

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

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NAPA COMMUNITY BANK)	ORDER CONDITIONALLY
NAPA, CALIFORNIA)	GRANTING APPROVAL
(INSURED DEPOSITORY INSTITUTION))	FOR WAIVER OF CROSS
)	GUARANTEE LIABILITY
)	
)	FDIC-10-204kk
)	

WHEREAS, on November 20, 2009, Commerce Bank of Southwest Florida, Fort Myers, Florida (“Commerce”) failed and caused a loss to the Federal Deposit Insurance Corporation (“FDIC”); and

WHEREAS, Commerce was controlled by Capitol Bancorp, Ltd., Lansing, Michigan (“Capitol”), a bank holding company; and

WHEREAS, Capitol also controls Napa Community Bank, Napa, California (“Bank”); and

WHEREAS, pursuant to 12 U.S.C. § 1815(e)(8), the Bank and Commerce were commonly controlled; and

WHEREAS, pursuant to 12 U.S.C. § 1815(e)(1)(A), the Bank incurred a cross-guarantee liability to the FDIC in connection with the FDIC’s actual and anticipated losses in connection with Commerce’s failure; and

WHEREAS, Capitol and the Bank neither admit nor deny the FDIC’s findings in this Order;

WHEREAS, Capitol has entered into a definitive agreement to sell its interest in the Bank to VIB Corp, El Centro, California, parent of Rabobank, N.A., El Centro,

California (“Acquirer”), which definitive agreement also provides for earn-out payments to be made to Capitol, on its behalf and on behalf of all of the Bank’s other shareholders, based on the performance of a portfolio of loans for a 5-year period post-consummation; and

WHEREAS, Capitol’s proposed sale of the Bank to Acquirer is conditioned upon the FDIC, pursuant to 12 U.S.C. § 1815(e)(5)(A), granting a waiver of the cross guarantee liability against the Bank as described herein; and

WHEREAS, on February 25, 2010, Capitol agreed with the FDIC that until November 19, 2011, Capitol and all second-tier holding companies controlled by Capitol shall not accept dividend payments, unless such payments are immediately injected into an affiliate of Capitol that is less than well-capitalized, or any other payments, other than for bona fide goods or services, from any FDIC-insured institution controlled by Capitol without the prior written approval of the FDIC Chicago Regional Director or his designee; and

WHEREAS, Acquirer and Capitol have requested a waiver of cross guarantee liability against the Bank;

BE ADVISED that the Board of Directors of the FDIC, having fully considered the facts and information relating to the foregoing request, has concluded that granting the request for a waiver of cross-guarantee liability is in the best interests of the Deposit Insurance Fund and that approval of the request should be and hereby is granted, subject to the conditions and restrictions set forth below.

IT IS THEREFORE ORDERED THAT:

1. This ORDER CONDITIONALLY GRANTING APPROVAL FOR WAIVER OF CROSS GUARANTEE LIABILITY (“ORDER”) will become effective and the waiver shall be unconditional upon the consummation of the proposed acquisition of the Bank by Acquirer once receiving any necessary approval from the Office of the Comptroller of the Currency pursuant to 12 U.S.C. § 215a. Absent such consummation within ninety (90) days from the date of issuance of this ORDER, the ORDER would become null and void unless, upon the written request of Acquirer and Capitol, the FDIC, in its discretion, grants an extension of that time period.
2. The waiver and exemption granted by this ORDER may not be conveyed to a third party or otherwise transferred.
3. Concurrent with the consummation of the sale of the Bank, all sales proceeds due to Capitol shall be paid by Acquirer to an escrow agent on behalf of Capitol, and the escrow agent shall immediately transfer (i) transaction expense payments not otherwise paid by Acquirer to the accounts of documented recipients after receiving written non-objection from the FDIC for payment of such expenses and (ii) all net sales proceeds due to Capitol to the capital accounts of other insured depository institutions controlled by Capitol as directed by Capitol and specifically agreed to in writing by the FDIC Chicago Regional Director or his designee. The escrow agreement to be entered into with the escrow agent shall provide for the escrow agent to, immediately following consummation of the transaction, provide evidence to the FDIC Chicago Regional Director that all of

- the sales proceeds due to Capitol were used consistent with this Condition 3 and that none of such sales proceeds were paid to any shareholder of Capitol or any second-tier holding company controlled by Capitol, except payments made in accordance with this Condition 3.
4. All earn-out payments made pursuant to the definitive agreement following the consummation of the sale of the Bank, through and including November 19, 2011, shall be paid by Acquirer to an escrow agent on behalf of Capitol, and the escrow agent shall immediately transfer (i) the pro rata portion of such earn-out payments to the Bank's former shareholders, except Capitol and (ii) the pro rata portion otherwise due to Capitol to the capital accounts of other insured depository institutions controlled by Capitol as directed by Capitol and specifically agreed to in writing by the FDIC Chicago Regional Director or his designee.
 5. Proceeds from the transaction due to Capitol may be used only as explicitly permitted in Conditions 3 or 4 and may not otherwise be used for payment of operating or other expenses of Capitol or any of its second-tier holding companies.
 6. Capitol or Acquirer shall inform the FDIC Chicago Regional Director within three (3) business days of any material changes to the proposed transaction, including the sales price and estimates of net proceeds. For purposes of this Condition 5, for monetary purposes "material" shall mean any changes that equal or exceed \$1.25 million in the aggregate.
 7. Should the FDIC determine prior to consummation of the sale transaction of the Bank to Acquirer that Capitol has failed to comply fully with the agreement

Capitol entered with the FDIC on February 25, 2010 or the conditions and restrictions contained in this ORDER, the FDIC shall have the right to revoke this waiver and exemption, prior to consummation, after giving Capitol and Acquirer written notice of said revocation and a reasonable opportunity to be heard on the matter.

8. The waiver and exemption granted by this ORDER may not be revoked after consummation of the sale transaction.

Dated at Washington, D.C. this 22nd day of April, 2010.

/s/ _____
Sandra L. Thompson
Director, Division of Supervision and Consumer Protection