

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

_____	)	
	)	
COMMUNITY BANK OF ROWAN	)	ORDER CONDITIONALLY
SALISBURY, NORTH CAROLINA	)	GRANTING APPROVAL
(INSURED DEPOSITORY INSTITUTION)	)	FOR WAIVER OF CROSS
	)	GUARANTEE LIABILITY
	)	
	)	FDIC-10-069kk
_____	)	

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 Community Bank of Rowan, Salisbury, North Carolina (“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, the Bank remains subject to cross-guarantee liability in connection with the failure of Commerce; 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 First American Financial Management Company, Charlotte, North Carolina (“First American”); and

WHEREAS, Capitol’s proposed sale of the Bank to First American 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, First American 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 upon the consummation of the proposed acquisition of the Bank by First American once receiving any necessary approvals from the FDIC, the Federal Reserve Bank of Richmond, and the North Carolina Office of the Commissioner of Banks. 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 First American and Capitol, the FDIC, in its discretion, grants an extension of that time period.

2. The 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 First American to an escrow agent on behalf of Capitol, and the escrow agent shall immediately transfer (i) transaction expense payments 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.
4. Immediately following consummation of the transaction, Capitol shall provide evidence to the FDIC Chicago Regional Director that all of the sales proceeds were used consistent with Condition 3.
5. No proceeds from the transaction may be paid to any shareholder of Capitol or any second-tier holding company controlled by Capitol except payments in accordance with Condition 3.
6. Proceeds from the transaction may be used only as explicitly permitted in Condition 3 and may not otherwise be used for payment of operating or other expenses of Capitol or any of its second-tier holding companies.
7. Capitol and First American shall inform the FDIC within one (1) business day of any material changes to the proposed transaction, including the sales price and estimates of net proceeds.

8. On February 25, 2010, Capitol agreed, in writing 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.
9. Should the FDIC determine prior to consummation of the sale transaction of the Bank to First American that Capitol has failed to comply fully with the conditions and restrictions contained in this ORDER, the FDIC shall have the right to revoke this exemption after giving Capitol written notice of said revocation and a reasonable opportunity to be heard on the matter.
10. No more than three directors of the board of directors of First American may serve on the board of directors (Board) of the Bank. If more than one First American director serves on the Board of the Bank, none shall have a familial or prior or current business relationship with each other. The chairman of the Board of the Bank shall not serve on the board of First American. Any modification to this paragraph must be approved in writing by the FDIC Atlanta Regional Director or designee
11. The individual designated as chief executive officer of First American shall not participate in the day-to-day affairs of the Bank without the prior, written non-objection of the FDIC Atlanta Regional Director or designee.

12. The Bank may not change the size of its Board or make any addition of a director or executive officer without the prior, written non-objection of the FDIC Atlanta Regional Director or designee.
13. Within sixty (60) days of consummation of the sale of the Bank to First American, the Bank shall provide a three-year, written business plan to the FDIC Atlanta Regional Director for written non-objection. The Bank shall receive the prior, written non-objection of the FDIC Atlanta Regional Director or designee before it makes any material changes to the business plan during the three year period covered by the business plan.

Dated at Washington, D.C. this 12<sup>th</sup> day of April, 2010.

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