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EXAMINER

SMITH MACKINNON, PA

ATTORNEYS AT LAW

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JOHN P. GREELEY

March 31, 2009

Via Federal Express

Ms. Karon Beyer
Department of State
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Re: Mercantile Commercial Capital, LLC with and into Mercantile Capital Corporation

Dear Karon:

Enclosed are the following documents relating to the above-referenced corporation:

1. Original Articles of Merger submitted for filing;
2. A check in the amount of \$87.50 (\$70.00 for filing fee and \$17.50 for two certified copies of the Articles of Merger); and
3. Two photocopies of the executed Articles of Merger.

Please file the enclosed document as soon as possible and return to us two certified copies of the Articles. If you have any questions regarding the enclosed, please do not hesitate to call me at your convenience. As always, we appreciate your assistance.

Very truly yours,


John P. Greeley

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Enclosures

Copy to: G. Geoffrey Longstaff, w/o enclosure
Chairman of Mercantile Capital Corporation

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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**ARTICLES OF MERGER
OF
MERCANTILE COMMERCIAL CAPITAL, LLC
INTO
MERCANTILE CAPITAL CORPORATION**

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Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act (the "Act"), Mercantile Capital Corporation, a Florida corporation, and Mercantile Commercial Capital, LLC, a Florida limited liability company, do hereby adopt the following Articles of Merger:

FIRST: The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are Mercantile Capital Corporation and Mercantile Commercial Capital, LLC. The surviving corporation in the Merger is Mercantile Capital Corporation.

SECOND: The Plan of Merger is set forth in the Plan of Merger and Merger Agreement by and between Mercantile Capital Corporation and Mercantile Commercial Capital, LLC dated as of March 31, 2009 (the "Plan of Merger"). A copy of the Plan of Merger is attached hereto as Annex A and made a part hereof by reference as if fully set forth herein.

THIRD: The Merger shall become effective at 12:01 a.m., Orlando, Florida time, on April 1, 2009, in accordance with the provisions of Section 607.1105(b) of the Act.

FOURTH: The Plan of Merger was adopted by the shareholders of Mercantile Capital Corporation on February 11, 2009 and by the shareholders of Mercantile Commercial Capital, LLC on March 25, 2009.

[Signature page follows]

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TALLAHASSEE, FLORIDA

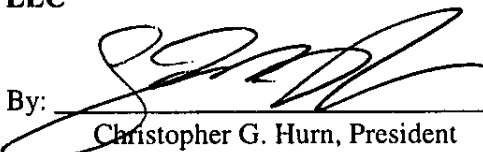
IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of March 31, 2009.

MERCANTILE CAPITAL CORPORATION

MERCANTILE COMMERCIAL CAPITAL,
LLC

By: 

G. Geoffrey Longstaff, Chairman

By: 

Christopher G. Hurn, President

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TALLAHASSEE, FLORIDA

PLAN OF MERGER AND MERGER AGREEMENT

THIS PLAN OF MERGER AND MERGER AGREEMENT, is dated this 31st day of March, 2009 (“Agreement”), by and among Mercantile Commercial Capital, LLC, a Florida limited liability company (“MCC”), and Mercantile Capital Corporation, a Florida corporation (“New MCC”).

RECITALS:

A. **Merger.** The parties desire to enter into this Agreement, which provides for MCC to merge with and into New MCC pursuant to the Florida Limited Liability Company Act and the Florida Business Corporation Act (collectively, the “Florida Act”). For purposes of this Agreement, the merger of MCC with and into New MCC is referred to in this Agreement as the “Merger.” Accordingly, the parties are entering into this Agreement to provide for the Merger.

B. **Approvals.** The Boards of Directors of each of MCC and New MCC have determined that this Agreement and the transactions contemplated hereby are in their respective best interests and the best interests of their respective unitholders or stockholders, and have approved this Agreement at meetings of each of such Boards of Directors.

NOW, THEREFORE, in consideration of their mutual promises and obligations, the parties hereto, intending to be legally bound, adopt and make this Agreement and prescribe the terms and conditions hereof and the manner and basis of carrying the Agreement into effect, as follows:

I. THE MERGER

1.1 **The Merger.** In the event that all of the conditions set forth in Article VI hereof have been satisfied or waived:

(A) **The Merger.** On the Merger Effective Date (as hereinafter defined), MCC shall merge with and into New MCC, and all of the outstanding MCC Units shall be converted in the manner set forth in Article II of this Agreement. New MCC, as successor in the Merger, is sometimes referred to in this Agreement as the “Continuing Corporation.”

(B) **Rights, etc.** On the Merger Effective Date, the Continuing Corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of a public as well as of a private nature, of MCC and all property, real, personal and mixed and all debts due on whatever account, and all other causes of action, all and every other interest of or belonging to or due to each of the corporations so merged shall be deemed to be vested in the Continuing Corporation without further act or deed. The title to any real estate, or any interest therein, vested in MCC, shall not revert or be in any way impaired by reason of the Merger, as provided by the laws of the United States.

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TALLAHASSEE,
FLORIDA

(C) **Liabilities.** On the Merger Effective Date, the Continuing Corporation shall thereupon and thereafter be responsible and liable for all the liabilities, obligations and penalties of each of the corporations so merged. All rights of creditors of MCC, all liens on the property of MCC, and all obligations due to MCC shall be unaffected by the Merger and shall be preserved unimpaired.

1.2 **Merger Effective Date; Closing.** The Merger shall become effective at the date and time set forth in the articles of merger to be filed with the Florida Secretary of State in connection with the Merger. All documents required by the terms of this Agreement to be delivered at or prior to consummation of the Merger shall be exchanged by the parties at the closing of the Merger (the "Closing"), which shall be held on the Merger Effective Date at such location and at such time as may be mutually agreed upon.

II. MERGER CONSIDERATION

2.1 **Merger Consideration.** Subject to the provisions of this Agreement, automatically, as a result of the Merger, and without any action on the part of any party or shareholder:

(A) As of the Merger Effective Date and by virtue of the Merger and without any further action on the part of the holder of any MCC Units or New MCC Common Stock

(i) each share of New MCC Common Stock issued and outstanding immediately prior to the Merger Effective Date shall remain issued and outstanding; and

(ii) each MCC Unitholder shall be entitled to receive 100 shares of New MCC Common Stock for each MCC Unit owned by such MCC Unitholder, upon the surrender of such MCC Units in the manner provided for in this Agreement.

(B) The applicable amount of New MCC Common Stock issuable in the Merger for each MCC Unit pursuant to this Section, as may be adjusted as provided herein, shall be hereinafter referred to as the "Exchange Ratio." Any MCC Units owned by MCC shall be canceled and retired upon the Merger Effective Date and no consideration shall be issued in exchange therefor.

2.2 **Shareholder Rights; Stock Transfers.** On the Merger Effective Date, holders of MCC Units shall cease to be, and shall have no rights as stockholders of MCC other than to receive the Merger consideration provided under Section 2.1 above or the amount set forth in Section 2.6 below (to the extent applicable). After the Merger Effective Date, there shall be no transfers on the stock transfer books of MCC of the MCC Units which were issued and outstanding immediately prior to the Merger Effective Date.

2.3 **Fractional Shares.** Notwithstanding any other provision hereof, no fractional shares of New MCC Common Stock, and no certificates or scrip therefor, or other evidence of ownership

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thereof, will be issued in the Merger. Instead, such fractional share interest shall be rounded to the nearest whole share of New MCC Common Stock.

2.4 Exchange Procedures. Promptly following the Merger Effective Date, New MCC shall send or cause to be sent to each former holder of record of MCC Units immediately prior to the Merger Effective Date transmittal materials for use in exchanging such holder's certificates formerly representing MCC Units ("Old Certificates") for the Merger consideration set forth in Section 2.1 above. The certificates representing the shares of New MCC Common Stock ("New Certificates") issuable in exchange for the Old Certificates, will be delivered to such stockholder only upon delivery of Old Certificates representing all of such shares (or, if any of the Old Certificates are lost, stolen or destroyed, indemnity satisfactory to New MCC, as Affidavit of Lost Certificate satisfactory to New MCC). New MCC shall issue following delivery of Old Certificates and the properly completed letter of transmittal, stock certificates within ten business days after the receipt of such completed documents. After the Merger Effective Date, to the extent required by law, former unitholders of record of MCC shall be entitled to vote at any meeting of holders of New MCC Common Stock the number of whole shares of New MCC Common Stock into which their MCC Units are converted, regardless of whether such holders have exchanged their Old Certificates for certificates representing New MCC Common Stock in accordance with the provisions of this Agreement. Notwithstanding the foregoing, New MCC shall not be liable to any former holder of MCC Units for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

2.5 Options. Any valid option to purchase MCC Units (an "MCC Option"), outstanding and unexercised immediately prior to the Merger shall be converted into an option exercisable for shares of New MCC Common Stock in an amount equal to the number of MCC Units subject to such MCC option multiplied by 100, and at an exercise price per share of New MCC Common Stock equal to the exercise price for each MCC Unit divided by 100.

2.6 Dissenters' Rights. Any holder of MCC Units who shall have perfected Dissenters' Rights in accordance with the provisions of the Florida Act (such laws are referred to as the "Dissent Provisions"), and has not effectively withdrawn or lost such holder's dissenters' rights, and shall not be converted into or represent a right to receive the New MCC Common Stock and cash issuable in the Merger but the holder thereof shall be entitled only to such rights as are granted by the Dissent Provisions. If after the Merger Effective Date a dissenting holder of MCC Units fails to perfect, or effectively withdraws or loses, such holder's dissenters right and payment for the MCC Units, New MCC shall issue and deliver the consideration to which such holder is entitled under Section 2.1 (without interest) upon surrender by such holder of the certificate or certificates representing the shares held by the holder.

2.7 Securities Act Matters. The parties intend that the New MCC Common Stock issuable in the Merger will qualify for an exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") and applicable state securities laws, pursuant to the exemption therefrom contained in Section 4(2) of the Securities Act and other exemptions contained

in such state securities laws, respectively. To cause the exemption from registration contained in the Securities Act and applicable state securities laws, the parties understand that the shares of New MCC Common Stock issuable in the Merger will be subject to restrictions upon transfer in accordance with the Securities Act and applicable state securities laws and the certificates for such shares will bear a legend to that effect.

III. ACTIONS PENDING MERGER

3.1 **Conduct of Business Prior to the Merger Effective Date.** Except as expressly contemplated or permitted by this Agreement, or as required by applicable Law, during the period from the date of this Agreement to the Merger Effective Date, MCC shall (i) conduct its business in the usual, regular and ordinary course consistent with past practice, (ii) use reasonable best efforts to maintain and preserve intact its business organization and advantageous customer and business relationships and retain the services of its key officers and employees and (iii) take no action which would reasonably be expected to adversely affect or delay its ability to consummate the transactions contemplated hereby.

IV. REPRESENTATIONS AND WARRANTIES.

4.1 MCC hereby represents and warrants to New MCC, and New MCC hereby represent and warrant to MCC as follows:

(A) **Recitals.** The facts set forth in the Recitals of this Agreement with respect to it or its subsidiary bank are true and correct.

(B) **Organization and Capital Shares.**

(i) MCC is a limited liability company duly organized, validly existing, in good standing under the laws of the State of Florida. New MCC is a Florida corporation duly organized, validly existing in good standing under the laws of the State of Florida. The sole outstanding share of New MCC consists of one share of New MCC Common Stock owned by G. Geoffrey Longstaff, which will be redeemed by New MCC for \$1.00 following the closing of the Merger.

(ii) The outstanding MCC Units are duly authorized, validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights. Except for MCC Options, there are no outstanding options, warrants, securities, subscriptions, rights or other contractual agreements or arrangements that give any person the right to purchase or otherwise receive or be issued any capital stock of it or its subsidiary or any security of any kind convertible into or exercisable or exchangeable for any shares of capital stock or Units of it or its subsidiary or to receive any benefits or rights similar to any rights enjoyed by or accruing to a holder of shares of capital stock (including any rights to participate in the equity, income or election of directors of it or its subsidiary).

(C) **Authority.** Subject to receipt of any necessary approval by its stockholders, it has the corporate power and authority to execute, deliver and perform its obligations under this Agreement, this Agreement has been authorized by all necessary corporate action by it, and is a valid and binding agreement of it enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, receivership, conservatorship and other laws of general applicability relating to or affecting creditors rights and to general equity principles.

(D) **No Conflict.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by it will not constitute (i) a breach or violation of, or a default under, any law, rule or regulation (collectively "Laws") or any judgment, decree or order (collectively "Orders"), governmental permit or license (collectively "Licenses"), or contract, agreement, indenture or instrument (collectively "Contracts") of it or to which it or any of its properties is subject or by which any of them are bound, which breach, violation or default is reasonably likely to have, either by itself or in the aggregate with one or more other events, occurrences or circumstances, a Material Adverse Effect on it; (ii) a breach or violation of, or a default under, its articles of incorporation, charter or bylaws (or other comparable corporate charter documents); (iii) result in or give any person any right of termination, cancellation, acceleration or modification in or with respect to any Orders, Licenses or Contracts, (iv) result in or give to any person any additional rights or entitlement to increased, accelerated or guaranteed payments under any Orders, Licenses or Contracts, or (v) result in the creation or imposition of any lien or encumbrance on the assets or properties of it; and the consummation of the transactions contemplated by this Agreement will not require any consent or approval under any Laws, Orders, Licenses or Contracts or, except as set forth in Schedule 4.1(F), the consent or approval of any other party to any Orders, Licenses or Contracts other than the required approvals of applicable regulatory authorities referred to in Section 6.2.

(E) **Financial Statements.** Prior to the execution of this Agreement, each party has delivered to the other true and complete copies of the following financial statements to the extent applicable:

(i) the audited balance sheets of it as of December 31, 2007 and 2006 and the related audited statements of operations, unit or stockholders' equity and cash flows for the fiscal year then ended (the "Audited Financial Statements"), together with a true and correct copy of the report on such audited information by their respective independent accountants, and all letters from such accountants with respect to the results of such audits; and

(ii) the unaudited balance sheets of it as of December 31, 2008 and the related unaudited statements of operations, unit or stockholders' equity and cash flows for the period then ended (the "Unaudited Financial Statements") (the Audited Financial Statements and the Unaudited Financial Statements are sometimes hereinafter collectively referred to as the "Financial Statements"). All such Financial Statements were prepared in accordance with generally accepted

accounting principles ("GAAP") consistently applied and fairly present its financial condition and results of operations as of the respective dates thereof and for the respective periods covered thereby.

(F) **No Undisclosed Liabilities.** Except as referred to or reserved against in its Financial Statements, there are no liabilities against, relating to or affecting it or any of its assets and properties, other than liabilities incurred in the ordinary course of business consistent with past practice which in the aggregate are not material to its business, financial condition or results of operations.

(G) **Litigation; Regulatory Action.** No litigation, proceeding, or controversy before any court or governmental agency is pending which, either by itself or in the aggregate with one or more other events, occurrences or circumstances, is reasonably likely to have a Material Adverse Effect on it and, to the best of its knowledge, no such litigation, proceedings or controversy has been threatened; it is not a party to, or subject to any order, decree, agreement, memorandum of understanding or similar arrangement with, or a commitment letter or similar submission to, or has adopted any board resolution at the request of, any federal, state or other government, governmental agency or authority charged with the supervision or regulation of financial institutions or their holding companies or the issuance of securities or engaged in the insurance of deposits or the supervision or regulation of it or its properties (collectively, the "Regulatory Authorities"); and it has not been advised by any Regulatory Authority that such authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding, commitment letter or similar submission or any such resolutions.

(H) **Compliance with Laws.** It is in material compliance, in the conduct of its business, with all applicable federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto or to the employees conducting such businesses; and it has all permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Regulatory Authorities that are required in order to permit it to conduct its business substantially as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the best of its knowledge, no suspension or cancellation of any of them is threatened; and it has not received notification or communication from any Regulatory Authority (i) asserting that it is not in material compliance with any of the statutes, regulations, or ordinances which such Regulatory Authority enforces or (ii) threatening to revoke any license, franchise, permit, or governmental authorization or (iii) threatening or contemplating revocation or limitation of, or which would have the effect of revoking or limiting, federal deposit insurance (nor, to its knowledge, do any grounds for any of the foregoing exist).

(I) **Defaults.** It is not in default under any material contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party, by which its assets, business, or operations may be bound or affected, or under which it or its assets, business, or operations receives benefits, and there has not occurred any event that, with the lapse

of time or the giving of notice or both, would constitute such a default. It is not subject to, or bound by, any Contract containing covenants which (i) limit its ability to compete in any material line of business or with any person, or (ii) involve any material restriction of geographical area in which, or method by which, it may carry on its business (other than as may be required by law or any applicable Regulatory Authority).

(J) **Articles and Bylaws.** It has previously delivered to the other party its articles of incorporation, articles of association, and bylaws (or other comparable corporate charter documents) which are true, correct and complete copies of such documents as in effect on the date of this Agreement.

(K) **Disclosure.** All material facts to its business, financial condition or results of operations have been disclosed to the other party in connection with this Agreement. No representation or warranty contained in this Agreement, and no statement contained in the Schedules hereto or in any certificate, list or other writing furnished pursuant to any provision of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein, in the light of the circumstances under which they were made, not misleading. All information disclosed by the parties pursuant to this Agreement shall be held by such parties subject to the terms and conditions of Section 5.5(C) of this Agreement.

V. COVENANTS.

5.1 **Reasonable Best Efforts.** Subject to the terms and conditions of this Agreement, each party hereto agrees to cooperate with the other and use its reasonable best efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable on its part under this Agreement or under applicable Laws to consummate and make effective the Merger and the other transactions contemplated hereby as promptly as practicable, including the satisfaction of the conditions set forth in Article VI hereof.

5.2 **Access; Information.**

(A) Each party agrees that upon reasonable notice and subject to applicable Laws relating to the exchange of information, it shall afford the other party and its officers, employees, counsel, accountants and other authorized representatives reasonable access during normal business hours throughout the period prior to the Merger Effective Date to its books, records (including tax returns and work papers of independent auditors), Contracts, properties and personnel and to such other information as the other party may reasonably request and, during such period, it shall furnish promptly to the other party all information concerning its business, properties and personnel as the other party may reasonably request.

(B) Without limiting the generality of Section 5.2(A), prior to the Merger Effective Date, upon reasonable prior notice and subject to applicable Laws relating to the exchange of information, each party's representatives shall have the right to conduct a review to determine the

accuracy of the representations and warranties of the other party and the satisfaction of the conditions to closing as provided hereunder.

(C) Each party agrees that any information obtained pursuant to this Section 5.2 (as well as any other information obtained prior to the date hereof in connection with the entering into of this Agreement) shall remain confidential (the parties agree that the confidential information shall exclude any information which is in the public domain other than through a breach of a party of this Section 5.2(C) or was known by such party prior to entering into this Agreement).

(D) No investigation by either party of the business and affairs of the other party shall affect or be deemed to modify or waive any representation, warranty, covenant or agreement in this Agreement, or the conditions to such party's obligation to consummate the transactions contemplated by this Agreement.

VI. CONDITIONS TO CONSUMMATION OF THE MERGER

Consummation of the Merger is conditioned upon:

6.1 **Unitholder Vote.** Approval of the Merger and the other transactions contemplated hereby by the required vote of the stockholders of MCC as and to the extent required by law, and the number of dissenting MCC Units shall not exceed 10% of the number of MCC Units issued and outstanding immediately prior to the Merger Effective Date.

6.2 **No Prohibition.** There not being in effect any law, order, decree or injunction of any court or agency of competent jurisdiction that restrains, enjoins or otherwise prohibits or makes illegal consummation of the Merger or which could be reasonably expected to result in a material diminution of the benefits of the transaction to New MCC or MCC, and there shall not be pending or threatened on the Merger Effective Date any action or proceeding which could reasonably be expected to result in the enactment or issuance of any such law, order, decree or injunction.

6.3 **Litigation.** No action, suit, or proceeding shall be pending or threatened before any court or administrative agency of any federal, state, local or foreign jurisdiction wherein an unfavorable judgment, order, decree, stipulation, injunction or charge could (a) prevent consummation of any of the transactions contemplated by the Agreement, (b) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (c) affect adversely the right after the Merger Effective Date of New MCC to own, operate, or control substantially all of the assets and operations of MCC and New MCC.

6.4 **Representations, Warranties and Covenants.** (i) Each of the representations and warranties contained herein of any party being true and correct as of the date of this Agreement and upon the Merger Effective Date with the same effect as though all such representations and warranties had been made on the Merger Effective Date, except (x) for any

such representations and warranties made as of a specified date, which shall be true and correct as of such date, (y) as expressly contemplated by this Agreement, or (z) for representations and warranties (other than the representations and warranties set forth in Paragraph (A) of Article IV, which shall be true and correct in all material respects) the inaccuracies of which relate to matters that, individually or in the aggregate, do not materially adversely affect the Merger and the other transactions contemplated by this Agreement; (ii) each and all of the agreements and covenants contained herein of any party to be performed and complied with pursuant to this Agreement and the other agreements contemplated hereby prior to the Merger Effective Date shall have been duly performed and complied with in all material respects, and (iii) each of MCC and New MCC shall have received a certificate signed by the Chief Executive Officer and the Chief Financial Officer of the other party dated the Merger Effective Date, to such effect.

6.5 Closing on Offering. Simultaneously with the consummation of the Merger hereunder, the investors pursuant to the Offering shall have consummated the terms of the Offering and such contributed cash and other assets as required under the Offering.

6.6 Additional Closing Conditions. In addition, the obligation of New MCC to consummate the Merger is subject to the fulfillment or written waiver by New MCC prior to the Merger Effective Date of each of the following conditions:

(A) **Securities Agreements.** New MCC shall have received a completed and executed securities agreement from each of MCC's shareholders receiving shares of New MCC Common Stock in the Merger acknowledging that such shares were not registered under the applicable provisions of the Securities Act, or any state securities laws, and are subject to the restrictions on transferability set forth in such laws.

VII. TERMINATION.

7.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Merger Effective Date, notwithstanding adoption thereof by the stockholders of MCC:

(A) by the mutual written consent of MCC and New MCC ;

(B) by New MCC or MCC if the Merger is not consummated by the 240th day subsequent to the date of this Agreement, except to the extent that the failure of the Merger then to be consummated arises out of or results from the knowing action or inaction of the party seeking to terminate pursuant to this Section 7.1(B).

(C) by MCC if there shall have been a breach of any representation, warranty, covenant or agreement on the part of New MCC contained in this Agreement such that the conditions set forth in Section 6.4 would not be satisfied and, in either such case, such breach is not

capable of being cured or, if capable of being cured, is not cured within thirty (30) days after written notice thereof is given by MCC to New MCC ; or

(D) by New MCC if there shall have been a breach of any representation, warranty, covenant or agreement on the part of MCC contained in this Agreement such that the conditions set forth in Section 6.4 would not be satisfied and, in either such case, such breach is not capable of being cured or, if capable of being cured, is not cured within thirty (30) days after written notice thereof is given by New MCC to MCC.

7.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 7.1, this Agreement (other than as set forth in Section 8.1) shall forthwith become void and there shall be no liability or obligation on the part of any party hereto except no such termination shall relieve any party hereto of any liability or damages resulting from any willful breach of this Agreement.

7.3 Amendment. This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time prior to the Merger Effective Date, whether before or after adoption of this Agreement by the stockholders of MCC; provided, however, that, after adoption of this Agreement by the stockholders of MCC, no amendment may be made which by law requires the further approval of the stockholders of MCC without such further approval. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

VIII. MISCELLANEOUS.

8.1 Survival. This Article VIII shall survive the consummation of the Merger. This Article VIII shall survive the termination of this Agreement. All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement.

8.2 Expenses.

(A) Whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement, the Merger and other transactions contemplated by this Agreement shall be paid by the party incurring such expense.

(B) Notwithstanding Section 8.2(A) hereof, in the event of any litigation or proceeding arising out of or resulting from this Agreement, the prevailing party shall be entitled to recover its costs and expenses (including reasonable attorneys fees and expenses) incurred in connection therewith.

8.3 Certain Definitions. For purposes of this Agreement, the term:

(A) “Affiliate” means, as to any person, any other person which, directly or indirectly, is in control of, is controlled by or is under common control with such person. For purposes of this definition, “control” of a person shall mean the power, directly or indirectly, either to (i) vote 10% or more of the securities having ordinary voting power for the election of directors or other management of such person or (ii) direct or cause the direction of the management and policies of such person, whether by contract or otherwise.

(B) “Business Day” means Monday through Friday of each week, except a legal holiday recognized as such by the United States federal government or any day on which banking institutions in the State of Florida are authorized or obligated by Law to close.

(C) “Code” means the Internal Revenue Code of 1986, as amended

(D) “GAAP” means generally accepted accounting principles in the United States, consistently applied over the period involved.

(E) “Knowledge” when used with respect to a party shall mean the knowledge, after due inquiry, of any “Executive Officer” of such party as such term is defined in Regulation O of the Federal Reserve Board.

(F) “Material Adverse Effect” shall mean (a) an event, occurrence or circumstance, which individually or in the aggregate, results, or is reasonably likely to result, in a decrease in the shareholders’ equity account, or results of operations, of a party, as determined in accordance with GAAP and as measured from its Unaudited Financial Statements in an amount equal to or greater than \$100,000, including, without limitation, (i) the making of any provisions for possible loan and lease losses, write-downs of other real estate and taxes, (ii) operating losses and (iii) a breach of a representation or warranty, or (b) a breach of a representation or warranty which would materially impair the party’s ability to perform its obligations under this Agreement or the consummation of the Merger and the other transactions contemplated by this Agreement; provided, however, that the term Material Adverse Effect shall not be deemed to include the impact of (a) changes in banking and similar laws of general applicability or interpretations thereof by courts or governmental authorities; and (b) changes in generally accepted accounting principles or regulatory accounting requirements applicable to banks and bank holding companies generally.

(G) “Organizational Documents” means, with respect to any person, such person’s charter, by-laws, articles or certificate of incorporation, limited liability Bank agreement, partnership agreement or other similar organizational or constituent documents. “Person” means an individual, corporation, partnership, limited liability Bank, association, trust, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Exchange Act).

8.4 **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified by like notice):

- (A) if to MCC: Mercantile Commercial Capital, LLC
 940 Centre Circle, Suite 2000
 Altamonte Springs, FL 32714
 Attention: Christopher Hurn
 Facsimile: (407) 875-3137

- (B) if to New MCC: Mercantile Capital Corporation
 940 Centre Circle, Suite 3006
 Altamonte Springs, FL 32714
 Attention: G. Geoffrey Longstaff
 Facsimile: (407) 875-3137

8.5 **Counterparts.** This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same instrument.

8.6 **Governing Law; Waiver of Jury Trial.**

(A) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of Florida, without regard to the conflict of law principles thereof.

(B) (b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.06.

8.7 Entire Understanding; No Third Party Beneficiaries. This Agreement constitutes the entire agreement of the parties hereto and thereto with reference to the transactions contemplated hereby and thereby and supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties or their officers, directors, agents, employees or representatives, with respect to the subject matter hereof. Nothing in this Agreement, expressed or implied, is intended to confer upon any Person, other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

8.9 Enforcement of the Agreement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

8.10 Interpretation. When reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein," "hereby" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "or" shall not be exclusive. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

8.11 Assignment. This Agreement shall not be assignable by operation of law or otherwise without the prior written consent of each of the other parties.

8.12 Effect. No provision of this Agreement shall be construed to require MCC or New MCC or any Affiliates or directors of any of them to take any action or omit to take any action which action or omission would violate applicable Law.

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

MERCANTILE COMMERCIAL CAPITAL, LLC

By: /s/ Christopher G. Hurn
Christopher G. Hurn, President

MERCANTILE CAPITAL CORPORATION

By: /s/ G. Geoffrey Longstaff
G. Geoffrey Longstaff
Chairman of the Board