0 during the first nine months of 2007. However, increases in the volume of net interest income and noninterest income are expected to begin offsetting these costs. Noninterest expenses included the following for the first nine months of 2008 and 2007:

	Nine Months Ended September 30,		
	2008	2007	% Change
(Dollars in thousands)			
<b>Noninterest Expenses</b>			
Salaries and employee benefits	\$ 36,577	\$ 30,959	18.2%
Occupancy, furniture and equipment expense	12,614	9,650	30.7
Amortization of core deposit intangibles	2,688	1,102	143.9
Loss on extinguishment of debt	—	1,469	(100.0)
Merger-related costs	118	530	(77.7)
Loss on extinguishment of debt	—	158	(100.0)
Professional fees	1,893	1,549	22.2
Insurance expense	2,438	1,551	57.2
Postage, stationery and supplies	1,555	1,682	(7.6)
Communications expense	1,654	1,469	12.6
Advertising expense	2,311	1,760	31.3
Other operating expense	7,598	5,493	38.3
Total	<u>\$ 69,446</u>	<u>\$ 57,372</u>	<u>21.1%</u>
<b>Selected Key Ratios</b>			
Noninterest expense to average assets (1)	2.97%	2.85%	
Efficiency ratio (1)	85.09	78.65	

(1) In calculating the selected key ratios, noninterest expense has been adjusted for amortization of intangibles, merger-related costs and other losses on the sale of assets.

*Income tax (benefit) expense.* We recognized income tax benefit of \$(1.3 million) and \$(719,000) for the third quarter of 2008 and first nine months of 2008, respectively, compared to income tax expense of \$911,000 and \$3.0 million for the third quarter of 2007 and first nine months of 2007, respectively. Our effective tax rate decreased in 2008 compared to 2007 due to lower levels of pre-tax income. The difference in the effective tax rates in the third quarters and first nine months of 2008 and 2007, and the blended federal statutory rate of 34% and state tax rates between 5% and 6%, is primarily due to certain tax-exempt income from investments and insurance policies. In addition, under federal tax law that was in effect at September 30, 2008 the losses recognized on the Fannie Mae and Freddie Mac preferred stock ( See "Financial Condition — Investment Securities" for additional discussion) were considered capital losses. As such, only the amount of this loss that could be offset by recognized capital gains was included in the third quarter 2008 as a deferred tax benefit, with the remaining deferred tax benefit, offset by a valuation allowance. As enacted on October 3, 2008, the EESA included a section which changed the character of these losses from capital to ordinary for federal income tax purposes. This change will allow us to recognize approximately \$2.3 million in deferred tax benefit in the fourth quarter of 2008.

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*Provision for Loan Losses.* The provision for loan losses represents the amount determined by management to be necessary to maintain the allowance for loan losses at a level capable of absorbing inherent losses in the loan portfolio. Management reviews the adequacy of the allowance for loan losses on a quarterly basis. The allowance for loan loss calculation is segregated into various segments that include classified loans, loans with specific allocations and pass rated loans. A pass rated loan is generally characterized by a very low to average risk of default and in which management perceives there is a minimal risk of loss. Loans are rated using an eight-point scale, with loan officers having the primary responsibility for assigning risk ratings and for the timely reporting of changes in the risk ratings. These processes, and the assigned risk ratings, are subject to review by our internal loan review function and senior management. Impaired loans are reviewed specifically and separately under Statement of Financial Accounting Standards No. 114 (“SFAS 114”) to determine the appropriate reserve allocation. Management compares the investment in an impaired loan with the present value of expected future cash flows discounted at the loan’s effective interest rate, the loan’s observable market price, or the fair value of the collateral, if the loan is collateral-dependent, to determine the specific reserve allowance. To evaluate the overall adequacy of the allowance to absorb losses inherent in our loan portfolio, management considers historical loss experience based on volume and types of loans, trends in classifications, volume and trends in delinquencies and non-accruals, economic conditions and other pertinent information. Based on future evaluations, additional provisions for loan losses may be necessary to maintain the allowance for loan losses at an appropriate level. See “Financial Condition — Allowance for Loan Losses” for additional discussion.

The provision for loan losses was \$2.3 million for the third quarter of 2008, an increase of \$1.1 million from \$1.2 million in the third quarter of 2007. The provision for loan losses was \$10.1 million for the first nine months of 2008, an increase of \$7.2 million from \$2.9 million in the first nine months of 2007. During the third quarter and first nine months of 2008, we had net charged-off loans totaling \$1.9 million and \$5.3 million, respectively, compared to net charged-off loans of \$1.2 million and \$2.6 million in the third quarter and first nine months of 2007. The annualized ratio of net charged-off loans to average loans was 0.34% for the three- and nine-month periods ended September 30, 2008, compared to 0.24% and 0.20% for the three- and nine-month periods ended September 30, 2007, and .24% for the year ended December 31, 2007. The allowance for loan losses totaled \$27.7 million, or 1.25% of loans, net of unearned income, at September 30, 2008, compared to \$22.9 million, or 1.13% of loans, net of unearned income, at December 31, 2007. See “Financial Condition — Allowance for Loan Losses” for additional discussion.

### **Financial Condition**

Total assets were \$3.103 billion at September 30, 2008, an increase of \$218 million, or 7.6%, from \$2.885 billion as of December 31, 2007. Average total assets for the first nine months of 2008 were \$2.981 billion, which were funded by average total liabilities of \$2.631 billion and average total stockholders’ equity of \$350 million.

*Short-term liquid assets.* Short-term liquid assets (cash and due from banks, interest-bearing deposits in other banks and federal funds sold) increased \$34.3 million, or 54.1%, to \$97.6 million at September 30, 2008 from \$63.3 million at December 31, 2007. At September 30, 2008, short-term liquid assets were 3.2% of total assets, compared to 2.2% at December 31, 2007. We continually monitor our liquidity position and will increase or decrease our short-term liquid assets as we deem necessary. See “Liquidity” section for additional discussion.

*Investment Securities.* Total investment securities decreased \$26.7 million, or 7.4%, to \$334.5 million at September 30, 2008, from \$361.2 million at December 31, 2007. Average investment securities totaled \$350.6 million for the first nine months of 2008, compared to \$345.7 million for the first nine months of 2007. Investment securities were 12.8% of interest-earning assets at September 30, 2008, compared to 14.7% at December 31, 2007. The investment portfolio produced an average taxable equivalent yield of 5.43% for the first nine months of 2008, compared to 5.27% for the first nine months of 2007.

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The following table presents the carrying value of the securities we held at the dates indicated.

**Investment Portfolio**

	Available for Sale		
	September 30, 2008	December 31, 2007	Percent Change
	(Dollars in thousands)		
U.S. agencies	\$ 6,743	\$ 94,215	(92.8)%
State and political subdivisions	39,301	40,587	(3.2)
Mortgage-backed securities (MBS)	262,438	191,378	37.3
Corporate debt and other securities	26,020	34,991	(25.6)
<b>Total investment securities</b>	<b>\$ 334,502</b>	<b>\$ 361,171</b>	<b>(7.4)%</b>

	Net Unrealized Gain (Loss)		
	September 30, 2008	December 31, 2007	Dollar Change Pre-tax
	(Dollars in thousands)		
U.S. agencies	\$ 111	\$ 1,011	\$ (900)
State and political subdivisions	(2,097)	(173)	(1,924)
Mortgage-backed securities (MBS)	(4,302)	194	(4,496)
Corporate debt and other securities	(5,003)	(1,892)	(3,111)
<b>Net unrealized loss</b>	<b>\$ (11,291)</b>	<b>\$ (860)</b>	<b>\$ (10,431)</b>

At September 30, 2008, a net unrealized after-tax loss of \$6.4 million on the investment securities portfolio was reflected in net accumulated other comprehensive loss, an element of our capital. This compares to a net unrealized after-tax loss of \$542,000 at December 31, 2007.

Changes in current market conditions, such as interest rates and the economic uncertainties in the mortgage, housing and banking industries, have severely constricted the structured securities market. The secondary market for various types of securities has been limited and has negatively impacted securities values. Quarterly, we review each investment security segment noted in the table below to determine the nature of the decline in the value of investment securities and evaluate if any of the underlying securities has experienced other-than-temporary impairment (“OTTI”). The following table provides further detail of the investment securities portfolio at September 30, 2008.

(Dollars in thousands)	Amortized Cost	Fair Value	Unrealized Gain (Loss)
<b>September 30, 2008</b>			
U.S. agency and agency MBS — AAA rated	\$ 244,144	\$ 244,004	\$ (140)
Municipal securities	41,398	39,301	(2,097)
Non-agency MBS — AAA rated	27,574	23,521	(4,053)
Non-agency MBS — A and B2 rated	1,656	1,656	—
Bank and pooled trust preferred securities	24,399	19,650	(4,749)
Corporate securities	6,059	5,807	(252)
Fannie Mae and Freddie Mac preferred stock	563	563	—
<b>Total</b>	<b>\$ 345,793</b>	<b>\$ 334,502</b>	<b>\$ (11,291)</b>

The unrealized losses associated with the U.S. agency and agency MBS securities are caused by changes in interest rates and are not considered credit-related since the contractual cash flows of these investments are backed by the full faith and credit of the U.S. government. Unrealized losses that are related to the prevailing interest rate environment will decline over time and recover as these securities approach maturity.

The unrealized losses in the municipal securities portfolio are due to widening credit spreads caused by concerns about the bond insurers associated with these securities. In addition, municipal securities were adversely impacted by changes in interest rates. This portfolio segment is not experiencing any credit problems at September 30, 2008. We currently believe that all contractual cash flows will be received on this portfolio.



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The non-agency MBS securities portfolio has experienced various levels of price declines during 2008. The AAA rated non-agency MBS securities have experienced price declines due to the current market environment and the currently limited secondary market for such securities. No losses are expected in this portfolio at September 30, 2008. We currently believe all contractual cash flows on these securities will be received. During the third quarter of 2008, we recognized a \$314,000, net of tax, non-cash OTTI charge on a non-agency MBS which experienced a significant rating downgrade.

The bank and pooled trust preferred securities prices continue to decline due to reduced demand for these securities as their average lives have lengthened and from the increased supply due to forced liquidations from some market participants. Additionally, there has been little secondary market trading for these types of securities. At September 30, 2008, we believe that the credit quality of these securities remains adequate to absorb further economic declines, and these securities remain investment grade. As a result, we currently believe all contractual cash flows will be received on this portfolio.

The unrealized losses in the corporate securities portfolio are associated with the widening spreads in the financial sector of the corporate bond market. At September 30, 2008, all of the securities are current as to principal and interest payments, and we currently expect them to remain so in the future.

On September 7, 2008, the U.S. Treasury, the Federal Reserve and the Federal Housing Finance Agency (FHFA) announced that FHFA was placing Fannie Mae and Freddie Mac under conservatorship. At September 30, 2008, we held in our available-for-sale investment portfolio preferred securities issued by Fannie Mae and Freddie Mac with a cost basis of \$8.6 million. After the conservatorship, these securities currently trade at five to seven percent of par value. We do not hold any common stock or other equity securities issued by Fannie Mae or Freddie Mac. In light of the significant decline in the market value of these securities due to the takeover of Fannie Mae and Freddie Mac, and as it is unclear at this time if the value of the securities will improve, we recognized a \$7.4 million, net of tax, non-cash OTTI charge on these investments during the third quarter of 2008. Under federal tax law that was in effect at September 30, 2008, the losses recognized on the Fannie Mae and Freddie Mac preferred stock were considered capital losses rather than ordinary losses (See Note 8 to the Condensed Consolidated Financial Statements). As such, only the amount of these losses that could be offset by recognized capital gains was included in the third quarter of 2008 income tax benefit.

For further details regarding investment securities at December 31, 2007, refer to Notes 1 and 3 of the Consolidated Financial Statements in our Form 10-K for the year ended December 31, 2007. We will continue to evaluate the investment ratings in the securities portfolio, severity in pricing declines, market price quotes along with timing and receipt of amounts contractually due. Based upon these and other factors, the securities portfolio may experience further impairment. At September 30, 2008, management currently has the intent and ability to retain investment securities with unrealized losses until the decline in value has been recovered.

*Loans.* Loans, net of unearned income, totaled \$2.219 billion at September 30, 2008, an increase of 10.0%, or \$202.0 million, from \$2.017 billion at December 31, 2007. The increase in loans includes the purchase of a pool of residential mortgage loans with a balance of approximately \$52 million during the second quarter of 2008. Mortgage loans held for sale totaled \$15.3 million at September 30, 2008, a decrease of \$18.1 million from \$33.4 million at December 31, 2007. Average loans, including mortgage loans held for sale, totaled \$2.142 billion for the first nine months of 2008 compared to \$1.769 billion for the first nine months of 2007. Loans, net of unearned income, were 84.6% of interest-earning assets at September 30, 2008, compared to 82.2% at December 31, 2007. The loan portfolio produced an average yield of 6.90% for the first nine months of 2008, compared to 8.30% for the first nine months of 2007.

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The following table details the distribution of the loan portfolio by category as of September 30, 2008 and December 31, 2007:

**DISTRIBUTION OF LOANS BY CATEGORY**  
(Dollars in thousands)

	September 30, 2008		December 31, 2007	
	Amount	Percent of Total	Amount	Percent of Total
Commercial and industrial	\$ 213,887	9.6%	\$ 183,013	9.1%
Real estate — construction and land development (1)	610,364	27.5	665,303	33.0
Real estate — mortgage				
Single-family	639,405	28.8	540,277	26.8
Commercial	639,991	28.8	533,611	26.4
Other	63,447	2.9	41,535	2.1
Consumer	52,820	2.3	53,570	2.5
Other	1,280	.1	1,235	.1
Total loans	<u>2,221,194</u>	<u>100.0%</u>	<u>2,018,544</u>	<u>100.0%</u>
Unearned income	(2,153)		(1,533)	
Allowance for loan losses	(27,670)		(22,868)	
Net loans	<u>\$2,191,371</u>		<u>\$1,994,143</u>	

(1) A further analysis of the components of our real estate construction and land development loans as of September 30, 2008 and December 31, 2007 is as follows:

	Residential Development	Commercial Development	Other	Total
	(Dollars in thousands)			
<i>As of September 30, 2008</i>				
Alabama segment	\$ 157,610	\$ 69,071	\$17,128	\$243,809
Florida segment	152,021	178,442	14,955	345,418
Other	7,838	13,299	—	21,137
Total	<u>\$ 317,469</u>	<u>\$ 260,812</u>	<u>\$32,083</u>	<u>\$610,364</u>
<i>As of December 31, 2007</i>				
Alabama segment	\$ 192,133	\$ 60,407	\$16,003	\$268,543
Florida segment	195,460	162,286	18,564	376,310
Other	7,929	12,521	—	20,450
Total	<u>\$ 395,522</u>	<u>\$ 235,214</u>	<u>\$34,567</u>	<u>\$665,303</u>

The following table shows the amount of total loans, net of unearned income, by segment and the percent change for the dates indicated:

	September 30, 2008	December 31, 2007	Percent Change
	(Dollars in thousands)		
Total loans, net of unearned income	\$2,219,041	\$2,017,011	10.0%
Alabama segment	939,407	888,007	5.8
Florida segment	1,024,086	932,478	9.8
Other (2)	255,548	196,526	30.0

(2) Increase is due to the purchase of a pool of residential mortgage loans with a balance of approximately \$52 million during the second quarter of 2008.

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*Premises & Equipment.* On June 27, 2008, the Bank entered into a lease with a limited liability company of which one of our directors is a member. The initial term of the lease is ten years commencing after a certificate of occupancy is received for the building. The lease may be renewed, at the Bank's option, for two additional terms of five years each. The amount of the monthly lease payments to be made by the Bank is \$21,221 for the first year of the lease and increases annually until it reaches \$27,688 per month in year ten.

*Deposits.* Noninterest-bearing deposits totaled \$220.5 million at September 30, 2008, an increase of 6.2%, or \$13.0 million, from \$207.6 million at December 31, 2007. Noninterest-bearing deposits were 9.91% of total deposits at September 30, 2008 compared to 9.4% at December 31, 2007.

Interest-bearing deposits totaled \$2.005 billion at September 30, 2008, an increase of 0.6%, or \$12.0 million, from \$1.993 billion at December 31, 2007. Interest-bearing deposits averaged \$1.995 billion for the first nine months of 2008 compared to \$1.728 billion for the first nine months of 2007. The average rate paid on all interest-bearing deposits during the first nine months of 2008 was 3.63%, compared to 4.66% for the first nine months of 2007.

The following table sets forth the composition of our total deposit accounts at the dates indicated.

	<b>September 30, 2008</b>	<b>December 31, 2007</b>	<b>Percent Change</b>
	(Dollars in thousands)		
Noninterest-bearing demand	\$ 220,553	\$ 207,602	6.2%
Alabama segment	128,589	128,009	0.5
Florida segment	82,721	73,061	13.2
Other	9,243	6,532	41.5
Interest-bearing demand	583,734	657,809	(11.3)
Alabama segment	275,759	295,794	(6.8)
Florida segment	184,495	253,017	(27.1)
Other	123,480	108,998	13.2
Savings (1)	174,987	59,507	194.1
Alabama segment	99,120	33,919	192.2
Florida segment	74,865	25,056	198.8
Other	1,002	532	88.4
Time deposits	1,246,255	1,275,693	(2.3)
Alabama segment	595,104	694,380	(14.3)
Florida segment	470,428	462,071	1.8
Other	180,723	119,242	51.6
Total deposits	<u>\$ 2,225,529</u>	<u>\$ 2,200,611</u>	<u>1.1%</u>
Alabama segment	<u>\$ 1,098,572</u>	<u>\$ 1,152,102</u>	<u>(4.7)%</u>
Florida segment	<u>\$ 812,509</u>	<u>\$ 813,205</u>	<u>(0.1)%</u>
Other	<u>\$ 314,448</u>	<u>\$ 235,304</u>	<u>33.6%</u>

(1) Increase resulted from the introduction of a new savings deposit product carrying a yield of 3.25%.

*Borrowings.* Advances from the Federal Home Loan Bank ("FHLB") totaled \$440 million at September 30, 2008, an increase of 97.6%, or \$217 million, from \$223 million at December 31, 2007. Borrowings from the FHLB were used primarily to fund growth in the loan portfolio. FHLB advances had a weighted average interest rate of approximately 3.32% at September 30, 2008. The advances are secured by FHLB stock, agency securities and a blanket lien on certain residential real estate loans and commercial loans.

On September 4, 2008, we established a \$10 million revolving line of credit with a regional bank (the "Lender"). The line of credit, which is secured by all of the issued and outstanding stock of our subsidiary bank, will mature on September 3, 2009. We may borrow, repay and re-borrow amounts advanced under the revolving line of credit from time to time until the maturity date. Interest on each advance under the line of credit accrues at the Lender's base rate (5.75% at September 30, 2008). The Lender may accelerate the payment of principal and interest if there is an event of default under the terms of the line of credit. Events of default include, among other things, our failure to make any payment when due, material breaches of our representations, warranties or covenants in the loan agreement, the commencement of voluntary or involuntary bankruptcy or similar proceedings with respect to us, a default by us with respect to other indebtedness and the occurrence of certain other events which have a material adverse effect on us.

On September 4, 2008, the Lender advanced the full \$10 million under the line of credit which we used to pay our obligations under a matured \$9.5 million line of credit with a separate regional bank.

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On September 17, 2008, our banking subsidiary entered into an Agreement to Purchase Subordinated Notes (the “Agreement”) with Durden Enterprises, LLC (the “Purchaser”). Pursuant to the terms of the Agreement, the Bank issued to the Purchaser a \$10 million principal amount 9.5% Subordinated Note due September 15, 2018 (the “Note”), and we issued to the Purchaser a warrant (the “Warrant”) to purchase up to one million shares of our common stock, \$.001 par value per share, at a price of \$7.53 per share. The exercise price for the Warrant was based on the average of the closing prices of our common stock for the 10 trading days immediately preceding September 17, 2008. Interest on the Note is payable quarterly. The Purchaser may, subject to regulatory approval, accelerate the payment of principal and interest if there is an event of default under the terms of the Note. Events of default are limited to the commencement of voluntary or involuntary bankruptcy or similar proceedings with respect to the Bank. Beginning on September 15, 2013, the Bank may redeem all or a portion of the Note on any interest payment date at a price equal to 100% of the principal amount of the redeemed portion of the Note plus accrued but unpaid interest.

The fair value of the Warrant of \$2.6 million was determined using the Black-Scholes option-pricing model. The value of the Warrant is being amortized into interest expense over the term of the Agreement. The Warrant is exercisable at any time prior to the close of business on September 15, 2013. We agreed to register with the Securities and Exchange Commission the stock that would be issued to the Purchaser upon the exercise of the Warrant. We also granted to the Purchaser an option to purchase up to \$10 million in additional subordinated notes and receive additional warrants in the future on similar terms and conditions with such changes as are necessary to reflect market conditions at that time. K. Earl Durden, the managing member of the Purchaser, is a retired director of the Corporation and Superior Bank.

*Accrued Expenses and Other Liabilities.* During the second quarter of 2008, we recognized two separate gains from the extinguishment of liabilities totaling approximately \$5.8 million. The first gain related to the settlement of a retirement agreement with a previous executive officer under which we had a remaining unfunded obligation to pay approximately \$6.2 million in benefits over a 17-year period. This obligation was settled through a cash settlement payment of \$3.0 million with a recognized pre-tax gain of \$574,000. The second gain related to the forfeiture of benefits owed to a former executive officer under the Community Bancshares, Inc. Benefit Restoration Plan (see Note 20 to the Consolidated Financial Statements included in the Corporation’s 2007 Form 10-K) that resulted in a pre-tax gain of \$2.3 million.

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*Allowance for Loan Losses.* We maintain an allowance for loan losses within a range we believe is adequate to absorb estimated losses inherent in the loan portfolio. We prepare a quarterly analysis to assess the risk in the loan portfolio and to determine the adequacy of the allowance for loan losses. Generally, we estimate the allowance using specific reserves for impaired loans, and other factors, such as historical loss experience based on volume and types of loans, trends in classifications, volume and trends in delinquencies and non-accruals, national and local economic trends and conditions and other pertinent information. The level of allowance for loan losses to net loans will vary depending on the quarterly analysis.

We manage and control risk in the loan portfolio through adherence to credit standards established by the Board of Directors and implemented by senior management. These standards are set forth in a formal loan policy which establishes loan underwriting and approval procedures, set limits on credit concentration and enforces regulatory requirements.

Loan portfolio concentration risk is reduced through concentration limits for borrowers, varying collateral types and geographic diversification. Concentration risk is measured and reported to senior management and the board of directors on a regular basis.

The allowance for loan loss calculation is segregated into various segments that include classified loans, loans with specific allocations and pass rated loans. A pass rated loan is generally characterized by a very low to average risk of default and in which management perceives there is a minimal risk of loss. Loans are rated using an eight-point scale, with the loan officer having the primary responsibility for assigning risk ratings and for the timely reporting of changes in the risk ratings. These processes, and the assigned risk ratings, are subject to review by our internal loan review function and senior management. Based on the assigned risk ratings, the criticized and classified loans in the portfolio are segregated according to the following regulatory classifications: Special Mention, Substandard, Doubtful or Loss.

Pursuant to SFAS No. 114, impaired loans are specifically reviewed loans for which it is probable that we will be unable to collect all amounts due according to the terms of the loan agreement. Impairment is measured by comparing the recorded investment in the loan with the present value of expected future cash flows discounted at the loan's effective interest rate, at the loan's observable market price or the fair value of the collateral if the loan is collateral dependent. A valuation allowance is provided to the extent that the measure of the impaired loans is less than the recorded investment. A loan is not considered impaired during a period of delay in payment if we continue to expect that all amounts due will ultimately be collected according to the terms of the loan agreement. Larger groups of homogenous loans such as consumer installment and residential real estate mortgage loans are collectively evaluated for impairment.

Reserve percentages assigned to homogeneous loans are based on historical charge-off experience adjusted for current trends in the portfolio and other risk factors.

As stated above, risk ratings are subject to independent review by internal loan review, which also performs ongoing, independent review of the risk management process. The risk management process includes underwriting, documentation and collateral control. Loan review is centralized and independent of the lending function. The loan review results are reported to senior management and the Audit Committee of the Board of Directors. We have a centralized loan administration department to serve our entire bank. This department provides standardized oversight for compliance with loan approval authorities and bank lending policies and procedures, as well as centralized supervision, monitoring and accessibility.

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The following table summarizes certain information with respect to our allowance for loan losses and the composition of charge-offs and recoveries for the periods indicated.

**SUMMARY OF LOAN LOSS EXPERIENCE**

	Three Months Ended September 30,		Nine Months Ended September 30,		Year Ended December 31, 2007
	2008	2007	2008	2007	
	(Dollars in Thousands)				
Allowance for loan losses at beginning of period	\$ 27,243	\$ 19,147	\$ 22,868	\$ 18,892	\$ 18,892
Allowance of acquired bank	—	3,717	—	3,717	3,717
Charge-offs:					
Commercial and industrial	88	247	400	684	1,162
Real estate — construction and land development	877	120	1,542	121	301
Real estate — mortgage					
Single-family	606	350	2,089	799	1,149
Commercial	—	570	411	589	724
Other	3	—	109	206	206
Consumer	627	472	1,777	1,409	2,117
Other	46	—	145	—	63
Total charge-offs	2,247	1,759	6,473	3,808	5,722
Recoveries:					
Commercial and industrial	117	78	595	334	398
Real estate — construction and land development	8	275	41	283	286
Real estate — mortgage					
Single-family	33	87	76	144	174
Commercial	99	3	124	23	70
Other	16	10	39	68	82
Consumer	62	106	147	304	382
Other	34	24	110	26	48
Total recoveries	369	583	1,132	1,182	1,440
Net charge-offs	1,878	1,176	5,341	2,626	4,282
Provision for loan losses	2,305	1,179	10,143	2,884	4,541
Allowance for loan losses at end of period	\$ 27,670	\$ 22,867	\$ 27,670	\$ 22,867	\$ 22,868
Loans at end of period, net of unearned income	\$2,219,041	\$2,039,530	\$2,219,041	\$2,039,530	\$ 2,017,011
Average loans, net of unearned income	2,181,873	1,921,404	2,112,800	1,745,261	1,814,032
Ratio of ending allowance to ending loans	1.25%	1.12%	1.25%	1.12%	1.13%
Ratio of net charge-offs to average loans (1)	0.34	0.24	0.34	0.20	0.24
Net charge-offs as a percentage of:					
Provision for loan losses	81.48	99.83	52.66	91.09	94.30
Allowance for loan losses (1)	27.00	20.42	25.78	15.36	18.72
Allowance for loan losses as a percentage of nonperforming loans	44.96	97.35	44.96	97.35	90.31

(1) Annualized.

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The provision for loan losses was \$2.3 million in the third quarter of 2008, maintaining the allowance for loan losses at 1.25% of net loans, or \$27.7 million, at September 30, 2008, compared to 1.27% of net loans, or \$27.2 million at June 30, 2008. Most of the increases in non-performing loans ("NPLs") and Other Real Estate Owned ("OREO") that occurred in the third quarter came from previously identified problem loans, and are potentially indicative of a slowing of deterioration of credit quality among our customer base (See "Nonperforming Assets" below). Management has taken a proactive approach to monitoring these loans and will continue to actively manage these credits to minimize loss.

At September 30, 2008, NPLs were 2.77% of total loans, compared to 1.83% at June 30, 2008 and 1.26% at December 31, 2007, which is in line with management's expectations. The \$22.2 million NPL increase during the third quarter of 2008 was predominantly located in Florida and includes real estate relationships primarily secured by residential properties in various stages of development. Of total NPLs, \$15.8 million is in Alabama and \$45.2 million is in Florida. The ratio of allowance for loan losses to NPLs decreased to 44.96% at September 30, 2008 from 90.31% at December 31, 2007 and 97.35% at September 30, 2007. Approximately \$4.0 million of loans past due 90 days and still accruing consist of relationships which have underlying cash flows for debt service but which are temporarily past due for reasons unrelated to the creditworthiness of the borrowing activity.

OREO increased \$12.2 million during the third quarter of 2008, to \$24.5 million. The increase in OREO consists primarily of properties in Alabama consisting of single-family homes and residential lots. Of total OREO, \$21.2 million is in Alabama and \$3.3 million is in Florida.

Net loan charge-offs as a percentage of average loans were 0.34% for the three- and nine-month periods ended September 30, 2008, compared to 0.24% and 0.20% for the three- and nine-month periods ended September 30, 2007, respectively, and 0.24% for the year ended December 31, 2007. Of the \$1.9 million net charge-offs in the third quarter of 2008, the Bank's charge-offs were \$1.5 million, or 0.26% of consolidated average loans, and the consumer finance company charge-offs were \$425,000, or 0.08% of consolidated average loans. Of the Bank's charge-offs, 37.4% related to 1-4 family mortgages and 46.3% related to real estate construction.

*Nonperforming Assets.* Nonperforming assets increased \$56.6 million, to \$86.3 million as of September 30, 2008 from \$29.7 million at December 31, 2007. The following table represents our nonperforming assets for the dates indicated:

	<u>September 30,</u> <u>2008</u>	<u>December 31,</u> <u>2007</u>
	(Dollars in thousands)	
Nonaccrual	\$ 51,451	\$ 22,533
Accruing loans 90 days or more delinquent	8,268	2,117
Restructured	1,818	671
Total nonperforming loans	61,537	25,321
Other real estate owned and repossessed assets	24,787	4,415
Total nonperforming assets	<u>\$ 86,324</u>	<u>\$ 29,736</u>
Nonperforming loans as a percentage of loans	<u>2.77%</u>	<u>1.26%</u>
Nonperforming assets as a percentage of loans plus nonperforming assets	<u>3.85%</u>	<u>1.47%</u>
Nonperforming assets as a percentage of total assets	<u>2.78%</u>	<u>1.03%</u>

The following is a summary of nonperforming loans by category for the dates shown:

	<u>September 30,</u> <u>2008</u>	<u>December 31,</u> <u>2007</u>
	(Dollars in thousands)	
Commercial and industrial	\$ 231	\$ 1,058
Real estate — construction and land development	27,648	10,569
Real estate — mortgages		
Single-family	17,704	8,069
Commercial	13,849	4,045
Other	1,243	805
Consumer	862	775
Total nonperforming loans	<u>\$ 61,537</u>	<u>\$ 25,321</u>

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The following is a summary of other real estate owned and repossessed assets by category for the dates shown:

	September 30, 2008	December 31, 2007
	(Dollars in thousands)	
Land	\$ 13,780	\$ 1,100
Single-family residential properties	10,114	2,874
Construction	632	153
Other repossessed assets	261	288
Other real estate owned and repossessed assets	<u>\$ 24,787</u>	<u>\$ 4,415</u>

A delinquent loan is placed on nonaccrual status when it becomes 90 days or more past due and management believes, after considering economic and business conditions and collection efforts, that the borrower's financial condition is such that the collection of interest is doubtful. When a loan is placed on nonaccrual status, all interest that has been accrued on the loan during the current period but remains unpaid, is reversed and deducted from earnings as a reduction of reported interest income; any prior period accrued and unpaid interest is reversed and charged against the allowance for loan losses. No additional interest income is accrued on the loan balance until the collection of both principal and interest becomes reasonably certain. When a problem loan is finally resolved, there may ultimately be an actual write-down, charge-off or recovery of previous charged-off amounts of the principal balance to the allowance for loan losses, which may affect earnings.

*Past Due Loans.* Loans past due 30 to 89 days for the Bank decreased to .86% at September 30, 2008, compared to 1.08% at December 31, 2007 (see "Potential Problem Loans" section below). Consolidated loans past due 30 to 89 days, including the finance company subsidiaries, decreased to 0.89% for September 30, 2008 compared to 2.05% at June 30, 2008 and 1.13% at December 31, 2007. The majority of our Bank's past due loans consisted of approximately \$17.6 million, or 97% of total past due loans, within the single family residential mortgage, commercial real estate mortgage, or the real estate construction categories, with the majority of the past dues (57%) in single family mortgages. Within these three categories, the average loan balance was approximately \$137,000 with the balances proportionately split between the Alabama (55%) and Florida (44%) markets. The improvement in overall past dues is indicative of management's commitment to actively work with each of our borrowers to restore them to a consistent performance level while minimizing our loss exposure. As the national and global financial markets work through the current credit cycle, we expect to manage through the challenge while minimizing the level of associated credit losses.

*Impaired Loans.* At September 30, 2008, the recorded investment in impaired loans under SFAS 114 totaled \$46.9 million, with approximately \$3.9 million in allowance for loan losses specifically allocated to impaired loans. This represents an increase of \$24.6 million from \$22.3 million at December 31, 2007. The following is a summary of impaired loans and the specifically allocated allowance for loan losses by category as of September 30, 2008:

	Outstanding Balance	Specific Allowance
	(Dollars in thousands)	
Commercial and industrial	\$ 350	\$ 2
Real estate — construction and land development	23,567	1,912
Real estate — mortgages		
Commercial	11,559	540
1-4 family	10,275	1,269
Other	1,192	149
Total	<u>\$ 46,943</u>	<u>\$ 3,872</u>

*Potential Problem Loans.* In addition to nonperforming loans, management has identified \$20.3 million in potential problem loans as of September 30, 2008, compared to \$19.1 million as of June 30, 2008. Potential problem loans are loans where known information about possible credit problems of the borrowers causes management to have doubts as to the ability of such borrowers to comply with the present repayment terms and may result in recognition of such loans as nonperforming. Approximately 50% of our potential problem loans are currently included in our 30-89 days past due category and include borrowers that are experiencing cash-flow shortages due to general



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economic conditions and the slowdown in the real estate market. Approximately \$13.3 million of our potential problem loans are related to real estate construction and land development loans with \$13.0 million located in Florida and the remaining \$294 thousand located in Alabama. In addition, approximately \$5.9 million of our potential problem loans are related to 1-4 single family properties with \$4.2 million of these properties located in Alabama and \$1.7 million located in Florida. The remaining \$1.1 million consist primarily of commercial and retail related properties with \$878 thousand in Florida and \$214 thousand in Alabama. We are working closely with the borrowers and will continue to monitor their respective cash flow positions.

### *Stockholders' Equity*

*Subordinated Debentures and Warrants.* During the third quarter of 2008, the Bank raised \$10 million through the private placement of a subordinated note with detached warrants to purchase our common stock. See "Financial Condition — Borrowings" for additional information. The principal amount of the subordinated note is considered Tier II capital and is included in our total regulatory capital ratios.

*Stock Incentive Plan.* In April 2008, our stockholders approved the Superior Bancorp 2008 Incentive Compensation Plan (the "2008 Plan") which succeeded the 1998 Plan. The purpose of the 2008 Plan is to provide additional incentive for our directors and key employees to further our growth, development and financial success by personally benefiting through the ownership of the common stock, or other rights which recognize such growth, development and financial success. Our Board also believes the 2008 Plan will enable us to obtain and retain the services of directors and employees who are considered essential to our long-range success by offering them an opportunity to own stock and other rights that reflect our financial success. The maximum aggregate number of shares of common stock that may be issued or transferred pursuant to awards under the 2008 Plan is 300,000 (restated for 1-for-4 reverse stock split) shares, of which no more than 90,000 shares may be issued for "full value awards" (defined under the 2008 Plan to mean any awards permitted under the 2008 Plan that are neither stock options nor stock appreciation rights). Only those employees and directors who are selected to receive grants by the administrator may participate in the 2008 Plan.

*Regulatory Capital.* The table below represents our Bank's regulatory and minimum regulatory capital requirements at September 30, 2008 (dollars in thousands):

	Actual		For Capital Adequacy Purposes		To Be Well Capitalized Under Prompt Corrective Action	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
<b>As of September 30, 2008</b>						
Tier 1 Core Capital (to Adjusted Total Assets)	\$209,351	7.20%	\$116,332	4.00%	\$145,414	5.00%
Total Capital (to Risk Weighted Assets)	243,142	10.10	192,566	8.00	240,708	10.00
Tier 1 Capital (to Risk Weighted Assets)	209,351	8.70	N/A	N/A	144,425	6.00
Tangible Capital (to Adjusted Total Assets)	209,351	7.20	43,624	1.50	N/A	N/A

### **Liquidity**

Our principal sources of funds are deposits, principal and interest payments on loans, federal funds sold and maturities and sales of investment securities. In addition to these sources of liquidity, we have access to purchased funds from several regional financial institutions, the Federal Reserve Discount Window and brokered deposits, and may borrow from the FHLB under a blanket floating lien on certain commercial loans and residential real estate loans.

Also, we have established certain repurchase agreements with a large financial institution. While scheduled loan repayments and maturing investments are relatively predictable, interest rates, general economic conditions and competition primarily influence deposit flows and early loan payments. Management places constant emphasis on the maintenance of adequate liquidity to meet conditions that might reasonably be expected to occur. Management believes it has established sufficient sources of funds to meet its anticipated liquidity needs.

As shown in the Condensed Consolidated Statement of Cash Flows, operating activities provided \$28.4 million in funds in the first nine months of 2008, primarily due to a net decrease of \$18.1 million in mortgage loans held for sale plus \$7.8 million in depreciation and amortization

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expense and \$10.1 million in the provision for loan losses offset by a net loss of \$4.9 million. This compares to a net funds provided of \$1.5 million in the first nine months of 2007, primarily due to net income of \$5.7 million plus \$3.4 million in depreciation and \$1.7 million provision for loan losses, which were offset by an increase in mortgage loans held for sale of \$2.5 million and decreases in accrued interest payable of \$2.0 million and other liabilities of \$6.0 million primarily as a result of the payment of interest and merger related costs.

Investing activities resulted in a \$234 million net use of funds in the first nine months of 2008, primarily due to an increase in loans and the purchase of investment securities offset by the maturity and sales of investment securities. Investing activities were a \$86 million net use of funds in the first nine months of 2007 primarily due to an increase in loans offset by investment security sales and maturities.

Financing activities provided \$241 million in funds during the first nine months of 2008, primarily as a result of an increase in FHLB advances. Financing activities provided \$88 million in funds in the first nine months of 2007, primarily as a result of an increase in deposits and advances from the FHLB.

### **Forward-Looking Statements**

The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements made by us or on our behalf. Some of the disclosures in this Quarterly Report on Form 10-Q, including any statements preceded by, followed by, or which include, the words “may,” “could,” “should,” “will,” “would,” “hope,” “might,” “believe,” “expect,” “anticipate,” “estimate,” “intend,” “plan,” “assume” or similar expressions constitute forward-looking statements.

These forward-looking statements, implicitly and explicitly, include the assumptions underlying the statements and other information with respect to our beliefs, plans, objectives, goals, expectations, anticipations, estimates, intentions, financial condition, results of operations, future performance and business, including our expectations and estimates with respect to our revenues, expenses, earnings, return on equity, return on assets, efficiency ratio, asset quality, the adequacy of our allowance for loan losses and other financial data and capital and performance ratios.

Although we believe that the expectations reflected in our forward-looking statements are reasonable, these statements involve risks and uncertainties which are subject to change based on various important factors (some of which are beyond our control). The following factors, among others, could cause our financial performance to differ materially from our goals, plans, objectives, intentions, expectations and other forward-looking statements: (1) the strength of the United States economy in general and the strength of the regional and local economies in which we conduct operations; (2) the effects of, and changes in, trade, monetary and fiscal policies and laws, including interest rate policies of the Board of Governors of the Federal Reserve System; (3) inflation, interest rate, market and monetary fluctuations; (4) our ability to successfully integrate the assets, liabilities, customers, systems and management we acquire or merge into our operations; (5) our timely development of new products and services in a changing environment, including the features, pricing and quality compared to the products and services of our competitors; (6) the willingness of users to substitute competitors’ products and services for our products and services; (7) the impact of changes in financial services policies, laws and regulations, including laws, regulations and policies concerning taxes, banking, securities and insurance, and the application thereof by regulatory bodies; (8) our ability to resolve any legal proceeding on acceptable terms and its effect on our financial condition or results of operations; (9) technological changes; (10) changes in consumer spending and savings habits; (11) the effect of natural disasters, such as hurricanes, in our geographic markets, (12) regulatory, legal or judicial proceedings; (13) the continuing instability in the domestic and international capital markets; (14) the effects of new and proposed laws relating to financial institutions and credit transactions; and (15) the effects of policy initiatives that may be introduced by a new Presidential administration..

If one or more of the factors affecting our forward-looking statements proves incorrect, then our actual results, performance or achievements could differ materially from those expressed in, or implied by, forward-looking statements contained in this report. Therefore, we caution you not to place undue reliance on our forward-looking information and statements.

We do not intend to update our forward-looking statements, whether written or oral, to reflect changes. All forward-looking statements attributable to us are expressly qualified by these cautionary statements.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The information shown under the caption “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations- Market Risk-Interest Rate Sensitivity” included in our Annual Report on Form 10-K for the year ended December 31, 2007, is hereby incorporated herein by reference.

We measure our interest rate risk by analyzing the correlation of interest-bearing assets to interest-bearing liabilities (“gap analysis”), net interest income simulation, and economic value of equity (“EVE”) modeling. The following is a comparison of these measurements as of September 30, 2008 to December 31, 2007 (dollars in thousands):

<b>12-Month Gap</b>	<b>September 30, 2008</b>	<b>December 31, 2007</b>
Interest-bearing liabilities in excess of interest-earning assets	\$(384,000)	\$(455,000)
Cumulative 12-month Gap Ratio	.81	.77

<b>Change (in Basis Points) in Interest Rates (12-Month Projection)</b>	<b>Increase (Decrease) in Net Interest Income</b>			
	<b>September 30, 2008</b>		<b>December 31, 2007</b>	
	<b>Amount</b>	<b>Percent</b>	<b>Amount</b>	<b>Percent</b>
+200 BP (1)	\$3,072	3.8%	\$ 2,700	3.5%
- 200 BP (1)	(887)	(1.1)	(7,100)	(9.1)

(1) Results are within our asset and liability management policy.

Our net interest income simulation model assumes an instantaneous and parallel increase or decrease in interest rates of 200 basis points. EVE is a concept related to our longer-term interest rate risk. EVE is defined as the net present value of the balance sheet’s cash flows or the residual value of future cash flows. While EVE does not represent actual market liquidation or replacement value, it is a useful tool for estimating our balance sheet earnings capacity. The greater the EVE, the greater our earnings capacity. Our EVE model assumes an instantaneous and parallel increase or decrease of 200 basis points. The EVE produced by these scenarios is within our asset and liability management policy. The following table shows the Bank’s EVE as of September 30, 2008 and December 31, 2007:

<b>September 30, 2008</b> <b>Change (in Basis Points) in Interest Rates</b>	<b>EVE</b>	<b>Change</b>	
		<b>Amount</b>	<b>Percent</b>
		<b>(Dollars in thousands)</b>	
+ 200 BP	\$523,994	\$ 15,129	3.0%
0 BP	508,865	—	—
- 200 BP	474,398	(34,467)	(6.8)

<b>December 31, 2007</b> <b>Change (in Basis Points) in Interest Rates</b>	<b>EVE</b>	<b>Change</b>	
		<b>Amount</b>	<b>Percent</b>
+ 200 BP	\$470,866	\$ 19,274	4.4%
0 BP	451,142	—	—
- 200 BP	407,146	(43,996)	(9.8)

The Bank’s EVE has increased approximately \$58 million since December 31, 2007. This increase is attributable to several factors including the purchase of a \$52 million 1-4 family mortgage pool during the second quarter of 2008 which is earning a yield in excess of 8%. In addition, the current level of interest rates as well as the steepening yield curve provided increased EVE related to our non-maturity deposits and certain FHLB advances.

Both the net interest income and EVE simulations include balances, asset prepayment speeds, and interest rate relationships among balances that management believes to be reasonable for the various interest rate environments. Differences in actual occurrences from these assumptions, as well as non-parallel changes in the yield curve, may change our market risk exposure.

## **ITEM 4. CONTROLS AND PROCEDURES**

### **CEO AND CFO CERTIFICATION**

Appearing as exhibits to this report are Certifications of our Chief Executive Officer (“CEO”) and our Chief Financial Officer (“CFO”). The Certifications are required to be made by Rule 13a-14 under the Securities Exchange Act of 1934, as amended. This Item contains the information about the evaluation that is referred to in the Certifications, and the information set forth below in this Item 4 should be read in conjunction with the Certifications for a more complete understanding of the Certifications.

### **EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

We conducted an evaluation (the “Evaluation”) of the effectiveness of the design and operation of our disclosure controls and procedures under the supervision and with the participation of our management, including our CEO and CFO, as of September 30, 2008. Based upon the Evaluation, our CEO and CFO have concluded that, as of September 30, 2008, our disclosure controls and procedures are effective to ensure that material information relating to Superior Bancorp and its subsidiaries is made known to management, including the CEO and CFO, particularly during the period when our periodic reports are being prepared.

There have not been any changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities and Exchange Act of 1934, as amended) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

While we are a party to various legal proceedings arising in the ordinary course of business, we believe that there are no proceedings threatened or pending against us at this time that will individually, or in the aggregate, materially adversely affect our business, financial condition or results of operations. We believe that we have strong claims and defenses in each lawsuit in which we are involved. While we believe that we will prevail in each lawsuit, there can be no assurance that the outcome of the pending, or any future, litigation, either individually or in the aggregate, will not have a material adverse effect on our financial condition or our results of operations.

### **ITEM 1A. RISK FACTORS**

Our business is influenced by many factors that are difficult to predict, involve uncertainties that may materially affect actual results and are often beyond our control. We have identified a number of these risk factors in our Annual Report on Form 10-K for the year ended December 31, 2007, which should be taken into consideration when reviewing the information contained in this report. There have been no material changes with regard to the risk factors previously disclosed in our most recent Form 10-K. For other factors that may cause actual results to differ materially from those indicated in any forward-looking statement or projection contained in this report, see “Forward-Looking Statements” under Part I, Item 2 above.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

There were no unregistered sales of equity securities by Superior Bancorp during the third quarter of 2008 except those previously disclosed in a Current Report on Form 8-K dated as of September 17, 2008.

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### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

No matters were submitted to a vote of security holders during the third quarter of 2008.

### **ITEM 5. OTHER INFORMATION**

None.

### **ITEM 6. EXHIBITS**

(a) Exhibit:

- 10.1 Loan Agreement, dated as of September 4, 2008, between Superior Bancorp and Colonial Bank
- 10.2 Revolving Credit Note, dated September 4, 2008, between Superior Bancorp and Colonial Bank
- 10.3 Stock Pledge Agreement, dated as of September 4, 2008, given by Superior Bancorp
- 10.4 Agreement to Purchase Subordinated Notes, dated as of September 17, 2008, by and among Superior Bank, Superior Bancorp and Durden Enterprises, LLC
- 10.5 Letter to Durden Enterprises, LLC, dated as of September 17, 2008
- 10.6 9.5% Subordinated Note Due September 15, 2018 given by Superior Bank
- 10.7 Warrant to Purchase Common Stock of Superior Bancorp dated as of September 17, 2008.
- 10.8 Agreement, dated as of September 8, 2008, between Superior Bancorp and James A. White
- 10.9 Change in Control Agreement, dated as of September 8, 2008, by and among Superior Bancorp, Superior Bank and James A. White
- 31.1 Certification of principal executive officer pursuant to Rule 13a-14(a).
- 31.2 Certification of principal financial officer pursuant to 13a-14(a).
- 32.1 Certification of principal executive officer pursuant to 18 U.S.C. Section 1350.
- 32.2 Certification of principal financial officer pursuant to 18 U.S.C. Section 1350.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SUPERIOR BANCORP  
(Registrant)

Date: November 7, 2008

By: /s/ C. Stanley Bailey  
C. Stanley Bailey  
Chief Executive Officer

Date: November 7, 2008

By: /s/ James C. Gossett  
James C. Gossett  
Chief Accounting Officer  
(Principal Accounting Officer)

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## Section 2: EX-10.1 (EX-10.1)

Exhibit 10.1

### LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made and entered into as of September 4, 2008, by and between **SUPERIOR BANCORP**, a Delaware corporation ("Borrower"), and **COLONIAL BANK** ("Lender"), and has reference to the following facts and circumstances:

- A. Borrower has applied for a revolving credit loan from Lender in the principal amount of up to \$10,000,000.
- B. Lender is willing to make said revolving credit loan to Borrower upon, and subject to, the terms, provisions and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby mutually agree and promise as follows:

### SECTION 1. TERM

The "Term" of this Agreement shall commence on the date hereof and shall end on September 3, 2009 (which, if such blank is not filled in, shall be twelve months from the date of execution of this Agreement), unless earlier terminated upon the occurrence of an Event of Default under this Agreement. All representations and warranties made herein shall survive termination and termination shall not affect a party's rights with respect to any prior breach of any term, agreement, covenant, representation or warranty contained herein.

### SECTION 2. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement or in any Exhibit or Schedule hereto, when used in this Agreement, the following terms shall have the following meanings (such meanings shall be equally applicable to the singular and plural forms of the terms used, as the context requires):

Act shall have the meaning ascribed thereto in Section 9.17.

Attorneys' Fees means the reasonable value of the services (and costs, charges and expenses related thereto) of the attorneys employed by Lender (including, without limitation, attorneys who are employees of Lender) from time to time to represent Lender (a) in the preparation or amendment of this Agreement and the other Transaction Documents, (b) in any litigation, contest or proceeding or to take any other action in or with respect to any litigation, contest or proceeding (whether instituted by Lender, Borrower or any other Person and whether in bankruptcy or otherwise) in any way or respect relating to this Agreement or any of the other Transaction Documents, Borrower, Subsidiary Bank, any Subsidiary, or any other Obligor, and (c) to enforce any of Lender's rights to collect any of the Obligations; provided, that such Attorneys' Fees shall be determined on the basis of rates then generally applicable to the attorneys (and all paralegals, accountants and other staff employed by such attorneys) employed by Lender, which may be higher than the rates such attorneys (and all paralegals, accountants and other staff employed by such attorneys) charge Lender in certain matters.



Birmingham Banking Day shall mean any day (other than a Saturday or Sunday) on which commercial banks are open for business in Birmingham, Alabama.

Business Day shall mean any day except a Saturday, Sunday or legal holiday observed by Lender.

Capitalized Lease shall mean any lease which, in accordance with GAAP and any more stringent requirements under regulations applicable to Borrower or Subsidiary Bank consistently applied, is required to be capitalized on the balance sheet of the lessee.

Change in Control shall mean any of the following events: (a) the acquisition at any time by a "person" or "group" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934 [the "Exchange Act"]) of beneficial ownership (as defined in Rule 13(d)-3 under the Exchange Act), directly or indirectly, of securities representing more than Fifty Percent (50%) of the combined voting power in the election of directors of the then outstanding securities of Borrower or any successor of Borrower; (b) during any period of two (2) consecutive years or less, the individuals who at the beginning of such period constituted a majority of the board of directors cease, for any reason other than death, disability or retirement to constitute a majority of Borrower's board of directors, unless the election of or nomination for election of each new director during such period was approved by a vote of at least a majority of the directors still in office who were directors at the beginning of the period; (c) approval by the stockholders of Borrower of any sale or disposition of substantially all of the assets or earning power of the Borrower; or (d) approval by the stockholders of Borrower of any merger, consolidation, or statutory share exchange to which Borrower is a party and as a result of which the persons who were stockholders of Borrower immediately prior to the effective date of the merger, consolidation or share exchange shall have beneficial ownership of less than Fifty Percent (50%) of the combined voting power in the election of directors of the surviving corporation.

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

Collateral shall have the meaning ascribed to such term in the Pledge.

Colonial Bank Base Rate shall mean the interest rate announced from time to time by Lender as the "Colonial Bank Base Rate". The Colonial Bank Base Rate is a reference rate established by Lender for use in computing and adjusting interest. It is subject to increase, decrease or change, and is only one of the reference rates or indices that the Lender uses. The Lender may lend to others at rates of interest at, or greater or less than the Colonial Bank Base Rate or the rate provided herein. The Colonial Bank Base Rate may change as often as daily. Any change in the interest rate resulting from a change in the Colonial Bank Base Rate shall take effect upon the change in the Colonial Bank Base Rate.

Advance shall have the meaning ascribed thereto in Section 3.02(a).

Consolidated Subsidiary shall mean with respect to any Person at any date, any Subsidiary or other entity the assets and liabilities of which are or should be consolidated with those of such



Person in its consolidated financial statements as of such date in accordance with GAAP and any more stringent requirements under regulations applicable to Borrower or Subsidiary Bank consistently applied.

Default shall mean an event or condition the occurrence of which would, with the lapse of time, the giving of notice, or both, become or constitute an Event of Default as defined in Section 8 hereof.

Distribution in respect of any corporation or other entity shall mean: (a) dividends or other distributions on or in respect of any of the capital stock or other equity interests of such corporation or other entity; and (b) the redemption, repurchase or other acquisition of any capital stock or other equity interests of such corporation or other entity or of any warrants, rights or other options to purchase any such capital stock or other equity interests.

Environmental Laws shall have the meaning ascribed thereto in Section 9.04.

Environmental Lien shall have the meaning ascribed thereto in Section 6.10(g).

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time (references to sections of ERISA shall be construed to also refer to any successor sections).

ERISA Affiliate shall mean any corporation, trade or business that is, along with Borrower, a member of a controlled group of corporations or a controlled group of trades or businesses, as described in Sections 414(b) and 414(c), respectively, of the Code or Section 4001 of ERISA.

Event of Default shall have the meaning ascribed thereto in Section 8.

GAAP shall mean, at any time, generally accepted accounting principles at such time in the United States.

Indebtedness of any Person shall mean and include all obligations of such Person which in accordance with GAAP and any more stringent requirements under regulations applicable to Borrower or Subsidiary Bank consistently applied are or should be classified upon a balance sheet of such Person as liabilities of such Person, including any and all contingent obligations, indebtedness and/or liabilities of such Person, as long as they are reflected on the balance sheet of such Person and any and all obligations of such Person under any Capitalized Lease.

Indemnitee shall have the meaning ascribed thereto in Section 9.05.

Indemnified Liabilities shall have the meaning ascribed thereto in Section 9.05.

Lien shall mean any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on common law, statute or contract, including, without limitation, any security interest, mortgage, deed of trust, pledge, lien or other encumbrance of any kind or nature whatsoever, any conditional sale or trust receipt and any lease, consignment or bailment for security purposes.

Loan shall have the meaning ascribed thereto in Section 3.01.

Material Adverse Effect shall mean (a) a material adverse effect on the Properties, assets, liabilities, business, operations, prospects, income or condition (financial or otherwise) of Borrower, Subsidiary Bank, and/or any Subsidiary, (b) material impairment of the ability of Borrower, Subsidiary Bank, and/or any Subsidiary to perform any of its obligations under this Agreement, the Note or any of the other Transaction Documents or (c) material impairment of the enforceability of the rights of, or benefits available to, Lender under this Agreement, the Note, the Pledge or any of the other Transaction Documents.

Money Markets shall mean one or more wholesale funding markets available to and selected by Lender, including negotiable certificates of deposit, commercial paper, Eurodollar deposits, bank notes, federal funds, interest rate swaps or others.

Multiemployer Plan shall mean a “multiemployer plan” as defined in Section 4001(a) (3) of ERISA which is maintained for employees of Borrower, any other Obligor, any ERISA Affiliate, Subsidiary Bank, or any Subsidiary.

Note shall mean the Revolving Credit Note to be executed and delivered to Lender pursuant to Section 3.01, as the same may from time to time be amended, modified, extended or renewed.

Notice of Borrowing shall have the meaning ascribed thereto in Section 3.03(a).

Obligations shall mean any and all indebtedness, liabilities and obligations of Borrower to Lender under this Agreement, the Note, the Pledge, any of the other Transaction Documents, or any other agreement, instrument or document heretofore, now or hereafter executed and delivered by Borrower to Lender, in each case in connection with or contemplated by the Transaction Documents, now existing or hereafter arising, absolute or contingent, joint and/or several, secured or unsecured, direct or indirect, expressed or implied in law, contractual or tortious, liquidated or unliquidated, at law or in equity, or otherwise, and whether created directly or acquired by Lender by assignment or otherwise, and any and all costs of collection and/or Attorneys’ Fees incurred or to be incurred in connection therewith.

Obligor shall mean Borrower and each other Person who is or shall become primarily or secondarily liable, by guaranty or otherwise, on any of the Obligations or who grants Lender a Lien upon any Property or assets of such Person as collateral for any of the Obligations.

OTS shall mean the United States Department of Treasury, Office of Thrift Supervision.

Capital Guidelines shall have the meaning ascribed thereto in Section 6.09.

PBGC shall mean the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

Pension Plan shall mean any “pension plan” as such term is defined in Section 3(2) of ERISA which is subject to the provisions of Title IV of ERISA and which is established or maintained by Borrower, any other Obligor, any ERISA Affiliate, Subsidiary Bank, or any Subsidiary, other than a Multiemployer Plan.

Permitted Liens shall mean (a) Liens securing government deposits at Subsidiary Bank; (b) Liens on Property or assets which secure loans or other extensions of credit made by Subsidiary Bank or any Subsidiary in the ordinary course of their banking business; (c) Liens on Property or assets acquired by Subsidiary Bank or any Subsidiary by foreclosure or by deed in lieu of foreclosure in the ordinary course of their banking business; (d) Liens for taxes, assessments and other governmental charges that are not yet delinquent or are being contested in good faith; (e) purchase money Liens related to purchase of capital assets not to exceed \$500,000; (f) Liens assumed in connection with acquisitions or mergers as long as such acquisition or merger is permitted by the terms of this Agreement; (g) statutory Liens of landlords, carriers, warehousemen, mechanics, suppliers, material men, or other like Liens incurred in the ordinary course of business and which are not yet delinquent or are being contested in good faith; (h) Liens incurred in the ordinary course of business in connection with workers' compensation and unemployment insurance and other types of social security; (i) Liens incurred or deposits made to secure performance or tenders, bids, leases, statutory obligations, utility services, progress payments and the like; (j) the refinancing of any Liens permitted by this Agreement, and (g) the Liens described on Schedule 5.12 attached hereto.

Person shall mean an individual, partnership, corporation, limited liability company, trust, unincorporated organization or association, and a government or agency or political subdivision thereof.

Pledge shall mean the Stock Pledge Agreement dated as of the date hereof to be executed by Borrower and delivered to Lender pursuant to Section 4 hereof as the same may from time to time be amended.

Property shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible and Properties shall mean any or all of the foregoing. For purposes of this Agreement, Borrower, Subsidiary Bank, and any Subsidiary, as the case may be, shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement, financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

Regulatory Agency shall mean any Federal, state or local governmental or regulatory agency, authority, entity or official having jurisdiction over the banking or other related activities of Borrower, Subsidiary Bank, and/or any Subsidiary including, without limitation (to the extent applicable), The Board of Governors of the Federal Reserve System, the OTS, and the Federal Deposit Insurance Corporation.

Related Party shall mean any Person which directly or indirectly through one or more intermediaries controls, or is controlled by or is under common control with, Borrower, Subsidiary Bank, or any Subsidiary. The term "control" shall include the possession, directly or indirectly, of the power to vote Ten Percent (10%) or more of the capital stock of any Person or the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Reportable Event shall have the meaning ascribed thereto in ERISA.

SEC shall mean the United States Securities and Exchange Commission.

Subsidiary shall mean any corporation or other entity of which more than Fifty Percent (50%) of the issued and outstanding capital stock or other equity interests entitled to vote for the election of directors, managers or other persons performing similar functions (other than by reason of default in the payment of dividends or other distributions) is at the time owned directly or indirectly by Borrower, Subsidiary Bank, or any Subsidiary or which under GAAP and any more stringent requirements under regulations applicable to Borrower or Subsidiary Bank, consistently applied, is required to be consolidated with any such entity on its balance sheet and Subsidiaries shall mean any or all of the foregoing.

Subsidiary Bank shall mean as of the effective date of this Agreement, Superior Bank, a Federal savings bank; provided, that, this definition may be amended in the future to reflect any other Subsidiary Bank that Borrower acquires.

Term shall have the meaning ascribed thereto in Section 1.

Transaction Documents shall mean this Agreement, the Note, the Pledge, and all other agreements, documents, instruments and certificates connected with or otherwise relating to this Agreement or the Loan made hereunder, all as the same may from time to time be amended, modified, extended or renewed.

### SECTION 3. THE LOAN

3.01 Commitment of Lender. Lender hereby agrees to make Borrower a revolving credit loan in the original principal amount of up to Ten Million Dollars (\$10,000,000.00) (the "Loan"), which Loan, or any portion thereof, may be repaid and, subject to the terms and conditions hereof (and as long as no Event of Default exists), reborrowed to, but not including, the last day of the Term. The aggregate principal amount which Borrower may have outstanding under the Loan at any one time shall not exceed Ten Million Dollars (\$10,000,000.00), which amount may be borrowed, paid, reborrowed and repaid in whole or in part. The Loan shall be evidenced by the Revolving Credit Note of Borrower dated the date of this Agreement, payable to the order of Lender in the principal amount of \$10,000,000.00, having a maturity date of the last day of the Term, and in the form attached hereto and incorporated by reference as Exhibit A (as the same may from time to time be amended, modified, extended or renewed, the "Note"). Borrower agrees to pay in full all interest, principal fees, charges and all other amounts due under the Note and Loan on the maturity date of the Term.

#### 3.02 Interest

(a) Interest on each Loan advance (each, an "Advance") shall accrue at the Colonial Bank Base Rate Floating. Interest from the date of any Advance on the outstanding unpaid principal balance shall be computed on the basis of a 360 day year by multiplying the product of the principal amount outstanding and the applicable rate by the actual amount of days elapsed and dividing by 360. No Advance may extend beyond the last day of the Term and all outstanding Advances, including principal, interest, fees related thereto, must be paid in full on the last day of the Term. Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error. Each Advance shall be in a minimum principal amount of \$100,000.

(b) After maturity of the Loan, whether by reason of acceleration or otherwise, interest shall accrue on the Loan and be payable on demand on the entire outstanding principal balance thereof at an annual rate equal to Twelve Percent (12%). Interest on each Advance shall be payable quarterly in arrears on each March 31, June 30, September 30 and December 31, and on the last day of the Term, or earlier if maturity is accelerated pursuant to the terms of this Agreement. All payments shall be applied first to the payment of all accrued and unpaid interest, with the balance, if any, to be applied to the payment of principal. Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error.

### 3.03 Method of Borrowing.

(a) Borrower shall give Lender oral or written notice (a "Notice of Borrowing") by 10:00 a.m. (Birmingham time) on (i) the Business Day on which each Advance shall be made. Each Notice of Borrowing shall specify: (A) the date of such advance, which shall be a Business Day during the Term, and (B) the aggregate principal amount of such advance.

(b) A Notice of Borrowing shall not be revocable by Borrower.

(c) Subject to the terms and conditions of this Agreement, provided that Lender has received the Notice of Borrowing, Lender shall (unless Lender determines that any applicable condition specified in Section 4 has not been satisfied) make the applicable Advance to Borrower by crediting the amount of such Advance to a demand deposit account of Borrower at Lender specified by Borrower (or such other account mutually agreed upon in writing between Lender and Borrower) not later than 2:30 p.m. (Birmingham time) on the Business Day specified in said Notice of Borrowing.

(d) If Lender makes a new Advance under this Agreement on a day on which Borrower is required to or has elected to repay all or any part of an outstanding Advance, Lender shall apply the proceeds of its new Advance to make such repayment and only an amount equal to the difference (if any) between the amount being borrowed and the amount being repaid shall be made available by Lender to Borrower.

(e) Borrower hereby irrevocably authorizes Lender to rely on telephonic, telegraphic, telecopy, telex, electronic mail, or written instructions of any individual identifying himself or herself as one of the individuals listed on Schedule 3.03 attached hereto (or any other individual from time to time authorized to act on behalf of Borrower pursuant to a resolution adopted by either the Board of Directors of Borrower and certified by the Secretary of Borrower) with respect to any request to make an Advance or a repayment under this Agreement, and on any signature which Lender believes to be genuine, and Borrower shall be bound thereby in the same manner as if such individual were actually authorized or such signature were genuine. Borrower also hereby agrees to defend and indemnify Lender and hold Lender harmless from and against any and all claims, demands, damages, liabilities, losses and reasonable costs and expenses (including, without limitation, reasonable Attorneys' Fees and expenses) relating to or arising out of or in connection with the acceptance of instructions for making Advances or repayments under this Agreement; unless such claims, demands, damages, liabilities and losses are caused solely by Lender's gross negligence or intentional misconduct.

3.04 Prepayment. Borrower shall be privileged at any time to prepay all or any portion of the Loan prior to last day of the Term, without penalty or premium, provided that: (a) partial prepayments shall be applied to the installments of principal of the Note in the inverse order of their stated maturities; (b) on each prepayment date, Borrower shall pay to Lender all accrued interest on the principal portion of the Loan being prepaid to and including the date of such prepayment; (c) no Default or Event of Default under this Agreement shall have occurred and be continuing; and (d) if an Advance is prepaid due to acceleration of the Loan upon default or otherwise, Borrower agrees to pay all of Lender's costs, and expenses (as determined by Bank) incurred as a result of such prepayment. Any prepayment of an Advance shall be in an amount equal to the remaining entire principal balance of such Advance.

3.05 General Provisions as to Payments. Borrower shall make each payment of principal of, and interest on, the Loan and all other amounts payable by Borrower under this Agreement, not later than 12:00 noon (Birmingham time) on the date when due and payable, in Federal or other funds immediately available in Birmingham, Alabama, to Lender at its address referred to in Section 3.06. All payments received by Lender after 12:00 noon (Birmingham time) shall be deemed to have been received by Lender on the next succeeding Business Day. Whenever any payment of principal of, or interest on, the Loans or of other amount shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon, at the then applicable rate, shall be payable for such extended time.

3.06 Place of Payment. Both principal and interest under the Note are payable to Lender in lawful currency of the United States in Federal or other immediately available funds at Lender's banking office at 100 Colonial Bank Blvd, Montgomery, AL 36117-4244.

3.07 Late Fees. If Borrower fails to make any payment of any principal of or interest on any Advance within ten (10) days after the same becomes due, whether by reason of maturity, acceleration or otherwise, in addition to all of the other rights and remedies of Lender under this Agreement and at law or in equity, Borrower shall pay Lender on demand with respect to each such late payment a late fee in an amount not to exceed Three Percent (3%) of each late payment.

3.08 Capital Adequacy. If, after the date of this Agreement, Lender shall have determined in good faith that the adoption of any applicable law, rule, regulation or guideline regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Regulatory Agency, other governmental or regulatory authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or will have the effect of reducing the rate of return on Lender's capital in respect of its obligations under this Agreement to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy), then from time to time Borrower shall pay to Lender upon demand such additional amount or amounts as will compensate Lender for such reduction. All determinations made in good faith by Lender of the additional amount or amounts required to compensate Lender in respect of the foregoing shall be conclusive in the absence of manifest error. In determining such amount or amounts, Lender may use any reasonable averaging and attribution methods.

#### **SECTION 4. PRECONDITIONS TO LOAN ADVANCES**

4.01 Initial Advance under Loan. Notwithstanding any provision contained herein to the contrary, Lender shall have no obligation to make the initial Advance unless Lender shall have received the following, all in form acceptable to Lender:

- (a) this Agreement and the Note, each executed by a duly authorized officer of Borrower;
- (b) the Pledge, executed by a duly authorized officer of Borrower, and the collateral schedule, stock power(s), UCC financing statement, and such other documents as Lender may require in connection with the Pledge;
- (c) 127,501 shares of the common stock of Subsidiary Bank, representing One Hundred Percent (100%) of the issued and outstanding common stock of Subsidiary Bank (as verified by the Secretary of Subsidiary Bank), said shares to be issued in Borrower's name and accompanied by stock powers duly executed in blank by an authorized officer of Borrower which the signature(s) of such officer(s) guaranteed; the Certificate of President, duly executed by the President of Borrower; copies of resolutions of the Board of Directors of Borrower, duly adopted, which authorize the execution, delivery and performance of this Agreement and the other Transaction Documents, certified by the Secretary of Borrower;
- (d) copies of the Articles or Certificate of Incorporation of Borrower, including any amendments thereto, certified by the Secretary of State of the State of Delaware, and copies of the Articles or Certificate of Incorporation of Subsidiary Bank, including any amendments thereto, certified by the OTS;
- (e) copies of the By-Laws of Borrower and Subsidiary Bank, including any amendments thereto, certified by the Secretary of Borrower, and the Secretary of Subsidiary Bank, respectively;
- (f) a certificate of good standing for Borrower issued by the Secretary of State of the State of Delaware, and a certificate of corporate existence for Subsidiary Bank issued by the OTS and a certificate of FDIC insurance;
- (g) an opinion of counsel from William H. Caughran, Jr., General Counsel of Borrower, in the form acceptable to Lender;
- (h) evidence that no change in the financial condition of Borrower, Subsidiary Bank and/or any Subsidiary shall have occurred since June 30, 2008 that could have a Material Adverse Effect; and
- (i) such other agreements, documents, instruments, certificates and assurances as Lender may reasonably request.

4.02 All Advances. Notwithstanding any provision contained in this Agreement to the contrary, Lender shall have no obligation to make any Advance under this Agreement unless:

(a) Lender shall have received a Notice of Borrowing for such Revolving Credit Loan as required by Section 3.03(a);

(b) both immediately before and immediately after giving effect to such Advance, no Default or Event of Default shall have occurred and be continuing;

(c) no change in the Properties, assets, liabilities, business, operations, prospects, income or condition (financial or otherwise) of Borrower, Subsidiary Bank and/or any Subsidiary which may have a Material Adverse Effect shall have occurred since the date of this Agreement and be continuing; and

(d) all of the representations and warranties made by Borrower and any third-parties in this Agreement and/or in any other Transaction Document shall be true and correct in all material respects on and as of the date of such Loan as if made on and as of the date of such Advance (and for purposes of this Section 4.02(d), the representations and warranties made by Borrower in Section 5.04 shall be deemed to refer to the most recent financial statements of Borrower delivered to Lender pursuant to Section 6.03).

Each request for an Advance by Borrower under this Agreement shall be deemed to be a representation and warranty by Borrower on the date of such Advance as to the facts specified in clauses (b), (c), and (d) of this Section 4.02.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES**

To induce Lender to make the Loan, Borrower hereby represents and warrants to Lender that:

5.01 Corporate Existence and Power. Each of Borrower, Subsidiary Bank, and each Subsidiary: (a) is duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization; (b) has all requisite corporate powers and all governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted; and (c) is duly qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a Material Adverse Effect on its business, financial condition or operations. Borrower is a Delaware chartered “savings and loan holding company” as defined in and within the meaning of 12 U.S.C. § 1467a *et seq.*, and as such Borrower has filed all necessary reports with and received all necessary approvals from OTS. Subsidiary Bank is a “Federal savings association” and an “insured depository institution”, as those terms are defined in and within the meaning of 12 U.S.C. §§ 1462 and 1813 and no act has occurred which could adversely affect the status of Subsidiary Bank as an “insured depository institution.” Subsidiary Bank is a Federal savings bank chartered under 12 U.S.C. § 1464.

5.02 Corporate Authorization. The execution, delivery and performance by Borrower of this Agreement, the Note, the Pledge, and the other Transaction Documents are within the corporate powers of Borrower and have been duly authorized by all necessary corporate action.



5.03 Binding Effect. This Agreement, the Note, the Pledge, and the other Transaction Documents have been duly authorized, executed and delivered and constitute the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights in general.

5.04 Financial Statements. Borrower has furnished Lender with the following financial statements, identified by the principal financial officer of Borrower: (a) consolidated and consolidating balance sheets and profit and loss statements of Borrower and its Consolidated Subsidiaries as of December 31, 2007, all certified by Borrower's independent certified public accountants, which financial statements have been prepared in accordance with GAAP and any more stringent requirements under regulations applicable to Borrower or Subsidiary Bank consistently applied; and (b) the Thrift Financial Report (OTS Form 1313) of Subsidiary Bank as of June 30, 2008, certified by the President or Chief Financial Officer of Subsidiary Bank. Borrower further represents that: (1) said financial statements fairly present the condition of Borrower and its Consolidated Subsidiaries as of the dates thereof, (2) there has been no change in the condition or operation, financial or otherwise, of Borrower or any of its Consolidated Subsidiaries since June 30, 2008 that could have a Material Adverse Effect, and (3) neither Borrower nor any of its Consolidated Subsidiaries has any direct or contingent liabilities which are not disclosed on said financial statements which could have a Material Adverse Effect.

5.05 Litigation. Except as disclosed in Schedule 5.05 attached hereto, there is no action or proceeding pending or, to the knowledge of Borrower, threatened against or affecting Borrower, Subsidiary Bank or any Subsidiary, before any court, arbitrator or governmental, regulatory or administrative body, agency or official which could result in any change in the condition or operation, financial or otherwise, of Borrower, Subsidiary Bank, or any Subsidiary which may have a Material Adverse Effect, and neither Borrower, Subsidiary Bank nor any Subsidiary is in default with respect to any order, writ, injunction, decision or decree of any court, arbitrator or governmental, regulatory or administrative body, agency or official which could have a Material Adverse Effect.

5.06 Pension and Welfare Plans. Each Pension Plan complies in all material respects with all applicable statutes and governmental rules and regulations; no Reportable Event has occurred and is continuing with respect to any Pension Plan; neither Borrower, Subsidiary Bank, any Subsidiary, nor any ERISA Affiliate has withdrawn from any Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" as defined in sections 4203 or 4205 of ERISA, respectively; no steps have been instituted by Borrower, Subsidiary Bank, any Subsidiary, or any ERISA Affiliate to terminate any Pension Plan; no condition exists or event or transaction has occurred in connection with any Pension Plan or Multiemployer Plan which could result in the incurrence by Borrower, Subsidiary Bank, any Subsidiary, or any ERISA Affiliate of any material liability, fine or penalty; and neither Borrower, Subsidiary Bank, any Subsidiary, nor any ERISA Affiliate is a "contributing sponsor" as defined in Section 4001(a) (13) of ERISA of a "single-employer plan" as defined in Section 4001(a) (15) of ERISA which has two or more contributing sponsors at least two of whom are not under common control. Neither Borrower, Subsidiary Bank, nor any Subsidiary, has any contingent liability with respect to any "employee welfare benefit plans", as such term is defined in Section 3(a) of ERISA, which covers retired employees and their beneficiaries.

5.07 Tax Returns. Borrower, Subsidiary Bank, and each Subsidiary have filed all Federal, state and local income tax returns and all other tax returns which are required to be filed and has paid all taxes due pursuant to such returns or pursuant to any assessment received by Borrower, Subsidiary Bank, and each Subsidiary, except for the filing of such returns, if any, in respect of which an extension of time for filing is in effect.

5.08 Subsidiaries. Subsidiary Bank and the other Subsidiaries set forth on Schedule 5.08 are the only Subsidiaries of Borrower. Except as disclosed herein, neither Borrower nor Subsidiary Bank, individually or collectively, owns or holds, directly or indirectly, any capital stock of or equity interest in any corporation, partnership, limited liability company or other entity. Borrower may at any time amend, modify or supplement this Section 5.08 and Schedule 5.08 by notifying Lender in writing of any changes thereto, including any formation, acquisition, merger or liquidation of any Subsidiary or any change in the capitalization of any Subsidiary, in each case, in accordance with the terms of this Agreement, and thereby the representations and warranties contained in this Section 5.08 shall be amended accordingly so long as such amendment, modification or supplement is made within thirty (30) days after the occurrence of any such changes in the facts stated therein and that such changes reflect transactions that are permitted under this Agreement.

5.09 Compliance with Laws. Borrower, Subsidiary Bank, and each Subsidiary have complied in all material respects with and will continue to comply with all applicable federal and state laws and regulations, including without limitation ones that: (a) regulate or are concerned in any way with its or their banking and trust business, including without limitation those laws and regulations relating to the investment of funds, lending of money, collection of interest, extension of credit, and location and operation of banking facilities; or (b) otherwise relate to or affect the business or assets of Borrower, Subsidiary Bank, and each Subsidiary, or the assets owned, used or occupied by them.

5.10 Compliance With Other Instruments. None of the execution and delivery by Borrower of the Transaction Documents, the consummation of the transactions therein contemplated or the compliance with the provisions thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Borrower, Subsidiary Bank and the other Subsidiaries or any of the provisions of the Certificates of Incorporation or By-Laws of each or any of the provisions of any indenture, agreement, document, instrument or undertaking to which each is a party or subject, or by which it or its Property is bound. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with, the exemption by, any governmental, regulatory, administrative or public body or authority, or any subdivision thereof, is required to authorize, or is otherwise required in connection with, the execution, delivery or performance of, or the legality, validity, binding effect or enforceability of, any of the Transaction Documents.

5.11 Other Loans, Guarantees or Derivative Transactions. Except as disclosed on Schedule 5.11 attached hereto or in the ordinary course of its banking business, neither Borrower, Subsidiary Bank, nor any Subsidiary is a borrower, guarantor or obligor with respect to any loan transaction, guarantee or other indebtedness for borrowed money or a party to a derivative or credit derivative transaction (including without limitation interest rate swaps, credit default swaps, total return swaps, credit-linked notes, and credit spread options), whether on-balance sheet

or off-balance sheet.

5.12 Title to Property. Borrower, Subsidiary Bank, and each Subsidiary are each the sole and absolute owner of, or has the legal right to use and occupy, all Property it claims to own or which is necessary for Borrower, Subsidiary Bank, and each Subsidiary to conduct its business. Neither Borrower, Subsidiary Bank, nor any Subsidiary has signed or authorized the filing of any financing statements, security agreements or chattel mortgages with respect to any of its respective Property, has granted or permitted any Liens with respect to any of its Property or has any knowledge of any Liens with respect to any of its Property, except as disclosed on Schedule 5.12 attached hereto.

5.13 Regulation U. No part of the proceeds of the Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately (a) to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock, or to refund or repay indebtedness originally incurred for such purpose or (b) for any purpose which entails a violation of, or which is inconsistent with, the provisions of the Regulations of The Board of Governors of the Federal Reserve System, including, without limitation, Regulations G, U, T or X thereof, as amended.

5.14 Environmental Matters. There are no disputes pending (nor, to the knowledge of Borrower, are there any disputes threatened nor, to the knowledge of Borrower, is there any basis therefor) affecting Borrower, Subsidiary Bank, or any Subsidiary, whether or not in or before any court or arbitrator of any kind or involving any governmental or regulatory body, which, if adversely determined could, singly or in the aggregate, have a Material Adverse Effect on the business, Properties, assets, liabilities, financial condition, results of operations or business prospects of Borrower, Subsidiary Bank, or any Subsidiary or on the ability of Borrower to perform its obligations hereunder or under the Note or any of the other Transaction Documents, relating to environmental matters, including, without limitation, any notice from any agency, state or Federal, that Borrower, Subsidiary Bank, or any Subsidiary is a potentially responsible party for the cleanup of any environmental waste site, that Borrower, Subsidiary Bank, or any Subsidiary is in violation of any environmental permit or regulation, that Borrower, Subsidiary Bank, or any Subsidiary has been placed on any registry of solid or hazardous waste disposal sites, or of the expiration, revocation or denial of any environmental permit or other loss of interim status or other current authorization to operate any unit or portion of the facilities of Borrower, Subsidiary Bank, or any Subsidiary.

5.15 Shares of Subsidiary Bank. The authorized capital of Subsidiary Bank consists solely of 200,000 shares of common stock, \$1.00 par value. As of the date hereof, Borrower is the sole legal and beneficial owner of 127,501 shares of common stock, \$1.00 par value, of Subsidiary Bank (the "Subsidiary Bank Shares"), representing all of the outstanding and issued shares of common stock of Subsidiary Bank, subject to no Liens, warrants, options, proxies, restrictions on transfer, resale or other disposition; and that all of such shares are all validly issued, fully paid and nonassessable. As of the date hereof, there are no warrants or options, or any agreements to issue any warrants or options, outstanding with respect to any class of capital stock of Subsidiary Bank. Upon delivery of the Pledge and the certificate evidencing the Subsidiary Bank Shares to Lender, Lender will have, and Borrower hereby grants to Lender, a first and prior and perfected security interest and lien on such Subsidiary Bank Shares, with right of set-off, and all proceeds thereof and distributions thereon, as collateral for and securing the Obligations of Borrower to Lender,

including the Note and Obligations arising hereunder and under the Pledge and other Transaction Documents, free and clear of and not subject to any Liens, rights of ownership or possession, or any adverse interest or claim of any Person.

5.16 [Intentionally deleted].

5.17 Material Contracts. Except as set forth in Schedule 5.17, there is not, under any agreement, lease or contract to which either Borrower or the Subsidiary Bank is a party, an existing default or event of default, or any event which with notice or lapse of time, or both, would constitute a default on the part of Borrower or the Subsidiary Bank, or provide a reasonable basis for any other claim of non-excusable delay or non-performance on the part of Borrower or the Subsidiary Bank and which could have a Material Adverse Effect on either Borrower or the Subsidiary Bank.

## SECTION 6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as any of Obligations are outstanding, it will, and will cause Subsidiary Bank, or any Subsidiary to:

6.01 Insurance. Keep adequately insured, by financially sound and reputable insurers acceptable to Lender and in amounts reasonably acceptable to Lender, all Property of Borrower, Subsidiary Bank, and each Subsidiary of the character usually insured by corporations and other entities engaged in the same or similar businesses similarly situated, against loss or damage of the kind customarily insured against by such corporations and acceptable to Lender, and (b) cause Subsidiary Bank to maintain coverage under a banker's blanket bond in an amount equal to the greater of the amount of coverage currently maintained by Subsidiary Bank or the minimum coverage recommended by the applicable Regulatory Agencies, plus such excess fidelity coverage as Lender may reasonably request from time to time. Promptly after Lender's request therefor, Borrower shall provide Lender with evidence that Borrower maintains, and that Subsidiary Bank maintain, the insurance required under this Section 6.01, and evidence of the payment of all premiums therefor.

6.02 Payment of Taxes. Duly file all Federal, state and local income tax returns and all other tax returns and reports which are required to be filed; and pay before the same become delinquent, all taxes and governmental charges assessed against or upon Borrower, Subsidiary Bank, and each Subsidiary, as the case may be, or upon their respective Properties, assets, income or franchises, except to the extent any failure to do so would not have a Material Adverse Effect.

6.03 Financial Data.

Deliver to Lender:

(a) As soon as practicable and in any event within sixty (60) days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year of Borrower) an unaudited consolidated statement of earnings and retained earnings of Borrower and its Consolidated Subsidiaries for the period from the beginning of the current fiscal year to the end of such fiscal

quarter, and an unaudited consolidated balance sheet of Borrower and its Consolidated Subsidiaries as at the end of such fiscal quarter, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified to Lender by the principal financial officer of Borrower, subject to changes resulting from normal year-end adjustments; all such statements to be prepared in accordance with GAAP and any more stringent requirements under regulations applicable to Borrower or Subsidiary Bank consistently applied (provided that as long as Borrower timely files its SEC Form 10-Q for any applicable fiscal quarter, this reporting requirement shall be deemed to be satisfied for such fiscal quarter);

(b) As soon as practicable and in any event within ninety (90) days after the end of each fiscal year, consolidated and consolidating statements of earnings and retained earnings of Borrower and its Consolidated Subsidiaries for such year, consolidated and consolidating statements of cash flow of Borrower and its Consolidated Subsidiaries for such year, and consolidated and consolidating balance sheets of Borrower and its Consolidated Subsidiaries as at the end of such year, setting forth in each case in comparative form corresponding figures from the preceding fiscal year, all such statements to be prepared in accordance with GAAP and any more stringent requirements under regulations applicable to financial institutions consistently applied and reported and accompanied by the unqualified opinion of independent certified public accountants selected by Borrower and acceptable to Lender (provided that as long as Borrower timely files its SEC Form 10-K for any applicable fiscal year, this reporting requirement shall be deemed to be satisfied for such fiscal year);

(c) As soon as practicable and in any event within sixty (60) days after the end of each fiscal quarter, a certificate in substantially the form of that attached hereto and made a part hereof as Exhibit B (with appropriate insertions), executed by the principal financial officer of Borrower;

(d) Promptly after filing with any Regulatory Agency, and in any event within fifteen (15) days after the filing thereof, copies of all financial statements, call reports, filings and other documents which Borrower, Subsidiary Bank, or any Subsidiary shall file with the SEC and any Regulatory Agency and which are otherwise not publicly available; and

(e) With reasonable promptness, such other financial information and data as Lender may from time to time reasonably request. Lender shall keep such information confidential in compliance with applicable law, provided that Lender is hereby authorized to deliver a copy of any financial statement or other information made available by Borrower, Subsidiary Bank, or any Subsidiary to any regulatory authority having jurisdiction over Lender, pursuant to any request therefor.

6.04 Maintenance of Property. Maintain all Property, plants and equipment (except obsolete equipment) in good operating order, and from time to time make all needful and proper repairs, renewals, replacements, additions, betterments and improvements thereto so that at all times the efficiency thereof shall be fully preserved and maintained.

6.05 Inspection. Permit any employee or contractor designated by Lender to visit, inspect and audit any of the Properties, corporate books, loan documentation, loan portfolios, loan files and financial records of Borrower, Subsidiary Bank, and any Subsidiary and to discuss the affairs, finances and accounts of Borrower, Subsidiary Bank, and any Subsidiary with the principal

officers of Borrower, Subsidiary Bank, and any Subsidiary, all at such reasonable times and at such reasonable intervals as Lender may request. Lender shall keep such information confidential in compliance with applicable law, provided that Lender is hereby authorized to deliver a copy of any such information made available by Borrower, Subsidiary Bank, or any Subsidiary to any regulatory authority having jurisdiction over Lender, pursuant to any request therefor.

6.06 Corporate Existence. Do or cause to be done all things necessary to (a) preserve and keep in full force and effect its corporate existence, rights and franchises to the extent the failure to do so could reasonably be expected to have a Material Adverse Effect, (b) duly qualify to do business in all jurisdictions where the nature of Property or the nature of the business requires such qualification to the extent the failure to do so could reasonably be expected to have a Material Adverse Effect, (c) maintain its status as a “savings and loan holding company” under and within the meaning of 12 U.S.C. §1467a, (d) cause Subsidiary Bank to preserve and keep in full force and effect its existence, franchise and right to do business as a Federal savings bank under the laws of the United States, and (e) maintain Subsidiary Bank’s status as an “insured depository institution” as defined in, or within the meaning of, 12 U.S.C. §1813, and to otherwise maintain Subsidiary Bank’s eligibility for federal deposit insurance.

6.07 Compliance with Law. Comply with any and all laws, ordinances and governmental and regulatory rules and regulations to which it is subject, and obtain any and all licenses, permits, franchises and other governmental and regulatory authorizations necessary to the ownership of the Properties, or to the conduct of the business, which violation or failure to obtain might have a Material Adverse Effect.

6.08 ERISA Compliance. If Borrower, Subsidiary Bank, or any Subsidiary shall have, or in the future create, any Pension Plan, Borrower shall comply in all material respects with, and shall cause Subsidiary Bank, and each Subsidiary to comply with, all requirements of ERISA relating to such plan. Without limiting the generality of the foregoing, Borrower will not: (a) permit, or cause or allow Subsidiary Bank, and each Subsidiary to permit, any Pension Plan maintained by it, Subsidiary Bank, or any Subsidiary, as the case may be, to engage in any nonexempt “prohibited transaction”, as such term is defined in Section 4975 of the Internal Revenue Code of 1986, as amended; (b) permit, or cause or allow Subsidiary Bank, or any Subsidiary to permit, any Pension Plan maintained by it, Subsidiary Bank, or any Subsidiary, as the case may be, to incur any “accumulated funding deficiency,” as such term is defined in Section 302 of ERISA, 29 U.S.C. §1082, whether or not waived; (c) terminate, or cause or allow Subsidiary Bank, or any Subsidiary to terminate, any such Pension Plan in a manner which could result in the imposition of a Lien on the Property of Borrower, Subsidiary Bank, or any Subsidiary, as the case may be, pursuant to section 4068 of ERISA, 29 U.S.C. §1368; or (d) take, or cause or allow Subsidiary Bank, or any Subsidiary to take, any action which would constitute or give rise to a complete or partial withdrawal from a multi-employer plan within the meaning of Sections 4203 and 4205 of Title IV of ERISA. Notwithstanding any provision contained in this Section 6.08 to the contrary, an act by Borrower, Subsidiary Bank, or any Subsidiary shall not be deemed to constitute a violation of subparagraphs (a) through (d) hereof unless Lender determines in good faith that said action, individually or cumulatively with other acts of Borrower, Subsidiary Bank, or any Subsidiary, does have or is likely to cause a significant adverse financial effect upon Borrower, Subsidiary Bank, or any Subsidiary. Borrower shall have the affirmative obligation hereunder to report to Lender any of those acts identified in subparagraphs

(a) through (d) hereof, regardless of whether said act does or is likely to cause a significant adverse financial effect upon Borrower, Subsidiary Bank, or any Subsidiary, and failure by Borrower to report such act promptly upon Borrower's becoming aware of the existence thereof shall constitute an Event of Default hereunder.

**6.09 Risk-Based and Leverage Capital Adequacy Requirements.** Comply with, to the extent applicable, the capital guidelines for savings associations of the OTS as set forth in 12 C.F.R. §565.4 (the "OTS Capital Guidelines"), as from time to time amended, or in any successor law, rule or regulation of similar import. In addition, Borrower will cause Subsidiary Bank (i) to maintain at all times during the Term of this Agreement a "well-capitalized" rating under the OTS Capital Guidelines; (ii) to maintain at least a Minimum Tier 1 capital/asset ratio of 7% and (iii) to maintain Tier 1 equity capital as determined under the OTS Capital Guidelines, and tangible capital as determined under 12 CFR 567.9, of at least \$200 million.

**6.10 Notices.** Notify Lender in writing of any of the following immediately after learning of the occurrence thereof, describing the same and, if applicable, the steps being taken by the Person(s) affected with respect thereto; and, in addition, shall make the notifications provided in sections 6.10(j), (k) and (l):

(a) **Default.** The occurrence of (i) any Default or Event of Default under this Agreement, or (ii) any default or event of default by Borrower, Subsidiary Bank, or any Subsidiary (which could reasonably be expected to have a Material Adverse Effect), under any note, indenture, loan agreement, mortgage, deed of trust, security agreement, lease or other similar agreement, document or instrument to which Borrower, Subsidiary Bank, or any Subsidiary, as the case may be, is a party or by which it is bound or to which it is subject;

(b) **Litigation.** The institution of any litigation, arbitration proceeding or governmental or regulatory proceeding affecting Borrower, Subsidiary Bank, or any Subsidiary, whether or not considered to be covered by insurance, which could reasonably be expected to have a Material Adverse Effect;

(c) **Judgment.** The entry of any judgment or decree against Borrower, Subsidiary Bank, or any Subsidiary which could reasonably be expected to have a Material Adverse Effect;

(d) **Pension Plans.** The occurrence of a Reportable Event (which could reasonably be expected to have a Material Adverse Effect) with respect to any Pension Plan; the filing of a notice of intent to terminate a Pension Plan by Borrower, any ERISA Affiliate, any other Obligor or Subsidiary Bank; the institution of proceedings to terminate a Pension Plan by the PBGC or any other Person to terminate any Pension Plan; the withdrawal in a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203 and 4205, respectively, of ERISA by Borrower, any ERISA Affiliate, any other Obligor or Subsidiary Bank from any Multiemployer Plan; or the incurrence of any material increase in the contingent liability of Borrower, any other Obligor or Subsidiary Bank with respect to any "employee welfare benefit plan" as defined in Section 3(1) of ERISA which covers retired employees and their beneficiaries;

(e) **Change of Name.** Any change in the name of Borrower, Subsidiary Bank, or any Subsidiary which could reasonably be expected to have a Material Adverse Effect;

(f) Change in Place(s) of Business. Any proposed opening, closing or other change of any place of business of Borrower, Subsidiary Bank, or any Subsidiary which could reasonably be expected to have a Material Adverse Effect;

(g) Environmental Matters. Receipt of any notice that the operations of Borrower, Subsidiary Bank, or any Subsidiary are not in full compliance with any of material requirements of any applicable Federal, state or local environmental, health or safety law, rule or regulation; receipt of notice that Borrower, Subsidiary Bank, or any Subsidiary is subject to any Federal, state or local investigation evaluating whether any remedial action is needed to respond to the material release of any hazardous or toxic waste, substance or constituent or other substance into the environment; or receipt of notice that any of the Properties or assets of Borrower, Subsidiary Bank, or any Subsidiary are subject to an "Environmental Lien." For purposes of this Section 6.10, "Environmental Lien" shall mean a Lien in favor of any governmental or regulatory agency, entity, authority or official for (1) any liability under Federal, state or local environmental laws, rules or regulations which could reasonably be expected to have a Material Adverse Effect or (2) damages arising from or costs incurred by any such governmental or regulatory agency, entity, authority or official in response to a release of a hazardous or toxic waste, substance or constituent or other substance into the environment which could reasonably be expected to have a Material Adverse Effect;

(h) Material Adverse Effect. The occurrence of any change in the business, operations or condition, financial or otherwise, of Borrower, Subsidiary Bank, or any Subsidiary which could reasonably be expected to have a Material Adverse Effect; and

(i) Regulatory Matters. The issuance of any cease and desist order against Borrower, Subsidiary Bank, or any Subsidiary by any Regulatory Agency and/or the entry of any memorandum of understanding or other agreement between Borrower, Subsidiary Bank, or any Subsidiary and any Regulatory Agency, regardless of whether the same is voluntary or involuntary.

(j) Letters / Notifications from Auditors. Borrower will provide copies of any reports or letters or notifications from Borrower's or Subsidiary Bank's certified public accountant that are addressed to management, the audit committee or the board of directors of Borrower or Subsidiary Bank respectively within 30 days of receipt.

(k) To the extent allowed by law, Borrower will provide any summary reports or requests from external regulators and the corresponding management responses within 30 days of receipt or sending thereof.

(1) Borrower will provide copies of internal memoranda or reports to the Audit Committees of Borrower or Subsidiary Bank regarding allowance for loan loss adequacy (ALLL Adequacy) within 30 days of issuance.

6.11 Utilization of Loan Proceeds. Utilize the proceeds of any advance made under the Loan solely for working capital purposes, for payment to U.S. Bank, National Association in the amount of the principal and interest outstanding under that certain \$10 million loan dated on or about January 26, 2007, for the repurchase of Borrower's stock, and for providing liquidity to Subsidiary Bank.



## SECTION 7. NEGATIVE COVENANTS

Borrower covenants and agrees that, as long as any of the Obligations are outstanding, it will not, and it will not cause or permit Subsidiary Bank, or any Subsidiary to, without the prior written consent of Lender:

7.01 Indebtedness. Create or incur any Indebtedness except (a) to Lender, (b) the Indebtedness described in Schedule 5.11 attached hereto, (c) Indebtedness of Subsidiary Bank to creditors in the ordinary course of its banking business, (d) other Indebtedness consisting of trust preferred securities or other subordinate Indebtedness having minimum maturities of ten (10) years, and (e) such other Indebtedness incurred after written approval from Lender; provided that any such permitted incurrence of Indebtedness described in this Section 7.01 shall not cause or constitute a Default or Event of Default under any other provision of this Agreement.

7.02 Merger or Consolidation, etc. Merge into or consolidate with any other Person, or cause or permit any change in the ownership of Borrower, Subsidiary Bank, or any Subsidiary, or any Change in Control; provided however, that the foregoing restriction shall not apply (a) to any merger or consolidation between or among any one or more of Borrower, Subsidiary, Bank and/or any other Subsidiary, and (b) to any other merger or consolidation in which Borrower, Subsidiary Bank or any other Subsidiary, as the case may be, is the surviving entity if, at the effective time of or immediately after the consummation such merger or consolidation no Event of Default has occurred and is continuing.

7.03 Sale of Property. Sell, lease, transfer or otherwise dispose of any Property or assets, except in the ordinary course of business; provided, however, that the foregoing shall not preclude Borrower, Subsidiary Bank, or any Subsidiary from selling, leasing, transferring or otherwise disposing of less than substantially all of its assets so long as the purchase price for said assets shall be equal to or greater than the depreciated book value of said assets.

7.04 Distributions. Declare or incur any liability to make any Distribution in respect of the capital stock of Borrower, Subsidiary Bank, or any Subsidiary, except that: (a) Subsidiary Bank shall be permitted to pay cash dividends to Borrower to the extent necessary to pay (i) the Obligations then due and payable to Lender and which are actually applied toward payment of the Obligations, and (ii) the normal operating expenses of Borrower; and (b) so long as no Default or Event of Default under this Agreement has occurred and is continuing or is created thereby Borrower shall be permitted to declare and pay cash dividends on its capital stock.

7.05 Issuance of Stock, etc. Authorize or issue any new types, varieties or classes of capital stock of Subsidiary Bank, either preferred or common, voting or nonvoting, or any bonds or debentures, subordinated or otherwise, or any stock warrants or options, or authorize or issue any additional shares of stock of any existing class of stock, or grant any person other than Lender any proxy for existing shares, or cause or allow, or declare any stock splits or take any other action which could, directly or indirectly, decrease Borrower's ownership interest in Subsidiary Bank.

7.06 Default. Allow to occur, or to continue unremedied, any act, event or condition which constitutes an event of default, or which, with the passage of time or giving of notice, or both, would constitute an event of default under, any agreement, document or instrument to

which Borrower, Subsidiary Bank, or any Subsidiary is a party or by which Borrower, Subsidiary Bank, or any Subsidiary may be bound.

7.07 Investments. Make any advances or loans or extensions of credit to, purchase any stock or other ownership interests, bonds, notes, debentures or other securities of, make any expenditures on behalf of or in any manner assume liability (direct, contingent or otherwise) for the Indebtedness of, any Person, except, as may arise in the ordinary course of business, (a) such guarantees, letters of credit, loans, advances and/or investments made by Subsidiary Bank or any Subsidiary in the ordinary course of their banking businesses, (b) loans or advances from Borrower to Subsidiary Bank, or any Subsidiary, (c) the acquisition by Borrower, Subsidiary Bank or any other Subsidiary, as the case may be, shares of stock, obligations and/or other securities received in settlement of claims arising in the ordinary course of business, (d) the acquisition by Borrower, Subsidiary Bank or any other Subsidiary, as the case may be, of the stock or other ownership interests of any Person if, at the effective time of or immediately after the consummation such acquisition, no Event of Default has occurred and is continuing, (e) such investments by Borrower, Subsidiary Bank or any other Subsidiary, as the case may be, that are permitted under applicable law to be made by bank holding companies, financial institutions and their subsidiaries, (f) that certain loan by Borrower to the Superior Bancorp Employee Stock Ownership Plan, formerly known as the Community Bancshares, Inc. Employee Stock Ownership Plan, and (g) such other investments which have been approved by Lender.

7.08 Liens. Create, incur, assume, permit the imposition of or allow the continuance of any Lien on any Properties except for Permitted Liens. Borrower shall not create, incur, assume, permit the imposition of or allow the continuance of any Liens on the Subsidiary Bank Shares except Liens in favor of Lender.

7.09 Subsidiaries and Related Companies. (a) Transfer any Property to any Related Party other than the transfer of Property between or among Borrower, Subsidiary Bank or other Subsidiaries, (b) purchase or sign any agreement to purchase any securities of any Related Party (whether debt, equity or otherwise), underwrite or guarantee the same, or otherwise become obligated with respect thereto in the aggregate amount greater than \$500,000, or (c) take any other action or permit any action to be taken with respect to any Related Party which would jeopardize either Borrower's ability to repay the Loan, or any portion thereof, as the same becomes due and payable, or the security given to Lender with respect to the Loan.

7.10 Use of Proceeds. Without Lender's prior written consent, use or permit any proceeds of any Advance to be used by Borrower, Subsidiary Bank, or any Subsidiary, to either directly or indirectly for the purpose (whether immediate, incidental or ultimate) of "purchasing or carrying any margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as from time to time amended.

7.11 Nature of Business. Conduct or engage in any business if, as a result thereof, the general nature of the business which would thereafter be engaged in by Borrower or Subsidiary Bank, as the case may be, would be substantially changed from the general nature of the business engaged in on the date of this Agreement by Borrower or Subsidiary Bank, as the case may be.

7.12 Other Agreements. Enter into any agreement containing any provision which would be violated or breached by the performance of its obligations hereunder or under any instrument or document delivered or to be delivered by it hereunder or in connection herewith.

#### SECTION 8. EVENTS OF DEFAULT

If any of the following (each an “Event of Default”) shall occur and be continuing:

8.01 Borrower shall fail to pay or perform any of the Obligations for the payment of money, including principal, interest, or fees, as and when the same shall become due and payable, whether by reason of demand, maturity, acceleration or otherwise;

8.02 Any material representation or warranty of Borrower made in this Agreement or in any of the other Transaction Documents or in any certificate, agreement, instrument or statement furnished or made or delivered pursuant hereto or thereto or in connection herewith or therewith, shall prove to have been untrue or incorrect when made or effected;

8.03 Borrower shall fail to perform or observe any term, covenant or provision contained in sections 6.09, 6.10, or Section 7 hereof;

8.04 Borrower shall fail to perform or observe any other (i.e., not expressly described under any other section of this Article 8) term, covenant or provision contained in this Agreement and any such failure remains unremedied for thirty (30) days after the earlier of (a) written notice of default is given to Borrower by Lender, or (b) any officer of Borrower obtaining actual knowledge of such failure;

8.05 This Agreement or any of the other Transaction Documents shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability hereof or thereof shall be contested or denied by Borrower or any Obligor, or if Borrower or any Obligor shall deny that it has any further liability or obligation hereunder or thereunder or if Borrower or any Obligor shall fail to comply with or observe any of the terms, provisions or conditions contained in any of the Transaction Documents (other than this Agreement);

8.06 Borrower, Subsidiary Bank or any Subsidiary shall (a) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code or any other Federal, state or foreign bankruptcy, insolvency, receivership, liquidation or similar law, (b) consent to the institution of, or fail to contravene in a timely and appropriate manner, any such proceeding or the filing of any such petition, (c) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official of itself, himself or herself or of a substantial part of its Property or assets, (d) file an answer admitting the material allegations of a petition filed against itself, himself or herself in any such proceeding, (e) make a general assignment for the benefit of creditors, (f) become unable, admit in writing its, his or her inability or fail generally to pay its, his or her debts as they become due, (g) become insolvent in either the equity or bankruptcy sense of the term or (h) take any corporate or other action for the purpose of effecting any of the foregoing;

8.07 An involuntary proceeding shall be commenced or an involuntary petition shall be

filed in a court of competent jurisdiction seeking (a) relief in respect of Borrower, Subsidiary Bank or any Subsidiary, or of a substantial part of the Property or assets of Borrower, Subsidiary Bank or any Subsidiary, under Title 11 of the United States Code or any other Federal, state or foreign bankruptcy; insolvency, receivership, liquidation or similar law, (b) the appointment of a receiver, trustee, custodian, sequestrator or similar official of Borrower, Subsidiary Bank or any Subsidiary or of a substantial part of the Property or assets of Borrower, Subsidiary Bank or any Subsidiary or (c) the winding-up or liquidation of Borrower, Subsidiary Bank or any Subsidiary; and any such proceeding or petition shall continue undismissed for sixth (60) consecutive days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for sixty (60) consecutive days;

8.08 Subsidiary Bank shall be placed in or threatened to be placed in receivership by any Regulatory Agency;

8.09 The issuance of any regulatory action, cease and desist order against Borrower, Subsidiary Bank, or any Subsidiary by any Regulatory Agency and/or the entry of any regulatory action, memorandum of understanding or other written agreement between Borrower, Subsidiary Bank, or any Subsidiary and any Regulatory Agency, regardless of whether the same is voluntary or involuntary; or if any Regulatory Agency shall notify Subsidiary Bank that its capital has been impaired or does not meeting the minimum capital requirements of such Regulatory Agency, or that if a Regulatory Agency issues an order requiring the Subsidiary Bank to raise additional capital;

8.10 Subsidiary Bank shall cease to be an “insured depository institution” under or within the meaning of 12 U.S.C. §1813, as amended, or a cease and desist order, memorandum of understanding or other agreement shall be issued by any Regulatory Authority against or affecting Borrower, Subsidiary Bank, or any Subsidiary which (in Lender’s opinion) has or could have a Material Adverse Effect;

8.11 Any litigation or governmental or regulatory proceeding is instituted against Borrower, Subsidiary Bank or any Subsidiary which, in Lender’s reasonable opinion, will have a Material Adverse Effect, after taking into account insurance coverage and reserves therefor (if any);

8.12 Any Property of Borrower, Subsidiary Bank or any Subsidiary, shall be seized, attached or levied upon, the value of which could reasonably be expected to have a Material Adverse Effect;

8.13 Borrower, Subsidiary Bank or any Subsidiary shall have a judgment entered against it by a court having jurisdiction in the premises, in an amount which could reasonably be expected to have a Material Adverse Effect, provided that if, upon conferring with its counsel, Lender believes that it is probable that such judgment shall be reversed or dismissed, then such judgment shall not constitute an Event of Default hereunder if it is appealed in good faith or satisfied (without causing a Material Adverse Effect) within sixty (60) days after the entry of such judgment;

8.14 Borrower, Subsidiary Bank or any Subsidiary shall fail (and such failure shall not have been cured or waived) to perform or observe any term, provision or condition of, or any other default or event of default shall occur under, any agreement, document or instrument evidencing or securing any outstanding indebtedness of Borrower, Subsidiary Bank or any Subsidiary, as the

case may be, for borrowed money in the amount of at least \$100,000 (other than the Obligations), if the effect of such failure or default is to cause or permit such indebtedness to be declared to be due and payable or otherwise accelerated, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

8.15 The institution by Borrower, any ERISA Affiliate or Subsidiary Bank of steps to terminate any Pension Plan if, in order to effectuate such termination, Borrower, any ERISA Affiliate or Subsidiary Bank would be required to make a contribution to such Pension Plan or would incur a liability or obligation to such Pension Plan in excess of \$500,000; or the institution by the PBGC of steps to terminate any Pension Plan;

8.16 Borrower, Subsidiary Bank or any Subsidiary shall be declared by Lender to be in default on, or pursuant to the terms of, (a) any other present or future obligation to Lender, including, without limitation, any other loan, line of credit, revolving credit, guaranty or letter of credit reimbursement obligation, or (b) any other present or future agreement purporting to convey to Lender a Lien upon any of the Property or assets of Borrower, Subsidiary Bank or any Subsidiary, and such default has not been cured within any applicable cure period;

8.17 notwithstanding any other provision of this Agreement to the contrary, or which conflicts with the terms of this Section 8.17, the occurrence of a Material Adverse Effect upon Borrower or the Subsidiary Bank;

THEN, and in each such event (other than an event described in Sections 8.06, 8.07, 8.08, 8.09 or 8.10), Lender may declare the entire outstanding principal balance of and all accrued and unpaid interest on the Note issued under this Agreement and all other amounts payable by Borrower hereunder to be immediately due and payable, whereupon all of such outstanding principal balance and accrued and unpaid interest and all such other amounts shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower, and Lender may exercise any and all other rights and remedies which it may have under any of the other Transaction Documents or under applicable law; provided, however, that upon the occurrence of any event described in Sections 8.06, 8.07, 8.08, 8.09 or 8.10, the entire outstanding principal balance of and all accrued and unpaid interest on the Note issued under this Agreement and all other amounts payable by Borrower hereunder shall automatically become immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower, and Lender may exercise any and all other rights and remedies which it may have under any of the other Transaction Documents or under applicable law.

#### **SECTION 9. GENERAL**

9.01 No Waiver. No failure or delay by Lender or the holder of the Note in exercising any right, remedy, power or privilege hereunder or under any other Transaction Document shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The remedies provided herein and in the other Transaction Documents are cumulative and not exclusive of any remedies provided by law. Nothing herein contained shall in any way affect the right of Lender to exercise any statutory or common law right of banker's lien or set-off.

9.02 Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default under this Agreement, Lender is hereby authorized at any time and from time to time to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and any and all other indebtedness at any time owing by Lender to or for the credit or the account of Borrower against any and all of the Obligations irrespective of whether or not Lender shall have made any demand hereunder or thereunder. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender, provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 9.02 are in addition to any other rights and remedies (including, without limitation, other rights of set-off) which Lender may have. Nothing contained in this Agreement or any other Transaction Document shall impair the right of Lender to exercise any right of set-off or counterclaim it may have against Borrower and, to apply the amount subject to such exercise to the payment of indebtedness of Borrower unrelated to this Agreement or the other Transaction Documents.

9.03 Origination Fee; Cost and Expenses. Upon execution of this Agreement, Borrower agrees to pay to Lender a non-refundable origination fee of \$25,000. Borrower also agrees to pay (a) all reasonable legal expenses (including Attorneys' Fees), recording and filing fees incurred in connection with the preparation and amendment of this Agreement and the other Transaction Documents (b) if an Event of Default occurs, all out-of-pocket costs and expenses incurred by Lender, including, without limitation, reasonable Attorneys' Fees, in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom and (c) all other reasonable Attorneys' Fees incurred by Lender relating to or arising out of or in connection with this Agreement or any of the other Transaction Documents.

9.04 Environmental Indemnity. Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs and Attorneys' Fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against, Lender for, with respect to or as a direct or indirect result of the violation by Borrower, Subsidiary Bank or any Subsidiary of any laws or regulations relating to solid waste and/or hazardous waste treatment, storage, disposal, generation and transportation, air, water and/or noise pollution, soil or ground or water contamination, the handling, storage or release into the environment of hazardous materials or hazardous substances, and the transportation of hazardous materials ("Environmental Laws"); or with respect to, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, properties utilized by Borrower and/or Subsidiary Bank in the conduct of their respective businesses into or upon any land, the atmosphere or any watercourse, body of water or wetland, of any hazardous material or substances (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Environmental Laws); and the provisions of and undertakings and indemnification set out in this Section 9.04 shall survive the satisfaction and payment of the Obligations and termination of this Agreement.

9.05 General Indemnity. In addition to the payment of expenses pursuant to Section 9.03, whether or not the transactions contemplated hereby shall be consummated, Borrower hereby agrees to indemnify, pay and hold Lender and any holder of any of the Note, and the officers, directors, employees, agents and affiliates of Lender and such holder(s) (each, and

“Indemnitee”; and collectively, “Indemnitees”) harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitees shall be designated a party thereto), that may be imposed on, incurred by or asserted against Indemnitees, in any manner relating to or arising out of this Agreement or other agreements executed and delivered by Borrower or any other Obligor in connection herewith, the statements contained in any commitment letters delivered by Lender, Lender’s agreement to make the Loan hereunder or the use or intended use of the proceeds of the Loan hereunder (the “Indemnified Liabilities”); that Borrower shall have no obligation to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the negligence or willful misconduct of that Indemnitee as determined by a court of competent jurisdiction. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this Section 9.05 shall survive satisfaction and payment of the Obligations and termination of this Agreement.

9.06 Authority to Act. Lender shall be entitled to act on any notices and instructions (telephonic or written) reasonably believed by Lender to have been delivered by any Person authorized to act on behalf of Borrower pursuant hereto, regardless of whether such notice or instruction was in fact delivered by a Person authorized to act on behalf of Borrower, and Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses and expenses, if any, ensuing from any such action; provided, however, that Borrower shall have no obligation to indemnify Lender against any such losses or expenses arising solely from Bank’s gross negligence or intentional misconduct as determined by a court of competent jurisdiction.

9.07 Notices. Except as otherwise specifically set forth in this Agreement, each notice, request, demand, consent, confirmation or other communication under this Agreement shall be in writing and delivered in person or sent by telecopy, recognized overnight courier or registered or certified mail, return receipt requested and postage prepaid, to the applicable party at its address or telecopy number set forth on the signature page(s) of this Agreement, or at such other address or telecopy number as any party hereto may designate as its address for communications under this Agreement by notice so given. Such notices shall be deemed effective on the day on which delivered or sent if delivered in person or sent by telecopy (with answerback confirmation received), on the first (1<sup>st</sup>) Business Day after the day on which sent, if sent by recognized overnight courier or on the third (3<sup>rd</sup>) Business Day after the day on which mailed, if sent by registered or certified mail.

9.08 CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. BORROWER IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY ALABAMA STATE COURT LOCATED IN JEFFERSON COUNTY, ALABAMA, OR ANY UNITED STATES OF AMERICA COURT SITTING IN BIRMINGHAM, ALABAMA, AS LENDER MAY ELECT, IN ANY SUIT, ACTION

OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT. BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT TO SUCH SUIT, ACTION OR PROCEEDING MAY BE HELD AND DETERMINED IN ANY OF SUCH COURTS. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH BORROWER MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND BORROWER FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. BORROWER HEREBY EXPRESSLY WAIVES ALL RIGHTS OF ANY OTHER JURISDICTION WHICH BORROWER MAY NOW OR HEREAFTER HAVE BY REASON OF ITS PRESENT OR SUBSEQUENT DOMICILES. BORROWER AUTHORIZES THE SERVICE OF PROCESS UPON BORROWER BY REGISTERED MAIL SENT TO BORROWER AT ITS ADDRESS SET FORTH IN SECTION 9.08. **BORROWER AND LENDER IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH BORROWER AND LENDER ARE ADVERSE PARTIES.**

9.09 Lender's Books and Records. Lender's books and records showing the account between Borrower and Lender shall be admissible in evidence in any action or proceeding and shall constitute prima facie proof thereof.

9.10 Governing Law; Amendments. This Agreement, the Note, and all of the other Transaction Documents shall be governed by and construed in accordance with the internal laws of the State of Alabama, and this Agreement and the other Transaction Documents may not be changed, nor may any term, condition or Event of Default be waived, modified or discharged orally but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.11 References; Headings for Convenience. Unless otherwise specified herein, all references herein to Section numbers refer to section numbers of this Agreement, and all references herein to Exhibits A and B, and Schedules 3.03, 5.05, 5.08, 5.11, and 5.12 refer to annexed Exhibits A and B and Schedules 3.03, 5.05, 5.08, 5.11, and 5.12 which are hereby incorporated herein by reference. The section headings are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Agreement.

9.12 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of Borrower and its successors and Lender and its successors and assigns. Borrower may not assign or delegate any of its rights or obligations under this Agreement.

9.13 Severability. In the event any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

9.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the



same instrument.

9.15 Resurrection of Obligations. To the extent that Lender receives any payment on account of any of the Obligations, and any such payment (s) or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other Person under any bankruptcy act, state or Federal law, common law or equitable cause, then, to the extent of such payment(s) received, the Obligations or part thereof intended to be satisfied and any and all liens, security interests, mortgages, deeds of trust and/or other encumbrances upon or pertaining to any assets of Borrower and theretofore created and/or existing in favor of Lender as security for the payment of such the Obligations shall be revived and continue in full force and effect, as if such payment(s) had not been received by Lender and applied on account of the Obligations.

9.16 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings (oral or written) relating to the subject matter hereof.

9.17 USA PATRIOT Act. Lender hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act, Title I11 of Pub. L. 107-56 (signed into law October 26, 2001) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**(SIGNATURES ON FOLLOWING PAGE)**

**BORROWER:**

**SUPERIOR BANCORP**, a Delaware Corporation

By: /s/ Mark A. Tarnakow

Name: Mark A. Tarnakow

Title: CFO

Address:

17 North 20<sup>th</sup> Street

Birmingham, Alabama 35203

Attention: Mark A. Tarnakow

Telecopier: (205) 327-3611

**LENDER:**

**COLONIAL BANK**

By: /s/ John J. Burke Jr.

Name: John J. Burke Jr.

Title: Sr. Vice President

Address:

100 Colonial Bank Blvd

Montgomery, AL 36117-4244

Attention: \_\_\_\_\_

Telecopier: \_\_\_\_\_

[\(Back To Top\)](#)

### Section 3: EX-10.2 (EX-10.2)

**Exhibit 10.2**

**REVOLVING CREDIT NOTE**

\$10,000,000.00

Birmingham, Alabama  
September 4, 2008

FOR VALUE RECEIVED, on the Maturity Date (defined below), the undersigned, **SUPERIOR BANCORP**, a Delaware corporation ("Borrower"), hereby promises to pay to the order of **COLONIAL BANK** ("Lender"), the principal sum of Ten Million Dollars (\$10,000,000.00), or such lesser sum as may then constitute the aggregate unpaid principal amount of all loan advances ("Advances") made by Lender to Borrower hereunder and pursuant to the Loan Agreement (defined below). The aggregate principal amount of Advances which Lender shall be committed to have outstanding under this Revolving Credit Note (this "Note") at any one time shall not exceed Ten Million Dollars (\$10,000,000.00), which amount may be borrowed, paid, reborrowed and repaid, in whole or in part, subject to the terms and conditions of this Note and of the Loan Agreement.

Borrower further promises to pay to the order of Lender interest on the unpaid principal balance from time to time outstanding under this Note at the rate(s) as set forth the below and to pay all fees and expenses as required by the Loan Agreement.

Interest on each Advance and the principal balance hereof shall accrue at the Colonial Bank Base Rate. Colonial Bank Base Rate shall mean the interest rate announced from time to time by Lender as the "Colonial Bank Base Rate". The Colonial Bank Base Rate is a reference rate established by Lender for use in computing and adjusting interest. It is subject to increase, decrease or change, and is only one of the reference rates or indices that the Lender uses. The Lender may lend to others at rates of interest at, or greater or less than the Colonial Bank Base Rate or the rate provided herein. The Colonial Bank Base Rate may change as often as daily. Any change in the interest rate resulting from a change in the Colonial Bank Base Rate shall take effect upon the change in the Colonial Bank Base Rate.

Interest from the date of any Advance on the outstanding unpaid principal balance shall be computed on the basis of a 360 day year by multiplying the product of the principal amount outstanding and the applicable rate by the actual amount of days elapsed and dividing by 360. No Advance may extend beyond the Maturity Date and all outstanding Advances, including principal, interest, and fees related thereto, must be paid in full on the Maturity Date. Each Advance shall be in a minimum principal amount of \$100,000.

Interest on each Advance shall be payable quarterly in arrears on each March 31, June 30, September 30 and December 31, and on the Maturity

Date, or earlier if maturity is accelerated pursuant to the terms of this Note or the Loan Agreement. If Borrower fails to make any payment of any principal of or interest on any Advance within ten (10) days after the same becomes due, whether by reason of maturity, acceleration or otherwise, in addition to all of the other rights and remedies of Lender under this Agreement and at law or in equity, Borrower shall pay Lender on demand with respect to each such late payment a late fee in an amount not to exceed Three Percent (3%) of each late payment.

All payments received by Lender under this Note shall be allocated among the

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principal, interest, collection costs and expenses and other amounts due under this Note in such order and manner as Lender shall elect.

This Note matures on September 3, 2009 (the "Maturity Date"). Borrower agrees to pay in full all interest, principal, fees, charges and all other amounts due under this Note and Loan Agreement on the Maturity Date. After maturity of the Loan, whether by reason of acceleration or otherwise, interest shall accrue on the Advances and be payable on demand on the entire outstanding principal balance hereof at an annual rate equal to Twelve Percent (12%).

All payments of principal and interest under this Note shall be made in lawful currency of the United States in Federal or other immediately available funds at the office of Lender situated at 100 Colonial Bank Blvd, Montgomery, AL 36117-4244, or at such other place as Lender may from time to time designate in writing.

Lender shall record in its books and records the date and amount of each Advance made by it to Borrower under this Note and the date and amount of each payment of principal and/or interest made by Borrower with respect thereto; provided, however, that the obligation of Borrower to repay each Advance made to Borrower under this Note shall be absolute and unconditional, notwithstanding any failure of Lender to make any such recordation or any mistake by Lender in connection with any such recordation. The books and records of Lender showing the account between Lender and Borrower shall be admissible in evidence in any action or proceeding and shall constitute prima facie proof of the items therein set forth. Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error.

This Note is the Note referred to in the Loan Agreement dated as of the date hereof by and between Borrower and Lender, as the same may from time to time be amended, modified, extended, renewed or restated (the "Loan Agreement"; all capitalized terms used and not otherwise defined in this Note shall have the respective meanings ascribed to them in the Loan Agreement). The Loan Agreement, among other things, contains provisions for acceleration of the maturity of this Note upon the occurrence of certain stated events and also for prepayments on account of the principal of this Note and interest on this Note prior to the maturity of this Note upon the terms and conditions specified therein.

If Borrower shall fail to make any payment of any principal of or interest on this Note as and when the same shall become due and payable, or if any Event of Default shall occur under or within the meaning of the Loan Agreement, then Lender's obligation to make additional Advances under this Note may be terminated in the manner and with the effect as provided in the Loan Agreement and the entire outstanding principal balance of this Note and all accrued and unpaid interest thereon may be declared to be immediately due and payable in the manner and with the effect as provided in the Loan Agreement.

In the event that any payment of any principal of or interest on this Note is not paid when due, whether by reason of maturity, acceleration or otherwise, and this Note is placed in the hands of an attorney or attorneys for collection, or if this Note is placed in the hands of an attorney or attorneys for representation of Lender in connection with bankruptcy or insolvency proceedings relating to or affecting this Note, Borrower hereby promises to pay to the order of Lender, in addition to all other amounts otherwise due on, under or in respect of this Note, the costs and

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shall be subject to Secured Party's security interest and immediately delivered to Secured Party, which shall hold such shares or securities so issued as additional Collateral, (b) if any warrants, options or other rights now or hereafter exist with respect to any of the Pledged Shares, any of the Additional Shares or any of the other Collateral, Debtor has and hereafter shall immediately so advise Secured Party of the existence of such warrants, options and rights, all such warrants, options and rights shall be subject to Secured Party's security interest and all stock or securities issued pursuant to the exercise of any such warrant, option or right shall be subject to Secured Party's security interest and immediately delivered to Secured Party, which shall hold such shares or securities as additional Collateral, (c) Debtor shall immediately pledge and deliver to Secured Party any and all shares of any class of capital stock of Subsidiary now owned or hereafter acquired by Debtor and (d) Debtor shall not, without the prior written consent of Secured Party, (i) sell, assign or otherwise transfer or pledge any of the Pledged Shares, any of the Additional Shares or any of the other Collateral, (ii) create or permit any other lien or encumbrance upon, or any other security interest in, any of the Pledged Shares, any of the Additional Shares or any of the other Collateral or (iii) grant any option or right with respect to any of the Pledged Shares, any of the Additional Shares or any of the other Collateral.

3. Debtor hereby represents and warrants to Secured Party that:

(a) Debtor is the sole legal, beneficial and record owner of all of the Collateral pledged hereunder and none of the Collateral pledged hereunder is or will be subject to any security interests, liens, encumbrances, charges, claims, warrants, options, proxies, restrictions on transfer, resale or other disposition, restrictions on voting rights, preferences and/or other preferential arrangements of any kind or nature whatsoever (except those in favor of Secured Party under this Agreement);

(b) the Pledged Shares have been duly authorized and validly issued by Subsidiary and are fully paid and non-assessable;

(c) Debtor has all requisite corporate power and authority to (i) pledge, assign, grant a security interest in, transfer and deliver the Collateral to Secured Party in the manner hereby done or contemplated and (ii) execute, deliver and perform all of its obligations under this Agreement;

(d) this Agreement has been duly authorized, executed and delivered by Debtor and constitutes the legal, valid and binding obligation of Debtor, enforceable in accordance with its terms;

(e) no consent, approval, authorization or other order of any governmental or regulatory agency, authority, body or official or any other third party is or will be required for (i) the execution, delivery and/or performance of this Agreement by Debtor or the delivery by Debtor of the Collateral to Secured Party as provided herein or (ii) the exercise by Secured Party of the voting or other rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement;

(f) the execution, delivery and performance by Debtor of this Agreement do not and

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will not (i) violate any provision of the Articles of Incorporation or Bylaws of Debtor or any law, rule, regulation (including, without limitation, Regulations U or X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Debtor, (ii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, document or instrument to which Debtor is a party or by which it or its properties may be bound or affected or (iii) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the property or assets of Debtor (other than in favor of Secured Party as provided for in this Agreement);

(g) upon the execution of this Agreement, Secured Party will have a valid and enforceable security interest in the Collateral. So long as Secured Party has possession of the certificates representing the Pledged Shares, Secured Party's security interest in the Pledged Shares and the proceeds thereof will be perfected and have a first priority;

(h) the authorized capital of Subsidiary consists solely of 200,000 shares of common stock, \$1.00 par value and no shares of preferred stock. As of the date hereof, (i) there are 127,501 shares of common stock of Subsidiary issued and outstanding, (ii) Debtor is the sole legal, beneficial and record owner of 127,501 shares of common stock of Subsidiary, representing all of the issued and outstanding shares of common stock of Subsidiary, and (iii) the Pledged Shares consist of One Hundred Percent (100%) of the outstanding shares of common stock of Subsidiary, subject to no security interests, liens, encumbrances, warrants, options, proxies, restrictions on transfer, resale or other disposition or restrictions on voting rights (except those in favor of Secured Party). As of the date hereof, there are no warrants or options, or any agreements to issue any warrants or options, outstanding with respect to any class of capital stock of Subsidiary.

4. Debtor hereby covenants and agrees that: (a) it will not cause or permit Subsidiary to (i) authorize or issue any new types, varieties or classes of capital stock or any bonds or debentures, subordinated or otherwise, or any stock warrants or options, (ii) authorize or issue any additional shares of any existing class of capital stock or (iii) declare any stock dividends or stock splits or take any other action which could, directly or indirectly, decrease Debtor's ownership interest in Subsidiary; and (b) without the prior written consent of Secured Party, (i) it will not cause or permit Subsidiary to amend or otherwise change its Articles or Certificate of Incorporation or its Bylaws in any manner which could affect any of the voting or other rights of any of the shares of capital stock of Subsidiary now owned or hereafter acquired by Debtor and (ii) it will not take or cause or permit Subsidiary to take any other action which could, directly or indirectly, affect the voting rights of Debtor with respect to any shares of capital stock of Subsidiary now owned or hereafter acquired by Debtor.

5. So long as no Event of Default (as hereinafter defined) under this Agreement has occurred and is continuing:

(a) Debtor shall be entitled to exercise any and all voting and other consensual rights

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pertaining to the Pledged Shares or any part thereof for any purpose not inconsistent with the terms of this Agreement or the terms of the Loan Agreement; provided, however, that (i) Debtor shall not exercise or refrain from exercising any such right if such action could reasonably be expected to have an adverse effect on the value of the Pledged Shares or any part thereof and (ii) Debtor shall not exercise or refrain from exercising any such right in a manner which would authorize or effect (A) the dissolution or liquidation, in whole or in part, of Subsidiary, (B) the consolidation or merger of Subsidiary with or into any corporation or other entity unless such Subsidiary is the surviving entity, (C) the sale, disposition or encumbrance of all or substantially all of the property or assets of Subsidiary, (D) any change in the authorized capital of Subsidiary, (E) the issuance of any additional shares of any class of capital stock of Subsidiary or (F) the alteration of the voting rights with respect to any class of capital stock of Subsidiary; and

(b) Debtor shall be entitled to collect and use for its proper corporate purposes all cash dividends (except cash dividends paid or payable in respect of the total or partial liquidation of Subsidiary) paid on the Pledged Shares so long as the declaration and payment of such dividends does not violate the provisions of Section 6.09 of the Loan Agreement; provided, however, that until actually paid, all rights to such dividends shall remain subject to the security interest created by this Agreement. All dividends (other than cash dividends governed by the immediately preceding sentence) and all other distributions in respect of any of the Pledged Shares or any of the other Collateral, whenever paid or made, shall be delivered to Secured Party and held by it subject to the security interest created by this Agreement.

6. If any one or more of the following events (each, an "Event of Default") shall occur and be continuing: (a) Debtor shall fail to make any payment of any principal of or interest on any of the Liabilities as and when the same shall become due and payable, whether by reason of demand, maturity, acceleration or otherwise; (b) Debtor shall fail to perform or observe any term, provision, covenant or agreement contained in this Agreement and any such failure shall remain unremedied for ten (10) days after the earlier of (i) written notice of default is given to Debtor by Secured Party or (ii) an officer of Debtor obtaining knowledge of such default; (c) any representation or warranty made by Debtor in this Agreement shall prove to be untrue or incorrect in any material respect; (d) if the shares of common stock of Subsidiary then pledged by Debtor to Secured Party pursuant to this Agreement shall at any time constitute less than One Hundred Percent (100%) of the then issued and outstanding shares of common stock of Subsidiary; or (e) any "Event of Default" (as defined therein) shall occur under or within the meaning of the Loan Agreement; then Secured Party may, at its option, (A) declare the principal of and interest on any or all of the Liabilities to be immediately due and payable, (B) exercise all voting rights with respect to the Collateral, (C) appropriate and apply toward the payment and discharge of any such Liability, moneys on deposit or otherwise held by Secured Party for the account of, to the credit of or belonging to Debtor, (D) sell or cause to be sold any Collateral, (E) have transferred to or registered in the name of Secured Party, or its nominee or nominees, any Collateral and thereafter to exercise all rights with respect thereto as the absolute owner thereof, without notice or liability to Debtor, except to account for money or property actually received by Secured Party; provided, however, that Secured Party may treat all cash proceeds as additional Collateral and such proceeds need not be applied to the reduction of the Liabilities of Debtor unless Secured Party so elects, (F) in Secured Party's name, or in the name

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of Debtor, demand, sue for, collect and receive money, securities or other property which may at any time be payable or receivable on account of or in exchange for any of the Collateral, or make any compromise or settlement that Secured Party considers desirable with respect thereto or renew or extend the time of payment or otherwise modify the terms of any obligation included in the Collateral; provided, however, that it is expressly agreed that Secured Party shall not be obligated to take any step to preserve rights against prior parties on any of the Collateral, and that reasonable care of the Collateral shall not include the taking of any such step and (G) exercise any or all of the rights and remedies of a Secured Party under the Uniform Commercial Code of the State of Alabama, as from time to time amended (the "Code"), or other applicable law. Any sale of Collateral may be made without demand of performance and any requirement of the Code for reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at its address as it appears herein or as last shown on the records of Secured Party at least five (5) business days before the time of sale, disposition or other event giving rise to the notice. Debtor acknowledges and agrees that it shall be reasonable for Secured Party to sell the Collateral on credit for present or future delivery without any assumption of any credit risk. In case of a public sale, notice published by Secured Party for ten (10) days in a newspaper of general circulation in the City or County where the sale is to be held shall be sufficient. The proceeds of any sale, or sales, of Collateral shall be applied by Secured Party in the following order: (1) to expenses, including attorneys' fees and expenses, arising from the enforcement of any of the provisions hereof, or of the Liabilities or of any actual or attempted sale; (2) to the payment or the reduction of any of the Liabilities of Debtor to Secured Party with the right of Secured Party to distribute or allocate such proceeds in such order and manner as Secured Party shall elect, and its determination with respect to such allocation shall be conclusive; and (3) to the payment of any surplus remaining after payment of the amounts mentioned, to Debtor or to whomsoever may be lawfully entitled thereto. If any deficiency arises upon any such sale or sales Debtor agrees to pay the amount of such deficiency promptly upon demand with interest. Notwithstanding that Secured Party may continue to hold the Collateral and regardless of the value thereof, Debtor shall be and remain liable for the payment in full of the principal of and interest on any balance of the Liabilities and expenses at any time unpaid.

7. Secured Party shall have no duties or obligations with respect to the Collateral except that while the Collateral is in Secured Party's possession, Secured Party's obligation with respect to the same shall be limited to preserving the physical condition of the same.

8. At any time, whether prior to or after the occurrence of an Event of Default under this Agreement, Secured Party may, at its option, but shall not be obligated to, surrender or deliver, without further liability on the part of Secured Party to account therefor, all or any part of the Collateral to or upon the written order of Debtor, permit substitutions therefor or additions thereto, and accept the receipt of Debtor for any Collateral, or proceeds thereof, which receipt shall be a full and complete discharge of Secured Party with respect to the Collateral so delivered and proceeds so paid.

9. The rights and powers of Secured Party under this Agreement (a) are cumulative and do not exclude any other right which Secured Party may have independent of this Agreement and (b) may be exercised or not exercised at the discretion of Secured Party (i) without regard to

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any rights of Debtor, (ii) without forfeiture or waiver because of any delay in the exercising thereof, (iii) without imposing any liability on Secured Party for so exercising or failing to exercise and (iv) in the event of a single or partial exercise thereof, without precluding further exercise thereof. No delay or omission on the part of Secured Party in exercising any right hereunder shall operate as a waiver of such right or of any other right hereunder and no waiver shall be construed as a bar to or waiver of any right or remedy in the future. The rights and powers of Secured Party under this Agreement shall inure to the benefit of its successors and assigns and any assignee of any Liability secured hereby. Any and all liabilities and obligations of Debtor under this Agreement shall be binding upon the successors and assigns of Debtor.

10. Debtor agrees to do such further acts and things and to execute and deliver such additional conveyances, assignments, agreements and instruments as Secured Party may at any time reasonably request in connection with the administration or enforcement of this Agreement or related to the Collateral or any part thereof or in order to better assure and confirm to Secured Party its rights, powers and remedies hereunder. Debtor hereby makes, constitutes and appoints Secured Party the true and lawful agent and attorney-in-fact of Debtor with full power of substitution to execute, endorse and deliver such agreements, documents and instruments and to take such other action in the name and on behalf of Debtor as may be necessary or appropriate to carry out the intent of this Agreement, including, without limitation, the grant of the security interest granted under this Agreement, and to perfect and protect the security interest granted to Secured Party in respect of the Collateral and Secured Party's rights created under this Agreement, which power of attorney is irrevocable during the term of this Agreement. Debtor hereby consents and agrees that the issuers of or obligors in respect of the Collateral or any registrar or transfer agent for any of the Collateral shall be entitled to accept the provisions hereof as conclusive evidence of the right of Secured Party to effect any transfer pursuant to this Agreement, notwithstanding any other notice or direction or the contrary heretofore or hereafter given by Debtor or any other person (unless consented to in writing by Secured Party) to any such issuers or obligors or to any such registrar or transfer agent.

11. Except as otherwise specified in this Agreement, any notice, request, demand, consent or other communication under this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, return receipt requested and postage prepaid, or transmitted by facsimile, if to Debtor at 17 North 20th Street, Birmingham, Alabama 35203, (205) 327-3611 (FAX), or if to Secured Party at 100 Colonial Bank Blvd, Montgomery, AL 36117-4244, \_\_\_\_\_ (FAX), or at such other address as either party may designate as its address for communications hereunder by notice so given. Such notices shall be deemed effective on the day on which delivered, if delivered in person, on the third (3rd) business day after the day on which mailed, if sent by registered or certified mail, or when with answerback confirmation received if sent by facsimile.

12. The terms of this Agreement, the pledge of Collateral hereunder and the security interest created by this Agreement are continuing and shall apply to all existing transactions and to all future transactions, although such transactions may not be continuous. Debtor may not revoke or terminate this Agreement unless and until (a) all of the Liabilities shall have been indefeasibly paid in full in cash, (b) the Loan Agreement shall have been terminated and (c)

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Secured Party shall have no further commitment or obligation to make advances or extend credit to Debtor, whether under the Loan Agreement, or otherwise.

13. If claim is ever made on Secured Party for repayment or recovery of any amount or amounts received by Secured Party in payment or on account of any of the Liabilities (including payment under a guaranty or from application of collateral) and Secured Party repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over Secured Party or any property of Secured Party or (b) any settlement or compromise of any such claim effected by Secured Party with any such claimant (including, without limitation, Debtor), then and in such event Debtor agrees that any such judgment, decree, order, settlement or compromise shall be binding on Debtor, notwithstanding any cancellation of any note or other instrument or agreement evidencing such Liabilities or of this Agreement, and this Agreement shall continue to be effective or be reinstated, as the case may be, and shall secure the payment of the amount so repaid or recovered to the same extent as if such amount had never originally been received by Secured Party except to the extent such judgment, decree, order, settlement or compromise were caused by the gross negligence or intentional misconduct of Secured Party. This Agreement shall continue to be effective or be reinstated, as the case may be, if (i) at any time any payment of any of the Liabilities is rescinded or must otherwise be returned by Secured Party upon the insolvency, bankruptcy or reorganization of Debtor or otherwise, all as though such payment had not been made or (ii) this Agreement is released in consideration of a payment of money or transfer of property or grant of a security interest by Debtor or any other person or entity and such payment, transfer or grant is rescinded or must otherwise be returned by Secured Party upon the insolvency, bankruptcy or reorganization of such person or entity or otherwise, all as though such payment, transfer or grant had not been made.

14. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Alabama (without reference to conflict of law principles); provided, however, that the perfection and effect of the perfection or nonperfection of the security interests and liens created by this Agreement shall in all respects be governed, construed, applied and enforced in accordance with the substantive laws of the applicable jurisdictions.

15. DEBTOR IRREVOCABLY AGREES THAT, SUBJECT TO SECURED PARTY'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT, THE OTHER AGREEMENTS OR THE COLLATERAL SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN THE COUNTY OF JEFFERSON, STATE OF ALABAMA. DEBTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. DEBTOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS SECTION. DEBTOR AND SECURED PARTY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH DEBTOR AND SECURED PARTY ARE PARTIES.

This Agreement executed by Debtor as of September 4 , 2008.

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(SIGNATURES ON FOLLOWING PAGE)

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COLLATERAL SCHEDULE #1

Description of Stock Pledged

127,501 Shares of Common Stock of Superior Bank Common

Stock Certificate No(s). 1 & 2 issued in the name of Superior Bancorp

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## Section 5: EX-10.4 (EX-10.4)

Exhibit 10.4

### AGREEMENT TO PURCHASE SUBORDINATED NOTES

THIS AGREEMENT TO PURCHASE SUBORDINATED NOTES (this "Agreement") is made as of the 17th day of September, 2008, by and among Superior Bank (the "Company"), a federal savings bank, Superior Bancorp, a Delaware corporation (the "Parent"), each with its principal offices at 17 North 20<sup>th</sup> Street, Birmingham, Alabama 35203, and the purchaser whose name and address is set forth on the signature page hereof (the "Purchaser").

IN CONSIDERATION of the mutual covenants contained in this Agreement, the Company and the Purchaser agree as follows:

SECTION 1. Authorization of Sale of Subordinated Notes. Subject to the terms and conditions of this Agreement, the Company has authorized the issuance and sale of up to \$20,000,000 in aggregate principal amount of its 9.5% Subordinated Notes due September 15, 2018 (the "Subordinated Notes").

SECTION 2. Agreement to Sell and Purchase the Subordinated Notes. At the Closing (as defined in Section 3 hereof), the Company will, subject to the terms and conditions of this Agreement, issue and sell to the Purchaser, and the Purchaser will buy from the Company, upon the terms and conditions hereinafter set forth, the aggregate principal amount of Subordinated Note(s) (at the purchase price) set forth directly below:

Aggregate Principal Amount of Subordinated Note(s) to be Purchased: \$10,000,000

The Company may enter into this same form of purchase agreement with certain other investors (the "Other Purchasers") and, if so, expects to complete sales of the Subordinated Notes

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to them. The Purchaser and the Other Purchasers are hereinafter sometimes collectively referred to as the “Purchasers”, and this Agreement and the purchase agreements executed by the Other Purchasers are hereinafter sometimes collectively referred to as the “Agreements”.

SECTION 3. Delivery of the Subordinated Note at the Closing. The completion of the purchase and sale of Subordinated Note(s) to the Purchaser (the “Closing”) shall occur at the offices of Haskell Slaughter Young & Rediker, LLC, 2001 Park Place North, 1400 Park Place Tower, Birmingham, Alabama, 35203, within five business days following the execution of this Agreement, or on such later date or at such different location as the parties hereto shall agree in writing, but not prior to the date that the conditions for Closing set forth below have been satisfied or waived by the appropriate party (the “Closing Date”).

At the Closing, the Purchaser shall deliver, in immediately available funds, the full amount of the purchase price for the Subordinated Note being purchased hereunder by wire transfer to an account designated by the Company, and the Company shall deliver to the Purchaser one [or more] Subordinated Note(s) registered in the name of the Purchaser in the aggregate principal amount set forth in Section 2 hereof. The Subordinated Notes set forth the terms, conditions and restrictions governing the payment and any pre-payment of interest and principal as well as other terms, conditions and restrictions in connection therewith. The name(s) in which the Subordinated Notes are to be registered are set forth in the Subordinated Note Questionnaire attached hereto as part of Appendix I.

The Company’s obligation to complete the sale and delivery of the Subordinated Notes and deliver such Subordinated Note(s) to the Purchaser at the Closing shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) receipt by

the Company of same-day funds in the full amount of the purchase price for the Subordinated Notes being purchased hereunder; (b) the accuracy of the representations and warranties made by the Purchaser and the fulfillment of those undertakings of the Purchaser to be fulfilled prior to the Closing; and (c) approval by the Office of Thrift Supervision (“OTS”) to include the proceeds of the Subordinated Notes in the Company’s supplementary capital.

The Purchaser’s obligation to pay for the Subordinated Notes and to accept delivery of such Subordinated Note(s) evidenced thereby shall be subject to the following conditions: (a) each of the representations and warranties of the Company and the Parent made herein shall be accurate as of the Closing Date; (b) the delivery to the Purchaser by counsel to the Company and the Parent of a legal opinion in a form reasonably satisfactory to counsel for the Purchaser; (c) receipt by the Purchaser of a certificate executed by the chief executive officer and the chief financial or accounting officer of, respectively, the Company and the Parent, dated as of the Closing Date, to the effect that the representations and warranties of the Company and the Parent set forth herein are true and correct as of the date of this Agreement and as of such Closing Date and that the Company and the Parent, each, has complied with all the agreements and satisfied all the conditions herein on its part to be performed or satisfied on or prior to such Closing Date; (d) the fulfillment in all material respects of those undertakings of the Company to be fulfilled prior to the Closing; and (e) the delivery to the Purchaser of warrants in the form of Exhibit B hereto (the “Warrants”) to purchase 1,000,000 shares of the Parent’s common stock, par value \$.001 (the “Common Stock”) (the Subordinated Notes, Warrants, and Common Stock being sometimes collectively referred to herein as the “Securities”) on the terms and conditions set forth in Section 9. The Purchaser’s obligations hereunder are expressly not conditioned on the



purchase by any or all of Other Purchasers, if any, of the Subordinated Notes that they have agreed to purchase from the Company.

SECTION 4. Representations, Warranties and Covenants of the Company and the Parent. The Company and the Parent each respectively hereby, with respect to itself, represents and warrants to, and covenants with, the Purchaser as follows:

4.1 Organization and Qualification. The Company is a federal savings bank, validly existing and in good standing under the laws of the United States and the Parent is a corporation validly existing and in good standing under the laws of the State of Delaware and each is qualified to do business as a foreign corporation in each jurisdiction in which qualification is required, except where failure to so qualify would not have a Material Adverse Effect. For the purposes of this Agreement, the term “Material Adverse Effect” shall mean a material adverse effect on the business, financial condition or results of operations of the Parent or the Company respectively and its Subsidiaries, taken as a whole; provided, that a “Material Adverse Effect” shall not be deemed to include any effects to the extent resulting from (i) changes in accounting principles generally accepted in the United States or regulatory accounting requirements applicable to banks or their holding companies generally, (ii) changes in laws, rules or regulations of general applicability or interpretations thereof, (iii) changes in general economic or market conditions in the United States or in the regions in which the Parent or the Company, respectively, and/or its Subsidiaries operate or conduct business or general changes in the industries in which the Parent or the Company, respectively, and/or its Subsidiaries participate, (iv) the announcement or disclosure of the sale of the Securities or other transactions contemplated by this Agreement or (v) effects caused by any event, occurrence or condition resulting from or relating to the taking of any action in accordance with this Agreement.

4.2 Bank Regulatory Authorities. The Company holds the requisite authority from the OTS to do business as a federal savings bank under the laws of the United States and to enter into and perform this Agreement. The Parent holds the requisite authority to enter into and perform this Agreement. The Parent and the Company each is in compliance in all material respects with all laws administered by the OTS and the Federal Deposit Insurance Corporation (the “FDIC”) (together, the “Bank Regulatory Authorities”) with jurisdiction over either the Parent or the Company respectively and the subsidiaries of each, except for failures to be so in compliance that would not, individually or in the aggregate, have a Material Adverse Effect.

4.3 Issuance, Sale and Delivery of the Subordinated Notes. The Subordinated Notes have been duly authorized and, when issued, delivered and paid for in the manner set forth in this Agreement, will be valid and enforceable against the Company, and will conform in all material respects to the description thereof set forth herein. No further approval or authority of the Board of Directors of the Company will be required for the issuance and sale of the Subordinated Notes to be sold by the Company as contemplated herein.

4.4 Issuance, Sale and Delivery of the Warrants and the Common Stock. The Warrants and the Common Stock have been duly authorized and when issued, delivered and (in the case of the Common Stock) paid for in the manner set forth in this Agreement, or the Exhibits incorporated herein, will be valid and enforceable against the Parent and will conform in all material respects to the description set forth herein. No further approval or authority of the Board of Directors of the Parent will be required for the issuance and (in the case of the Common Stock) sale of the Warrants and Common Stock, as contemplated herein.

4.5 Due Execution, Delivery and Performance of the Agreements. The Parent and the Company each has full legal right, corporate power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and the Parent. This Agreement constitutes a legal, valid and binding agreement of the Company and the Parent, enforceable against the Company and the Parent in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and the application of equitable principles relating to the availability of remedies, and subject to 12 U.S.C. §§ 1818(b)(6)(D), 1828(b) and 1831o(h) (or any successor statutes) and similar thrift regulatory powers and to the application of principles of public policy, and except as rights to indemnity or contribution, including but not limited to, indemnification provisions set forth in Section 7.3 of this Agreement may be limited by federal or state securities law or the public policy underlying such laws.

4.6 Accountants. Each of Carr Riggs and Ingram, LLC and Grant Thornton, LLP, who have expressed their opinions with respect to the consolidated financial statements contained in the Annual Report on Form 10-K of the Parent for the year ended December 31, 2007, which is incorporated by reference into the Disclosure Materials, are registered independent public accountants as required by the Securities Act of 1933 (the "Securities Act") and the rules and regulations promulgated thereunder (the "1933 Act Rules and Regulations") and by the rules of the Public Accounting Oversight Board.

4.7 No Defaults or Consents. The execution and performance of this Agreement by the Company and the Parent and the consummation of the transactions herein

contemplated will not (i) violate any provision of the Charter or bylaws of the Company or the Parent, and (ii) except as would not reasonably be expected to result in a Material Adverse Effect, will not (x) result in the creation of any lien, charge, security interest or encumbrance upon any assets of the Company or the Parent pursuant to the terms or provisions of, and will not conflict with, result in the breach or violation of, or constitute, either by itself or upon notice or the passage of time or both, a default under, or give rise to the accelerated due date of any payment due under, any agreement, mortgage, deed of trust, lease, franchise, license, indenture, permit or other instrument to which the Company or the Parent is a party or by which the Company or the Parent or, respectively, its properties may be bound or affected or (y) violate any statute or any authorization, judgment, decree, order, rule or regulation of any court or any regulatory body, administrative agency or other governmental agency or body applicable to the Company or the Parent or, respectively, any of its properties. No consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental agency or body is required for the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement, except for the approval by the OTS to include the proceeds of the Subordinated Notes in the Company's supplementary capital.

4.8 Contracts. The material contracts to which the Parent or the Company is a party have been duly and validly authorized, executed and delivered by the Parent or the Company, as the case may be, and constitute the legal, valid and binding agreements of the Parent or the Company, as the case may be, enforceable by and against it in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to enforcement of creditors' rights

generally, and general equitable principles relating to the availability of remedies, and subject to 12 U.S.C. §1818(b)(6)(D) (or any successor statute) and similar thrift regulatory powers and to the application of principles of public policy, and except as rights to indemnity or contribution may be limited by federal or state securities laws and the public policy underlying such laws.

4.9 Deposit Accounts. The deposit accounts of the Company are insured up to the maximum amount provided by the FDIC and no proceedings for the modification, termination or revocation of any such insurance are pending or threatened.

4.10 No Actions. Except as disclosed in the Disclosure Materials, there are no legal or governmental actions, suits or proceedings pending or, to the Company's or the Parent's knowledge, threatened against the Company or the Parent before or by any court, regulatory body or administrative agency or any other governmental agency or body, domestic, or foreign, which actions, suits or proceedings, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and no labor disturbance by the employees of the Company or the Parent exists or, to the knowledge of the Company or the Parent, is imminent, that would reasonably be expected to have a Material Adverse Effect.

4.11 No Restrictions on the Company. As of the date hereof, neither the Company nor the Parent is prohibited, directly or indirectly, under any order of the OTS, or any agreement or other instrument to which it is a party or is subject, from paying any dividends, from making any other distribution on the Company's or the Parent's capital stock, from repaying any loans or advances or from transferring any of the Company's or the Parent's properties or assets, provided, that,

(a) the Company is prohibited from paying any dividends or interest on the Subordinated Notes (if such interest is required to be paid only out of net profits) or distributing any capital assets if it is in default in the payment of any assessment due to the FDIC, provided further, that if such default is due to a dispute between the Company and the FDIC over the amount of such assessment, such prohibition on the payment of dividends and interest shall not apply if the Company deposits security satisfactory to the FDIC for payment upon final determination of the issue; and

(b) if the Company becomes critically undercapitalized, then it is prohibited, beginning 60 days after becoming critically undercapitalized, from making any payment of principal or interest on the Subordinated Notes, provided, further that, if the FDIC has taken action with respect to such undercapitalization and determines that the payment of principal and interest would further the purpose of 12 U.S.C. 1831o(h), then such payment may be permitted.

4.12 Properties. The Company or the Parent, as the case may be, has valid title to all the properties and assets described as owned by it in the consolidated financial statements included in the Disclosure Materials, free and clear of all liens, mortgages, pledges, or encumbrances of any kind except (i) those, if any, reflected in such consolidated financial statements, or (ii) those that would not reasonably be expected to have a Material Adverse Effect. The Company or the Parent hold its material leased properties under valid and binding leases. The Company or the Parent own or lease all such material properties as are necessary to its operations as now conducted.

4.13 No Material Adverse Change. Except as disclosed in the Disclosure Materials, since December 31, 2007, (i) the Company and the Parent have conducted their respective businesses in all material respects in the ordinary course, consistent with prior practice, (ii) neither the Company nor the Parent has incurred any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not fully reflected or reserved against in the financial statements described in Section 4.18, except for liabilities that have arisen since such date in the ordinary and usual course of business and consistent with past practice and that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect and (iii) no event or events have occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

4.14 Intellectual Property. The Company or the Parent, as the case may be, owns, is licensed or otherwise possesses all rights to use, all patents, patent rights, inventions, know-how (including trade secrets and other unpatented or unpatentable or confidential information, systems, or procedures), trademarks, service marks, trade names, copyrights and other intellectual property rights (collectively, the “Intellectual Property”) necessary for the conduct of its business as described in the Disclosure Materials, except as would not reasonably be expected to have a Material Adverse Effect. No claims have been asserted against the Company or the Parent by any person with respect to the use of any such Intellectual Property or challenging or questioning the validity or effectiveness of any such Intellectual Property except as would not reasonably be expected to have a Material Adverse Effect.

4.15 Compliance. Neither the Company nor the Parent has been advised, nor does either of them have any reason to believe, that it is not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting

business, including, without limitation, all applicable local, state and federal environmental laws and regulations, except where failure to be so in compliance would not have a Material Adverse Effect.

4.16 Taxes. The Company and the Parent have filed on a timely basis (giving effect to extensions) all required federal, state and foreign income and franchise tax returns and has paid or accrued all taxes shown as due thereon, and neither the Company nor the Parent has knowledge of a tax deficiency that has been or might be asserted or threatened against it, in each case, that could have a Material Adverse Effect except that the Alabama Department of Revenue has issued a Notice of Preliminary Assessment of Corporate Income Tax to a subsidiary of the Parent, TBC Realty Holdings Corporation, for the tax years ended December 31, 2002 and December 31, 2003. Representatives of TBC Realty Holdings Corporation met with representatives of the Alabama Department of Revenue to discuss and challenge the preliminary assessments. The matter is pending with the Alabama Department of Revenue. Final assessments have not been issued by the Alabama Revenue Department on the basis of the preliminary assessments, but, if that were to occur, then TBC Realty Holdings Corporation would have the right to appeal such assessments. All tax liabilities accrued through the date hereof have been adequately provided for on the books of the Parent and the Company.

4.17 Transfer Taxes. On the Closing Date, any transfer or other taxes (other than income taxes) that are required to be paid in connection with the sale and delivery of the Subordinated Notes to be sold to the Purchaser hereunder will have been, fully paid or provided for by the Company and all laws imposing such taxes will have been fully complied with.



4.18 Investment Company. The Company is not and, after giving effect to the offering and sale of the Subordinated Notes and the application of the proceeds thereof, will not be an “investment company,” as such term is defined in the Investment Company Act of 1940, as amended.

4.19 Offering Materials. The Company has furnished to the Purchaser or otherwise made available a copy of each of the following: (i) the Parent’s Annual Report on Form 10-K for the year ended December 31, 2007, as filed with the Securities and Exchange Commission (the “SEC”); (ii) the Parent’s proxy statement for its Annual Meeting of Stockholders, held on April 23, 2008, as filed with the SEC on March 24, 2008, (iii) the Parent’s Quarterly Reports on Form 10-Q for the quarters ended March 31 and June 30, 2008; and (iv) the Parent’s Current Reports on Form 8-K as filed with the SEC since June 30, 2008 pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (items (i) through (iv) together with other SEC filings incorporated therein and any other information about the Company or the Parent or relating to their prospects that the Company may provide to the Purchaser in connection with the sale of the Subordinated Notes, collectively, the “Disclosure Materials”).

4.20 Insurance. The Company and the Parent, each, maintains insurance underwritten by insurers of recognized financial responsibility, of the types and in the amounts that the Company and the Parent, each, reasonably believes is adequate for its business, including, but not limited to, insurance covering real and personal property owned or leased by the Company or the Parent, as the case may be, against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, with such deductibles as are customary for companies in the same or similar business, all of which insurance is in full force and effect.

4.21 Additional Information. The information contained in the Disclosure Materials, which the Company has furnished to the Purchaser (it being understood that all documents publicly filed with or publicly furnished to the Commission by the Parent shall be deemed “furnished” by the Company for purposes of this Section 4.20), or will furnish prior to the Closing, as of the dates thereof, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances in which they were made not misleading.

The documents incorporated by reference in the Disclosure Materials or attached as exhibits thereto, at the time they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder (the “1934 Act Rules and Regulations” and, together with the 1933 Act Rule and Regulations, the “Rules and Regulations”).

4.22 Use of Proceeds. The Company shall use the proceeds from the sale of the Subordinated Notes for general corporate purposes.

4.23 Non-Public Information. Subject to Section 8 hereof, the Company and the Parent, each, hereby represents that it has not disclosed to the Purchaser, whether in the Disclosure Materials or otherwise, information that would constitute material non-public information as of the Closing Date other than the existence of the transaction contemplated hereby.

4.24 Use of Purchaser Name. Except as otherwise required by applicable law or regulation neither the Company nor the Parent shall use the Purchaser’s name or the name of

any of its affiliates in any advertisement, announcement, press release or other similar public communication unless it has received the prior written consent of the Purchaser for the specific use contemplated which consent shall not be unreasonably withheld.

4.25 Governmental Permits, Etc. The Company or the Parent, as the case may be, have all franchises, licenses, certificates and other authorizations from such federal, state or local government or governmental agency, department or body that are currently necessary for the operation of the business of the Company or the Parent as currently conducted, except where the failure to possess currently such franchises, licenses, certificates and other authorizations is not reasonably expected to have a Material Adverse Effect. Neither the Company nor the Parent has received any notice of proceedings relating to the revocation or modification of any such permit that, if the subject of an unfavorable decision, ruling or finding, could reasonably be expected to have a Material Adverse Effect.

4.26 Financial Statements.

(a) The consolidated financial statements of the Parent and the related notes and schedules thereto included in the Parent's Exchange Act filings fairly present the financial position, results of operations, stockholders' equity and cash flows of the Parent and its consolidated Subsidiaries at the dates and for the periods specified therein. Such financial statements and the related notes and schedules thereto have been prepared in accordance with accounting principles generally accepted in the United States consistently applied throughout the periods involved (except as otherwise noted therein) and all adjustments necessary for a fair presentation of results for such periods have been made; provided, however, that the unaudited

financial statements are subject to normal year-end adjustments and do not contain all footnotes required under generally accepted accounting principles.

(b) So long as any of the Subordinated Notes remain outstanding, the Company will provide to the Purchaser a copy of its monthly unaudited financial statements with the understanding that they will be subject to the proviso in the penultimate sentence of Section 5.2.

4.27 Foreign Corrupt Practices. Neither the Company nor the Parent, nor to the knowledge of the Company or the Parent, any director, officer, agent, employee or other Person acting on behalf of the Company or the Parent has, in the course of its actions for, or on behalf of, the Company or the Parent (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

4.28 ERISA. The Company and the Parent, each, is in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (herein called “ERISA”); no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company or the Parent would have any material liability; neither the Company nor the Parent has incurred nor expects

to incur any material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan”; or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “Code”); and each “Pension Plan”, if any, for which the Company or the Parent would have liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

4.29 Filing of Form 8-K. Within four business days after the date hereof, the Parent shall file a Current Report on Form 8-K describing the material terms of the transactions contemplated by this Agreement (for clarification purposes only and without implication to the contrary, the transactions contemplated by this Agreement include only the transaction among the Company, the Parent, and the Purchaser and do not include any other transaction among the Company, the Parent, and any other third party purchaser of the securities of the Company or the Parent), and attaching as an exhibit to such Form 8-K a form of this Agreement.

4.30 Solvency. The Company and the Parent, each, does and will, after giving effect to the transactions contemplated hereby to occur at the Closing and the sale of Subordinated Notes to the Other Purchasers, if any, and the issuance of the Warrants (a) own assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including known contingent liabilities) and (ii) greater than the amount that will be required to pay the probable liabilities of its existing debts as they become absolute and matured considering the financing alternatives reasonably available to it, and (b) have capital that will not be unreasonably small in relation to its business as presently conducted or any contemplated. Neither the Parent nor the Company has knowledge of any facts or circumstances which lead it

to believe that it or any of its Subsidiaries will be required to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction, and has no present intent to so file.

SECTION 5. Representations, Warranties and Covenants of the Purchaser. The Purchaser represents and warrants to, and covenants with, the Company and the Parent that:

5.1 Experience. (i) The Purchaser is knowledgeable, sophisticated and experienced in financial and business matters, in making, and is qualified to make, decisions with respect to the purchase of the Securities representing an investment decision like that involved in the purchase of the Securities, including investments in securities issued by the Company, the Parent and comparable entities, has the ability to bear the economic risks of an investment in the Securities and has reviewed carefully the Disclosure Materials and has requested, received, reviewed and considered all information the Purchaser deems relevant in making an informed decision to purchase the Securities; (ii) the Purchaser is acquiring the aggregate principal amount of Subordinated Notes set forth in Section 2 above, the Warrants and the Common Stock in the ordinary course of the Purchaser's business and for the Purchaser's own account for investment only and with no present intention of distributing any of the Securities or any arrangement or understanding with any other persons regarding the resale of such Securities; (iii) the Purchaser has, in connection with the Purchaser's decision to purchase the aggregate principal amount of Subordinated Notes set forth in Section 2 above, the Warrants and the Common Stock, relied solely upon the Disclosure Materials and the representations and warranties of the Company or the Parent, as the case may be, contained herein; (iv) the Purchaser has had an opportunity to discuss this investment with representatives of the Company and the

Parent and ask questions of them; and (v) the Purchaser is an “accredited investor” within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act.

5.2 Confidentiality. For the benefit of the Company and the Parent, the Purchaser has agreed to keep confidential all information concerning this private placement. The Purchaser understands that the information contained in this Agreement and non-public documents, if any, included in the Disclosure Materials is strictly confidential and proprietary to the Company and the Parent and has been prepared from the publicly available documents of the Company and the Parent and other information and is being submitted to the Purchaser solely for such Purchaser’s confidential use. The Purchaser agrees to use the non-public information contained in the Disclosure Materials for the sole purpose of evaluating a possible purchase of the Securities, and the Purchaser acknowledges that it is prohibited from reproducing or distributing any non-public information included in the Disclosure Materials, or any other offering materials or other information provided by the Company or the Parent in connection with the Purchaser’s consideration of its purchase of the Securities, in whole or in part, or divulging or discussing any of their contents, except to its financial, investment or legal advisors in connection with its proposed investment in the Securities, which or whom the Purchaser will cause to comply with the obligations under this Section 5.2. Further, the Purchaser understands that the existence and nature of all conversations and presentations, if any, regarding the Company or its Parent and this offering must be kept strictly confidential. The Purchaser understands that the federal securities laws impose restrictions on trading in the Parent’s securities based on non-public information regarding this offering. In addition, the Purchaser hereby acknowledges that unauthorized disclosure of non-public information regarding this offering may result in a violation of Regulation FD. The obligations under this Section 5.2 will

terminate upon the filing by the Parent of the 8-K filing contemplated by Section 4.28 hereof; provided, however, that if the Purchaser receives any future non-public information such as the monthly Company financials contemplated by Section 4.26(b), Purchaser will treat that information as confidential and will not trade on the basis of that information (if it is material) until it is made public or subsumed in an Exchange Act filing of the Parent.. The foregoing agreements shall not apply to any information that was non-public that is or becomes publicly available through no fault of the Purchaser, or that the Purchaser is legally required to disclose; provided, however, that if the Purchaser is requested or ordered to disclose any such non-public information pursuant to any court or other government order or any other applicable legal procedure, to the extent permitted by applicable law it shall provide the Company and the Parent with prompt notice of any such request or order in time sufficient to enable the Parent or the Company to seek an appropriate protective order.

5.3 Investment Decision. The Purchaser understands that nothing in this Agreement or any other materials presented to the Purchaser in connection with the purchase of the Securities constitutes legal, tax or investment advice. The Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

5.4 Risk of Loss. The Purchaser understands that its investment in the Securities involves a significant degree of risk, including a risk of total loss of the Purchaser's investment, and the Purchaser has full cognizance of and understands all of the risk factors related to the Purchaser's purchase of the Securities, including, but not limited to, those set forth under the caption "Risk Factors" in the Parent's Form 10-K filing for the year ended December 31, 2007.



5.5 Residency. The Purchaser's principal executive offices or residence address is in the jurisdiction set forth immediately below the Purchaser's name on the signature pages hereto.

5.6 Organization; Validity; Enforcements. The Purchaser further represents and warrants to, and covenants with, the Company and the Purchaser that (i) the Purchaser has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, (ii) the making and performance of this Agreement by the Purchaser and the consummation of the transactions herein contemplated will not violate or conflict with, result in the breach or violation of, or constitute, either by itself or upon notice or the passage of time or both, a default under any material agreement, mortgage, deed of trust, lease, franchise, license, indenture, permit or other instrument to which the Purchaser is a party or, any statute or any authorization, judgment, decree, order, rule or regulation of any court or any regulatory body, administrative agency or other governmental agency or body applicable to the Purchaser, (iii) no consent, approval, authorization or other order of any court, regulatory body, administrative agency or other governmental agency or body is required on the part of the Purchaser for the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement, (iv) upon the execution and delivery of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or the enforcement of creditor's rights and the application of equitable principles relating to the availability of remedies, and except as rights to indemnity or

contribution, including, but not limited to, the indemnification provisions set forth in Section 7.3 of this Agreement, may be limited by federal or state securities laws or the public policy underlying such laws and (v) there is not in effect any order enjoining or restraining the Purchaser from entering into or engaging in any of the transactions contemplated by this Agreement.

SECTION 6. Survival of Agreements; Non-Survival of Company and Parent Representations and Warranties. Notwithstanding any investigation made by any party to this Agreement, all covenants and agreements made by the Company, the Parent and the Purchaser herein and in the Securities sold pursuant hereto shall survive the execution of this Agreement, the delivery to the Purchaser of the Warrants and the Subordinated Notes being purchased and the payment therefor. All representations and warranties, made by the Company, the Parent and the Purchaser herein and in the Subordinated Notes and Warrants sold pursuant hereto shall survive for a period of three years following the later of the execution of this Agreement, the delivery to the Purchaser of the Subordinated Notes and Warrants being purchased and the payment therefor.

SECTION 7. Indemnification

7.1 Company Indemnity. The Company and the Parent, each, agrees to indemnify and hold harmless the Purchaser and each Purchaser/Affiliate, against any and all losses, claims, damages, liabilities or expenses, joint or several, to which the Purchaser or Purchaser/Affiliates may become subject (including in settlement of any litigation or any investigation or proceeding by any governmental agency or body, commenced or threatened, if such settlement is effected with the written consent of the Company or the Parent, as the case

may be, subject to Section 7.3 hereof), insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof as contemplated below) arise out of any breach of the representations, warranties, covenants or agreements of the Company or the Parent, as the case may be, set forth herein or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Disclosure Materials and will promptly reimburse the Purchaser and any Purchaser/Affiliate for any reasonable legal and other expenses as such expenses are reasonably incurred by such Purchaser in connection with investigating, defending or preparing to defend, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that, subject to Section 7.3 hereof, neither the Company nor the Parent will be liable for amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company or the Parent, as the case may be, which consent shall not be unreasonably withheld, and neither the Company nor the Parent will be liable in any such case to the extent that any such loss, claim, damage, liability or expense arises out of or is based upon (i) any breach of the representations, warranties or covenants of the Purchaser set forth herein, or (ii) the inaccuracy of any representation or warranty made by such Purchaser herein.

7.2 Purchaser Indemnity. The Purchaser will severally, but not jointly with any other Purchaser, indemnify and hold harmless the Company and the Purchaser, each of their respective directors, each of their respective officers and each person, if any, who controls the Company or the Parent against any losses, claims, damages, liabilities or expenses to which the Company or the Parent, each of their respective directors, each of their respective officers or any controlling person may become subject (including in settlement of any litigation, but only if such settlement is effected with the written consent of such Purchaser) insofar as such losses, claims,

damages, liabilities or expenses (or actions in respect thereof as contemplated below) arise out of or are based upon any untrue or alleged untrue statements or omissions made by the Purchaser to the Company or the Parent in connection with the transactions contemplated by this Agreement; and will reimburse the Company or the Parent, each of their respective directors, each of their respective officers or controlling person for any legal and other expense reasonably incurred by the Company or the Parent, each of their respective directors, each of their respective officers or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action.

7.3 Indemnification Procedures. Promptly after receipt by an indemnified party under this Section 7.3 of notice of the threat or commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 7.3 promptly notify the indemnifying party in writing thereof, but the omission to notify the indemnifying party will not relieve it from any liability that it may have to any indemnified party for contribution or otherwise under the indemnity agreement contained in this Section 7.3 to the extent it is not prejudiced as a result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with all other indemnifying parties similarly notified, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party, and the indemnifying party and the indemnified party shall have reasonably concluded, based on an opinion of counsel, that there may be a conflict of interest between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or

that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 7.3 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed such counsel in connection with the assumption of legal defenses in accordance with the proviso to the preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel representing all of the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of action, in each of which cases the reasonable fees and expenses of counsel shall be at the expense of the indemnifying party. The indemnifying party shall not be liable for any settlement of any action without its written consent; provided that such consent shall not be unreasonably withheld. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnification could have been sought hereunder by such indemnified party from all liability on claims that are the subject matter of such proceeding.

7.4 Payments in Lieu of Indemnification. If the indemnification provided for in Section 7.3 hereof is required by its terms but is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party here in respect to any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of any losses, claims, damages, liabilities or expenses referred to herein (i) in such proportion as is appropriate to reflect the relative benefits received by the Parent, the Company and the Purchaser from the transactions contemplated by this Agreement. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 7.3, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 7.3 with respect to the notice of the threat or commencement of any threat or action shall apply if a claim for contribution is to be made under this Section 7.4; provided, however, that no additional notice shall be required with respect to any threat or action for which notice has been given under Section 7.3 for purposes of indemnification.

SECTION 8. Purchaser May Receive Non-Public Information. Notwithstanding anything contained herein to the contrary, the Purchaser may have elected to receive (and therefore received) certain information that may be deemed to be material non-public information (the "Confidential Information"). If so, the Purchaser hereby agrees (i) not to use the Confidential Information for any purpose other than in connection with its evaluation of a possible investment in the Subordinated Notes, (ii) to keep all Confidential Information confidential and not to disclose or reveal in any manner whatsoever any Confidential Information to

any person other than such Purchaser's representatives who are actively and directly participating in the evaluation of a possible investment in the Securities or otherwise need to know the Confidential Information for such purpose and who have been advised by such Purchaser of, and have agreed to be bound by, the restrictions contained in this Section 8, and (iii) not to effect any transaction in (other than as contemplated by this Agreement) any securities of the Parent until the earlier of (A) six months from the date of this Agreement and (B) such time as the Company or its Parent in its reasonable opinion determines that the Confidential Information is no longer considered material non-public information. The Company and the Parent agree promptly to advise the Purchaser if the Confidential Information has been made public or if, in their discretion, the Confidential Information is no longer considered material non-public information.

**SECTION 9. Issuance of Warrants and Registration of Underlying Stock.**

(a) Issuance of Warrants. In consideration of Purchaser's agreement to purchase the Subordinated Note, the Parent, simultaneously with the delivery of the Subordinated Note, will issue to the Purchaser a Warrant to purchase one million shares of the Parent's Common Stock at a price per share equal to the greater of (i) \$7.00 or (ii) the average closing price of the Parent's Common Stock on NASDAQ for the ten trading days immediately preceding the Closing Date. The Purchaser's right to exercise the Warrant, in whole, may be subject to the receipt of certain regulatory approvals.

(b) Registration of Warrant Shares. Within 90 days following the Closing Date, the Parent will register the Warrant Shares with the Securities and Exchange Commission (the "SEC") pursuant to Rule 415(a)(iii) promulgated under the Securities Act of 1933 in

anticipation of a possible future sale by the Purchaser of the Warrant Shares should the Purchaser exercise the Warrants.

SECTION 10. Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be mailed by first-class registered or nationally recognized overnight express courier postage prepaid, and shall be deemed given when so mailed and shall be delivered as addressed as follows:

(a) if to the Company or the Parent, to:

Superior Bank  
or Superior Bancorp  
17 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203  
Attention: William Caughran, General  
Counsel and Corporate Secretary

with a copy to:

Haskell Slaughter Young & Rediker, LLC  
2001 Park Place North  
1400 Park Place Tower  
Birmingham, Alabama 35203  
Attention: Robert E. Lee Garner

or to such other person at such other place as the Company or the Parent shall designate to the Purchaser in writing; and

(b) if to the Purchaser, at its address as set forth at the end of this Agreement, or at such other address or addresses as may have been furnished to the Company and Parent in writing with a copy to:



Dow T. Hurkey  
Attorney at Law  
P.O. Drawer 500  
Dothan, Alabama 36302

SECTION 11. Changes. This Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company, the Parent and the Purchaser. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon each future holder of any Subordinated Notes purchased under this Agreement at the time outstanding and the Company.

SECTION 12. Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

SECTION 13. Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

SECTION 14. Governing Law; Venue. This Agreement is to be construed in accordance with and governed by the federal law of the United States of America and the internal laws of the State of Delaware without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction to the rights and duties of the parties hereto. Each of the Company and the Purchaser submits to the exclusive jurisdiction of the United States District Court for the Northern District of Alabama and of any Alabama circuit court sitting in Birmingham, Alabama for purposes of all legal proceedings arising out of or relating to this

Agreement and the transactions contemplated hereby. Each of the Company and the Purchaser irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

SECTION 15. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties.

SECTION 16. Entire Agreement. This Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company, the Parent nor the Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of this Agreement.

SECTION 17. Fees and Expenses. Except as set forth herein, each of the Company, the Parent and the Purchaser shall pay its respective fees and expenses related to the transactions contemplated by this Agreement.

SECTION 18. Parties. This Agreement is made solely for the benefit of and is binding upon the Purchaser, the Company and the Parent and any person controlling the Company, the Parent or acting on behalf of, or controlling, the Purchaser, the officers and

directors of the Company, and their respective executors, administrators, successors and assigns and no other person shall acquire or have any right under or by virtue of this Agreement.

SECTION 19. Further Assurances. Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurance as may be reasonably requested by any other party to evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

*[Remainder of Page Left Intentionally Blank]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

SUPERIOR BANK

By: /s/ C. Stanley Bailey  
Name: C. Stanley Bailey  
Title: Chairman and Chief Executive Officer

SUPERIOR BANCORP

By: /s/ C. Stanley Bailey  
Name: C. Stanley Bailey  
Title: Chairman and Chief Executive Officer

Print or Type:

DURDEN ENTERPRISES, LLC

By: /s/ K. Earl Durden  
Name: K. Earl Durden  
Title: Managing Member

(Name of Purchaser)

2605 Thomas Drive, Suite 150  
Panama City Beach, Florida 32408  
(Purchaser's Executive Offices)

If the Purchaser has received Confidential Information, it hereby acknowledges that it has read, is familiar with, and accepts the information contained in Section 8 hereof.

DURDEN ENTERPRISES, LLC

By: /s/ K. Earl Durden

Name: K. Earl Durden

Title: Managing Member

(Name of Purchaser)

2605 Thomas Drive, Suite 150

Panama City Beach, Florida 32408

(Purchaser's Executive Offices)

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## Section 6: EX-10.5 (EX-10.5)



**Exhibit 10.5**

September 17, 2008

Mr. K. Earl Durden  
Managing Member  
Durden Enterprises, LLC  
2605 Thomas Drive, Suite 150  
Panama City, Florida 32408

Dear Earl:

In connection with the purchase by Durden Enterprises, LLC ("Purchaser") of \$10,000,000 in aggregate principal amount of Superior Bank 9.5% Subordinated Notes due September 15, 2018 and the issuance to Purchaser of a warrant to purchase 1,000,000 shares of common stock of Superior Bancorp, I hereby confirm that Purchaser has the option to purchase up to an additional \$10,000,000 in Superior Bank subordinated debt and receive additional warrants for Superior Bancorp common stock. The terms and conditions of future debt and warrants shall be substantially as set forth in the present documents with such adjustments as are necessary to reflect the market conditions at the time the additional debt and warrants are issued. The right to exercise any warrants issued in connection with the Purchaser's purchase of additional subordinated debt pursuant to this letter agreement will expire not later than September 15, 2018.

Very truly yours,

/s/ C. Stanley Bailey

C. Stanley Bailey

Chairman and Chief Executive Officer

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## Section 7: EX-10.6 (EX-10.6)

**Exhibit 10.6**

**SUPERIOR BANK**

**9.5% Subordinated Note due September 15, 2018**

**THIS SECURITY IS NOT A SAVINGS ACCOUNT OR DEPOSIT AND IS NOT INSURED BY THE UNITED STATES OR ANY AGENCY OR**

**FUND OF THE UNITED STATES.**

THIS SECURITY IS SUBORDINATED AND JUNIOR IN RIGHT OF PAYMENT UPON ANY LIQUIDATION OF SUPERIOR BANK (THE "ISSUER") AS TO PRINCIPAL, INTEREST, AND PREMIUM TO ALL CLAIMS AGAINST THE ISSUER THAT HAVE THE SAME PRIORITY AS SAVINGS ACCOUNTS.

THIS SECURITY IS UNSECURED AS TO THE ISSUER'S ASSETS OR THE ASSETS OF ANY AFFILIATE OF THE ISSUER, INCLUDING, BUT NOT LIMITED TO, SUPERIOR BANCORP, AND IS INELIGIBLE AS COLLATERAL FOR A LOAN BY THE ISSUER.

THE ISSUER SHALL NOT PAY ANY DIVIDENDS OR INTEREST ON THIS SECURITY (IF SUCH INTEREST IS REQUIRED TO BE PAID ONLY OUT OF NET PROFITS) OR DISTRIBUTE ANY CAPITAL ASSETS IF IT IS IN DEFAULT IN THE PAYMENT OF ANY ASSESSMENT DUE TO THE FEDERAL DEPOSIT INSURANCE CORPORATION (THE "FDIC"), PROVIDED, THAT, IF SUCH DEFAULT IS DUE TO A DISPUTE BETWEEN THE ISSUER AND THE FDIC OVER THE AMOUNT OF SUCH ASSESSMENT, SUCH PROHIBITION ON THE PAYMENT OF DIVIDENDS OR INTEREST SHALL NOT APPLY IF THE ISSUER DEPOSITS SECURITY SATISFACTORY TO THE FDIC FOR PAYMENT UPON FINAL DETERMINATION OF THE ISSUE.

IF THE ISSUER BECOMES CRITICALLY UNDERCAPITALIZED, THEN IT IS PROHIBITED, BEGINNING 60 DAYS AFTER BECOMING CRITICALLY UNDERCAPITALIZED, FROM MAKING ANY PAYMENT OF PRINCIPAL OR INTEREST ON THIS SECURITY, PROVIDED, THAT, IF THE OFFICE OF THRIFT SUPERVISION (THE "OTS") HAS TAKEN ACTION WITH RESPECT TO SUCH UNDERCAPITALIZATION AND THE FDIC DETERMINES THAT THE PAYMENT OF PRINCIPAL OR INTEREST WOULD FURTHER THE PURPOSE OF 12 U.S.C. 1831o(h), THEN SUCH PAYMENT MAY BE PERMITTED.

THE ISSUER MAY PREPAY OR REDEEM THIS SECURITY PURSUANT TO THAT CERTAIN AGREEMENT TO PURCHASE SUBORDINATED NOTES DATED SEPTEMBER 17, 2008 AND SECTION 3 OF THIS NOTE, WHICH ALSO PROVIDES THAT THE ISSUER MUST OBTAIN PRIOR APPROVAL FROM THE "OTS" BEFORE ANY VOLUNTARY PREPAYMENT OR ACCELERATION OF PAYMENT OF PRINCIPAL ON THIS SECURITY IF THE ISSUER IS UNDERCAPITALIZED, SIGNIFICANTLY UNDERCAPITALIZED OR CRITICALLY UNDERCAPITALIZED OR WOULD FAIL TO MEET ANY OF THESE STANDARDS FOLLOWING SUCH PAYMENT.

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Superior Bank  
9.5% Subordinated Note due September 15, 2018

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THIS NOTE NOR ANY INTEREST THEREIN MAY BE TRANSFERRED, HYPOTHECATED OR OTHERWISE DISPOSED OF WITHOUT (I) REGISTRATION UNDER THAT ACT OR (II) AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

1. Payment.

(a) Superior Bank, a federal savings bank (the “Issuer”), for value received, hereby promises to pay to DURDEN ENTERPRISES, LLC (“Purchaser”), the principal sum of \$10,000,000 on September 15, 2018 (the “Maturity Date”) and to pay interest thereon at the rate of 9.5% per annum (computed on the basis of a 360-day year of twelve 30-day months) from the date of issuance of this Note or from the most recent Interest Payment Date to which interest has been paid or duly provided, on March 15, June 15, September 15, and December 15 of each year, (each, an “Interest Payment Date”), commencing December 15, 2008 until the principal hereof is paid or made available for payment.

(b) Any payment of principal of or interest on this Note that would otherwise become due and payable on a day which is not a Business Day shall become due and payable on the next succeeding Business Day, with the same force and effect as if made on the date for payment of such principal or interest, and no interest shall accrue in respect of such payment for the period after such day. The term “Business Day” means any day that is not a Saturday or Sunday and that is not a day on which banks in Birmingham, Alabama or any city where payment is to be made hereunder are generally authorized or required by law or executive order to be closed.

2. Subordinated Notes and Subordinated Noteholders. This Note is designated as a 9.5% Subordinated Note due September 15, 2018 (herein called the “Subordinated Note”).

3. Optional Redemption. Beginning on September 15, 2013, the Issuer may, at its sole option and subject to obtaining prior approval, if required at the time, of the OTS, redeem some portion of or all of the Subordinated Note on any Interest Payment Date at a redemption price of 100% of the principal amount of the redeemed Subordinated Note, plus any accrued but unpaid interest.

The Subordinated Note, when it has been called for redemption, and with respect to which monies sufficient to pay the principal thereof and interest thereon have been paid to the Subordinated Noteholder shall cease to be outstanding from and after the redemption date.

4. Subordination. The indebtedness of the Issuer evidenced by this Note, including the principal and interest on this Note, shall be subordinate and junior in right of payment to the Issuer's obligations to its depositors, its obligations under bankers' acceptances and letters of credit, and its obligations to its other creditors, including its obligations to the Federal Reserve Bank of Atlanta, the FDIC, and any rights acquired by the FDIC as a result of loans made by the FDIC to the Issuer or the purchase or guarantee of any of its assets by the FDIC, pursuant to the provisions of 12 U.S.C. 1823 (c), (d) or (e) whether now outstanding or hereafter incurred (except any other obligations which rank on a parity with or subordinate to the Subordinated Note). In the event of any insolvency, receivership, conservatorship, reorganization, readjustment of debt, marshalling of assets and liabilities or similar proceedings or any liquidation or winding up of or relating to the Issuer, whether voluntary or involuntary, all obligations of the Issuer (except any other obligations which rank on a parity with or subordinate to this Note) shall be entitled to be paid in full before any payment shall be made on account of the principal of or interest on this Note. In the event of any such proceeding, after payment in full of all sums owing with respect to such prior obligations, the Noteholder, together with the holders of any obligations of the Issuer ranking on a parity with this Note, shall be entitled to be paid from the remaining assets of the Issuer the unpaid principal thereof, and the unpaid interest thereon before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock or any obligations of the Issuer ranking junior to this Note.

Nothing herein shall impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and interest on this Note in accordance with its terms.

5. Consolidation, Merger and Sale of Assets. The Issuer shall not consolidate with or merge into another entity or convey, transfer or lease its properties and assets substantially as an entirety to any person, unless:

(a) the continuing entity formed by such consolidation or into which the Issuer is merged or the person which acquires by conveyance or transfer or which leases the properties and assets of the Issuer substantially as an entirety shall be a corporation, association or general partnership or other legal entity organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly shall assume, by a supplemental agreement executed and delivered to the Noteholder in form reasonably satisfactory to the Noteholder, the due and punctual payment of the principal of and any premium and interest on this Note according to their terms, and the due and punctual performance of all covenants and conditions hereof on the part of the Issuer to be performed or observed; and

(b) immediately after giving effect to such transaction, no Event of Default (as defined hereinbelow), and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing.

6. Events of Default; Acceleration If any of the following events shall occur and be continuing (each an "Event of Default"):



(a) the Issuer shall consent to the appointment of a receiver, liquidator, trustee or other similar official in any liquidation, insolvency or similar proceeding with respect to the Issuer or all or substantially all of its property; or

(b) a court or other governmental agency or body having jurisdiction on the premises shall enter a decree or order for the appointment of a receiver, liquidator, trustee or other similar official in any liquidation, insolvency or similar proceeding with respect to the Issuer or all or substantially all of the property of the Issuer, or for the winding up of the affairs or business of the Issuer and such decree or order shall have remained in force for 60 days; then, and in each such case, unless the principal of this Note already shall have become due and payable, the holder of this Note, by notice in writing to the Issuer may declare the principal amount of this Note to be due and payable immediately and, upon any such declaration the same shall become and shall be immediately due and payable. The Issuer waives demand, presentment for payment, notice of nonpayment, notice of protest, notice of default, and all other notices. The Issuer also waives the benefit of any exemptions under the Constitution and laws of the State of Alabama and the United States of America that are not specifically preserved herein.

The Issuer, promptly after the occurrence of an Event of Default with respect to this Note, shall mail to the Noteholder, at its address shown on the Issuer's records, such written notice of Event of Default, unless such Event of Default shall have been cured or waived before the giving of such notice.

**THIS NOTE MAY NOT BE REPAID PRIOR TO THE MATURITY DATE, WHETHER PURSUANT TO AN ACCELERATION UPON AN EVENT OF DEFAULT OR OTHERWISE, WITHOUT THE PRIOR APPROVAL OF THE OTS.**

7. Failure to Make Payment. In the event of failure by the Issuer to make any payment of principal of or interest on this Note (and, in the case of payment of interest, such failure to pay shall have continued for 30 days), the Issuer will, upon demand of the holder of this Note, pay to such holder the whole amount then due and payable on this Note for principal and interest (without acceleration), with interest on the overdue principal and interest at the rate borne by this Note, to the extent permitted by applicable law. If the Issuer fails to pay such amount upon such demand, the holder of this Note may, among other things, institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Issuer and collect the amounts adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer. The Issuer agrees to pay all costs, expenses, and reasonable attorneys' fees of the Noteholder in connection with the enforcement of the payment of this Note.

8. Payment Procedures. Payment of the principal and interest payable on the Maturity Date will be made by wire transfer in immediately available funds to a bank account in the United States designated by the holder of this Note, upon presentation and surrender of this Note at the office of Issuer in Birmingham, Alabama or at such other place or places as the Noteholder may reasonably request, provided that this Note is presented to the Issuer in time for the Issuer to make such payments in such funds in accordance with its normal procedures. Payments of interest (other than interest payable on the Maturity Date) shall be made by check or wire transfer, at the sole discretion of the Issuer, to the holder of this Note.  
Interest payable on

any Interest Payment Date shall be payable to the holder in whose name this Note is registered at the close of business on February 15, May 15, August 15, or November 15, as the case may be, next preceding such Interest Payment Date (such date being referred to herein as the “Regular Record Date”) for such Interest Payment Date, except that interest not so punctually paid, if any, will be paid to the holder in whose name this Note is registered at the close of business on a Special Record Date fixed by the Issuer (a “Special Record Date”) notice of which shall be given to the holder not less than ten (10) calendar days prior to such Special Record Date. (The Regular Record Date and Special Record Date are referred to herein collectively as the “Record Dates”). To the extent permitted by applicable law, interest shall accrue, at the Default Rate on any amount of principal of or interest on this Note not paid when due. All payments on this Note shall be applied first to accrued interest and then the balance, if any, to principal.

9. Form of Payment. Payments of principal of and interest on this Note shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

10. Registration of Transfer, Subordinated Note Register. This Note is transferable in whole or in part, and may be exchanged for a like aggregate principal amount of Subordinated Notes of other authorized denominations, by the holder of this Note in person, or by his attorney duly authorized in writing, at the principal office of the Issuer in the City of Birmingham, Alabama. The Issuer shall maintain a register providing for the registration of the Subordinated Note and any exchange or transfer thereof (the “Subordinated Note Register”). Upon surrender or presentation of this Note for exchange or registration of transfer, the Issuer shall execute and the Issuer shall deliver in exchange therefor a Note or Notes of like aggregate principal amount, each in a denomination of \$1,000,000 or any amount in excess thereof which is an integral multiple of \$1,000 and that is or are registered in such name or names requested by the holder. Any Subordinated Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Issuer) be duly endorsed, or accompanied by a written instrument of transfer with such evidence of due authorization and guarantee of signature as may reasonably be required by the Issuer in form satisfactory to the Issuer, duly executed by the holder or his attorney duly authorized in writing, and with such tax identification number or other information for each person in whose name a Subordinated Note is to be issued as the Issuer may reasonably request to comply with applicable law and accompanied by a legal opinion of counsel reasonably satisfactory to the Issuer that the transfer of the Note does not violate any securities law registration requirements. No exchange or registration of transfer of this Note shall be made on or after the fifteenth day immediately preceding the Maturity Date.

11. Charges and Transfer Taxes. No service charge (other than any cost of delivery) shall be imposed for any exchange or registration of transfer of this Note, but the Issuer may require the payment of a sum sufficient to cover any stamp or other tax or governmental charge that may be imposed in connection therewith (or presentation of evidence that such tax or charge has been paid).

12. Ownership. Prior to due presentment of this Note for registration of transfer, the Issuer may treat the holder in whose name this Note is registered in the Subordinated Note Register as the absolute owner of this Note for the purpose of receiving payments of principal of and interest on this Note and for all other purposes whatsoever, whether or not this Note be

overdue, and the Issuer and the Subordinated Note shall not be affected by any notice to the contrary.

13. Priority. This Note ranks *pari passu* in the event of any insolvency proceeding, receivership, conservatorship, reorganization, readjustment of debt, marshalling of assets and liabilities or similar proceeding or any liquidation or winding up of the Issuer, with all other present or future unsecured subordinated debt obligations of the Issuer, except any unsecured subordinated debt which may be expressly stated to be senior to or subordinate to the Subordinated Notes.

14. Notices. All notices to the Issuer under this Note shall be in writing and addressed to the Issuer at 17 North 20<sup>th</sup> Street, Birmingham, Alabama 35203, Attention: William H. Caughran, General Counsel and Secretary, or to such other address as the Issuer may notify to the holder. All notices to the Subordinated Noteholders shall be in writing and sent by first-class mail to each Subordinated Noteholder at his, her or its address as set forth in the Subordinated Note Register.

15. Modification. This Note may not be amended or modified by the Issuer without the consent of the Noteholder. This Note may not be amended or modified by the Issuer for the purpose of changing the Maturity Date or other terms of the Subordinated Notes without the prior consent of the OTS.

16. Absolute and Unconditional Obligation of the Issuer. No provisions of this Note shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and interest on this Note at the times, places and rate, and in the coin or currency, herein prescribed.

17. Waiver and Consent. (a) Any consent or waiver given by the holder of this Note shall be conclusive and binding upon such holder and upon all future holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange therefore or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

(b) No delay or omission of the holder of this Note to exercise any right or remedy accruing upon any Event of Default shall impair such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein.

18. Further Issues. The Issuer may, without the consent of the Noteholder, create and issue additional notes having the same terms and conditions of this Note (except for the issue date and issue price) so that such further notes shall be consolidated and form a single series with this Note. Any such issuance will either be registered or issued pursuant to an exemption from registration under the Securities Act of 1933, as amended, or similar laws or regulations issued by the applicable banking agency.

19. Governing Law. This Note shall be governed by and construed in accordance with applicable federal law and the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be duly executed and its corporate seal to be hereunto affixed and attested.

SUPERIOR BANK

By: /s/ C. Stanley Bailey

Name: C. Stanley Bailey

Title: Chairman and Chief Executive Officer

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## Section 8: EX-10.7 (EX-10.7)

Exhibit 10.7

### WARRANT TO PURCHASE COMMON STOCK OF SUPERIOR BANCORP, a Delaware corporation

Void after September 15, 2018

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THESE SECURITIES NOR ANY INTEREST THEREIN MAY BE TRANSFERRED, HYPOTHECATED OR OTHERWISE DISPOSED OF WITHOUT (I) REGISTRATION UNDER THAT ACT OR (II) AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

This certifies that for value received DURDEN ENTERPRISES, LLC (“Holder”) is entitled, subject to the terms set forth below, at any time before 5:00 p.m., Birmingham, Alabama time on September 15, 2013, to purchase from SUPERIOR BANCORP, a Delaware corporation (the “Company”), up to one million shares of the common stock of the Company (“Common Stock”) at the price per share equal to the greater of (i) \$7.00 or (ii) the average closing price per share of the Common Stock on NASDAQ for the ten trading days immediately preceding the closing of the Purchase of Superior Bank’s Subordinated Note(s) due September 15, 2018 pursuant to that certain “Agreement to Purchase Subordinated Notes” dated September 17, 2008 (the “Purchase Price”), upon surrender of this Warrant at the principal office of the Company referred to below, with the subscription form attached hereto (the “Subscription Form”) duly executed, and simultaneous payment therefor in the manner specified in Section 1 hereof. The Purchase Price and the number of shares of Common Stock purchasable hereunder (the “Warrant Shares”) are subject to adjustment as provided in Section 3 of this Warrant.

As used herein, (i) “Exercise Date” shall mean the particular date (or dates) on which this Warrant is exercised, (ii) “Issue Date” shall mean September 17, 2008, (iii) “Warrant” shall include this Warrant and any warrant delivered in substitution or exchange therefor as provided herein and (iv) “Warrant Shares” shall mean any shares of Common Stock acquired by Holder upon exercise of this Warrant.

#### 1. Exercise.

(a) This Warrant may be exercised, in whole or in part, at any time or from time to time, on any business day, for all or any part of the number of shares of Common Stock called for hereby, by surrendering it at the principal office of the Company, 17 North Twentieth Street, Birmingham, AL 35203, together with a completed and executed Subscription Form, together with delivery of a certified or cashier’s check in an amount equal to (i) the number of shares of Common Stock being purchased, multiplied by (ii) the Purchase Price. Notwithstanding the foregoing, in the event of the closing of the Company’s sale or transfer of all or substantially all of its assets, or the closing of the acquisition of the Company by another entity by means of merger, consolidation or other transaction or series of related transactions, resulting in the exchange of the outstanding shares of the Company’s capital stock such that the stockholders of

the Company prior to such transaction own, directly or indirectly, less the 50% of the voting power of the surviving entity (an "Acquisition"), this Warrant shall, on the date of such event, no longer be exercisable and become null and void. In the event of a proposed transaction of the kind described above, the Company shall notify the holder of the Warrant at least fifteen (15) days prior to the consummation of such event or transaction.

(b) This Warrant may be exercised for less than the full number of shares as of the Exercise Date. Upon such partial exercise, this Warrant shall be surrendered, and a new Warrant of the same tenor and for the purchase of the Warrant Shares not purchased upon such exercise shall be issued to Holder by the Company.

(c) A Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above, and the person entitled to receive the shares of Common Stock issuable upon such exercise shall be treated for all purposes as the holder of such shares of record as of the close of business on such date. As soon as practicable on or after such date, the Company shall issue and deliver to the person or persons entitled to receive the same a certificate or certificates for the number of full shares of Common Stock issuable upon such exercise, together with cash, in lieu of any fraction of a share, equal to such fraction of the current fair market value of one full share, which shall be the closing price of the Common Stock on the Exercise Date.

2. Payment of Taxes. All shares of Common Stock issued upon the exercise of a Warrant shall be validly issued, fully paid and non-assessable, and the Company shall pay all taxes and other governmental charges that may be imposed in respect of the issue or delivery thereof, other than any tax or other charge imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock in any name other than that of the registered Holder of the Warrant surrendered in connection with the purchase of such shares, and in such case the Company shall not be required to issue or deliver any stock certificate until such tax or other charge has been paid or it has been established to the Company's satisfaction that no tax or other charge is due.

### 3. Certain Adjustments.

(a) *Adjustment for Dividends in Other Stock, Property; Reclassifications.* In case at any time or from time to time after the Issue Date the holders of Common Stock (or any shares of stock or other securities at the time receivable upon the exercise of this Warrant) shall have received, or, on or after the record date fixed for the determination of eligible stockholders (a "Record Date"), shall have become entitled to receive, without payment therefor, (1) other or additional stock or other securities or property (including cash) by way of dividend, or (2) other or additional stock or other securities or property by way of stock-split, spin-off, reclassification, combination of shares or similar corporate rearrangement (other than additional shares of Common Stock of the Company issued as a stock dividend or stock-split, which events shall be covered by the terms of Section 3(b) or 3(c) hereof), then and in each such case Holder, upon the exercise hereof as provided in Section 1, shall be entitled to receive the amount of stock and other securities and property which such Holder would have received if, upon the Record Date such Holder had been the holder of the number of shares of Common Stock called for on the face

hereof and had thereafter, during the period from the Issue Date through the date of such exercise, retained such shares and/or all other or additional stock and other securities and property receivable by it as aforesaid during such period, giving effect to all adjustments called for during such period by Sections 3(a) and 3(b).

(b) *Adjustment for Reorganization, Consolidation, Merger.* In case of any reclassification or change of outstanding Company securities or of any reorganization of the Company (or any other corporation the stock or securities of which are at the time receivable upon the exercise of this Warrant) or any similar corporate reorganization on or after the date hereof, then and in each such case the Holder, upon the exercise hereof at any time after the consummation of such reclassification, change, reorganization, merger or conveyance, shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which the Holder would have been entitled upon such consummation if the Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment as provided in paragraph (a); and in each such case, the terms of this Section 3 shall be applicable to the Company securities properly receivable upon the exercise of this Warrant after such consummation.

(c) *Adjustments for Dividends in Common Stock.* In case at any time after the Issue Date the Company shall declare any dividend on the Common Stock which is payable in Common Stock, the number of Warrant Shares evidenced hereby shall be proportionately increased and the Purchase Price shall be proportionately decreased.

(d) *Stock Split and Reverse Stock Split.* If the Company at any time or from time to time after the Issue Date effects a subdivision of the outstanding Common Stock, the Purchase Price then in effect immediately before that subdivision shall be proportionately decreased, and the number of shares of Common Stock theretofore receivable upon the exercise of this Warrant shall be proportionately increased. If the Company at any time or from time to time after the Issue Date combines the outstanding shares of Common Stock into a smaller number of shares, the Purchase Price then in effect immediately before that combination shall be proportionately increased and the number of shares of Common Stock theretofore receivable upon the exercise of this Warrant shall be proportionately decreased. Each adjustment under this Section 3(d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(e) *No Dilution or Impairment.* Subject to the provisions of Section 1(a), the Company will not, by amendment of its restated articles of incorporation or through reorganization, consolidation, merger, dissolution, issue or sale of securities, sale of assets or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Warrants, but will at all times assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Warrants against dilution or other impairment.

4. Notices of Record Date. In case (a) the Company shall take a record of the holders of its Common Stock (or other stock or securities at the time receivable upon the exercise of the Warrants) for the purpose of entitling them to receive any dividend or other distribution, or any

right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, or (b) of any voluntary dissolution, liquidation or winding-up of the Company, then, and in each such case, the Company will mail or cause to be mailed to each holder of a Warrant at the time outstanding a notice specifying, as the case may be, (1) the date on which a record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (2) the date on which such reorganization, reclassification, consolidation, merger, conveyance, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such stock or securities at the time receivable upon the exercise of the Warrants) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, conveyance, dissolution, liquidation or winding-up. Such notice shall be mailed at least 10 days prior to the date therein specified.

5. Restrictions on Transfer and Compliance with Securities Act. The Holder, by acceptance hereof, agrees that this Warrant and the Warrant Shares to be issued upon exercise hereof are being acquired for investment and not with a view towards resale and that it will not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances which will not result in a violation of the Securities Act. Upon exercise of this Warrant, the holder hereof shall confirm in writing that the Warrant Shares so purchased are being acquired for investment and not with a view toward distribution or resale. Neither this Warrant nor the Warrant Shares may be assigned, disposed of, encumbered, or otherwise transferred (any such action, a "Transfer"), except (i) to an Affiliate (as that term is defined in Rule 405 as promulgated under the Securities Act), or any officer of the Holder or its Affiliates, or (ii) to any underwriter in connection with an effective registration statement ("Registration Statement") filed under the Securities Act used in connection with a public offering of the Company's common stock ("Public Offering"), provided as to (ii) that this Warrant is exercised upon such Transfer and the shares of Common Stock issued upon such exercise are sold by such underwriter as part of such Public Offering and, as to both (i) and (ii), only in accordance with and subject to the provisions of the Securities Act and the rules and regulations promulgated thereunder. If at the time of a Transfer, a Registration Statement is not in effect to register this Warrant or the Warrant Shares, the Company may require the Holder to make such representations as may be reasonably required in the opinion of counsel to the Company to permit a Transfer without such registration.

6. No Rights as Shareholder. Prior to the exercise of this Warrant, the Holder shall not be entitled to any rights of a shareholder with respect to the Warrant Shares, including without limitation the right to vote such Warrant Shares, receive dividends or other distributions thereon, exercise preemptive rights or be notified of stockholder meetings, and such Holder shall not be entitled to any notice or other communication concerning the business or affairs of the Company. However, nothing in this Section 8 shall limit the right of the holder to be provided the notices required under this Warrant.

This Warrant and all shares of Warrant Shares issued upon exercise of this Warrant (unless registered under the Securities Act) shall be stamped or imprinted with the legend indicated on the first page of this Warrant.

7. Loss or Mutilation. Upon receipt by the Company of evidence satisfactory to it (in the exercise of reasonable discretion) of the ownership of and the loss, theft, destruction or mutilation of any Warrant and (in the case of loss, theft or destruction) of indemnity satisfactory to it (in the exercise of reasonable discretion), and (in the case of mutilation) upon surrender and cancellation thereof, the Company will execute and deliver in lieu thereof a new Warrant of like tenor.

8. Reservation of Common Stock. The Company shall at all times reserve and keep available for issue upon the exercise of Warrants such number of its authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all outstanding Warrants.

9. Regulatory Approval. Notwithstanding anything to the contrary stated hereinabove, this Warrant may not be exercised for a number of shares of Common Stock that would require approval of the Office of Thrift Supervision, or any other regulatory authority having jurisdiction in the matter, until such approval is obtained.

10. Notices. All notices and other communications from the Company to the Holder of this Warrant shall be mailed by first-class registered or certified mail, postage prepaid, to the address furnished to the Company by Holder.

11. Change; Waiver. Neither this Warrant nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

12. Headings. The headings in this Warrant are for purposes of convenience in reference only, and shall not be deemed to constitute a part hereof.

13. Law Governing. This Warrant is delivered in Alabama and shall be construed and enforced in accordance with and governed by the internal laws, and not the law of conflicts, of such State.

SUPERIOR BANCORP

By: /s/ C. Stanley Bailey

Its: Chairman and Chief Executive Officer



ACCEPTED AND AGREED TO:

DURDEN ENTERPRISES, LLC

By: /s/ K. Earl Durden

Name: K. Earl Durden

Title: Managing Member

### SUBSCRIPTION FORM

(To be executed only upon exercise of Warrant)

The undersigned registered owner of this Warrant irrevocably exercised this Warrant and purchases \_\_\_\_\_ of the number of shares of the Common Stock of SUPERIOR BANCORP, a Delaware corporation, purchasable with this Warrant, and herewith makes payment therefor, all at the price and on the terms and conditions specified in this Warrant. The undersigned hereby represents and warrants that the undersigned is acquiring such shares for its own account for investment purposes only, and not for resale or with a view to distribution of such shares or any part thereof:

DATED: \_\_\_\_\_

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## Section 9: EX-10.8 (EX-10.8)

Exhibit 10.8

### AGREEMENT

**This Agreement** ("Agreement"), dated as of September 8, 2008 (the "Effective Date"), is between **Superior Bancorp**, its successors, assigns and affiliated companies (the "Company") and **James A. White** (the "Executive").

**1. Term.** The term of this Agreement shall begin on the Effective Date and end on the third anniversary of the Effective Date.

**2. Employment of Executive.** On the Effective Date Executive shall be employed as the Chief Administrative Officer of the Company and Superior Bank. Executive shall perform those duties as are customarily associated with his position and such other reasonable duties as may be assigned to him by the Company's Chief Executive Officer.

**3. Compensation and Benefits.** In consideration for Executive's services, Executive shall receive the following compensation, in each case subject to any required withholdings:

(a) Executive shall be paid in accordance with the Company's normal payroll procedures an annual base salary of \$275,000. Executive's base salary will be reviewed on December 31, 2009 and annually thereafter.

(b) Executive shall be eligible for all welfare benefit, pension benefit, and bonus and incentive compensation plans maintained by the Company on the same basis as other employees at Executive's level within the Company.

(c) Subject to approval by the Compensation Committee of the Company's Board of Directors, Executive will receive options to purchase 25,000 shares of Company's common stock upon such terms as are determined by the Compensation Committee.

(d) Executive shall receive an automobile allowance of \$500 per month.

(e) Executive's expenses of relocating his residence to Birmingham, Alabama shall be paid by the Company. Specifically, the Company will provide the Executive and his family with the use of a condominium residence in The John A. Hand Building at no cost to the Executive for up to 12 months, during which time Executive will seek local housing. The Company will reimburse the Executive for reasonable closing costs associated with the purchase of a new residence in the Birmingham, Alabama area. If the purchase of Executive's new residence is financed by Superior Bank, Executive will receive the customary employee discount of one-half the origination fee. The Company will also reimburse the Executive for the reasonable and direct moving expenses associated with the moving of personal household goods both into the Company-provided condominium and into a new residence selected by the Executive. The Company shall pay Executive a relocation bonus equal to (i) \$12,500 in the first payroll following the

Effective Date and (ii) \$12,500 in the first regular payroll following the Executive's purchase of a residence in the Birmingham, Alabama area.

**4. Termination of Executive's Employment.** (a) If, during the term of this Agreement, Executive voluntarily resigns his employment with the Company, or his employment is terminated by the Company for Cause (as defined below), then Executive shall receive unpaid salary and benefits which have accrued through the date of his termination of employment, and the Company shall have no further liability under this Agreement.

(b) If, during the term of this Agreement, Executive's employment is terminated by the Company for any reason other than for Cause (as defined below) or the Executive resigns his employment with the Company for Good Reason (as defined below), then Executive shall, within thirty (30) days from the date of termination of his employment, receive a lump sum payment, unreduced for early receipt, equal to his base salary as of the date his employment terminates for the period from the date of termination of his employment to the last day of the term of this Agreement. Provided, however, that in the event the termination of Executive's employment with the Company triggers payments to Executive under the provisions of a Change in Control Agreement with the Company, any payments due to Executive under this Agreement shall be reduced by the amount of the payments made to Executive under the Change in Control Agreement.

**5. Cause Defined.** The termination of the Executive's employment shall be for "Cause" if it is a result of:

(a) any act (including any omission or failure to act) that constitutes, on the part of the Executive, fraud, dishonesty, gross negligence, willful misconduct, incompetence, breach of fiduciary duty involving direct or indirect gain to or personal enrichment of the Executive, intentional failure to perform stated duties or to follow lawful direction of the Company's Board of Directors or the corporate officer to whom he reports, willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of this Agreement, or

(b) the conviction (from which no appeal may be or is timely taken) of the Executive of (i) a felony, or (ii) a misdemeanor involving fraud or dishonesty, or

(c) the suspension or removal of the Executive by federal or state banking regulatory authorities acting under lawful authority pursuant to provisions of federal or state law or regulation which may be in effect from time to time,

provided, however, that in the case of clauses (a) and (b) above, such conduct shall not constitute Cause unless (i) there shall have been delivered to the Executive a written notice setting forth with specificity the reasons that the Company's Board of Directors believes the Executive's conduct constitutes the criteria set forth in clause (a) or (b), as the case may be, (ii) the Executive shall have been provided the opportunity to be heard

in person by the Company's Board of Directors (with the assistance of the Executive's counsel if the Executive so desires), and (iii) after such hearing, the termination is evidenced by a resolution adopted in good faith by a majority of the members of the Company's Board of Directors.

**6. Good Reason Defined.** Executive's resignation of employment with the Company shall be for Good Reason if such resignation follows the occurrence of any of the following events:

- (a) a material diminution in the Executive's base compensation;
- (b) a material diminution in the Executive's authority, duties or responsibilities;
- (c) a material change in the geographic location at which the Executive must perform services; or
- (d) any other action or inaction that constitutes a material breach by the Company of this Agreement.

Provided, however, that the Executive must provide written notice to the Company of the occurrence of such event, within thirty (30) days after the initial occurrence of such event. The Company shall have thirty (30) days following the receipt of such written notice to remedy the condition. If the event shall not have been remedied within such thirty-day period, the Executive's employment shall terminate on the 31st day following the receipt of such written notice and Executive shall be entitled to the rights and benefits set forth in Section 4(b) of this Agreement.

**7. Non-Disclosure of Information.** The Executive acknowledges that any documents and information, whether written or not, that came or come into the Executive's possession or knowledge during the Executive's employment by the Company, including without limitation the financial and business conditions, business methods, goals, operations, sales techniques or services of the Company and its affiliates or subsidiaries as the same may exist from time to time (collectively, "Confidential Information"), are valuable, special and unique assets of the Company's business. The Executive will not, during or after the term of this Agreement: (a) disclose any written Confidential Information to any person, firm, corporation, association, or other entity not employed by or affiliated with the Company for any reason or purpose whatsoever, or (b) use any written Confidential Information for any reason other than to further the business of the Company. The Executive agrees to return immediately any written Confidential Information, and all copies thereof, upon the termination of the Executive's employment. In the event of a breach or threatened breach by the Executive of the provisions of this Section 7, in addition to all other remedies available to the Company, the Company shall be entitled to an injunction restraining the Executive from disclosing any written Confidential Information or from rendering any services to any person, firm, corporation, association or other entity to whom any written Confidential Information has been

disclosed or is threatened to be disclosed, without the need to post bond or other security. In the event of any suit or arbitration with respect to the Executive's obligations in this Section 7, the Executive shall pay all costs incurred by the Company in securing an injunction (or other equitable remedy) and/or damages, including reasonable attorneys' fees and expenses; provided, however, in the event the Company is unsuccessful in obtaining any such remedy, the Executive shall have no liability for the Company's costs in connection with such suit or arbitration.

**8. Enforcement of the Company's obligations.** In the event of any suit or arbitration with respect to the Company's obligations under this Agreement, the Company shall pay all costs incurred by the Executive in securing an injunction (or other equitable remedy) and/or damages, including reasonable attorneys' fees and expenses; provided, however, in the event the Executive is unsuccessful in obtaining any such remedy, the Company shall have no liability for the Executive's costs in connection with such suit or arbitration.

**9. Choice of Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Alabama.

**10. Amendments.** This Agreement may not be modified, amended or terminated except by a written document executed by the Executive and a duly authorized representative of the Company.

**11. Entire Agreement.** This Agreement sets forth the entire agreement between the Company and the Executive with respect to the payments provided for herein.

**12. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the Company and the Executive, their respective heirs, successors, assigns, personal representatives and affiliates; provided, however, that the Executive may not assign his right to any payment hereunder.

**13. Severability.** If any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable for any reason, then the invalidity, illegality or unenforceability of that provision shall not affect any other provision of this Agreement. The Company and the Executive intend that this Agreement shall be interpreted as if any invalid, illegal or unenforceable provision were never included herein.

JAMES A. WHITE

SUPERIOR BANCORP

/s/ James A. White

Executive

By: /s/ C. Stanley Bailey

C. Stanley Bailey  
Chairman and Chief Executive Officer

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## Section 10: EX-10.9 (EX-10.9)

Exhibit 10.9

### CHANGE IN CONTROL AGREEMENT

**CHANGE IN CONTROL AGREEMENT** (the "Agreement"), dated this 8th day of September, 2008 among Superior Bancorp, a Delaware corporation (the "Parent"), Superior Bank, a federal savings bank, and James A. White (the "Executive").

WHEREAS, the Parent's subsidiary, Superior Bank, employs the Executive in an executive position, and in consideration of such employment the Parent, Superior Bank and the Executive wish to provide for certain benefits and payments to the Executive in the event such employment is terminated following a Change in Control (as defined herein); and

WHEREAS, this Agreement shall supersede and replace any prior change in control agreement entered into between the parties hereto;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parent, Superior Bank and the Executive agree as follows:

1. **Employment Status.** Superior Bank has employed the Executive as an employee-at-will. Unless and until a Change in Control shall have occurred, nothing in this Agreement shall modify, amend or vary the terms or status of such employment or constitute any independent obligation of Superior Bank to employ, or continue to employ, the Executive.

2. **Change In Control.** For purposes of this Agreement, a "Change in Control" is hereby defined to be:

(a) a merger, consolidation or other corporate reorganization of the Parent in which the Parent does not survive, or, if it survives, the shareholders of the Parent before such transaction do not own more than 50% of, respectively: (i) the Common Stock of the surviving entity, and (ii) the combined voting power of any other outstanding securities entitled to vote on the election of directors of the surviving entity;

(b) the acquisition, other than from the Parent, by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended from time to time (the "Exchange Act") or any successor provision) of beneficial ownership of 25% or more of either: (i) the then outstanding shares of Common Stock of the Parent, or (ii) the combined voting power of the then outstanding voting securities of the Parent entitled to vote generally in the election of directors; provided, however, that neither of the following shall constitute a Change in Control:

(A) any acquisition by the Parent, any of its subsidiaries, or any employee benefit plan (or related trust) of the Parent or its subsidiaries,

or

(B) any acquisition by any corporation, entity, or group, if, following such acquisition, more than 50% of the then outstanding voting rights of such corporation, entity or group are owned, directly or indirectly, by all or

substantially all of the persons who were the owners of the Common Stock of the Parent immediately prior to such acquisition;

(c) individuals who, as of the effective date of this Agreement, constitute the Board of Directors of the Parent (the "Incumbent Parent Board") cease for any reason to constitute at least a majority of such Board of Directors (the "Parent Board"), provided that any individual becoming a director subsequent to such date, whose election, or nomination for election by the Parent's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Parent Board, shall be considered as though such individual were a member of the Incumbent Parent Board, but excluding, for this purpose, any individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Parent (as such terms are used in Rule 14a-1 of Regulation I4A promulgated under the Exchange Act or any successor provision); or

(d) approval by the shareholders of the Parent of:

(i) a complete liquidation or dissolution of the Parent, or

(ii) the sale or other disposition of all or substantially all the assets of the Parent, other than to a corporation, with respect to which immediately following such sale or other disposition more than 50%, respectively, of the then outstanding shares of common stock of such corporation, and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Common Stock of the Parent, and the outstanding voting securities of the Parent immediately prior to such sale or other disposition, in substantially the same proportions as their ownership, immediately prior to such sale or disposition, of the outstanding Common Stock of the Parent and outstanding securities of the Parent, as the case may be.

3. Termination Following Change in Control. Superior Bank or the Parent will provide or cause to be provided to the Executive the rights and benefits provided in Section 4 hereof in the event that the Executive's employment is terminated at any time within three (3) years following a Change in Control under the circumstances stated in (a) or (b) below:

(a) by Superior Bank or the Parent for reasons other than for Cause (as is defined below) or other than as a consequence of the Executive's death or disability (as defined below); or

(b) by the Executive following the occurrence of any of the following events:

(i) a material diminution in the Executive's base compensation;

- (ii) a material diminution in the Executive's authority, duties or responsibilities;
- (iii) a material change in the geographic location at which the Executive must perform services; or
- (iv) any other action or inaction that constitutes a material breach by the Parent or the Bank of this Agreement.

Provided, however, that the Executive must provide written notice to the Parent or Superior Bank, as the case may be, of the occurrence of such event, within thirty (30) days after the initial occurrence of such event. The Parent and/or Superior Bank, as the case may be, shall have thirty (30) days following the receipt of such written notice to remedy the condition. If the event shall not have been remedied within such thirty-day period, the Executive's employment shall terminate on the 31st day following the receipt of such written notice and Executive shall be entitled to the rights and benefits set forth in Section 4 of this Agreement.

(c) The termination of the Executive's employment shall be for "Cause" if it is a result of:

(i) any act (including any omission or failure to act) that constitutes, on the part of the Executive, fraud, dishonesty, gross negligence, willful misconduct, incompetence, breach of fiduciary duty involving direct or indirect gain to or personal enrichment of the Executive, intentional failure to perform stated duties or to follow lawful direction of the Superior Bank Board or the Parent Board or the corporate officer to whom he reports, willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any employment agreement with the Parent or any of its subsidiaries, or

(ii) the conviction (from which no appeal may be or is timely taken) of the Executive of (A) a felony, or (B) a misdemeanor involving fraud or dishonesty, or

(iii) the suspension or removal of the Executive by federal or state banking regulatory authorities acting under lawful authority pursuant to provisions of federal or state law or regulation which may be in effect from time to time,

provided, however, that in the case of clauses (c)(i) and (c)(ii)(B) above, such conduct shall not constitute Cause unless (I) there shall have been delivered to the Executive a written notice setting forth with specificity the reasons that the Parent Board believes the Executive's conduct constitutes the criteria set forth in clause (c)(i) or (c)(ii)(B), as the

case may be, (II) the Executive shall have been provided the opportunity to be heard in person by the Superior Bank Board (with the assistance of the Executive's counsel if the Executive so desires), and (III) after such hearing, the termination is evidenced by a resolution adopted in good faith by a majority of the members of the Superior Bank Board (other than the Executive, should he be a member of that Board).

(d) For purposes of this Agreement only, the Executive shall be deemed to be "disabled" if for medical (including psychological) reasons the Executive has been unable to fully perform his duties and services hereunder for one hundred and twenty (120) consecutive days, or an aggregate of one hundred and eighty (180) days in any period of twelve (12) consecutive months.

4. Rights and Benefits Upon Termination upon Change in Control. In the event of the termination of the Executive's employment within three (3) years following a Change in Control as provided in Section 3(a) or Section 3(b) hereof, ("Termination"), Superior Bank and the Parent agree to provide or cause to be provided to the Executive the following rights and benefits:

(a) Salary and Other Payments at Termination. The Executive shall be entitled to receive payment in cash in the amount of 2.99 times the Executive's Earnings (as defined in this Section 4(a)) in effect at the time of Termination. Payment shall be made in a lump sum to the Executive within 30 days of Termination, subject to applicable withholding requirements. For purposes of this Agreement, "Earnings" shall mean the sum of (i) the Executive's annual base salary as approved by the Parent Board, the Superior Bank Board or any committee or designee of either immediately preceding the Change in Control or at the time of Termination, whichever is higher, plus (ii) if established, any target bonus the Executive would have been entitled to receive for the calendar year in which the Change in Control occurs or the year in which the Termination occurs, whichever is higher, as if the performance targets had been achieved.

(b) Lapse of Restrictions on Benefits. Except to the extent expressly prohibited by any applicable law or regulation or the terms of any applicable benefit plans, any and all restrictions, vesting schedules or schedule of exercise provided in any agreement with the Executive shall immediately lapse, and the Executive shall be entitled immediately to receive all benefits and exercise all rights previously granted him thereunder.

(c) [Intentionally Omitted]

(d) Target Bonus. Notwithstanding any provision of any plan or arrangement, any target bonus established and earned for a year prior to the year of the Termination with respect to a Change in Control which has not been paid, shall be paid within 30 days of the Termination, and a target bonus for the year of the Termination with respect to a Change in Control shall be paid in an amount equal to 1/12th of the target bonus for the prior year times each full month in the current year prior to the month of the Executive's Termination. Payments made under this paragraph will be subject to



applicable withholding requirements.

(e) Insurance and Other Special Benefits. For three (3) years following the Executive's Termination, the Executive shall continue to be covered by the life insurance, medical insurance, dental insurance and accident and disability insurance plans of Superior Bank and the Parent and its other subsidiaries or any successor plan or program in effect at or after Termination for employees in the same class or category as was the Executive prior to his Termination. In the event, the Executive is ineligible to continue to be so covered under the terms of any such benefit program, or, in the event the Executive is eligible but the benefits applicable to the Executive under any such plan or program after Termination (the "Post-Termination Benefits") are not substantially equivalent to the benefits applicable to the Executive immediately prior to Termination, then, Superior Bank, the Parent, or its other subsidiaries or their successors, as the case may be, shall for a period of three (3) years following his Termination date, pay, provide or cause to be provided, such additional benefits as may be necessary to make the Post-Termination Benefits applicable to the Executive substantially equivalent to those in effect immediately prior to Termination, through other sources or successor plans or programs; provided however, that if during such period the Executive should enter into the employ of another company or firm which provides substantially similar benefit coverage, the Executive's participation in the comparable benefit provided hereunder shall cease. Nothing contained in this paragraph shall be deemed to require or permit termination or restriction of any the Executive's coverage under any plan or program of Superior Bank, the Parent or any of its other subsidiaries or any successor plan or program, to which the Executive is entitled under the terms of such plan or program.

Notwithstanding anything contained in this Agreement, the Executive understands that certain Post-Termination Benefits may be taxable. The Executive agrees that neither Superior Bank nor the Parent will be liable to Executive for any tax assessed to Executive in connection with the Post-Termination Benefits. Superior Bank and the Parent will cooperate with Executive to minimize or eliminate the tax effects to the Executive, provided that Superior Bank and the Parent shall not be required to take any action that would significantly increase the cost to Superior Bank or the Parent of providing such benefits. The welfare benefits that are not non-taxable medical benefits, "disability pay" or "death benefit" plans within the meaning of Treasury Regulation Section 1.409A-1(a)(5) shall be provided and administered in a manner that complies with regulations promulgated under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code").

(f) Other Benefit Plans. The specific arrangements referred to in this Section 4 are not intended to exclude the Executive's participation in other benefit plans in which the Executive currently participates or which are or may become available to the Executive, or to preclude other compensation or benefits as may be authorized by the Superior Bank Board or the Parent Board from time to time.

(g) No Duty to Mitigate. The Executive's entitlement to benefits hereunder shall not be governed by any duty to mitigate his damages by seeking further employment nor

offset by any compensation that he may receive from future employment except as set forth in the proviso in Section 4(e) hereof.

(h) Payment Obligation Absolute. Superior Bank's or the Parent's obligation to pay or cause to be paid to the Executive the benefits and to make the arrangements as provided in this Section 4 shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation, any offset, counterclaim, recoupment, defense or other right, which Superior Bank or the Parent or any of its other subsidiaries may have against him or anyone else. All amounts payable under this Section 4 shall, unless specifically stated to the contrary herein, be paid without notice or demand. Each and every payment made under this Section 4 by or on behalf of Superior Bank or the Parent shall be final, and neither Superior Bank, the Parent nor any of its subsidiaries shall, for any reason whatsoever, seek to recover all or any part of such payment from the Executive or from whoever shall be entitled thereto.

(i) If the Executive should die prior to the time all payments which would otherwise have been payable to Executive hereunder are made, such payments shall be made to Executive's estate at the time such payments otherwise would have been payable to Executive hereunder.

(j) If the Executive is terminated for Cause as defined in Section 3(c) hereof, neither Superior Bank nor the Parent nor any of its subsidiaries shall have any obligation to provide or cause to be provided to the Executive the rights and benefits described in this Section 4.

(k) Maximum Amount of Benefits and Payments. Notwithstanding anything stated above, if the benefits and payments granted to Executive after a Change in Control exceed the limits provided in the then applicable provisions of the Code so as to impose tax penalties on such benefits and payments, the amount of such benefits and payments shall be reduced to the highest amount allowed to avoid such penalties.

5. Federal Rules and Regulations. This Agreement is subject to all the laws, rules and regulations governing federal savings banks. To the extent that any provision of this Agreement is inconsistent with applicable federal laws, rules or regulations, such laws, rules or regulations shall control. In such case, such provision of the Agreement shall be invalid, but only to the extent necessary for this Agreement to comply with applicable federal laws, rules and regulations. To the extent that any provision of any other Section of this Agreement is inconsistent with any provision of this Section 5, such provision of this Section 5 shall govern.

6. Waiver. No waiver of any obligation of any party hereto under this Agreement shall be effective unless in a writing specifying such waiver and executed by the other party. No waiver of any right or remedy of any party hereto under this Agreement shall be effective unless in a writing specifying such waiver and executed by such party. A waiver by any party hereto of any of its rights or remedies under this Agreement on any occasion shall not be a bar to the exercise of the same right or remedy on any subsequent occasion or of any other right or remedy at any time.

7. Binding Effect: Benefits. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors, permitted assigns, heirs and legal representatives, including, without limitation, any corporation with which the Bank or the Parent may merge or consolidate; provided, however, that this Agreement, because it relates to personal services, cannot be assigned by the Executive.

8. Attorneys' Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.

9. Notices. Any notice or other written communication, with respect to the employment of the Executive by the Parent, or any matter related to the rights or obligations of any party under this Agreement, and to be given to a party hereto, shall be given to such party at the address for such party provided herein, or such other address as such party shall hereafter provide, in writing, to the other party.

To the Executive:

17 North 20th Street  
Birmingham, AL 35203

To the Parent:

17 North 20th Street  
Birmingham, AL 35203  
Attention: Chief Executive Officer

All such notices or communications shall be given by being personally delivered, placed in the United States mail, postage prepaid, certified or registered mail, or by being sent by prepaid air freight, overnight delivery, which is guaranteed and acknowledgement of receipt of which is required, to the party to which such notice or communication is to be given at the address for such party specified above. Each such notice shall be deemed to be effective upon receipt, if personally delivered, one business day after being so sent by air freight, or five business days after being so mailed. For purposes of this Agreement, a business day shall mean a day other than a Saturday, Sunday or federal or Alabama state holiday.

10. Integration and Amendments. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes any prior agreement or understanding, whether written or oral, relating to such subject matter. No modification or amendment to this Agreement shall be effective or binding unless in writing, specifying such modification or amendment, executed by all of the parties hereto. Notwithstanding the foregoing, in the event that the provisions of this Agreement should be amended, modified, or terminated in order to ensure compliance with Section 409A of the Code or to avoid the application of any penalties that may be imposed upon the Executive pursuant to Section 409A of the Code, the parties hereby agree that they will use their best efforts and will negotiate in good faith to cause this Agreement to be so amended, modified or terminated (and may do so retroactively) and to the extent reasonably possible, such amendment, modification or termination shall not have a material adverse economic effect on the Executive,

the Parent or Superior Bank.

11. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the construction or interpretation of this Agreement.

12. Severability. Should any section, provision, or portion of this Agreement be declared invalid or unenforceable in any jurisdiction, then such section, provision or portion shall be deemed to be (a) severable from this Agreement as to such jurisdiction (but not elsewhere) and shall not affect the remainder hereof, and (b) amended to the extent, and only to the extent, necessary to permit such section, provision or portion, as the case may be, to be valid and enforceable in such jurisdiction (but not elsewhere).

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original, but all of which together shall constitute one and the same instrument.

14. Governing Law. This Agreement is made and shall be construed under the internal laws, but not the conflicts of law provisions, of the State of Alabama subject to the provisions of Section 5 hereof.

15. Compliance with Section 409A. The parties hereto intend for all payments and benefits under this Agreement to be either outside the scope of Section 409A of the Code or to comply with its requirements as to timing of payments. Accordingly, to the extent applicable, this Agreement shall at all times be operated in accordance with the requirements of Section 409A of the Code and the regulations and rulings thereunder, including any applicable transition rules. The parties hereto shall take action, or refrain from taking any action, with respect to the payments and benefits under this Agreement that is reasonably necessary to comply with Section 409A of the Code. Notwithstanding any provision in this Agreement to the contrary, if the payment of any compensation or benefit hereunder would be subject to additional taxes and interest under Section 409A of the Code because the timing of such payment is not delayed as provided in Section 409A(a)(2)(B) of the Code, then any such payment or benefit that Executive would otherwise be entitled to during the first six (6) months following the date of Executive's termination of employment shall be accumulated and paid or provided, as applicable, on the date that is six (6) months and one day after the date of Executive's termination of employment, or such earlier date upon which such amount can be paid or provided under Section 409A of the Code without being subject to such additional taxes and interest. The preceding sentence shall apply only to the extent required to avoid Executive's incurrence of any additional tax or interest under Section 409A of the Code or the regulations or Treasury guidance promulgated thereunder.

16. Term of Agreement. This Agreement shall commence as of the date hereof, and shall continue in effect for a three-year term unless extended or terminated as hereinafter provided. On each monthly anniversary date of this Agreement, the term of this Agreement shall automatically be extended for one additional month unless prior to any such monthly anniversary date, the Parent or Superior Bank shall give written notice to the Executive to fix the term of this Agreement to a definite three-year term from the date of such notice. Upon receipt of such notice by the Executive, no further automatic extensions shall occur, and this Agreement will terminate

at the end of the fixed term. Except as provided below, this Agreement shall automatically terminate upon the termination of the Executive's employment with the Parent and its affiliates prior to the occurrence of a Change in Control. In the event a Change in Control occurs during the term of this Agreement, this Agreement will remain in effect until all obligations of the Parent and/or Superior Bank hereunder have been fulfilled, and until all benefits required hereunder have been paid to the Executive. If (a) during the term of this Agreement there is a public announcement of a proposal for a transaction that, if consummated, would constitute a Change in Control or the Parent Board receives and decides to explore an expression of interest with respect to a transaction which, if consummated, would lead to a Change in Control (either transaction being referred to herein as the "Proposed Transaction"); and (b) the Executive's employment is thereafter terminated by the Parent or Superior Bank other than for Cause or by reason of the Executive's death or disability; and (c) the Proposed Transaction is consummated within one (1) year after the date of termination of the Executive's employment, then, for the purposes of this Agreement, a Change in Control shall be deemed to have occurred during the term of this Agreement and the termination of the Executive's employment shall be deemed to have occurred following a Change in Control.

17. Non-Disclosure Covenant. Executive acknowledges that any documents and information, whether written or not, that came or come into Executive's possession or knowledge as a result of Executive's services to the Parent or Superior Bank, including without limitation the financial and business conditions, business methods, goals, operations, sales techniques or services of Parent, Superior Bank and their subsidiaries as the same may exist from time to time (collectively, "Confidential Information"), are valuable, special and unique assets of the Parent's and Superior Bank's business. Executive will not, during or after the term of this Agreement: (a) disclose any written Confidential Information to any person, firm, corporation, association, or other entity not employed by or affiliated with the Parent or Superior Bank for any reason or purpose whatsoever, or (b) use any written Confidential Information for any reason other than to further the business of the Parent or Superior Bank. Executive agrees to return immediately any written Confidential Information, and all copies thereof, upon the termination of Executive's employment (whether hereunder or otherwise). In the event of a breach or threatened breach by Executive of the provisions of this Section 17, in addition to all other remedies available to Company, Company shall be entitled to an injunction restraining Executive from disclosing any written Confidential Information or from rendering any services to any person, firm, corporation, association or other entity to whom any written Confidential Information has been disclosed or is threatened to be disclosed. In the event of any suit or arbitration with respect to Executive's obligations in this Section 17, Executive will pay all costs incurred by the Parent or Superior Bank in securing an injunction (or other equitable remedy) and/or damages, including reasonable attorneys' fees and expenses; provided, however, that if the Parent or Superior Bank is not successful in securing such an injunction, then Executive shall have no obligation to pay such fees and expenses.

18. Dispute Resolution. (a) Except as may otherwise hereinafter be provided, any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by binding arbitration in Birmingham, Alabama, in accordance with the rules of the American Arbitration Association then in effect. The agreement set forth herein to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notwithstanding the foregoing, Executive or Parent or Superior Bank shall have the right to seek enforcement by preliminary

injunction, specific performance or other equitable relief of the provisions of Section 17 hereof in any state or federal court of competent jurisdiction without regard to whether any such claim has been or can be referred to arbitration. In the event legal or arbitration proceedings are necessary for either party to enforce the terms of this Agreement, the prevailing party (by final judgment or other non-appealable order) shall be entitled to recover the cost of said legal or arbitration proceedings, including, but not limited to reasonable attorney fees.

(b) The parties hereto (i) acknowledge that they have read and understood the provisions of this Section regarding arbitration and (ii) that performance of this Agreement will be interstate commerce as that term is used in the Federal Arbitration Act, and the parties contemplate substantial interstate activity in the performance of this Agreement including, but not limited to, interstate travel, the use of interstate phone lines, the use of the U.S. mail services and other interstate courier services.

(c) Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

**EXECUTIVE:**

/s/ James A. White

James A. White

**SUPERIOR BANCORP**

By: /s/ C. Stanley Bailey

C. Stanley Bailey

Chairman and Chief Executive Officer

**SUPERIOR BANK**

By: /s/ C. Stanley Bailey

C. Stanley Bailey

Chairman and Chief Executive Officer

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## Section 11: EX-31.1 (EX-31.1)

EXHIBIT 31.1

### CERTIFICATIONS

I, C. Stanley Bailey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Superior Bancorp;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to

us by others within those entities, particularly during the period in which this report is being prepared;

- b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
- a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

By: /s/ C. Stanley Bailey  
C. Stanley Bailey  
Chief Executive Officer

A signed original of this written statement has been provided to the registrant and will be retained by the registrant and furnished to the Securities and Exchange Commission or its staff upon request.

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## Section 12: EX-31.2 (EX-31.2)

EXHIBIT 31.2

### CERTIFICATIONS

I, James A. White, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Superior Bancorp;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
- All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

By: /s/ James A. White

James A. White  
Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement has been provided to the registrant and will be retained by the registrant and furnished to the Securities and Exchange Commission or its staff upon request.

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## Section 13: EX-32.1 (EX-32.1)

EXHIBIT 32.1

SUPERIOR BANCORP  
CERTIFICATION OF PERIODIC FINANCIAL REPORT  
PURSUANT TO 18 U.S.C. SECTION 1350

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Superior Bancorp (the "Company") certifies that, to his knowledge, the Quarterly Report on Form 10-Q of the Company for the Quarter ended September 30, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 7, 2008

/s/ C. Stanley Bailey  
C. Stanley Bailey  
Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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## Section 14: EX-32.2 (EX-32.2)

EXHIBIT 32.2

SUPERIOR BANCORP  
CERTIFICATION OF PERIODIC FINANCIAL REPORT  
PURSUANT TO 18 U.S.C. SECTION 1350

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Superior Bancorp (the "Company") certifies that, to his knowledge, the Quarterly Report on Form 10-Q of the Company for the Quarter ended September 30, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 7, 2008

/s/ James A. White



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James A. White  
Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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