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Effective date 4-25-09 Merspli Mersis 4-24-09





"April 20, 2009"

Mr. Bruce Ricca
Office of Financial Regulation, State of Florida
Fletcher Building 6th Floor
200 East Gaines Street
Tallahassee, Florida 32399-0371

Re: Merger Application for First Community Bank of Southwest Florida and Community Bank of Cape Coral

Dear Mr. Ricca:

Thank you for your approval of the merger of Community Bank of Cape Coral into First Community Bank of Southwest Florida, which will be consummated effective April 25, 2009. In accordance with the March 23, 2009 Final Order of Approval, please find enclosed the following:

- 1. The approval of the Federal Deposit Insurance Corporation is attached hereto.
- 2. The Articles of Merger and articles of incorporation of First Community Bank of Southwest Florida are attached hereto, along with a check in the amount of \$122.50 payable to the Florida Secretary of State.
- 3. The Board of Directors of First Community Bank of Southwest Florida is composed of those people identified in Exhibit 1 of the Plan of Merger and Merger Agreement.
- 4. The Executive Officers of First Community Bank of Southwest Florida is composed of those people identified in Exhibit 2 of the Plan of Merger and Merger Agreement.
- 5. There are no agreements or contracts between the resulting bank and any company, partnership, or other business entity owned or controlled by any of the directors, officers or affiliated parties of the resulting bank, prior to execution of any such agreement or the transaction of any business between the signatory parties under the terms of such agreement.
- 6. Please find enclosed the original charter of Community Bank of Cape Coral

If you have any further questions, please do not hesitate to contact me.

Yours truly,

David Carleton Hall

President

Proposed 22/09

INTEROFFICE COMMUNICATION



OFFICE OF FINANCIAL REGULATION

DATE:

April 23, 2009 -

TO:

Karon Beyer, Chief

Department of State
Division of Corporations

FROM:

Bruce Ricca, Office of Financial Regulation

SUBJECT:

Merger of Community Bank of Cape Coral with and into

First Community Bank of Southwest Florida and under the

title of First Community Bank of Southwest Florida

Please file the attached "Merger Documents" for the above-referenced institutions, using 12:01 a. m., April 25, 2009, as the effective date for the merger.

Please make the following distribution of certified copies of the merger documents:

(1) One copy to:

Bruce Ricca

Office of Financial Regulation

200 East Gaines Street

Fletcher Building, Sixth Floor Tallahassee, Florida 32399-0371

(2) One copy to:

Mr. David C. Hall

First Community Bank of Southwest Florida

1565 Red Cedar Drive Fort Myers, Florida 33907

(3) One copy to:

Mr. Tim Flono

(uncertified)

Federal Deposit Insurance Corporation

10 Tenth Street, N. E.

Suite 800

Atlanta, Georgia 30309-3906

Also attached is a check that represents payment of the filing fees, charter tax and certified copies. If you have any questions, please call 410-9528.

OFFICE OF FINANCIAL REGULATION



Having been approved by the Acting Commissioner of the Office of Financial Regulation on March 23, 2009, to merge Community Bank of Cape Coral, Cape Coral, Lee County, Florida, with and into First Community Bank of Southwest Florida, Fort Myers, Lee County, Florida, and being satisfied that the conditions of approval have been met, I hereby approve for filing with the Department of State, the attached "Plan of Merger and Merger Agreement" which contains the Articles of Incorporation of First Community Bank of Southwest Florida (the resulting bank), so that effective at 12:01 a.m., April 25, 2009, they shall read as stated herein.

Signed on this 23RD day of April 2009.

Director, Division of Financial Institutions

SOUTHWEST FLORIDA COMMUNITY BANCORP, INC.

As the owner of all of the shares of common stock of First Community Bank of Southwest Florida, Southwest Florida Community Bancorp, Inc. hereby authorizes, adopts, and approves the Plan of Merger and Merger Agreement dated December 29, 2008, between First Community Bank of Southwest Florida and Community Bank of Cape Coral. This certificate has been signed as of December 29, 2008.

Southwest Florida Community Bancorp, Inc.

By:

David Carleton Hall

President and Chief Operating Officer

SOUTHWEST FLORIDA COMMUNITY BANCORP, INC.

As the owner of 98.98% of the shares of common stock of Community Bank of Cape Coral, Southwest Florida Community Bancorp, Inc. hereby authorizes, adopts, and approves the Plan of Merger and Merger Agreement dated December 29, 2008, between First Community Bank of Southwest Florida and Community Bank of Cape Coral. This certificate has been signed as of December 29, 2008.

Southwest Florida Community Bancorp, Inc.

By:

David Carleton Hall

President and Chief Operating Officer

ARTICLES OF MERGER OF COMMUNITY BANK OF CAPE CORAL INTO FIRST COMMUNITY BANK OF SOUTHWEST FLORIDA

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SECRETARY OF STATE
TALLAHASSEE. FLORIDA

Community Bank of Cape Coral and First Community Bank of Southwest Florida do hereby adopt the following Articles of Merger:

FIRST: The names of the corporation which are parties to the merger (the "Merger") contemplated by these Articles of Merger are Community Bank of Cape Coral and First Community Bank of Southwest Florida. The surviving corporation in the Merger is First Community Bank of Southwest Florida, which shall continue to conduct its business following effectiveness of the Merger under the name "First Community Bank of Southwest Florida."

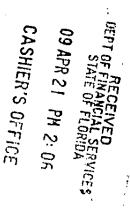
SECOND: The Plan of Merger is set forth in the Plan of Merger and Merger Agreement dated December 29, 2008, by and among First Community Bank of Southwest Florida and Community Bank of Cape Coral. A copy of the Plan of Merger is attached hereto and made a part hereof by reference as if fully set forth herein.

THIRD: The Merger shall become effective at 12.01 a.m., Fort Myers, Florida time, on April 25, 2009.

FOURTH: The Merger Agreement was adopted by the shareholders of Community Bank of Cape Coral on December 29, 2008 and by the sole shareholder First Community Bank of Southwest Florida on December 29, 2008.

FIFTH: The Articles of Incorporation of First Community Bank of Southwest Florida shall serve as the Articles of Incorporation of the surviving corporation, until amended thereafter in accordance with applicable law.

[Signature page follows]



IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of April 27, 2009.

COMMUNITY BANK OF CAPE CORAL

J. Steven Root

President and Chief Executive

Officer

FIRST COMMUNITY BANK OF

SOUTHWEST FLORIDA

By: David Caffeton Hall

President and Chief Operating

Officer

PLAN OF MERGER AND MERGER AGREEMENT

THIS PLAN OF MERGER AND MERGER AGREEMENT, is dated this 29th day of December, 2008 ("Agreement"), by and among Community Bank of Cape Coral, a Florida banking corporation (the "Bank"), First Community Bank of Southwest Florida, a Florida banking corporation ("First Community Bank"), and Southwest Florida Community Bancorp, Inc., a Florida corporation ("BHC").

RECITALS:

- A. **Bank.** Bank is a Florida banking corporation duly organized and existing in good standing under the laws of the State of Florida, with its principal executive offices located in Cape Coral, Florida. As of the date hereof, Bank's authorized capital stock consisted of 3,000,000 shares of common stock, par value \$5.00 per share ("Bank Common Stock"), of which 985,000 shares of Bank Common Stock are outstanding (938,938 of which are owned by BHC).
- B. BHC. BHC is a Florida corporation duly organized and existing in good standing under the laws of the State of Florida with its principal executive offices located in Fort Myers, Florida. As of the date hereof, BHC's authorized capital stock consisted of 3,000,000 shares of common stock, par value \$.01 per share ("BHC Common Stock"), of which 1,823,200 shares are outstanding, and 1,000,000 shares of preferred stock, par value \$.01 per share, none of which shares are outstanding.
- C. First Community Bank. First Community Bank is a Florida banking corporation duly organized and existing in good standing under the laws of the State of Florida, with its principal executive offices located in Fort Myers, Florida. As of the date hereof, First Community Bank's authorized capital stock consisted of 2,000,000 shares of common stock, par value \$5.00 per share, of which 760,000 shares of such common stock are outstanding (all of which are owned by BHC).
- D. **Merger.** Pursuant to this Agreement, the Bank shall merge with and into First Community Bank. For purposes of this Agreement, the foregoing Merger is referred to as the "Merger."
- E. **Intention of the Parties.** It is the intention of the parties to this Agreement that the Merger shall qualify as a tax free reorganization under Section 368 of the Internal Revenue Code of 1986, as amended (the "Code").
- F. Approvals. The Boards of Directors of each of BHC and the Bank have determined that this Agreement and the transactions contemplated hereby are in their respective best interests and the best interests of their respective 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), the Bank shall merge with and into First Community Bank, and all of the outstanding shares of capital stock of the Bank shall be converted in the manner set forth in Article II of this Agreement. The name of the Bank following consummation of the Merger shall continue as "First Community Bank of Southwest Florida." First Community Bank, following consummation of 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 the Bank and First Community Bank, 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 any of such corporations, shall not revert or be in any way impaired by reason of the Merger, as provided by the laws of the State of 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 the Bank, all liens on the property of the Bank, and all obligations due to the Bank shall be unaffected by the Merger and shall be preserved unimpaired.

(D) Articles of Incorporation; Bylaws; Directors; Officers; Offices.

- (i) The articles of incorporation and bylaws of First Community Bank following the Merger Effective Date, shall be those in effect immediately prior to the Merger Effective Date and until such documents are changed in accordance with applicable law.
- (ii) The directors of First Community Bank following the Merger Effective Date, who shall hold office until such time as their successors are elected and qualified, shall consist of those persons set forth on Exhibit 1, which also sets forth the name and address of each such individual.

- (iii) The officers of First Community Bank following the Merger Effective Date, who shall hold office until such time as their successors are elected and qualified, shall consist of those persons who were officers of First Community Bank immediately prior to the Merger Effective Date. The name and address of each executive officer of First Community Bank is set forth on Exhibit 2.
- (iv) The banking offices of First Community Bank following the Merger Effective Date shall be those banking offices of First Community Bank immediately prior to the Merger Effective Date. The name and location of the main office and each existing and proposed branch office of First Community Bank is set forth on Exhibit 3.
- 1.2 Merger Effective Date; Closing. The Merger shall become effective at the date and time set forth in the certificate of merger issued by the Florida Office of Financial Regulation (the "Florida Department") with respect to the Merger (such time is hereinafter referred to as the "Merger Effective Date"). The parties shall utilize their best efforts to cause the Merger to be effective within thirty (30) days after satisfaction of all conditions set forth in Article VI, including, without limitation, the receipt of the regulatory approvals (and the expiration of all waiting periods) referred to in Section 6.2. 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.
- 1.3 **Trust Powers**. At the Merger Effective Date, no direct or indirect subsidiary bank of BHC will exercise trust powers.

. 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) Outstanding Bank and BHC Common Stock.

- (i) Subject to the provisions of this Agreement, 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 shares of the Bank Common Stock or BHC Common Stock
- (a) each share of BHC Common Stock issued and outstanding immediately prior to the Merger Effective Date shall remain issued and outstanding; and
- (b) each share of the Bank Common Stock (excluding shares owned by BHC and excluding shares held by holders who perfect their rights under the Dissent Provisions) issued and outstanding immediately prior to the Merger Effective Date shall become and be converted into the right to receive one-half share of BHC Common Stock. Each share of

Bank Common Stock owned by BHC shall be cancelled and retired upon the Merger Effective Date and no consideration shall be issued in exchange therefor.

- (ii) The applicable amount of BHC Common Stock issuable in the Merger for each the Bank Common Stock pursuant to this Section, as may be adjusted as provided herein, shall be hereinafter referred to as the "Exchange Ratio." Any shares of the Bank Common Stock owned by the Bank shall be canceled and retired upon the Merger Effective Date and no consideration shall be issued in exchange therefor. In the event that prior to the Merger Effective Date the shares of the Bank Common Stock shall be changed into a different number of shares or a different class of shares by reason of any recapitalization or reclassification, stock dividend, combination, stock split, or reverse stock split of such shares, an appropriate and proportionate adjustment shall be made in the number of shares of BHC Common Stock into which such shares shall be converted.
- 2.2 Shareholder Rights; Stock Transfers. On the Merger Effective Date, holders of the Bank Common Stock shall cease to be, and shall have no rights as stockholders of the Bank 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 the Bank of the shares of the Bank Common Stock 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 BHC Common Stock, and no certificates or scrip therefor, or other evidence of ownership thereof, will be issued in the Merger. Instead, such fractional share interest shall be converted to a cash payment determined by multiplying the fraction by \$7.00.
- 2.4 Exchange Procedures. Promptly following the Merger Effective Date, BHC shall send or cause to be sent to each former stockholder of record of the Bank immediately prior to the Merger Effective Date transmittal materials for use in exchanging such stockholder's certificates formerly representing the Bank Common Stock ("Old Certificates") for the Merger consideration set forth in Section 2.1 above. The certificates representing the shares of BHC Common Stock ("New Certificates") and cash payment 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 BHC, as Affidavit of Lost Certificate satisfactory to BHC). BHC shall issue following delivery of Old Certificates and the properly completed letter of transmittal, stock certificates and cash payments within ten business days after the receipt of such completed documents. After the Merger Effective Date, to the extent required by law, former stockholders of record of the Bank shall be entitled to vote at any meeting of holders of BHC Common Stock the number of whole shares of BHC Common Stock into which their shares of the Bank Common Stock are converted, regardless of whether such holders have exchanged their Old Certificates for certificates representing BHC Common Stock in accordance with the provisions of this Agreement. Notwithstanding the foregoing, BHC shall not be liable to any former holder of the Bank Common Stock for any amount

properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

- Option"), outstanding and unexercised immediately prior to the Merger shall, by virtue of the Merger, automatically and without any action on the part of the holder thereof, become and be converted into an option to purchase that number of shares of BHC Common Stock as shall equal the Exchange Ratio multiplied by that number of shares of the Bank Common Stock which such option entitled the holder thereof to purchase (rounded to the nearest whole share), and at an exercise price equal to the exercise price per share of the Bank Option divided by the Exchange Ratio (rounded to the nearest cent). BHC shall assume each such the Bank Option in accordance with the terms of the plan or agreement by which it is evidenced, subject to the foregoing. A list of all 39,000 outstanding Bank Options is set forth in Exhibit 4 of this Agreement.
- Dissenters' Rights. Any shareholder of the Bank who shall have perfected Dissenters' Rights in accordance with the provisions of the Florida Business Corporation 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 BHC 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 shareholder of the Bank fails to perfect, or effectively withdraws or loses, such holder's dissenters right and payment for the shares of the Bank Common Stock, BHC 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 BHC 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 BHC 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, the Bank 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.

- 3.2 Forbearances of The Bank. From the date hereof until the Merger Effective Date, except as otherwise contemplated by this Agreement, without the prior written consent of BHC, the Bank shall not:
- (A) Capital Stock. Issue, sell, transfer, dispose of, permit to become outstanding, authorize the creation of, pledge or encumber any shares of capital stock, voting securities or other equity interest, or any options, warrants, convertible securities or other rights of any kind to acquire or receive any shares of capital stock, voting securities or other equity interests (including stock appreciation rights, phantom stock or similar instruments).
- (B) **Dividends, Etc.** Make, declare, pay or set aside for payment any dividend payable in cash, stock or property on or in respect of, or declare or make any distribution on, any shares of its capital stock, or directly or indirectly adjust, split, combine, reclassify, redeem, purchase or otherwise acquire any shares of its capital stock.
- (C) Compensation; Employment Agreements, Etc.. Enter into, adopt, establish, renew or allow to renew automatically, make any new grants of awards under, amend or otherwise modify or terminate any employment, consulting, transition, termination, severance, change in control, retention or similar agreements or arrangements, benefit, program, policy, trust, fund or other arrangement with any current or former director, officer, employee or independent contractor of the Bank or grant any salary or wage increase or increase any other compensation or employee benefit (including incentive or bonus payments), except (provided that BHC is given five (5) Business Days advance written notice thereof): (i) for normal individual increases in base salary or wage rates to current employees, directors and officers in the ordinary and usual course of business consistent with past practice, provided that no such increase shall result in an annual adjustment of more than 5% of the aggregate base salary and wages payable in 2008; or (ii) for other changes that are required by applicable Law or any Contract disclosed to BHC prior to the date hereof.
- (D) Hiring and Promotion. Hire any person as an employee or promote any employee, except (provided that BHC is given five (5) Business Days advance written notice thereof) persons hired to fill any vacancies and whose employment is terminable at the will of the Bank, as the case may be, and whose base salary or wage rate, including any guaranteed bonus or any similar bonus, does not exceed \$50,000 per annum.
- (E) **Benefit Plans.** Enter into, terminate, establish, adopt or amend (except as may be required by applicable Law) any Benefit Plans, take any action to grant or approve the grant of, accelerate the vesting, accrual or exercisability of stock options (except as expressly provided by this Agreement), restricted stock or other compensation or benefits payable thereunder or increase the participant pool of any Benefit Plan (except that it may renew its health insurance policies and programs in effect as of the date of this Agreement upon terms and conditions acceptable to the Bank

- and BHC). Without limiting the generality of the foregoing, the Bank shall not take any action which has the effect of increasing its obligations or liabilities pursuant to any stock option plans or any other Benefit Plan.
- (F) **Dispositions.** Sell, transfer, lease, license, guarantee, mortgage, pledge, encumber or otherwise create any Lien on, dispose of or discontinue any of its assets, deposits, business or properties (other than sales of loans and loan participations made in the ordinary and usual course of business consistent with past practice and pursuant to Section 3.2(P)) except in the ordinary and usual course of business consistent with past practice and in a transaction that, together with all other such transactions, is not material to it.
- (G) Acquisitions. Acquire (other than by way of foreclosures or acquisitions of control of property other than real estate in a bona fide fiduciary capacity or in satisfaction of indebtedness previously contracted in good faith, in each case in the ordinary and usual course of business consistent with past practice) all or any portion of the assets, deposits, business or properties of any other person except in the ordinary and usual course of business consistent with past practice and in a transaction that, together with all other such transactions, is not material to it, as the case may be (and, in the case of purchases of loans and loan participations, in accordance with Section 3.2(P)).
- (H) Capital Expenditures. Make any capital expenditures other than (i) capital expenditures provided for in the capital budget furnished by it to BHC prior to the date of this Agreement, and (ii) other capital expenditures in the ordinary and usual course of business consistent with past practice in amounts not exceeding \$5,000 individually or \$20,000 in the aggregate.
- (I) Governing Documents. Amend or otherwise change its Organizational Documents or any similar governing instruments.
- (J) Accounting Methods. Implement or adopt any change in its book or tax accounting principles, practices or methods, other than as may be required by GAAP or regulatory accounting principles, and as concurred in by its independent public accountants.
- (K) Contracts. Except with respect to Contracts relating to loans or loan participations made in the ordinary and usual course of business consistent with past practice and in accordance with Section 3.2(P), enter into, renew or allow to renew automatically, modify, amend or terminate, make any payment not then required under or waive, release or assign any material right or claims under, any Contract that calls for aggregate annual payments of \$10,000 or more and which is not terminable at will or with sixty (60) days or less notice without payment of any amount other than for products delivered or services performed through the date of termination.
- (L) Claims. Enter into any settlement, compromise or similar agreement with respect to, or take any other significant action with respect to the conduct of, any litigation, claim, action, suit, hearing, investigation or other proceeding to which it is or becomes a party, which

settlement, compromise, agreement or action involves payment by it, of an amount that exceeds \$5,000 individually or \$10,000 in the aggregate and/or would impose any material restriction on the business of Bank, or the Continuing Corporation or any of its Affiliates or create precedent for claims that are reasonably likely to be material to it or any of its subsidiaries, as the case may be.

- (M) Adverse Actions. Take any action or omit to take any action that would result in (i) any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect at any time at or prior to the Merger Effective Date, (ii) any of the conditions to the Merger set forth in Article VI not being satisfied on a timely basis or (iii) a material violation of any provision of this Agreement, except as may be required by applicable Law
- (N) Risk Management. Except as required by applicable Law, (i) implement or adopt any material change in its interest rate and other risk management policies, procedures or practices, (ii) fail to follow any of its existing policies or practices with respect to managing its exposure to interest rate and other risks or (iii) fail to use commercially reasonable efforts to avoid any material increase in its aggregate exposure to interest rate risk.
- (O) Indebtedness. Incur or modify any indebtedness for borrowed money or other liability (other than deposits, federal funds borrowings and borrowings from the Federal Home Loan Bank) or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other person (other than in connection with payments, processing and similar matters in the ordinary course of business consistent with past practices).
- (P) Loans. (i) Make any loan or loan commitment or renewal or extension thereof to any person which would, when aggregated with all outstanding loans or loan commitments thereof made to such person and any Affiliate or immediate family member of such person, exceed \$500,000 (on a secured basis) and \$50,000 (on an unsecured basis) with respect to any new loan or loan commitment or any renewal or extension of any outstanding loan or loan commitment; (ii) take any action that would result in any discretionary releases of collateral or guarantees or otherwise restructure any loan or commitment for any loan with a principal balance in excess of \$500,000 (on a secured basis) and \$50,000 (on an unsecured basis) or (iii) purchase or sell any loan or loan participation exceeding \$1,000,000 (on a secured basis) and \$50,000 (on an unsecured basis).
- (Q) Investments. (i) Other than in the ordinary and usual course of business consistent with past practice in amounts not to exceed \$1,000,000 individually and \$5,000,000 in the aggregate or sales of overnight federal funds (limited to 25% of its shareholders' equity) or in securities transactions as provided in (ii) below, make any investment either by contributions to capital, property transfers or purchases of any property or assets of any person and (ii) other than purchases of direct obligations of the United States of America or obligations of U.S. government agencies which are entitled to the full faith and credit of the United States of America, in any case with a remaining maturity at the time of purchase of one year or less, purchase or acquire securities of any type; provided, however, that in the case of investment securities, it may purchase investment securities if, within five (5) Business Days after the Bank requests in writing (which request shall

describe in detail the investment securities to be purchased and the price thereof) that BHC consent to making of any such purchase, BHC has approved such request in writing or has not responded in writing to such request.

- (R) Taxes. Commence, compromise or settle any litigation or proceeding with respect to any liability for Taxes, make or change any Tax election, file any amended Tax Return, enter into any closing agreement, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to it, take any action which is reasonably likely to have an adverse effect on any Tax position of it or, after the Merger, the Continuing Corporation or any of its Affiliates, change any of its methods of reporting income or deductions for Tax purposes or take any other action with respect to Taxes that is outside the ordinary and usual course of business or inconsistent with past practice.
- (S) Operations. Introduce any material new products or services; begin any material marketing campaigns; enter into any material new line of business; change its lending, underwriting, credit-grading or other material banking or operating policies in any material respects; or make or file any applications with any Regulatory Authority for the opening, relocation or closing of any, or open, relocate or close any, branch, servicing center or other office or facility.
 - (T) Commitments. Agree or commit to do any of the foregoing.

IV. REPRESENTATIONS AND WARRANTIES.

- 4.1 The Bank hereby represents and warrants to BHC, and BHC hereby represents and warrants to the Bank 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. For purposes of this Agreement, any reference in Article IV to BHC shall mean, unless otherwise indicated, BHC on a consolidated basis, including its ownership of First Community Bank, the Bank, and Sanibel Captiva Community Bank.

(B) Organization and Capital Shares.

- (i) It, and each of its subsidiaries, is a corporation or association duly organized, validly existing, and in good standing under the laws of the State of Florida. BHC owns 95.32% of the outstanding shares of the Bank, all of the shares of capital stock of First Community Bank, and 48.42% of the outstanding shares of Sanibel Captiva Community Bank, each of which is duly organized, validly existing and in good standing under the laws of the State of Florida.
- (ii) The outstanding shares of it are duly authorized, validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights. Except for the Bank Options and the BHC 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 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 (collectively, "Options")).

- (C) Qualification. It is duly qualified to do business and is in good standing in the State of Florida and in any other states of the United States and foreign jurisdictions where their ownership, use or leasing of property or the conduct or nature of their business requires either of them to be so qualified, licensed or admitted and in which the failure to be so qualified, licensed or admitted and in good standing could reasonably be expected to have a Material Adverse Effect (as such term is defined in Section 8.8(F)). Each has the corporate power and authority to carry on its business as it is now being conducted and to own all its material properties and assets. Each has in effect all federal, state and local authorizations, licenses and approvals necessary for it to own or lease its properties and assets and to carry on its business as it is now conducted.
- (D) **Subsidiaries.** Each has no direct or indirect subsidiaries except, (i) in the case of BHC, its ownership of 95.32% of the outstanding shares of the Bank, all of the outstanding shares of First Community Bank, and its 48.42% of ownership of Sanibel Captiva Community Bank and (ii) in the case of the Bank, its ownership of CBCC, LLC.
- (E) Authority. Subject to receipt of the regulatory approvals referred to in Section 6.2, it has the corporate power and authority to execute, deliver and perform its obligations under this Plan, this Plan 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.
- (F) No Conflict. The execution, delivery and performance of this Plan 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, articles of association, 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 Plan will not require any consent or approval under any Laws,

Orders, Licenses or Contracts or, except as set forth in <u>Schedule 4.1(F)</u>, 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.

- 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, including, without limitation, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act, the Home Mortgage Disclosure Act and all other applicable fair lending laws relating to discriminatory business practices; 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).
- (H) **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).
- (I) No Brokers. All negotiations relative to this Plan and the transactions contemplated hereby have been carried on by it and its agents directly with the other parties hereto and their agents and no action has been taken by it that would give rise to any valid claim against any party hereto for a brokerage commission, finder's fee or other like payment.

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 **Press Release.** Except as otherwise required by Law, the parties hereto shall consult with each other before issuing any press release with respect to the Merger or this Agreement and shall not issue any such press release or make any such public statements without the prior consent of the other parties, which consent shall not be unreasonably withheld or delayed. The parties hereto shall cooperate to develop all public announcement materials and make appropriate management available at presentations related to the transactions contemplated by this Agreement as reasonably requested by the other party.

5.3 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 5.5(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) 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.

5.4 Regulatory Applications.

(A) BHC shall use its reasonable best efforts to prepare and deliver for filing, all documentation to effect all necessary notices, reports and other filings and to obtain all permits, consents, approvals and authorizations necessary or advisable to be obtained from any third parties and/or Regulatory Authorities in order to consummate the Merger and the other transactions contemplated hereby; and any initial filings forwarded to the Regulatory Authorities shall be made by BHC within forty-five (45) days after the execution hereof, and the Bank shall cooperate in such preparation and filing. Subject to applicable laws relating to the exchange of information, each of BHC and the Bank shall have the right to review in advance, and to the extent practicable each shall

consult with the other on, all material written information submitted to any third party and/or any Regulatory Authority in connection with the Merger and the other transactions contemplated by this Agreement. In exercising the foregoing right, each of such parties agrees to act reasonably and as promptly as practicable. Each party hereto agrees that it shall consult with the other parties hereto with respect to the obtaining of all material permits, consents, approvals and authorizations of all third parties and/or Regulatory Authorities necessary or advisable to consummate the transactions contemplated by this Agreement and each party shall keep the other parties apprised of the status of material matters relating to completion of the transactions contemplated hereby (including promptly furnishing the other with copies of applications filed with, and notices or other communications received by BHC or the Bank, as the case may be, from any third party and/or Regulatory Authority with respect to the Merger and the other transactions contemplated by this Agreement).

(B) Each party agrees, upon request, to furnish the other party with all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with any filing, notice or application made by or on behalf of such other party to any third party and/or Regulatory Authority.

5.5 Indemnification; Directors' and Officers' Insurance.

- From and after the Merger Effective Date, BHC agrees that it will cause the (A) Surviving Bank to indemnify and hold harmless each present and former director and officer of the Bank or its Subsidiaries (each, an "Indemnified Party" and, collectively, the "Indemnified Parties") against all costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of actions or omissions occurring at or prior to the Merger Effective Date (including the transactions contemplated by this Agreement), whether asserted or claimed prior to, at or after the Merger Effective Date, to the fullest extent that the Bank would have been permitted under applicable law and the Organizational Documents of the Bank as in effect on the date hereof to indemnify such Person (and BHC shall also cause the Continuing Corporation to advance expenses as incurred to the fullest extent permitted under applicable law, provided that the person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification). BHC's obligations under this Section 5.8(A) shall continue in full force and effect for a period of two (2) years from the Merger Effective Date; provided, however, that all rights to indemnification in respect of any claim asserted or made within such period shall continue until the final disposition of such claim.
- (B) Any Indemnified Party wishing to claim indemnification under paragraph (A) of this Section 5.8, upon learning of any such claim, action, suit, proceeding or investigation, shall promptly notify BHC thereof, but the failure to so notify shall not relieve BHC of any liability it may have to such Indemnified Party if such failure does not materially prejudice BHC. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Merger Effective Date), (i) BHC shall have the right to assume, or cause the Continuing Corporation to

assume, the defense thereof and BHC shall not be liable to such Indemnified Party for any legal expenses or other counsel or any other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof, (ii) the Indemnified Party will cooperate in the defense of any such matter and (iii) BHC shall not be liable for any settlement effected without its prior written consent; *provided* that BHC shall not have any obligation hereunder to any Indemnified Party if and when a court of competent jurisdiction shall ultimately determine, and such determination shall have become final, that the indemnification of such Indemnified Party in the manner contemplated hereby is prohibited by applicable Law.

- For a period of two (2) years from the Merger Effective Date, BHC shall use (C) its commercially reasonable efforts to provide or cause the Bank to provide that portion of director's and officer's liability insurance ("D&O Insurance") that serves to reimburse the present and former officers and directors (determined as of the Merger Effective Date) of the Bank (as opposed to the portion that serves to reimburse the Bank) with respect to claims against such directors and officers arising from facts or events which occurred before the Merger Effective Date, which D&O Insurance shall contain at least the same coverage and amounts, and contain terms and conditions not materially less advantageous, as that coverage provided by the Bank as of the date hereof; provided, however, that in no event shall BHC be required to expend or cause the Bank to expend on an annual basis more than 150% of the last annual premium paid prior to the date hereof (the "Insurance Cap") to maintain or procure such D&O Insurance; provided further, however, that if BHC is unable to maintain or obtain the D&O Insurance called for by this Section 5.8, BHC shall use its commercially reasonable efforts to obtain as much comparable insurance as is available for the Insurance Cap; provided further that officers and directors of the Bank may be required to make application and provide customary representations and warranties to BHC's insurance carrier for the purpose of obtaining such D&O Insurance.
- (D) If BHC or any of its successors or assigns shall (i) consolidate with or merge into any other person and shall not be the continuing or surviving person of such consolidation or Merger or (ii) transfer all or substantially all of its properties and assets to any other person, then, and in each case, proper provision shall be made so that the successors and assigns of BHC shall assume the obligations set forth in this Section 5.5.
- (E) Notwithstanding any provisions to the contrary, the indemnification obligations of this Section 5.5 are limited by federal banking law and those obligations that violate federal banking law will be invalid and unenforceable.
- 5.6 **Notification of Certain Matters.** Each of the Bank and BHC shall give prompt notice to the other (i) of the occurrence, or non-occurrence, of any event that, individually or in the aggregate, would make the timely satisfaction of any of the conditions set forth in Article VI impossible or unlikely or otherwise prevent, materially delay or materially impair the ability of the Bank or BHC, as the case may be, to consummate the transactions contemplated by this Agreement, or (ii) of any fact, event or circumstance known to it that would cause or constitute a material breach of any of its representations, warranties, covenants or agreements contained herein.

VI. CONDITIONS TO CONSUMMATION OF THE MERGER

Consummation of the Merger is conditioned upon:

- 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 the Bank and BHC shall have received a certificate signed by the President of the other party dated the Merger Effective Date, to such effect.
- 6.2 **Regulatory Approvals.** Procurement by BHC and the Bank of all requisite approvals and consents of Regulatory Authorities, and the expiration of applicable statutory waiting periods relating thereto, provided, however, that no such approval or consent shall have imposed any condition or requirement (other than conditions or requirements set forth in any Schedule hereto) which would so materially and adversely impact the economic or business benefits to BHC, of the transactions contemplated by this Agreement that, had such condition or required been known, it would not, in its reasonable judgment, have entered into this Agreement.
- 6.3 **Third Party Consents.** All consents or approvals of all persons (other than Regulatory Authorities) required for the consummation of the Merger shall have been obtained and shall be in full force and effect, unless the failure to obtain any such consent or approval is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on the Bank or BHC.
- 6.4 **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 BHC or the Bank, 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.
- 6.5 **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 BHC to own, operate, or control substantially all of the assets and operations of the Bank and BHC.

- 6.6 Additional BHC Conditions. In addition, the obligation of BHC to consummate the Merger is subject to the fulfillment or written waiver by BHC prior to the Merger Effective Date of each of the following conditions:
- (A) Securities Agreements. BHC shall have received a completed and executed securities agreement from each of the Bank's shareholders receiving shares of BHC 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 the Bank:
 - (A) by the mutual written consent of the Bank and BHC;
- (B) by BHC or the Bank if the Merger is not consummated by the 180th 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 (i) the party seeking to terminate pursuant to this Section 7.1(B) or (ii) any of the Stockholders (if the Bank is the party seeking to terminate), which action or inaction is in violation of its obligations under this Agreement or, in the case of any of the Stockholders, such Stockholder's obligations under the Stockholders Agreement; *provided, however*, that the foregoing date shall be extended if by the 180th day subsequent to the date of this Agreement all of such regulatory approvals have not been received or applicable waiting periods for consummation of the Merger have not expired and, *provided further*, that the extension shall be for a period following such 180th day equal to the lesser of (x) 90 days, or (y) 30 days after satisfaction of all conditions set forth in Article VI, including, without limitation, the receipt of the regulatory approvals (and the expiration of all waiting periods) referred to in Section 6.2;
- (C) by BHC or the Bank if the approval of any Regulatory Authority required for consummation of the Merger and the other transactions contemplated by this Agreement shall have been denied by final and nonappealable action of such Regulatory Authority or an application therefore shall have been permanently withdrawn at the invitation, request or suggestion of a Regulatory Authority;

- (D) by the Bank if there shall have been a breach of any representation, warranty, covenant or agreement on the part of BHC contained in this Agreement such that the conditions set forth in Section 6.1 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 the Bank to BHC; or
- (E) by BHC if there shall have been a breach of any representation, warranty, covenant or agreement on the part of the Bank contained in this Agreement such that the conditions set forth in Section 6.1 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 BHC to the Bank.
- 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 the Bank; provided, however, that, after adoption of this Agreement by the stockholders of the Bank, no amendment may be made which by Law requires the further approval of the stockholders of the Bank 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 and the agreements of the Bank and BHC contained in Section 5.5 shall survive the consummation of the Merger. This Article VIII and the agreements of the Bank and BHC contained in the Confidentiality Agreement and Section 7.2 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 Action 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) "<u>Business Day</u>" 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) "<u>GAAP</u>" 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.

- (H) "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):

If to BHC, to

David C. Hall

President and Chief Operating Officer

Southwest Florida Community Bancorp, Inc.

1565 Red Cedar Drive Fort Myers, Florida 33907 Facsimile: (239) 939-4123

If to Bank, to:

J. Steven Root

President and Chief Executive Officer Community Bank of Cape Coral 61 Hancock Bridge Parkway West

Cape Coral, Florida 33991 Facsimile: (239) 573-5123

With, in each instance, a copy to:

John P. Greeley, Esquire Smith Mackinnon, PA

255 South Orange Avenue, Suite 800

Orlando, Florida 32801 Facsimile: (407) 843-2448

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 (including the Disclosure Schedule attached hereto and incorporated herein), the Confidentiality Agreement, the Stockholders Agreements and the Non-Competition Agreements constitute 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. Except for Section 5.5, 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; provided, however, that BHC may assign all or any of its rights and obligations hereunder to any direct or indirect wholly-owned Subsidiary of BHC.
- 8.12 **Effect.** No provision of this Agreement shall be construed to require the Bank or BHC 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.

COMMUNITY BANK OF CAPE CORAL

I Staven Post

President and Chief Executive

Officer

SOUTHWEST FLORIDA COMMUNITY

BANCORP, INC.

David Carleton Hall

President and Chief Operating Officer

FIRST COMMUNITY BANK OF SOUTHWEST FLORIDA

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David Carleton Hall

President and Chief Operating Officer

EXHIBIT 1 TO PLAN OF MERGER AND MERGER AGREEMENT

Name and address of Directors of First Community Bank of Southwest Florida following the Merger Effective Date: *

Mark Anderson

Gary Aubuchon

Donna Caruso

Suzanne Edwards

Lanny G. Finley

Lyman Frank

David Carleton Hall

Randall Henderson

Elizabeth Kagan

Wayne Kirkwood

Robert D. Knight, Jr.

Paul Malbon

Gerard McHale, Jr.

James B. McMenamy

J. Steven Root

Scott G. Siler

Gene Solomon

Gary Trippe

Michael Volpe

* The address for each of the directors is 1565 Red Cedar Drive, Fort Myers, Florida 33907

EXHIBIT 2 TO PLAN OF MERGER AND MERGER AGREEMENT

Name and Address of Executive Officers of First Community Bank of Southwest Florida

Name of Individual * Position with First Community Bank of Southwest Florida

Gerard McHale, Jr. Chairman of the Board and Acting Chief Executive Officer

David Carleton Hall President and Chief Operating Officer

David Barbur Executive Vice President and Senior Loan Officer

Donald Adams, Jr. Executive Vice President of Government Guaranteed Lending

J. Steven Root Chief Executive Office of the Cape Coral Market

Robert Gaglio President of the Cape Coral Market

* The address of each individual is 1565 Red Cedar Drive, Fort Myers, Florida 33907

EXHIBIT 3 TO PLAN OF MERGER AND MERGER AGREEMENT

Banking Offices of First Community Bank of Southwest Florida Following the Merger Effective Date

Main Office:

1565 Red Cedar Drive Fort Myers, Florida 33907

Branch Offices:

Daniels Branch -5200 Daniels Parkway Fort Myers, Florida 33912

Bonita Springs Branch -28235 South Tamiami Trail Bonita Springs, Florida 34134

Forum Branch - 3414 Forum Parkway Fort Myers, Florida 33905

Hancock Bridge Branch -61 Hancock Bridge Parkway West Cape Coral, Florida 33991

47th Terrace Branch -1635 SE 47th Terrace Cape Coral, Florida 33904

Gulf Coast Village Branch -1333 Santa Barbara Blvd Cape Coral, Florida 33991

EXHIBIT 4 TO PLAN OF MERGER AND MERGER AGREEMENT

Stock Options of First Community Bank of Southwest Florida Outstanding as of December 29, 2008

<u>Name</u>	Number of Options	Exercise Price	Grant Date
J. Steven Root	11,000	\$16.00	July 12, 2007
David Carleton Hall	10,000	\$10.00	August 11, 2004
Robert Gaglio	4,000	\$16.00	December 13, 2007
Kim Geiger	4,000	\$10.00	November 18, 2005
Sharon Landel	4,000	\$10.00	August 11, 2004
Melissa Stanford	2,000	\$10.00	February 10, 2005
Toni Barber	2,000	\$10.00	October 17, 2005
Lana Hollier	2,000	\$10.00	May 11, 2006