

P14000036968

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Effective:
11-30-15

Merger

FILED
15 NOV 23 PM 2:01
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

NOV 24 2015

D CONNELL

IGLER | PEARLMAN P.A.

ATTORNEYS AT LAW

November 20, 2015

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Re: Articles of Merger and Amended and Restated Articles of Incorporation

Greetings:

Enclosed are a number of documents related to a series of corporate actions to be taken by Calusa Financial Corporation, Inc. (Document Number P06000094935), Calusa Bank (Document Number P14000036968), CNB Property Holdings 1, LLC (Document Number L11000041086), and CNB Property Holdings 2, LLC (Document Number L11000041074).

The Florida Office of Financial Regulation ("OFR") is aware of and has approved the transactions as required. Our contact at the OFR is Bruce Ricca, Chief of the Bureau of Credit Union Regulation. Mr. Ricca can be reached at (850) 410-9528 or Bruce.Ricca@flofr.com should you have any questions or need any information from the OFR.

We would request that your office file the following documents in the following order:

1. Articles of Merger of Calusa Financial Corporation, Inc. (surviving) and CNB Property Holdings 1, LLC (merging) to be effective at 4:57 p.m. on November 30, 2015.
2. Articles of Merger of Calusa Financial Corporation, Inc. (surviving) and CNB Property Holdings 2, LLC (merging) to be effective at 4:57 p.m. on November 30, 2015.
3. Amended and Restated Articles of Incorporation of Calusa Successor Bank (formerly known as Calusa Financial Corporation, Inc.) as approved by the OFR and to be effective at 4:58 p.m. on November 30, 2015.
4. Articles of Merger of Calusa Bank (surviving) and Calusa Successor Bank (merging) to be effective at 4:59 p.m. on November 30, 2015.
5. Articles of Dissolution of Calusa Bank to be effective at 5:01 p.m. on November 30, 2015.

November 20, 2015

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Also enclosed is our firm's check for \$498.75 representing \$280.00 for the requisite filing fees and \$218.75 for five certified copies of each document. We have also enclosed five copies of each document for the certifications.

We thank you in advance for your assistance in this matter. If you have any questions about these filings or need any additional information, please call me at (850) 878-2411.

Sincerely,

IGLER AND PEARLMAN, P.A.

A handwritten signature in black ink, appearing to read 'Richard Pearlman', with a long horizontal flourish extending to the right.

Richard Pearlman

Enclosures

cc: Bruce Ricca, Chief, Bureau of Credit Union Regulation, Florida Office of Financial Regulation
Michael M. Bell, Esq.





FLORIDA OFFICE OF FINANCIAL REGULATION

www.FLOFR.com

DREW J. BREAKSPEAR COMMISSIONER

The Commissioner of the Office of Financial Regulation ("OFR") approved on September 14, 2015, the merger of Calusa Bank, Punta Gorda, Charlotte County, Florida, with and into Achieva Credit Union, Dunedin, Pinellas County, Florida. Prior to the merger, Calusa Financial Corporation intends to file "Amended and Restated Articles of Incorporation" to become a successor institution (Calusa Successor Bank) in accordance with Section 658.40(4), Florida Statutes. Calusa Successor Bank will subsequently merge with and into Calusa Bank, prior to the merger with and into Achieva Credit Union. The OFR does not object to the filing with the Department of State of the attached Amended and Restated Articles of Incorporation for Calusa Financial Corporation or the subsequent merger of Calusa Successor Bank with and into Calusa Bank.


Bruce Ricca, Chief
Bureau of Credit Union Regulation


Date

**ARTICLES OF MERGER
OF
CALUSA BANK
(the surviving corporation)
AND
CALUSA SUCCESSOR BANK
(the merging corporation)**

FILED
15 NOV 23 PM 2:01
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The following Articles of Merger are submitted in accordance with the Florida Business Corporation Act, pursuant to Section 607.1105, *Florida Statutes*.

ARTICLE I

The surviving corporation is Calusa Bank, a Florida corporation with document number P14000036968.

ARTICLE II

The merging corporation is Calusa Successor Bank (formerly known as Calusa Financial Corporation, Inc.), a Florida corporation with document number P06000094935.

ARTICLE III

The Plan of Merger is attached as an Agreement and Plan of Merger dated April 30, 2015.

ARTICLE IV

The merger shall become effective at 4:59 p.m. on November 30, 2015.

ARTICLE V

The Plan of Merger was adopted by the Board of Directors of the surviving corporation on April 30, 2015, and by the sole shareholder of the surviving corporation on April 30, 2015. The number of votes cast for approval was sufficient for approval.

ARTICLE VI

The Plan of Merger was adopted by the Board of Directors of the merging corporation on April 20, 2015, and by the shareholders of the merging corporation on October 20, 2015. The number of votes cast for approval was sufficient for approval.

In witness whereof, the undersigned executed the foregoing Articles of Merger on this 6th day of November, 2015.

CALUSA BANK

By: _____

Lewis S. Albert
Chairman of the Board and
Chief Executive Officer

CALUSA FINANCIAL CORPORATION

By: _____

Lewis S. Albert
Chairman of the Board and
Chief Executive Officer

**AGREEMENT AND PLAN OF MERGER
BETWEEN
CALUSA FINANCIAL CORPORATION, INC.
AND
CALUSA BANK**

THIS AGREEMENT AND PLAN OF MERGER (the "Bank Merger Agreement") dated as of April 30, 2015, is made by and between Calusa Financial Corporation, Inc. ("CFC"), a Florida corporation, and Calusa Bank (the "Bank"), a Florida-chartered bank.

RECITALS:

WHEREAS, the boards of directors of CFC and the Bank have approved and authorized the execution and delivery of this Bank Merger Agreement; and

WHEREAS, the boards of directors of CFC and the Bank each believe this Bank Merger Agreement and the transactions contemplated hereby are in the best interest of the respective shareholders of CFC and the Bank.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto, intending to be legally bound, have agreed as follows:

**ARTICLE 1
THE MERGER**

Section 1.1 The Merger.

(a) Provided that this Bank Merger Agreement shall not have been terminated in accordance with its express terms, upon the terms and subject to the conditions of this Bank Merger Agreement and in accordance with the applicable provisions of the Florida law, at the Effective Time (as defined below) CFC shall be merged with and into the Bank pursuant to the provisions of, and with the effects provided under, Florida law, the separate existence of CFC shall cease and the Bank will be the surviving corporation and will continue its corporate existence under Florida law. As a result of the Bank Merger, each share of CFC common stock issued and outstanding immediately prior to the Effective Time, other than shares held by shareholders of CFC who or which properly elect to exercise his, her or its right to dissent under Section 607.1301, *Florida Statutes* ("Dissenting Shares"), will be converted into the right to receive one share of Bank common stock for each share of CFC common stock then held by such shareholder. Dissenting Shares shall be entitled to such sums as are provided under Florida law.

(b) CFC and the Bank agree to execute and deliver articles of merger (the "Articles of Merger") (in substantially the form attached as Appendix A hereto with such changes and modifications as shall be appropriate to reflect the final structure and regulatory approval process appropriate for the Bank Merger and the Achivea Merger [as defined below]), the terms of which shall be consistent with and subject to the terms of this Bank Merger Agreement, in order to facilitate the processing and approval of the applications contemplated in Section 2.3.

(c) The Bank has entered into an Agreement and Plan of Merger with CFC and Achieva Credit Union ("Achieva") dated as of the date hereof (the "Achieva Merger Agreement"), pursuant to which the Bank will be merged with and into Achieva immediately following the Bank Merger (the "Achieva Merger").

(d) The Bank and CFC agree to amend this Bank Merger Agreement as shall be appropriate to reflect the final structure and regulatory approval process appropriate for the Bank Merger and the Achieva Merger, in order to facilitate the processing and approval of the applications contemplated in Section 2.3, subject to any limitations or requirements of Florida or Federal law.

Section 1.2 Effective Time; Closing.

Provided that this Bank Merger Agreement shall not have been terminated in accordance with its express terms, the closing of the Bank Merger (the "Closing") shall occur on a date that is mutually agreed by the parties following the satisfaction or waiver in writing of all of the conditions set forth in Article 2 hereof. The Bank Merger shall be effective on the date and at the time designated in the Articles of Merger as filed with the Florida Secretary of State (the "Effective Time").

Section 1.3 Articles of Incorporation and Bylaws. At the Effective Time, the articles of incorporation and bylaws of the Bank, as in effect immediately prior to the Effective Time, shall be the articles of incorporation and bylaws of the Bank (as the surviving corporation) until thereafter amended in accordance with applicable law.

Section 1.4 Board of Directors and Officers. From and after the Effective Time, until duly changed in compliance with any applicable law and organizational documents of the Bank (as the surviving corporation), the board of directors and officers of the Bank (as the surviving corporation) shall be the board of directors and officers of the Bank in place immediately prior to the Effective Time.

Section 1.5 Rights as Shareholders. At the Effective Time, holders of CFC common stock shall cease to be shareholders of CFC and shall have no rights as shareholders of CFC other than the right to receive one share of Bank common stock for each share of CFC common stock held by any such holder, or such rights associated with dissenting shares in accordance with Florida law.

Section 1.6 Treatment of CFC Options and Warrants. Each outstanding and unexercised CFC stock option or warrant, and any related plans, as of the Effective Time shall be converted into a Bank stock option or warrant, on the same terms as such CFC stock options and warrants, and any such related plans shall be assumed by the Bank.

Section 1.7 Representations and Warranties.

(a) CFC is a corporation, duly organized, validly existing and in good standing under the laws of the State of Florida. CFC has all requisite corporate power and authority (including all licenses, franchises, permits and other governmental authorizations as are

legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and carry out its obligations under this Bank Merger Agreement.

(b) The Bank is a state bank, duly organized, validly existing and in good standing under the laws of the State of Florida. The Bank has all requisite corporate power and authority (including all licenses, franchises, permits and other governmental authorizations as are legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and carry out its obligations under this Bank Merger Agreement.

ARTICLE 2

CONDITIONS PRECEDENT

The obligations of CFC and the Bank to consummate the Bank Merger are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Bank or CFC, in whole or in part):

Section 2.1 CFC's and the Bank's Performance. Each of CFC and the Bank shall have performed or complied in all material respects with all of the covenants and obligations to be performed or complied with by it under the terms of this Bank Merger Agreement on or prior to the Closing.

Section 2.2 No Proceedings. Since the date hereof, there must not have been commenced or threatened against CFC or the Bank any proceeding: (a) involving any challenge to, or seeking damages or other relief in connection with, the Bank Merger or the Merger; or (b) that may have the effect of preventing, delaying, making illegal or otherwise interfering with the Bank Merger or the Merger.

Section 2.3 Consents and Approvals. Any consents or approvals required to be secured by CFC or the Bank by the terms of this Bank Merger Agreement or applicable law shall have been obtained and shall be reasonably satisfactory to CFC and the Bank, and all applicable waiting periods shall have expired.

Section 2.4 No Prohibition. Neither the consummation nor the performance of either of the Bank Merger or the Merger will, directly or indirectly (with or without notice or lapse of time), contravene, or conflict with or result in a violation of any applicable law, regulation or court or regulatory order.

Section 2.5 Shareholder Approval. This Bank Merger Agreement, the Achieva Merger Agreement, the Bank Merger, and the Merger shall have been duly and validly approved by CFC's shareholders and CFC, in its capacity as the sole shareholder of the Bank. In that regard, CFC shall cause a meeting of its shareholders for the purpose of acting upon this Bank Merger Agreement, the Achieva Merger Agreement, the Bank Merger, and the Merger to be held at the earliest practicable date after the date hereof. CFC shall send to its shareholders, at least thirty (30) days prior to such meeting, notice of such meeting together with a proxy statement, which shall include a copy of this Bank Merger Agreement, the Achieva Merger Agreement, and

a copy of the portions of the Florida law governing the rights of shareholders seeking dissenter's rights.

ARTICLE 3

TERMINATION

Section 3.1 Reasons for Termination and Abandonment. This Bank Merger Agreement, by prompt written notice given to the other parties prior to or at the Closing, may be terminated:

- (a) by mutual consent of the boards of directors of CFC and the Bank;
- (b) automatically upon termination of the Achieva Merger Agreement;
- (c) by either CFC or by the Bank if:
 - (i) any of the conditions in Article 2 has not been satisfied and CFC and the Bank have not waived such condition on or before the Closing; or
 - (ii) the other commits a willful breach of its obligations under this Bank Merger Agreement and the act or omission that constitutes a willful breach is not or cannot be cured within ten (10) business days after receipt by the breaching party of written demand for cure by the non-breaching party.
- (d) by CFC, if its shareholders fail to approve this Bank Merger Agreement, the Achieva Merger Agreement, the Bank Merger, and the Merger, on or before January 31, 2016;
- (e) by the Bank, if CFC, in its capacity as the sole shareholder of the Bank, fails to approve this Bank Merger Agreement, the Achieva Merger Agreement, the Bank Merger, and the Merger, on or before January 31, 2016; or
- (f) by either CFC or the Bank, if the Closing has not occurred (other than through the failure of any party seeking to terminate this Bank Merger Agreement to comply fully with its obligations under this Bank Merger Agreement) on or before January 31, 2016.

Section 3.2 Effect of Termination. If this Bank Merger Agreement is terminated pursuant to Section 3.1 of this Bank Merger Agreement, this Bank Merger Agreement shall forthwith become void, there shall be no liability under this Bank Merger Agreement on the part of CFC or the Bank, and all rights and obligations of each party hereto shall cease; *provided, however*, that, nothing herein shall relieve any party from liability for the breach of any of its covenants or agreements set forth in this Bank Merger Agreement.

Section 3.3 Expenses. All expenses incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Bank Merger Agreement, and all other matters related to the Bank Merger or the Merger shall be paid by the party incurring or otherwise responsible for such expenses whether or not the Bank Merger or the Merger are consummated.

ARTICLE 4

MISCELLANEOUS

Section 4.1 Governing Law. All questions concerning the construction, validity and interpretation of this Bank Merger Agreement and the performance of the obligations imposed by this Bank Merger Agreement shall be governed by the internal laws of the State of Florida applicable to contracts made and wholly to be performed in such state without regard to conflicts of laws.

Section 4.2 Jurisdiction and Service of Process. Any action or proceeding seeking to enforce, challenge or avoid any provision of, or based on any right arising out of, this Bank Merger Agreement shall be brought only in the courts of the State of Florida, County of Charlotte, and each of the parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to jurisdiction or venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

Section 4.3 Assignments, Successors and No Third Party Rights. None of the parties to this Bank Merger Agreement may assign any of its rights under this Bank Merger Agreement without the prior written consent of the other party. Subject to the preceding sentence, this Bank Merger Agreement and every representation, warranty, covenant, agreement and provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing expressed or referred to in this Bank Merger Agreement will be construed to give any Person (as defined in the Achieva Merger Agreement) other than the parties to this Bank Merger Agreement any legal or equitable right, remedy or claim under or with respect to this Bank Merger Agreement or any provision of this Bank Merger Agreement.

Section 4.4 Waiver. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Bank Merger Agreement or the documents referred to in this Bank Merger Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law: (a) no claim or right arising out of this Bank Merger Agreement or the documents referred to in this Bank Merger Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Bank Merger Agreement or the documents referred to in this Bank Merger Agreement.

Section 4.5 Notices. All notices, consents, waivers and other communications under this Bank Merger Agreement must be in writing (which shall include telecopier communication) and will be deemed to have been duly given if delivered by hand or by nationally recognized overnight delivery service (receipt requested), mailed by registered or certified U.S. mail (return receipt requested) postage prepaid, or via email, if confirmed immediately thereafter by also

mailing a copy of any notice, request or other communication by U.S. mail as provided in this Section:

If to the Bank, to:

Calusa Bank
Attention: Lewis S. Albert
3105 Tamiami Trail
Punta Gorda, Florida 33950
Telephone: (941) 505-4300
Email: lalbert@calusabank.com

If to CFC, to:

Calusa Financial Corporation, Inc.
Attention: Lewis S. Albert
3105 Tamiami Trail
Punta Gorda, Florida 33950
Telephone: (941) 505-4300
Email: lalbert@calusabank.com

or to such other place as the either party shall furnish to the other in writing. Except as otherwise provided herein, all such notices, consents, waivers and other communications shall be effective: (a) if delivered by hand, when delivered; (b) if mailed in the manner provided in this Section, five (5) business days after deposit with the United States Postal Service; (c) if delivered by overnight express delivery service, on the next business day after deposit with such service; and (d) if by email, on the next business day if also confirmed by mail in the manner provided in this Section.

Section 4.6 Entire Bank Merger Agreement. This Bank Merger Agreement and any documents executed by the parties pursuant to this Bank Merger Agreement and referred to herein constitute the entire understanding and agreement of the parties hereto and supersede all other prior agreements and understandings, written or oral, relating to such subject matter between the parties.

Section 4.7 Modification. This Bank Merger Agreement may not be amended except by a written agreement signed by each of the parties hereto. Without limiting the foregoing, the parties may by written agreement signed by each of them: (a) extend the time for the performance of any of the obligations or other acts of the parties hereto; (b) waive any inaccuracies in the representations or warranties contained in this Bank Merger Agreement or in any document delivered pursuant to this Bank Merger Agreement; and (c) waive compliance with or modify, amend or supplement any of the conditions, covenants, agreements, representations or warranties contained in this Bank Merger Agreement or waive or modify the performance of any of the obligations of any of the parties hereto, which are for the benefit of the waiving party.

Section 4.8 Severability. Whenever possible, each provision of this Bank Merger Agreement shall be interpreted in such manner as to be effective and valid under applicable law,

but if any provision of this Bank Merger Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Bank Merger Agreement unless the consummation of the transactions contemplated hereby is adversely affected thereby.

Section 4.9 Further Assurances. The parties agree: (a) to furnish upon request to each other such further information; (b) to execute and deliver to each other such other documents; and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Bank Merger Agreement and the documents referred to in this Bank Merger Agreement.

Section 4.10 Survival. The representations, warranties and covenants contained herein shall terminate and be of no further effect after the Effective Time.


Section 4.11 Specific Performance. The parties acknowledge and agree that irreparable damage would occur if any provision of this Bank Merger Agreement were not performed by a party in accordance with the terms hereof and that any party shall be entitled to specific performance of the terms hereof.

Section 4.12 Counterparts; Facsimile/PDF Signatures. This Bank Merger Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Bank Merger Agreement may be executed and accepted by facsimile or portable data file (pdf) signature and any such signature shall be of the same force and effect as an original signature.


[remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Bank Merger Agreement to be executed by their respective officers on the day and year first written above.

CALUSA FINANCIAL CORPORATION, INC.

By: 
Name: TODD KATZ
Its: PRESIDENT

CALUSA BANK

By: 
Name: TODD KATZ
Its: PRESIDENT

APPENDIX A

ARTICLES OF MERGER

The following Articles of Merger are submitted in accordance with the Florida Business Corporation Act, pursuant to Section 607.1105, *Florida Statutes*.

ARTICLE I

The surviving corporation is Calusa Bank, a Florida corporation with document number P14000036968.

ARTICLE II

The merging corporation is Calusa Financial Corporation, Inc., a Florida corporation with document number P06000094935.

ARTICLE III

The Plan of Merger is attached as an Agreement and Plan of Merger dated April __, 2015.

ARTICLE IV

The merger shall become effective at _____ on _____, 2015.

ARTICLE V

The Plan of Merger was adopted by the Board of Directors of the surviving corporation on April 29, 2015, and by the sole shareholder of the surviving corporation on April 29, 2015.

ARTICLE VI

The Plan of Merger was adopted by the Board of Directors of the merging corporation on April 29, 2015, and by the shareholders of the merging corporation on _____, 2015.

In witness whereof, the undersigned executed the foregoing Articles of Merger this ____ day of _____, 2015.

CALUSA BANK

CALUSA FINANCIAL CORPORATION, INC.

By: _____
Name
Title

By: _____
Name
Title