

# 446653

INTER-OFFICE  
COMMUNICATION

COMPTROLLER OF FLORIDA  
DIVISION OF BANKING

DATE: June 19, 1997  
TO: Louise Flemming-Jackson  
Department of State - Division of Corporations  
FROM: Bruce Ricca, Licensing and Chartering *BR*  
SUBJ: Merger of Universal National Bank with and into  
Totalbank and under the title of "Totalbank"

Please file the attached "Agreement and Plan of Merger" for the above-referenced institutions, using JUNE 20, 1997, as the effective date.

Please make the following distribution of certified copies:

- (1) One copy to: Division of Banking  
Office of Licensing and Chartering  
Fletcher Building, Suite 636
- (2) One copy to: Federal Deposit Insurance Corporation  
One Atlantic Center, Suite 1600  
1201 West Peachtree Street, N.E.  
Atlanta, Georgia 30309-3449
- (3) One copy to: Mr. David Schlosberg  
Totalbank  
2720 Coral Way  
Miami, Florida 33145

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97 JUN 29 PM 2:54  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Also attached is a check which represents payment of the filing fees, charter tax and certified copies. If you have any questions, please call 414-8066.

BR:a:mergeart

Attachments

cc: Federal Reserve Bank of Atlanta, Atlanta, Georgia  
Bureau of Financial Institutions - District II

FILED 70.00  
R AGENT  
(3) CERT. COPY 157.50  
CUS  
OVERPAYMENT  
TOTAL 227.50

*LFT*

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ARTICLES OF MERGER  
Merger Sheet

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MERGING:

UNIVERSAL NATIONAL BANK, a federally-chartered commercial bank

INTO

**TOTALBANK**, a Florida corporation, 446653

File date: June 20, 1997

Corporate Specialist: Louise Flemming-Jackson



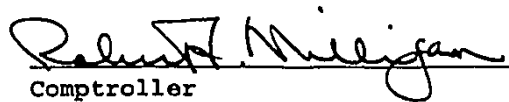
ROBERT F. MILLIGAN  
COMPTROLLER OF FLORIDA

OFFICE OF COMPTROLLER  
DEPARTMENT OF BANKING AND FINANCE  
STATE OF FLORIDA  
TALLAHASSEE  
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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Having given my approval on May 5, 1997, to merge Universal National Bank, Miami, Dade County, Florida, with and into Totalbank, Miami, Dade County, Florida, and being satisfied that the conditions of my approval have been met, I hereby approve for filing with the Department of State, the attached "Agreement and Plan of Merger", which contains the Articles of Incorporation of Totalbank (the resulting bank), so that effective on June 20<sup>TH</sup>, 1997, they shall read as stated herein.

Signed on this 6<sup>th</sup> day of  
June, 1997.

  
Comptroller

**UNIVERSAL BANCORP, INC.**

17701 BISCAYNE BOULEVARD, MIAMI, FLORIDA 33160

305/937-BANK

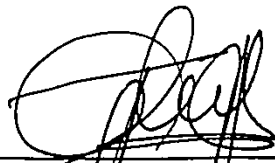
**CERTIFICATE OF SOLE SHAREHOLDER  
APPROVING AGREEMENT AND PLAN OF MERGER**

**UNIVERSAL BANCORP, INC. HEREBY CERTIFIES** as follows:

1. Universal Bancorp, Inc is the sole shareholder of Universal National bank.
2. Universal Bancorp, Inc. has duly Approved the agreement and plan of Merger, entered into as of the 13th day of February, 1997 for the merger of its wholly owned subsidiary, Universal National Bank, into Totalbank pursuant to said agreement.
3. That all requirements of Section 607.1302 of the Florida Statutes (regarding dissenters rights) have been duly complied with or waived and there are no dissenters to the proposed transaction.

**UNIVERSAL BANCORP, INC.**

By: \_\_\_\_\_



George Feldenkreis  
Chairman of the Board

**CORPORATE SEAL**

CERTIFIED EXCERPTS OF MINUTES

I, DAVID I. SCHLOSBERG, Secretary to the Board of Directors of TOTALBANK, a Florida banking corporation, DO HEREBY CERTIFY that the following is a true and complete excerpt from the Minutes of the Meeting of Shareholders' which took place at 10:00 a.m. on Thursday, March 27, 1997 at Totalbank at 2720 Coral Way, Miami, Florida. The below excerpts constitute a full and complete record, as recorded in said minutes, of discussions and/or actions represented by the agenda categories highlighted and underlined below. The undersigned also certifies that the certified excerpts have not been repealed and are still in full force and effect as of the date of this Certification.

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CALL TO ORDER/WELCOME AND INTRODUCTIONS/QUORUM

The Annual Meeting of the Shareholders of TOTALBANK, a Florida corporation, was held at the time and place above-stated, pursuant to notice appearing hereinbefore among these minutes.

Personally present were:

<u>Name of Shareholder</u>	<u>Number of Shares</u>
Adrienne Arsht	455.75
Myer Feldman	159,020.00
William J. Heffernan	228.00
Gary P. Eidelstein	228.00
Kevin P. O'Connor	455.75
Bruce A. Keller	455.75
Patrick Ward	45.00
TOTAL	----- 160,888.25

Ms. Adrienne Arsht and Mr. Myer Feldman, as proxies, represented the following shareholders:

<u>Name of Shareholder</u>	<u>Number of Shares</u>
Cathy Beck	2,280
James A. Feldman	3,618
Jamie Beck Gordon	2,280
Paul Golob	134
Gary Gordon	134
TOTAL BY PROXY	----- 8,446

Ms. Adrienne Arsht chaired the meeting and Jorge N. Carvallo acted as Recording Secretary.

The Chairman called the meeting to order, welcomed the shareholders present and requested from the Secretary a report on the constitution of the meeting and quorum.

Mr. Carvallo reported that the meeting had been called by means of a Notice of Meeting, a copy of which is filed among these Minutes; that said notice was sent on March 7, 1997 to all shareholders of record of the corporation as of January 1, 1997; that the shareholders present at this meeting are those stated above; that the proxies held by Ms. Adrienne Arsht and Mr. Myer Feldman, as stated above, appeared to be in order and the same are filed among the corporate records of this meeting. The Secretary reported that shares represented in person or by proxy are well in excess of the 50% of the shares and, therefore, there was a quorum.

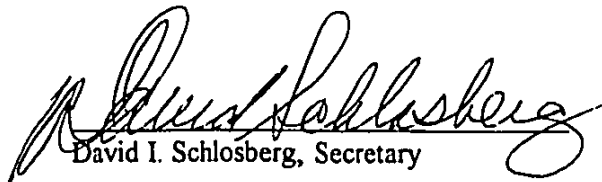
[various other business conducted not a part of this certificate]

Approval and Ratification of Agreement and Plan for Merger:

**The next item to come before the meeting was the consideration and vote upon resolution approving and ratifying the Agreement and Plan of Merger between Totalbank and Universal National Bank and Universal Bancorp, Inc. whereby Totalbank will purchase Universal National Bank and merge it into Totalbank.**

**Upon motion made by Mr. Feldman and seconded by Mr. Heffernan the shareholders unanimously and without dissent, approved and ratified the Agreement and Plan for Merger.**

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary and have affixed the seal of this Corporation this 15 day of April, 1997.

  
David I. Schlosberg, Secretary

(Corporate Seal)

EXHIBIT "A"

ORIGINAL

FILED

AGREEMENT AND PLAN OF MERGER

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is entered into as of the 13 day of February 1997, by and among TOTALBANK, a Florida chartered bank ("Totalbank"), and UNIVERSAL BANCORP, INC., a Florida corporation (the "Company"), and UNIVERSAL NATIONAL BANK, a federally-chartered commercial bank and wholly-owned subsidiary of the Company (the "Bank").

WITNESSETH:

WHEREAS, the parties desire that the Company and the Bank be acquired by Totalbank through a transaction whereby (i) TBU Interim State Bank, a to-be-formed state bank or other entity formed under Florida law ("Interim") and a wholly owned subsidiary of Totalbank, shall be merged with and into the Company (the "Interim Merger") with the Company as the surviving corporation, and immediately thereafter (ii) the Company shall be merged with and into Totalbank in a liquidating transaction (the "Company Liquidating Merger"), and immediately thereafter (iii) the Bank shall be merged with and into Totalbank in a liquidating transaction (the "Bank Liquidating Merger" and, collectively with the Interim Merger and the Company Liquidating Merger, the "Mergers"), all upon the terms and conditions contained herein and in accordance with applicable law;

WHEREAS, the Boards of Directors of Totalbank, the Company and the Bank have each determined that it is in the best interests of their respective stockholders for Totalbank to acquire the Company and the Bank through the transactions described herein, and have each adopted a resolution approving this Agreement and the transactions contemplated hereby;

WHEREAS, the Board of Directors of Totalbank have adopted a resolution directing that Totalbank, as the sole stockholder of Interim, cause Interim to be merged with and into the Company;

WHEREAS, the Board of Directors of Totalbank has adopted a resolution directing that Totalbank, (i) as the sole shareholder of the Company after the Interim Merger, shall immediately subsequent to the Interim Merger, adopt a plan of complete liquidation for the Company by approving the Company Liquidating Merger and (ii) as the sole shareholder of the Bank after the Company Liquidating Merger, shall immediately subsequent to the Company Liquidating Merger, adopt a plan of complete liquidation for the Bank by approving the Bank Liquidating Merger;

WHEREAS, the Board of Directors of the Company has adopted a resolution directing that this Agreement and the transactions contemplated hereby be submitted for approval by the stockholders of the Company either at a meeting of the Company's stockholders or through an action by the written consent of a majority of the Company's stockholders; and

WHEREAS, certain stockholders of the Company representing in excess of fifty percent (50%) of the Company's outstanding capital stock have agreed to enter into an agreement with

Totalbank pursuant to which such stockholders have agreed to vote their shares of the Company's common stock in favor of this Agreement and the transactions contemplated hereby.

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements, representations, warranties and covenants herein contained and for the purpose of prescribing the terms and conditions of the Mergers, the parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE I DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings indicated below:

"Adjustment Date" shall initially be May 15, 1997 but shall be extended by an additional number of days, if any, equal to the number of days, beyond the date or time period set forth in Sections 6.7 and 7.5, that the Company or the Bank takes to deliver the Schedules pursuant to Section 7.5 and/or to provide requested information pursuant to Section 6.7.

"Affiliate" means as to any party, any entity which directly or indirectly, is in control of, is controlled by, or is under common control with, such party, including any Person who would be treated as a member of a controlled group under Section 414 of the Code and any officer or director of such party. For purposes of this definition, an entity shall be deemed to be "controlled by" a Person if the Person possesses, directly or indirectly, power either to (i) vote 10% or more of the securities (including convertible securities) having ordinary voting power or (ii) direct or cause the direction of the management or policies of such entity whether by contract or otherwise; and, as to a party who is a natural person, such person's spouse, parents, siblings and lineal descendants.

"Applicable Governmental Authorities" has the meaning set forth in Section 2.4 hereof.

"Certificates of Merger" has the meaning set forth in Section 2.2 hereof.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company Subsidiary" means a Subsidiary of the Company, including, without limitation, the Bank, and "Company Subsidiaries" means all of the Subsidiaries of the Company.

"Dissenting Share" has the meaning set forth in Section 3.9 hereof.

"Effective Date" has the meaning set forth in Section 2.2 hereof.

"Exchange Agent" has the meaning set forth in Section 3.5 hereof.



"Knowledge" or "known" means, with respect to any representation or warranty or other statement in this Agreement qualified by the knowledge of any party, each of the parties hereto acknowledges and confirms that it has made due and diligent inquiry as to the matters that are the subject of such representations and warranties. Where reference is made to the Company's, the Bank's or any Company Subsidiary's knowledge or any similar phrase, such reference shall be deemed to include the respective officers, directors and managerial employees of such entity, all of whom shall be deemed to have conducted the inquiry required in the preceding sentence.

"Liens" means any liens, claims, charges, pledges, security interests or other encumbrance of any nature whatsoever.

"New Common Stock" has the meaning set forth in Section 3.6 hereof.

"Person" means any natural person, corporation, unincorporated organization, partnership, association, joint stock company, joint venture, trust or government, or any agency or political subdivision of any government, or any other entity.

"Purchase Price" has the meaning set forth in Section 3.1 hereof.

"Subsidiary" of any Person means any Person, whether or not capitalized, in which such Person owns, directly or indirectly, an equity interest of fifty percent (50%) or more, or any Person which may be controlled, directly or indirectly, by such Person, whether through the ownership of voting securities, by contract, or otherwise.

"Tax" means any federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding, or other tax or governmental charge, of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; the foregoing shall include any transferee or secondary liability for a Tax and any liability assumed by agreement or arising as a result of being (or ceasing to be) a member of any affiliated group (or being included (or required to be included) in any tax return relating thereto).

## ARTICLE II THE MERGERS

2.1 Mergers. At the Effective Date, (i) Interim shall be merged with and into the Company, with the Company as the surviving corporation, and immediately thereafter (ii) Totalbank will effect a plan to completely liquidate the Company, pursuant to which plan the Company, which at that time will be a wholly-owned subsidiary of Totalbank, shall be merged with and into Totalbank, and Totalbank will be the surviving entity, and immediately thereafter

(iii) Totalbank will effect a plan to completely liquidate the Bank, pursuant to which plan the Bank, which at that time will be a wholly-owned subsidiary of Totalbank, shall be merged with and into Totalbank, and Totalbank will be the resulting state bank (the "Resulting Bank"), all in accordance with applicable law, the terms, conditions and provisions of this Agreement and subject to the requisite approval of the Applicable Governmental Authorities and the other conditions set forth herein.

2.2 Consummation of the Mergers; Effective Date. The consummation of the transactions contemplated by this Agreement shall take place at the offices of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., 150 West Flagler Street, Miami, FL 33130, at such time as shall be fixed by mutual agreement of Totalbank and the Company as promptly as practicable after the satisfaction or waiver of all of the conditions set forth in this Agreement, but in no event later than November 14, 1997 (the "Final Closing Date"); provided, however, that in the event that the date of the closing (the "Closing") occurs after the Adjustment Date, then the Purchase Price shall be adjusted in accordance with Section 3.1 hereof; and provided further that on the day after the Adjustment Date, Totalbank shall deliver to the Company a two hundred fifty thousand dollar (\$250,000) deposit (the "Deposit") which shall be held in a segregated interest bearing account. On the date of the Closing, the Deposit, together with the interest earned thereon, shall be delivered to the Exchange Agent to be applied toward the Purchase Price. If the Closing does not occur by the Final Closing Date or the Agreement is otherwise terminated prior to the Final Closing Date, the Company may retain the Deposit only if (i) neither the Company nor the Bank is in breach of this Agreement and each has performed its obligations and covenants contained herein to the extent that they were required to be performed prior to the date of termination, (ii) the Company shall have obtained all consents and approvals specified in Section 8.1(e) to the extent required to be obtained prior to the termination date, (iii) no circumstances exist which enjoin, restrict or prohibit the consummation of the transactions contemplated hereby, all as contemplated by Section 8.1(f), (iv) the stockholders of the Company shall have approved this Agreement as specified in Section 8.1(i) and the holders of no more than five percent (5%) of the Company Common Stock shall have exercised or remain entitled to exercise dissenters' rights under Florida law, (v) no material adverse change shall have occurred with respect to the Company and the Company Subsidiaries as specified in Section 8.1(c), (vi) the offices of the Bank are available to Totalbank on substantially the terms agreed to during the twenty (20) day period specified in Section 7.3 hereof and (vii) if all required approvals or waivers from the Applicable Governmental Authorities have not been obtained, the primary basis of any such failure is not related to facts or circumstances associated with the Company or the Bank. If the Company is not entitled to retain the Deposit based on the foregoing, the Company shall promptly on demand return the Deposit, together with the interest earned thereon, to Totalbank. Subject to the satisfaction or waiver of all conditions precedent to the consummation of the transactions contemplated by this Agreement, the parties shall cause the Mergers to become effective on the date of the Closing by requesting in accordance with all applicable regulations that one or more Certificates of Merger with respect to the Interim Merger, the Company Liquidating Merger and the Bank Liquidating Merger ("Certificates of Merger"), be issued effective as of the date of Closing (the "Effective Date").

### 2.3 Effect of the Mergers.

(a) *Transfer of Assets and Liabilities.* Upon the consummation of the Interim Merger, the separate corporate existence of Interim shall cease as a consequence of being merged into the Company. The corporate existence of the Company shall continue as the surviving corporation which shall then be a wholly-owned subsidiary of Totalbank, all of the rights, privileges, powers and franchises of Interim shall be possessed by the Company and the charter and bylaws of Interim shall be deemed cancelled. Upon the consummation of the Company Liquidating Merger, the separate corporate existence of the Company shall cease as a consequence of being merged into and continued in Totalbank as the surviving entity, and the charter and by-laws of the Company shall be deemed cancelled. Upon the consummation of the Bank Liquidating Merger, the separate corporate existence of the Bank shall cease as a consequence of being merged into and continued in Totalbank as the Resulting Bank, and the charter and by-laws of the Bank shall be deemed cancelled. On and after the Effective Date, all rights, franchises, property, powers and other interests (whether tangible or intangible) of Interim, the Company and the Bank, and all obligations and liabilities thereof shall be transferred to, be vested in, and become the obligations of the Resulting Bank by virtue of the Company Liquidating Merger and the Bank Liquidating Merger, without any deed or other instrument of transfer.

(b) *Accountholders' Accounts.* Upon the Effective Date, each accountholder of the Bank shall receive, without payment, a withdrawable account or accounts in the Resulting Bank equal in withdrawal value to the account or accounts held in the Bank on such date. Any reference to the Bank in any writing relating to accounts or accountholders, whether executed or taking effect before or after the Bank Liquidating Merger, shall be deemed a reference to the Resulting Bank unless inconsistent with the other provisions of such writing.

(c) *Charter; Articles of Incorporation and By-laws.* The articles of incorporation and by-laws of the Company immediately prior to the Interim Merger shall be the articles of incorporation and by-laws, respectively, of the Company immediately after the Interim Merger. The charter of Totalbank as in effect immediately prior to the Company Liquidating Merger and the Bank Liquidating Merger, shall be the charter of the Resulting Bank (the "Charter"). The by-laws of Totalbank in effect immediately prior to the Company Liquidating Merger and the Bank Liquidating Merger shall be the by-laws of the Resulting Bank (the "By-laws").

(d) *Name and Place of Business.* The business of the Resulting Bank shall be that of a Florida state chartered bank. The Resulting Bank shall conduct this business under the name "Totalbank" and its main office shall remain at 2720 Coral Way, Miami, Florida. At the Effective Date, the main and branch offices of the Bank which were in lawful operation immediately prior to the Effective Date or whose establishment has been approved before the Effective Date shall be retained and operated or established and operated as branches of the Resulting Bank. Schedule 2.3(d) hereof sets forth the location of each branch office that will be operated immediately after the Effective Date by the Resulting Bank.

(e) *Board of Directors.* After the Interim Merger, the Board of Directors of the Company shall be identical to the Board of Directors of the Company immediately prior to the Effective Date. After each of the Company Liquidating Merger and the Bank Liquidating Merger, the Board of Directors of the Resulting Bank shall be identical to the Board of Directors of Totalbank immediately prior to the Effective Date. The directors of the Resulting Bank, whose names and addresses are set forth on Schedule 2.3(e) hereof, shall hold office subject to the Charter and By-laws of the Resulting Bank.

(f) *Executive Officers.* After the Interim Merger, the executive officers of the Company shall be the same executive officers of the Company as were in office immediately prior to the Effective Date. After each of the Company Liquidating Merger and the Bank Liquidating Merger, the executive officers of Totalbank immediately prior to the Effective Date shall constitute the executive officers of the Resulting Bank until such time as their respective successors have been elected and qualified. The executive officers of the Resulting Bank, whose names and addresses are set forth on Schedule 2.3(f) hereof, shall hold office subject to the Charter and By-laws of the Resulting Bank.

2.4 Prior Approvals. The parties hereto acknowledge that requisite approvals or waivers must be received from or notices must be given to certain federal and state regulatory agencies. Such regulatory agencies may include (i) the Federal Deposit Insurance Corporation (the "FDIC"); (ii) the Florida Department of Banking and Finance; (iii) the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"); (iv) the Office of the Comptroller of the Currency (the "OCC"); and (v) any other regulatory authorities having jurisdiction (collectively, the "Applicable Governmental Authorities"). The transactions contemplated herein are subject to receipt of all requisite regulatory approvals or waivers, the filing of any required notices and the expiration of any required waiting periods and, to the extent received or accepted, such approvals, waivers or notices shall not contain or be subject to any terms or conditions (other than those generally imposed in similar transactions) which in the reasonable judgment of Totalbank are unduly burdensome. In addition, the transactions contemplated by this Agreement are subject to a number of other conditions set forth herein, including, without limitation, approval by the stockholders of each of the Company, the Bank, Interim and Totalbank.

### ARTICLE III PURCHASE PRICE; CONVERSION OF SHARES

#### 3.1 Purchase Price.

(a) The aggregate purchase price (the "Purchase Price") to be paid upon the effectiveness of the Mergers in exchange for all of the outstanding shares of common stock, par value \$1.00 per share, of the Company (the "Company Common Stock") and options to purchase Common Stock shall be an amount equal to eleven million eight hundred fifty thousand dollars (\$11,850,000) minus the amount of the Employee Benefit Costs plus (or minus), if the Closing

occurs after the Adjustment Date, an amount equal to the net income or loss ("Net Income") of the Company during the period commencing on the Adjustment Date and ending on the Net Income Computation Date (as defined below); provided, however, that the Purchase Price shall not be increased to the extent that the Closing has been delayed as the result of (i) the fact that the conditions precedent set forth in Sections 8.1(a), (b), (c), (e), (f), (i), (l) and (m) have not been satisfied through no fault of Totalbank or (ii) delays in obtaining all required approvals or waivers from the Applicable Governmental Authorities where the primary basis of any such delay is related to facts or circumstances associated with the Company or the Bank.

(b) For purposes of this Agreement, Employee Benefit Costs shall mean (i) all severance costs, change of control payments or similar arrangements payable to the Company's or any Company Subsidiary's employees as a consequence of or relating to the transactions contemplated herein (but not including any portion of the Purchase Price payable to holders of Options) and (ii) all accrued benefits, including, without limitation, all accrued sick days, personal days and vacation days paid by the Company or any Company Subsidiary after the date of this Agreement or accrued and unpaid as of the Effective Date. On or prior to the date which is five (5) business days prior to the Closing, the Company shall provide Totalbank with a correct detailed, itemized schedule of Employee Benefit Costs for the purpose of the above Purchase Price calculation.

(c) For purposes of this Agreement, Net Income of the Company shall mean the net income (loss) after taxes of the Company and the Company Subsidiaries on a consolidated basis, computed in accordance with generally accepted accounting principles ("GAAP") consistently applied with prior periods; provided, however, that Net Income shall not include any income realized from sales or reclassifications of securities held in its investment portfolio or any income realized as a result of the sale of any other assets. The computation of Net Income shall be contained in a special purpose statement of income prepared by the Company which shall be dated as of the close of business on the day that is six (6) business days prior to Closing (the "Net Income Computation Date") and which shall be delivered no later than five (5) business days prior to Closing, together with a certificate from the Company's chief executive officer and chief financial officer certifying that such income statement was prepared in accordance with the requirements of this Section and is true and correct in all material respects. At the request of Totalbank given not less than three (3) business days prior to the Closing, the Company shall cause the special purpose statement of income to be audited by its independent certified public accountants and request that such firm issue a manually signed report certifying such income statement, provided that Totalbank shall be responsible for paying the fees and costs of such audit.

3.2 Conversion of Shares and Options Upon the Interim Merger. On the Effective Date and as a result of the Interim Merger, each issued and outstanding share of Company Common Stock, other than shares of New Common Stock and other than Dissenting Shares, if applicable, and each outstanding security exchangeable for or convertible into shares of Company Common Stock (each hereinafter an "Option") shall, without further action, cease to be issued and outstanding shares of Company Common Stock or Options, and shall become and

be converted into a right to receive an amount of cash equal to the Per Share Amount or the Per Option Amount (as defined below), as the case may be. The price payable for each share of Company Common Stock (the "Per Share Amount") shall be equal to the quotient of (i) the Purchase Price plus the aggregate exercise price for all Options issued and outstanding on the Effective Date and (ii) the total number of shares of Company Common Stock outstanding on the Effective Date plus the total number of shares of Company Common Stock issuable upon exercise of all Options outstanding on the Effective Date. The price payable for each Option, assuming that such Option is exercisable for one share of Company Common Stock (the "Per Option Amount"), shall be equal to the Per Share Amount minus the price per share of Company Common Stock at which such Option is exercisable.

3.3 Effect of Conversion of Shares and Options. After the Effective Date and until surrendered for payment, each outstanding certificate which, prior to the Effective Date, represented shares of Company Common Stock (except for shares of New Common Stock) shall be deemed for all purposes to represent the right to receive an amount of cash equal to the product of the Per Share Amount multiplied by the number of shares of Company Common Stock represented by such certificate, provided that, in any matters relating to such certificates, the Exchange Agent may rely conclusively upon the record of stockholders maintained by the Company containing the names and addresses of the holders of record of Company Common Stock on the Effective Date. After the Effective Date, each Option shall be deemed for all purposes to be cancelled and converted into the right to receive an amount of cash equal to the product of the Per Option Amount multiplied by the number of shares of Company Common Stock for which such Option is exercisable immediately prior to the Effective Date. Each share of capital stock of the Company held in treasury, if any, shall be cancelled and no consideration shall be payable with respect to any such share.

3.4 Total Purchase Price. Notwithstanding anything herein to the contrary, except to the extent payments made to holders of Dissenting Shares exceed the Per Share Amount (if there exist Dissenting Shares and, if applicable, Totalbank has waived the condition set forth in Section 8.1(I)), in no event shall the aggregate Purchase Price paid by Totalbank hereunder to the holders of Company Common Stock and Options exceed the amount calculated pursuant to Section 3.1 hereof.

3.5 Payment of Purchase Price; Exchange Agent.

(a) Promptly after the Effective Date, an exchange agent designated by Totalbank and reasonably acceptable to the Company (the "Exchange Agent"), shall deliver to each record holder of Company Common Stock and each record holder of an Option a form of letter of transmittal which, among other matters, shall specify how such shareholder or optionholder shall receive payment. Promptly after the Effective Date and after surrender to the Exchange Agent of a properly executed letter of transmittal and, in the case of record holders of shares of Company Common Stock, the certificate or certificates which immediately prior to the Effective Date represented issued and outstanding shares of Company Common Stock, the Exchange Agent shall deliver to the person in whose name such Company Common Stock or

Options shall have been registered, a check in an amount equal to the product of the Per Share Amount and the number of shares of Company Common Stock represented by the certificate or certificates surrendered in the case of a holder of Company Common Stock, or in the case of the holder of an Option, the product of the Per Option Amount and the number of shares of Company Common Stock into which such Option was exercisable immediately prior to the Effective Date; provided that the Exchange Agent shall (i) attempt to accommodate requests to make payment by wire transfer if the amount of such payment exceeds one million dollars (\$1,000,000) and (ii) shall make payment by cashier's check if the amount of such payment exceeds one hundred fifty thousand dollars (\$150,000). No interest shall accrue or be paid with respect to the cash payable upon the surrender of shares of Company Common Stock or Options for payment of the Per Share Amount or Per Option Amount, as applicable. There shall be no obligation to deliver the Per Share Amount in respect of any shares of Company Common Stock until (and then only to the extent that) the holder thereof surrenders its certificate or certificates representing the shares of Company Common Stock for exchange as provided in this Section 3.5, or, in lieu thereof, delivers to the Exchange Agent an appropriate affidavit of loss and an indemnity agreement and/or a bond as may be required in any such case by the Exchange Agent. If any payment for shares of Company Common Stock or Options is to be made in a name other than that in which the certificate for Company Common Stock surrendered for exchange or the Option, as the case may be, is registered, it shall be a condition to the payment that, in the case of holders of shares of Company Common Stock, the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and, in the case of holders of Options, the special instructions in the letter of transmittal shall have been complied with, and in each case that the person requesting the payment shall either (i) pay to the Exchange Agent any transfer or other taxes required by reason of the payment to a person other than the registered holder of the certificate surrendered or the Option or (ii) establish to the satisfaction of the Exchange Agent that such taxes have been paid or are not payable. From and after the Effective Date, there shall be no transfers on the transfer books of the Company of any shares of Company Common Stock nor shall there be any further exercises of Options which were outstanding immediately prior to the Effective Date and any such shares of Company Common Stock or Options presented to the Exchange Agent shall be cancelled in exchange for the aggregate consideration payable with respect thereto as provided in this Article 3.

(b) Totalbank's sole responsibility with respect to the Exchange Agent and the surrender of certificates representing shares of Company Common Stock or Options for payment of the Per Share Amount or Per Option Amount, as applicable, shall be to deposit with the Exchange Agent at the Closing an amount of cash equal to the Purchase Price minus (i) an amount equal to the product of the Per Share Amount multiplied by the number of Dissenting Shares, if any and (ii) the Deposit, together with interest thereon, if applicable. The parties agree and acknowledge that the Exchange Agent shall be instructed that any funds deposited with the Exchange Agent for the payment of the Per Share Amount or the Per Option Amount remaining unclaimed for two (2) years after the Effective Date shall be paid to Totalbank. The parties further agree and acknowledge that Totalbank may, at its option, act as the Exchange Agent hereunder, in which case Totalbank agrees to exercise the same care customarily exercised by prudent third-party exchange agents.

3.6 Conversion of Interim Common Stock. On the Effective Date and as a result of the Interim Merger, each share of common stock of Interim issued and outstanding immediately prior to the Effective Date shall, without further action cease to be an issued and outstanding share of Interim, and shall become and be converted into a right to receive one share of Company Common Stock (the "New Common Stock").

3.7 Impact of the Company Liquidating Merger on New Common Stock. On the Effective Date and as a result of the Company Liquidating Merger, each share of New Common Stock of the Company, all of which will be held by Totalbank as a result of the Interim Merger, shall be cancelled and extinguished and no payment or other consideration shall be made with respect thereto.

3.8 Impact of the Bank Liquidating Merger on the Bank's Capital Stock. On the Effective Date and as a result of the Bank Liquidating Merger, each share of capital stock of the Bank, all of which will be held by Totalbank as a result of the Company Liquidating Merger, shall be cancelled and extinguished and no payment or other consideration shall be made with respect thereto.

3.9 Dissenting Shares. The holder of any Dissenting Share shall have the rights, subject to the limitations, provided by applicable law. A "Dissenting Share" shall mean any share of Company Common Stock for which the holder thereof will, immediately after the Effective Date, be entitled to seek appraisal rights under Florida law.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF TOTALBANK

In order to induce the Company and the Bank to enter into this Agreement and to consummate the transactions contemplated hereby, Totalbank makes the representations and warranties set forth below to the Company and the Bank.

4.1 Organization. Totalbank is a Florida banking corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Totalbank has all requisite right, power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

4.2 Authorization; Enforceability. Subject to the approval of the Company Liquidating Merger and the Bank Liquidating Merger by the stockholders of Totalbank, the execution, delivery and performance of this Agreement by Totalbank and the consummation by Totalbank of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by Totalbank and, upon due execution by the Company and the Bank, will, subject to the terms and conditions of this Agreement, constitute the legal, valid and binding obligation of Totalbank, enforceable in accordance with its terms, except to the extent that its enforcement is limited by bankruptcy,



insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity.

4.3 No Violation or Conflict. The execution, delivery and performance of this Agreement by Totalbank and the consummation by Totalbank of the transactions contemplated hereby: (a) do not and will not violate or conflict with any provision of law or regulation, or any writ, order, judgment or decree of any court or governmental or regulatory authority, or any provision of Totalbank's Charter or Bylaws; and (b) do not and will not, with or without the passage of time or the giving of notice, result in the breach of, or constitute a default, cause the acceleration of performance, or require any consent under, or result in the creation of any Lien upon any property or assets of Totalbank pursuant to any material instrument or agreement to which Totalbank is a party or by which Totalbank or its properties may be bound or affected, other than instruments or agreements as to which consent shall have been obtained at or prior to the Closing.

4.4 Consent of Governmental Authorities. Other than approvals or waivers from Applicable Governmental Authorities as contemplated by Section 2.4 hereof, no consent, approval or authorization of, or registration, qualification or filing with any United States or foreign, federal, state or local governmental or regulatory authority is required to be made by Totalbank in connection with the execution, delivery or performance by Totalbank of this Agreement or the consummation by Totalbank of the transactions contemplated hereby.

4.5 Community Reinvestment Act Compliance. Totalbank is in substantial compliance with the applicable provisions of the Community Reinvestment Act of 1977 and the regulations promulgated thereunder, and received a CRA rating of at least satisfactory as of its last examination. As of the date of this Agreement, Totalbank has not been advised of the existence of any fact or circumstance or sets of facts or circumstances which, if true, would cause Totalbank to fail to be in substantial compliance with such provisions.

4.6 Brokers. Totalbank has not incurred and will not incur any broker's, finder's, investment banking or similar fees, commissions or expenses, in connection with the transactions contemplated by this Agreement.

4.7 Totalbank Reports. Since January 1, 1995, Totalbank has filed on a timely basis all reports and statements, together with all amendments required to be made with respect thereto that it is required to file with the Applicable Governmental Authorities. No Totalbank filing with respect to periods beginning on or after January 1, 1995 and until the Closing contained or will contain any information that was false or misleading with respect to any material fact or omitted or will omit or state any material fact necessary in order to make the statements therein not misleading.

4.8 Other Matters. Neither Totalbank nor any of its Subsidiaries has taken or agreed to take any action or has any knowledge of any fact or circumstance that would materially impede or delay receipt of any consent or approval referred to in Section 2.4.

4.9 Litigation. There are no judicial proceedings of any kind or nature or, to the knowledge of Totalbank, threatened against Totalbank before any court or arbitral tribunal or before or by any governmental department, agency or instrumentality involving the transactions contemplated by this Agreement.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE BANK

In order to induce Totalbank to enter into this Agreement and to consummate the transactions contemplated hereby, the Company and the Bank, jointly and severally, make the representations and warranties set forth below to Totalbank.

5.1 Organization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. The Bank is a federally chartered commercial bank duly organized, validly existing and in good standing under the laws of the United States of America. Each of the Company Subsidiaries, including the Bank, is listed on Schedule 5.1 and each is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation as set forth on Schedule 5.1. The Company and each of the Company Subsidiaries is duly qualified to transact business as a foreign corporation in all jurisdictions where the ownership or leasing of its properties or the conduct of its business requires such qualification; each jurisdiction in which the Company or the Company Subsidiaries is so qualified and each location where the Company or the Company Subsidiaries has an office or place of business is listed on Schedule 5.1. The Company and each of the Company Subsidiaries has all requisite right, power and authority to (a) own or lease and operate its properties, (b) conduct its business as presently conducted, and (c) engage in and consummate the transactions contemplated hereby. No Company Subsidiary (other than the Bank) is an "insured depository institution" as defined in the Federal Deposit Insurance Act, as amended.

5.2 Authorization; Enforceability. Subject to the approval of the Interim Merger by the stockholders of the Company, the execution, delivery and performance of this Agreement by the Company and the Bank and the consummation by the Company and the Bank of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement and all other documents to be executed and delivered by the Company and the Bank pursuant to this Agreement have been duly executed and delivered and, upon due execution by Totalbank, will, subject to the terms and conditions of this Agreement, constitute the legal, valid and binding obligations of the Company and the Bank, enforceable in accordance with their terms, except to the extent that their enforcement is limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity.

5.3 No Violation or Conflict. The execution, delivery and performance of this Agreement by the Company and the Bank and the consummation by the Company and the Bank

of the transactions contemplated hereby: (a) do not and will not violate or conflict with any provision of law or regulation, or any writ, order, judgment or decree of any court or governmental or regulatory authority, or any provision of the Company's or any Company Subsidiary's Charter, Articles of Incorporation or Bylaws or analogous organizational documents; and (b) do not and will not, with or without the passage of time or the giving of notice, result in the breach of, or constitute a default, cause the acceleration of performance or require any consent under, or result in the creation of any Lien upon any property or assets of the Company or any Company Subsidiary pursuant to any instrument or agreement to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary or their respective properties may be bound or affected, other than instruments or agreements as to which consent shall have been obtained at or prior to the Effective Date, each of which instruments or agreements is listed on Schedule 5.3 hereto.

5.4 Consent of Governmental Authorities. Other than approvals or waivers from Applicable Governmental Authorities as contemplated by Section 2.4 hereof, no consent, approval or authorization of, or registration, qualification or filing with any United States or foreign, federal, state or local governmental or regulatory authority, is required to be made by the Company or any Company Subsidiary in connection with the execution, delivery or performance of this Agreement by the Company or the Bank, or the consummation by the Company or the Bank of the transactions contemplated hereby.

5.5 Brokers. No financial advisor, broker or finder, is entitled to any broker's, finder's, investment banking or similar fees, commissions or expenses in connection with the transactions contemplated by this Agreement.

5.6 Corporate Records. The stock records and minute books of the Company and each Company Subsidiary fully reflect all issuances, transfers and redemptions of their respective capital stock, correctly show the total number of shares of their respective capital stock issued and outstanding on the date hereof, contain their respective charters, articles of incorporation or other analogous organizational documents and all amendments thereto, and contain their respective by-laws as amended and currently in force. Such minute books also contain complete and accurate records of all meetings and other corporate actions of the board of directors, committees of the board of directors, incorporators and shareholders of the Company and each Company Subsidiary from the date of their incorporation to the date hereof.

5.7 Capitalization. The authorized capital stock of the Company consists of 300,000 shares of Company Common Stock, of which 188,876 shares are issued and outstanding and, except as indicated on Schedule 5.7, no shares are reserved for issuance upon the exercise of outstanding Options. Schedule 5.7 also sets forth a list of all outstanding Options, the exercise price of each such Option and the registered holders thereof. The Company has no treasury shares. All shares of the Company's and each Company Subsidiary's outstanding capital stock have been duly authorized, are validly issued and outstanding, and are fully paid and nonassessable. No securities issued by the Company or any Company Subsidiary from the date of its incorporation to the date hereof were issued in violation of the preemptive rights of any

shareholder. There are no dividends which have accrued or been declared but are unpaid on the capital stock of the Company or any Company Subsidiary. All Taxes required to be paid in connection with the issuance and any transfers of the Company's or any Company Subsidiary's capital stock have been paid. All authorizations required to be obtained from or registrations required to be effected with any Person in connection with the issuances of securities of the Company or any Company Subsidiary from the date of such entity's incorporation to the date hereof have been obtained or effected and all securities of the Company and each Company Subsidiary have been issued and are held in accordance with the provisions of all applicable securities and other laws.

5.8 Rights, Warrants, Options. Except as disclosed on Schedule 5.8, there are no outstanding: (a) securities or instruments convertible into or exercisable for any of the capital stock or other equity interests of the Company or any Company Subsidiary; (b) options, warrants, subscriptions or other rights to acquire capital stock or other equity interests of the Company or any Company Subsidiary; (c) debt securities with any voting rights or convertible into securities with voting rights; or (d) commitments, agreements or understandings of any kind, including employee benefit arrangements, relating to any capital stock or other equity interests of the Company or any Company Subsidiary, or the issuance or repurchase by the Company or any Company Subsidiary of (x) any capital stock or other equity interests of the Company or any Company Subsidiary, (y) any such securities or instruments convertible into or exercisable for capital stock or other equity interests of the Company or any Company Subsidiary or (z) any such options, warrants or rights. Neither the Company nor any Company Subsidiary has any outstanding stock appreciation, phantom stock rights or any similar rights.

5.9 Subsidiaries. Each Subsidiary of the Company is listed on Schedule 5.9. All of the shares of the capital stock of the Company Subsidiaries which are issued and outstanding are owned by the Company, as shown on Schedule 5.9, free and clear of all Liens. Other than as reflected on Schedule 5.9, the Company has no Subsidiaries and owns no interest in any Person.

5.10 Financial Statements. The Company has previously delivered to Totalbank true and complete copies of the audited consolidated balance sheet of the Company and the Company Subsidiaries as of December 31, 1995 and 1994, and the related audited consolidated statements of income, stockholders' equity and cash flows of the Company and the Company Subsidiaries for the fiscal years ended December 31, 1995 and 1994, including any related notes, certified without qualification by the Company's independent certified public accountants pursuant to their audit of the financial records of the Company and the unaudited consolidated balance sheet, statement of income and cash flows for the nine month period ending September 30, 1996 (collectively, the "Financial Statements"). The Company shall deliver to Totalbank as soon as reasonably possible but no later than March 31, 1997 audited financial statements as indicated above for the year ended December 31, 1996 and shall also deliver any further annual, quarterly or monthly financial statements prepared by the Company, or audited by its independent certified public accountants, as soon as such statements become available. All such financial statements, including the Financial Statements: (a) have been or will be prepared in accordance with the books of account and records of the Company and the Company Subsidiaries; (b) fairly present

or will fairly present the consolidated financial condition and the results of operations of the Company and the Company Subsidiaries at the dates and for the periods specified in those statements; and (c) have been or will be prepared in accordance with generally accepted accounting principles ("GAAP") consistently applied with prior periods (except with respect to footnote disclosure on unaudited financial statements).

5.11 Absence of Undisclosed Liabilities. Other than as disclosed in the balance sheet for the nine (9) month period ended September 30, 1996 (the "1996 Balance Sheet") contained in the Financial Statements, neither the Company nor the Company Subsidiaries have any liabilities, commitments or obligations of any nature whatsoever, whether unaccrued, contingent or otherwise or any unrealized or anticipated losses from any commitments, and there is no basis for assertion against the Company or any Company Subsidiary of any such liability, commitment, obligation or loss, except for liabilities, commitments, obligations and losses arising in the ordinary course of business, none of which, individually or in the aggregate, have had or could have a material adverse effect on the financial condition, results of operations, assets, liabilities, properties, business or prospects of the Company and the Company Subsidiaries.

5.12 Contracts. Schedule 5.12 sets forth a true and complete list and a summary description of all contracts, agreements and other instruments to which the Company or any Company Subsidiary is a party or otherwise relating to or affecting any of their respective assets, properties or operations (except that no information need be provided with respect to clauses (i), (ii) or (iii) below, if they call for payments of less than ten thousand dollars (\$10,000)), including, without limitation, all written or oral, express or implied, (i) purchase and supply contracts; (ii) leases and subleases of real or personal property; (iii) contracts, agreements or understandings with respect to the development, license, sale or use of computer software programs or applications, (iv) agreements and other arrangements for the sale of any assets or for the grant of any options or preferential rights to purchase any assets, property or rights; (v) documents granting any power of attorney with respect to the affairs of the Company or any Company Subsidiary; (vi) suretyship contracts, working capital maintenance or other forms of guaranty agreements; (vii) contracts or commitments limiting or restraining the Company or any Company Subsidiary from engaging or competing in any lines of business or with any Person or using or employing the services of any Person; (viii) partnership and joint venture agreements; (ix) documents, agreements or arrangements relating to the issuance by the Company or any Company Subsidiary of any of its capital stock or other securities; (x) any mortgage, pledge, conditional sales contract, security agreement, option or any other similar agreement with respect to any interest of the Company or any Company Subsidiary (other than as mortgagee, secured party or deed of trust beneficiary, in all such cases in the ordinary course of its business); (xi) any letter of credit or loan commitment; (xii) any employment, severance, consulting, termination or retirement contract; (xiii) any agreement for the borrowing of any money by the Company or any Company Subsidiary, other than deposits obtained in the ordinary course of business and other than with respect to investment securities sold under repurchase agreements or pledged for borrowings in the ordinary course of business; (xiv) any agreement or contract with any Affiliate of the Company or any Company Subsidiary or any executive

officer (as defined in Regulation O of the Federal Reserve Board) or director of the Company or Company Subsidiary; and (xv) all amendments, modifications, extensions or renewals of any of the foregoing (the foregoing contracts, agreements, documents and instruments are hereinafter referred to collectively as the "Commitments" and individually as a "Commitment").

Each Commitment is valid, binding and enforceable against the parties thereto in accordance with its terms, and is in full force and effect on the date hereof. The Company and the Company Subsidiaries have performed all obligations required to be performed by each to date under, are not in default in any material respect of, any Commitment, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default. Except as disclosed on Schedule 5.3, no consent of or notice to third parties is required relating to any Commitment as a consequence of this Agreement or the transactions contemplated herein. To the knowledge of the Company or any Company Subsidiary, no other party to any Commitment is in material default in respect thereof, and no event has occurred which, with due notice or lapse of time or both, would constitute such a material default. The Company shall have delivered to Totalbank or its representatives prior to ten (10) days after execution of this Agreement true and complete originals or copies of all the Commitments.

5.13 Real Properties. Schedule 5.13 describes all real estate owned or leased by the Company or the Company Subsidiaries, exclusive of "other real estate owned" acquired as a result of foreclosure or "deed in lieu" settlements and held for resale. All such real property, if owned by the Company or any Company Subsidiary, is owned under marketable title, free and clear of all Liens, except statutory liens securing payments not yet due. Except as set forth in Schedule 5.13: (i) all of the real property of the Company or any Company Subsidiary (the "Real Property") is free from any zoning laws, ordinances and regulations, and from all special taxes or assessments, except those generally applicable to other properties in the tax districts in which the Real Property is located; (ii) the Company or a Company Subsidiary has the exclusive right of possession of each tract comprising the Real Property; and (iii) the boundaries of each parcel of the Real Property are contiguous to the rights-of-way of abutting public roads, and there is ingress and egress to and from all of the Real Property. All improvements on such Real Property and the operations therein conducted conform in all material respects to all applicable health, fire, environmental, safety, zoning and building laws, ordinances and administrative regulations, except for possible nonconforming uses or violations which do not and will not materially interfere with the use, operation or maintenance thereof by the Company or a Company Subsidiary as now used, operated or maintained or access thereto. All buildings, structures, improvements and fixtures owned, leased or used by the Company or any Company Subsidiary in the conduct of its business conform in all material respects to (or are otherwise exempt from) all applicable codes and rules adopted by national and local associations and boards of insurance underwriters; and all such buildings, structures, improvements and fixtures are in satisfactory operating condition and repair, normal wear and tear excepted.

5.14 Real Property Leases. All leases pursuant to which the Company or any Company Subsidiary is lessee or lessor of any real property (the "Leases") are listed in Schedule 5.14. All such Leases are valid, legally binding, in full force and effect, and enforceable in

accordance with their terms. There is not under any of the Leases: (i) any default or any claim of default which with notice or lapse of time, or both, would constitute a material default by the Company or any Company Subsidiary or (ii) any material default or claim of default by any lessee of the Company or any Company Subsidiary, or any event of default or event which with notice or lapse of time, or both, would constitute a material default by any such lessee. None of the property subject to a Lease is subject to any sublease, license or other agreement granting to any Person any right to the use, occupancy or enjoyment of such property or any portion thereof, except where such sublease, license or other agreement would not materially and adversely affect the use, occupancy or enjoyment of such real property as it is currently being used, occupied or enjoyed.

5.15 Personal Property. Schedule 5.15 sets forth a complete and correct list of each item of machinery, equipment, furniture, fixtures and other tangible personal property owned, leased or used by the Company or any Company Subsidiary (i) in which the Company or any Company Subsidiary had an unamortized basis, as of September 30, 1996, exceeding five thousand dollars (\$5,000) or (ii) having an aggregate lease cost to the Company or any Company Subsidiary exceeding five thousand dollars (\$5,000) (collectively, the "Personal Property"). Except as set forth in Schedule 5.15, the Company and the Company Subsidiaries own and have good title, free and clear of all title defects and Liens (other than the lien of current property taxes and assessments not in default, if any) to the Personal Property shown on Schedule 5.15 as owned by it and to all the machinery, equipment, furniture, fixtures, inventory, receivables and other tangible or intangible personal property reflected on the 1996 Balance Sheet and all such property acquired since the date thereof, except for sales and dispositions in the ordinary course of business since such date. None of the Liens, if any, listed on Schedule 5.15 materially adversely affects the value of any of the items of the Personal Property to which it relates or interferes with its use in the conduct of business of the Company and the Company Subsidiaries. The Company and the Company Subsidiaries hold good and transferable leaseholds in all of the Personal Property shown on Schedule 5.15 as leased by it, in each case under valid and enforceable leases. Neither the Company nor any Company Subsidiary is in breach of or default (and no event has occurred which, with due notice or lapse of time or both, may constitute such a breach or default) under any lease of any items of Personal Property leased by it. The Personal Property and other personal property now owned, leased or used by the Company and the Company Subsidiaries is sufficient and adequate to carry on their businesses as presently conducted and all items thereof are in good operating condition and repair, normal wear and tear excepted.

5.16 Investigations; Litigation. There is no investigation by any federal, state or local governmental agency, or any action, suit, proceeding or claim pending or threatened, against or adversely affecting the Company or any Company Subsidiary (including, without limitation, any investigation, action, or proceeding with respect to Taxes), or the assets or business of the Company or the Company Subsidiaries that, if determined adversely to the Company or the Company Subsidiaries, could have a material adverse effect on the financial condition, results of operations, assets, liabilities, properties, business or prospects of the Company and the Company Subsidiaries, taken as a whole. Except as disclosed on Schedule 5.16, (i) neither the

Company nor the Company Subsidiaries nor any director, officer, employee or agent of the Company or the Company Subsidiaries in their respective capacities as such, is a party to any, and there are no pending or threatened, legal, administrative or other proceedings, claims, suits, actions or governmental investigations of any nature against the Company or any Company Subsidiary, or any director, officer, employee or agent of the Company or any Company Subsidiary in their respective capacities as such, or involving any property or assets of the Company or any Company Subsidiary, (ii) there is no outstanding order, writ, injunction or decree of any court, government or governmental agency against, or affecting the Company, any Company Subsidiary or their respective assets or businesses and (iii) during the last twelve (12) months there were no workers compensation claims involving the Company or any Company Subsidiary. Except as set forth on Schedule 5.16 and except for repossession or foreclosure actions in the ordinary course of business where no counterclaim has been asserted, there is no lawsuit or claim by the Company or any Company Subsidiary pending against any other Person.

5.17 Insurance. The Company and the Company Subsidiaries have in effect insurance coverage with reputable insurers, which in respect to amounts, types and risks insured, is adequate for the businesses in which the Company and the Company Subsidiaries are engaged. All policies of fire, product or other liability, worker's compensation and other similar forms of insurance owned or held by the Company or the Company Subsidiaries are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid (other than retrospective premiums which may be payable with respect to worker's compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy. The insurance policies to which the Company or any Company Subsidiary is a party are sufficient for compliance with all requirements of law and of all agreements to which the Company or any Company Subsidiary is a party. Neither the Company nor any of the Company Subsidiaries have been refused any insurance with respect to any assets or operations, nor has any coverage been limited in any material respect to any operations by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last five (5) years. Schedule 5.17 lists each insurance policy and bond maintained by the Company or any Company Subsidiary or under which any of its business, assets, operations or personnel are insured and specifically identifies the policy number, the carrier, the nature of the coverage (including limits and deductibles), the premium payable, and the agent's name, address and telephone number.

5.18 Compliance with Laws, Regulations. The Company and the Company Subsidiaries have all permits, licenses, certificates of authority, orders and approvals of, and have made all filings, applications and registrations with, federal, state, local or foreign governmental or regulatory bodies or other Persons that are required in order to permit each to carry on its business as presently conducted. All such permits, licenses, certificates of authority, orders and approvals are in full force and effect, and, to the knowledge of either the Company or any Company Subsidiary, no suspension or cancellation of any of them is threatened; and all such filings, applications and registrations are current. Neither the Company nor any Company Subsidiary is in default under any order, license, regulation or demand of any federal, state,



local or other governmental agency or with respect to any order, writ, injunction or decree of any court. Except for statutory or regulatory restrictions of general application, no federal, state, local or other governmental authority has placed any restrictions on the business of the Company or the Company Subsidiaries. The Company and the Company Subsidiaries have conducted their respective businesses in compliance in all material respects with all applicable federal, foreign, state and local laws, regulations and orders including, without limitation, disclosure, usury, equal credit opportunity, equal employment, fair credit reporting, consumer credit protection, truth in lending, lender liability, antitrust and the Florida Unclaimed Property Act. The forms, procedures, and practices used by the Company and the Company Subsidiaries are in compliance in all material respects with all laws, regulations and orders and neither the Company nor any Company Subsidiary has received any indication from regulatory authorities or otherwise that it is not in compliance or needs to improve its compliance in these areas.

5.19 Employee Benefit Plans. Schedule 5.19 lists and correctly summarizes all employee benefits plans, including but not limited to any plan, program, practice, policy or other arrangement, whether or not written, providing pension, profit-sharing, stock option, stock bonus, deferred compensation, supplemental retirement, severance, health care, hospitalization, medical, dental, disability, life insurance, salary continuation or other benefits to employees or former employees of the Company or any Company Subsidiary (the "Plans"). The Company shall have delivered to Totalbank prior to ten (10) days after execution of this Agreement true and complete copies of all of the Plans and all documents relating thereto, including, but not limited to, summary plan descriptions, trust agreements, insurance contracts, the most recent Annual Report (Form 5500 Series) and IRS determination letter and accountant or trustee reports, if any. Each Plan has been maintained and administered in all respects in accordance with its terms and with all applicable laws, including the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the Code, and the regulations promulgated thereunder. All contributions required to be made to any Plan have been made, and there does not exist any accumulated funding deficiency (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to any Plan. No Plan is subject to Title IV of ERISA, and there are no circumstances pursuant to which the Company or any Company Subsidiary could be liable to the Pension Benefit Guaranty Corporation or a multi-employer plan (as defined in Section 3(37) of ERISA) (a "Multiemployer Plan") with respect to any plan not listed on Schedule 5.19. Except as set forth on Schedule 5.19, the Company and the Company Subsidiaries neither maintain nor have entered into any document, plan or agreement which contains, directly or indirectly, any change in control provisions which would cause an increase or acceleration of benefits or benefit entitlements to employees or former employees of the Company or any Company Subsidiary or its respective beneficiaries or other event which would cause an increase in liability to Totalbank as a result of the transactions contemplated by this Agreement. The Internal Revenue Service has issued a favorable determination letter with respect to each Plan that is intended to be a "qualified plan" under Section 401(a) of the Code, and there are no existing circumstances nor any events that have occurred that could adversely affect the qualified status of any such Plan. No Plan is a Multiemployer Plan or a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA (a "Multiple Employer Plan"). Neither the Company nor any

Company Subsidiary nor any entity under common control with the Company or any Company Subsidiary, at any time within the last six (6) years, has contributed to, or been obligated to contribute to, any Multiemployer Plan or Multiple Employer Plan. Except for health continuation coverage as required by Section 4980B of the Code or Part 6 of Title I of ERISA, or as identified on Schedule 5.19, neither the Company nor any Company Subsidiary has any liability for life, health, medical or other welfare benefits to former employees or beneficiaries or dependents thereof. Except as set forth in Schedule 5.19, there are no pending or threatened claims (other than claims for benefits in the ordinary course), lawsuits or arbitrations which have been asserted or instituted against the Plans or any fiduciaries thereof with respect to their duties to the Plans.

5.20 Labor Matters. Neither the Company nor any Company Subsidiary is a party to nor has in effect any organized labor contract or collective bargaining agreement. Except as set forth on Schedule 5.20A, there are no employment, consulting, severance or indemnification arrangements, agreements, or understandings between the Company or the Company Subsidiaries, and any officer, director, consultant or employee (the "Employment Agreements"). The Company shall have delivered to Totalbank prior to ten (10) days after execution of this Agreement true and complete copies of all of the Employment Agreements. Except as set forth in Schedule 5.20A, the terms of employment or engagement of all directors, officers, employees, agents, consultants and professional advisers of the Company or the Company Subsidiaries are such that their employment or engagement may be terminated upon not more than two weeks notice given at any time without liability for payment of compensation or damages and neither the Company nor any Company Subsidiary has entered into any agreement or arrangement for the management of its business or any part thereof other than with its directors, officers or employees. Schedule 5.20B contains a list of all officers and employees of the Company or any Company Subsidiary (including any employees on leave of absence) and sets forth with respect to each such officer or employee the total compensation paid during 1996 and payable during 1997, all accrued sick time, personal time and vacation time and the rate at which such time will accrue during 1997, the amount of any severance or other amounts payable as a result of the transactions contemplated by this Agreement or payable in the event that such officer or employee is terminated by the Company on or prior to the Effective Date.

5.21 Environmental Liability. "Properties" as used in this Section 5.21(a)-(c) inclusive, shall include all of the following: (x) all real property owned and/or operated by the Company or any Company Subsidiary, (y) all Other Real Estate Owned by the Company or any Company Subsidiary and (z) all real property which serves as collateral (the "Collateral Property") for any loan or other indebtedness held by the Bank; provided, however, that the representation and warranty with regard to any Collateral Property shall be to the knowledge of the Company or any Company Subsidiary.

(a) The Company and the Company Subsidiaries have obtained all permits, licenses and other authorizations which are required with respect to the operation of their respective businesses and all Properties under any Environmental Laws (as hereinafter defined) (such permits, licenses and authorizations being hereinafter referred to as "Environmental

Permits"), including all federal, state and local laws relating to pollution or protection of the environment such as laws relating to emissions, discharges, releases or threatened releases of hazardous, toxic or other pollutants, contaminants, chemicals or industrial material, into the natural environment, including without limitation, into ambient air, surface water, ground water, land survey or subsurface strata or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous, toxic or other pollutants, contaminants, chemicals or industrial materials, substances or wastes (which laws, together with all regulations, rules, codes, plans, decrees, judgments, injunctions, notices and demand letters issued, entered, promulgated or approved thereunder being herein referred to as "Environmental Laws"). The Company and the Company Subsidiaries are in compliance with all terms and conditions of all Environmental Permits required under the Environmental Laws, and are also in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws. The Company will provide Totalbank with complete copies of all notices known to the Company or any Company Subsidiary of whatever form (all of which disclosures are set forth on Schedule 5.21) received by any previous owner or operator of any Properties or any business currently owned or operated by the Company or any Company Subsidiary within the five (5) years preceding the date of this Agreement or alleging noncompliance with any Environmental Law.

(b) There is no civil, criminal or administrative action, demand, claim, investigation or proceeding pending or, to the Company's or any Company Subsidiary's knowledge, threatened against the Company or any Company Subsidiary with regard to any Properties, under or relating in any way to the Environmental Laws.

(c) With regard to any of the Properties, there are no past, present or known or anticipated future events, conditions, circumstances, or plans which may interfere with or prevent compliance or continued compliance with the Environmental Laws, or which may give rise to any common law or other legal liability, including, but not limited to, liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or which otherwise may form the basis of any claim, action, demand, proceeding, notice of violation or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling or the emission, discharge, release or threatened release into the environment of any pollutant, contaminant, chemical, industrial, toxic or hazardous material, substance or waste. Without in any way limiting the foregoing, no release, emission or discharge into the environment of any hazardous substance (as that term is currently defined under CERCLA or any applicable similar state law) or petroleum or petroleum-based substances (as those terms are defined in the Federal Storage Tank Regulations, 40 C.F.R. Part 280) which would give rise to liability under any Environmental Laws has occurred, is currently occurring or, to the extent known or reasonably anticipated, is probable of occurring in the future in connection with the ownership or operation of any Properties and there is no spill, deposit, or discharge of any such hazardous substance or petroleum or petroleum-based substance, at, on, into, under or having originated from any of the Properties. None of the Properties or any other assets of the Company or the Company Subsidiaries include

any equipment, machinery, device, or other apparatus that contains polychlorinated biphenyls that is now or ever has been leaking, any asbestos that is or reasonably may be anticipated to become in friable condition within the next five (5) years, or any underground tank.

5.22 Reports. The Company and the Company Subsidiaries have timely filed all filings, reports, registrations and statements, together with any amendments required to be made with respect thereto, that were required to be filed with all state and federal governmental agencies and any other Person. As of their respective dates, such reports were complete and accurate and complied in all material respects with all the statutes, rules and regulations enforced or promulgated by the applicable governmental authorities or Person with which they were filed. The Company will make available to Totalbank prior to ten (10) days after execution of this Agreement copies of all such reports, registrations or filings made since January 1, 1992.

5.23 Tax Matters. The Company will deliver to Totalbank prior to ten (10) days after execution of this Agreement true, correct and complete copies of each of the federal, state, local and foreign, if any, income tax returns filed by the Company or the Company Subsidiaries for the five (5) fiscal years 1991 through 1995. All Tax returns and other documents required to be filed by or with respect to the Company or the Company Subsidiaries (including but not limited to Form 1099's) have been timely filed with the appropriate governmental authorities in all jurisdictions in which such returns and documents are required to be filed, all of the foregoing were true, correct and complete and reflect accurately all liability for Taxes of the Company and the Company Subsidiaries for the periods to which such returns and documents relate, and all amounts shown as owing thereon have been paid. All Taxes, if any, collectible or payable by the Company or the Company Subsidiaries or relating to or chargeable against any of their respective assets, revenues or income through December 31, 1996, were fully collected and paid by such date. No taxation authority has audited the records of the Company or the Company Subsidiaries or notified the Company or the Company Subsidiaries of its intention to audit such records, in the past five (5) years. No claims or deficiencies have been asserted against the Company or the Company Subsidiaries with respect to any Taxes or other governmental charges or levies which have not been paid or otherwise satisfied or for which accruals or reserves have not been made in the 1996 Balance Sheet, and there exists no reasonable basis for the making of any such claims. Neither the Company nor the Company Subsidiaries have waived any restrictions on assessment or collection of Taxes or consented to the extension of any statute of limitations relating to taxation.

5.24 Loan Loss Reserves. The reserve for possible loan losses reflected on the 1996 Balance Sheet is, and for periods subsequent to such date, will be adequate to provide for all losses, net of recoveries relating to loans previously charged off, on loans outstanding as of the date of such statements. Such reserve shall in no event be reduced prior to the Effective Date.

5.25 Deposit Accounts.

(a) Schedule 5.25(a) sets forth a complete and correct list, as of the most recent practicable date (but in no event less than fifteen (15) days prior to the date hereof), with

respect to the amounts of demand deposit accounts, passbook accounts, statement savings accounts, money market savings accounts, negotiable order of withdrawal ("NOW") accounts, certificates of deposits with principal balances of less than one hundred thousand dollars (\$100,000), certificates of deposits with principal balances of one hundred thousand dollars (\$100,000) or more held by natural persons, certificates of deposit of one hundred thousand dollars (\$100,000) or more held other than by natural persons, and any other appropriate characterizations for those deposit accounts contemplated to be assumed by Totalbank pursuant to this Agreement. Schedule 5.25(a) shall also set forth (i) each deposit account, regardless of amount, beneficially owned by any foreign Person, (ii) deposits where the customer has directed the Company or the Bank to not mail account statements to the customer, and (iii) all payable through accounts. Except as set forth on Schedule 5.25(a), no director, officer, employee or shareholder of the Company or the Bank or any of their Affiliates holds, directly or indirectly, any interest in any deposit account set forth on Schedule 5.25(a). Schedule 5.25(a) shall further set forth the approximate rates of interest being paid, the term of the deposits and the cost of funds within each such deposit category along with the percentage the total deposits in each such category represents with respect to all deposit accounts of the Bank. The taking and collection of deposits by the Bank is and has been done in compliance with all applicable laws, including without limitation, those relating to suspicious activity reporting and cash transaction reporting. Form 1099's are maintained for each customer as required by law, are complete in all material respects and contain the social security number of the customer or if such social security numbers are missing, the Bank has exercised all legally required diligence to properly obtain them.

(b) Except as indicated on Schedule 5.25(b), neither the Company nor the Bank maintain any office or pay any employee or agent outside of the United States with respect to the solicitation, taking, sending or transmitting of loans, loan payments or deposits.

#### 5.26 Loans.

(a) All loan commitments of, and all loans originated, underwritten or held by, the Bank (the "Loans") represent or represented, as applicable, bona fide, valid and binding arms' length loan transactions between the Bank and their respective borrowers and all of said Loans are repayable to the Bank or the holders thereof, as applicable, upon the dates set forth in the respective borrower's notes and loan agreements. None of the credits entered or given effect with respect to any Loan was gratuitous or given for a consideration other than the payment of money to the Person to whom payment was due thereunder. Except as set forth in Schedule 5.26 hereto, all of the Loans are valid and enforceable in accordance with their terms, except to the extent that enforcement of the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity and are subject to no defenses, counterclaims or set offs of any nature. Except as set forth in Schedule 5.26, the Bank has not waived, compromised or otherwise relinquished any of its rights under any Loan, including, without limitation, the right of a lender to foreclosure in respect of a secured Loan. Except as set forth on Schedule 5.26, no Loan or loan commitment is made to or with, directly or indirectly, any director, officer,

employee or shareholder of the Company or any Company Subsidiary or any of their immediate family members. Neither the Company nor the Bank has received any notice of any offset, defense or counterclaim to, right of refund or credit (other than any right of refund or credit of unearned finance charges or unearned premiums) under, or any right of rescission with respect to, any payment or other obligation under any of the Loans. Schedule 5.26 hereto also contains a complete list of all Loans, if any, where a default has occurred, or with notice or lapse of time or both, would render Loans in default. Other than as set forth on Schedule 5.26, the Bank has no knowledge of any borrower's inability to repay any Loans when due, regardless of whether such Loans are currently in default. Except as set forth on Schedule 5.26, neither the Bank nor any holder thereof has made any principal or interest payments in respect of any Loans using its own funds. Each of the Loans of the Bank have been issued in accordance in all material respects with all applicable statutes and regulatory requirements and have been made in the regular course of the Bank's business and in accordance with their respective customary practices. Schedule 5.26 hereto contains a true and complete list of all outstanding Loans existing as of the date hereof setting forth for each such Loan: (a) the name of the borrower, (b) the loan number, (c) any guarantors, endorsors or co-makers, (d) the term of the Loan, (e) the original principal amount, (f) the current outstanding balance, (g) the rate of interest and (h) whether such Loan is secured and the nature, priority and description (including location) of the collateral securing such Loan. Documentation maintained by the Bank in the loan file with respect to each of its Loans is in accordance with the Bank's loan policies and all applicable laws and regulations.

(b) Each currently outstanding Loan is evidenced by a promissory note duly executed by the borrower(s). Each Loan designated on Schedule 5.26 as secured has in effect a mortgage, security agreement, or other instrument, duly executed by the borrower(s) and containing enforceable provisions to protect and assert a secured party's rights and remedies thereunder. For each Loan secured under a security agreement, such security interest is evidenced by a valid filing in accordance with the Uniform Commercial Code where such filing is required by such code, which grants the Bank or the secured party a perfected security interest in the collateral described therein; and for each Loan secured by real property, the related mortgage, deed of trust or other security agreement has been recorded in the appropriate local land records and constitutes a perfected security interest in the real property securing such Loan and the Bank has obtained a mortgage title insurance policy insuring such mortgage.

(c) Schedule 5.26 indicates any Loan which was not originated directly by the Bank. Except as specifically noted on Schedule 5.26, neither the Company nor the Bank holds any indirect Loans and carries no dealer reserves.

(d) Except as indicated on Schedule 5.6, the Company and the Bank do not service Loans for third parties and have not sold Loans where the purchaser or subsequent transferee may have recourse against either the Company or the Bank. Schedule 5.26 identifies the amounts and nature of any such recourse, including the events which give rise thereto.

5.27 Absence of Certain Changes. Except as disclosed on Schedule 5.27 hereto, since September 30, 1996, the Company and the Company Subsidiaries have conducted their businesses in the ordinary and usual course consistent with past practices and there has not occurred any material adverse change in the condition (financial or otherwise), results of operations, properties, assets, liabilities, business or prospects of the Company and the Company Subsidiaries. Without limiting the generality of the foregoing, except as disclosed on Schedule 5.27, since September 30, 1996, neither the Company nor any Company Subsidiary has: (a) amended its Charter, Articles of Incorporation, Bylaws or other analogous governing documents; (b) issued, sold or authorized for issuance or sale, shares of any class of its securities (including, but not limited to, by way of stock split or dividend) or any subscriptions, options, warrants, rights or convertible securities or entered into any agreements or commitments of any character obligating it to issue or sell any such securities; (c) redeemed, purchased or otherwise acquired, directly or indirectly, any shares of its capital stock or any option, warrant or other right to purchase or acquire any such shares; (d) declared or paid any dividends or other distribution (whether in cash, stock or other property) with respect to its capital stock; (e) suffered any damage, destruction or loss, whether or not covered by insurance, in excess of twenty five thousand dollars (\$25,000) in value; (f) voluntarily or involuntarily sold, transferred, surrendered, abandoned or disposed of any of its assets or property rights (tangible or intangible) or acquired any material assets, other than in the ordinary course of business consistent with past practices; (g) granted or made any mortgage or pledge or subjected itself or any of its properties or assets to any Lien, except liens for taxes not currently due; (h) created, incurred or assumed any liability or indebtedness (other than deposits taken in the ordinary course of business), except in the ordinary course of business consistent with past practices, but in no event in an aggregate amount exceeding five thousand dollars (\$5,000) more than is shown on the 1996 Balance Sheet; (i) made or committed to make any capital expenditures in excess of twenty five thousand dollars (\$25,000) in the aggregate; (j) applied any of its assets to the direct or indirect payment, discharge, satisfaction or reduction of any amount payable directly or indirectly to or for the benefit of any Affiliate of the Company or any Company Subsidiary thereof or to the prepayment of any such amounts; (k) entered into any agreement which would be a Commitment, or amended or terminated any existing Commitment, except as disclosed in Schedule 5.12; (l) altered the manner of keeping its books, accounts or records, or changed in any manner the accounting practices therein reflected; (m) transferred any investment securities from available for sale classification to hold to maturity classification or from held to maturity classification to available for sale classification or held any investment securities in the Bank's trading account; (n) sold investment securities for an aggregate loss of more than five thousand dollars (\$5,000); (o) increased the compensation, bonuses or benefits of any kind to any of its directors, officers, employees or agents over the amounts being paid to them on September 30, 1996, except for increases of base salaries in accordance with past practice not exceeding in the aggregate five percent (5%) over the aggregate amount paid as base salaries to its employees during the immediately preceding annual period payable ratably on an annualized basis; (p) experienced any material decrease in its deposit base, the credit quality of its assets or the fair market value of its investment accounts or experienced any material increase in its cost of funds, loan loss allowance, or loss experience; or (q) experienced any event, change or condition of any character whatsoever which has or could have, individually or in the aggregate, a material

adverse effect on its financial condition, results of operations, assets, liabilities, properties, business or prospects.

5.28 Investment Portfolios. Schedule 5.28 sets forth a true and correct list of all securities held by the Company or the Bank and identifies the security, the maturity and the yield thereon. All United States treasury securities, obligations of United States government agencies and corporations, obligations of states and political subdivisions of the United States, and other investment securities held by the Company or the Bank for its own account, as reflected in the Financial Statements, are, and at all times prior to the Effective Date shall be, carried in accordance with GAAP.

5.29 Related Party Transactions. Except as set forth in Schedule 5.29 or any other Schedule to this Agreement if specifically identified thereon as a related party transaction, neither the Company nor any Company Subsidiary has any contract, extension of credit (direct or indirect), business arrangement, depository relationship or other relationship with (i) any present or former director or officer of the Company or any Company Subsidiary; (ii) any stockholders of the Company owning ten percent (10%) or more of the outstanding equity securities of the Company on a fully diluted basis; or (iii) any Affiliate of (i) or (ii) above. Each extension of credit disclosed in Schedule 5.29 has been made in the ordinary course of business, and on the same terms, including interest rate and collateral, as those prevailing at the time for comparable arms'-length transactions, do not involve more than the normal risk of collectibility or present other unfavorable features and comply in all respects with the provisions of Regulation O and all other applicable laws and regulations.

5.30 Fiduciary Activities. Except as indicated on Schedule 5.30, neither the Company nor any Company Subsidiary is directly or indirectly engaged in any fiduciary or custodial activities.

5.31 Intangible Property. Set forth on Schedule 5.31 is a list and description of all foreign and domestic trademarks, service marks, trade names, software and copyrights (whether or not registered and, if applicable, including pending applications for registration), owned, used or controlled by the Company and the Company Subsidiaries (collectively, the "Intangible Property"). Except as set forth on Schedule 5.31: (a) the Company or the Company Subsidiaries have the exclusive right to use and license the Intangible Property, free and clear of any claim or conflict with the rights of others; (b) no royalties, honorariums or fees are payable by the Company or any Company Subsidiary to any Person by reason of the ownership or use of any of the Intangible Property; (c) there have been no written claims made against the Company or any Company Subsidiary asserting the invalidity, abuse, misuse, or unenforceability of any of the Intangible Property, and no grounds for any such claims exist; (d) neither the Company nor any Company Subsidiary has made any claim of any violation or infringement by others of its rights in the Intangible Property, and to the Company or any Company Subsidiary's knowledge, no grounds for any such claims exist; (e) neither the Company nor any Company Subsidiary has received any notice that it is in conflict with or infringing upon the asserted rights of others in connection with the Intangible Property and neither the use of the Intangible Property by the



Company or any Company Subsidiary nor the operation of its business is infringing or has infringed upon any rights of others; (f) the consummation of the transactions contemplated hereby will not alter or impair any of the Intangible Property; or (g) no interest in any of the Company's or any Company Subsidiary's rights to any Intangible Property has been assigned, transferred, licensed or sublicensed to third parties. To the extent any of the Intangible Property constitutes proprietary or confidential information, the Company has adequately safeguarded such information from disclosure.

5.32 Absence of Regulatory Actions. Except as set forth on Schedule 5.32, neither the Company nor any Company Subsidiary is or during the past five (5) years has been a party to any cease and desist order, written agreement or memorandum of understanding with, or a party to any commitment letter or similar written undertaking to, or is subject to any order or directive by, or is a recipient of any extraordinary supervisory letter from any governmental or regulatory authority nor has it been advised by any governmental or regulatory authority that it is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, directive, written agreement, memorandum of understanding, extraordinary supervisory letter, commitment letter or similar written undertaking.

5.33 Creditor Placed Property Insurance. The Bank has not and does not advance any amounts for the benefit of its customers to obtain force placed collateral protection insurance ("CPI"). Neither the Company nor the Bank is a party to any agreement or arrangement which would require it to place CPI with respect to any of the Bank's loans.

5.34 Customer Lists. Neither the Company nor the Company Subsidiaries have sold, disclosed, transferred or otherwise compromised all or part of any list of the depositors or borrowers of the Company or the Company Subsidiaries, and to the knowledge of the Company or any Company Subsidiary, no third party is in possession of such information.

5.35 BHC, FDIC Status. The Company is a bank holding company under the Bank Holding Company Act of 1956, as amended. The Bank is an insured depository institution under the Federal Deposit Insurance Act, the deposit accounts of which are insured by the Bank Insurance Fund of the FDIC to the maximum extent permitted by federal law, and the Bank has paid all premiums and assessments and filed all reports required in connection therewith and is in compliance in all respects with all laws, rules, regulations and other conditions and requirements of the FDIC for the maintenance of insurance by the FDIC. The FDIC has not commenced any inquiries, investigations, special audits or other proceedings relating to the Bank that could adversely affect the insurance coverage provided by the FDIC for the Bank's deposit accounts.

5.36 Activities of the Company. Except as set forth on Schedule 5.36, the Company has no material assets or activities other than relating to the ownership of the Bank.

5.37 Community Reinvestment Act Compliance. The Company and the Bank are in substantial compliance with the applicable provisions of the Community Reinvestment Act of

1977 and the regulations promulgated thereunder, and received a CRA rating of at least satisfactory as of its last examination. As of the date of this Agreement, neither the Company nor any Company Subsidiary has been advised of the existence of any fact or circumstance or sets of facts or circumstances which, if true, would cause the Company or the Bank to fail to be in substantial compliance with such provisions.

5.38 Full Disclosure. No representation or warranty of the Company or the Bank contained in this Agreement, and none of the statements or information concerning the Company and the Company Subsidiaries contained in this Agreement or the exhibits and the schedules hereto, contains or will contain any untrue statement of a material fact nor will such representations, warranties, covenants or statements taken as a whole omit a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

## ARTICLE VI COVENANTS

During the period from the date of this Agreement and until the Effective Date, each of the Company and the Bank, jointly and severally, and Totalbank, as applicable, agree to perform the covenants set forth below applicable to them:

6.1 Ordinary Course, Insurance, Preservation of Business, Et Cetera. Except as otherwise agreed to in writing by Totalbank, each of the Company and the Company Subsidiaries shall:

(a) carry on its business only in the ordinary course and consistent with their respective policies, procedures and practices in substantially the same manner as heretofore conducted;

(b) except as they may terminate in accordance with their terms or in accordance with the terms of this Agreement, keep in full force and effect, and not cause a default of any of its obligations under, any Commitments;

(c) keep in full force and effect the insurance coverage in effect on the date hereof to the extent that such insurance continues to be reasonably available;

(d) maintain, renew, keep in full force and effect and preserve its business organization and material rights and franchises, permits and licenses, and maintain its existing, or substantially equivalent, relationships with others having business relations with it and use its best efforts to maintain the continuance of its depositor and general customer relationships; and

(e) duly comply in all material respects with all laws applicable to it and to the conduct of its business.

6.2 Prohibited Action Without Approval. Except with the prior written consent of Totalbank (which consent shall not be unreasonably withheld and shall be deemed granted if no response is given within two (2) business days after written request therefor) or as otherwise required or permitted by this Agreement, each of the Company and the Company Subsidiaries shall not, directly or indirectly, do any of the following:

- (a) amend its Charter, Articles of Incorporation or Bylaws or any other organizational or governing instrument;
- (b) issue, sell or authorize for issuance or sale, shares of any class of its securities (including, but not limited to, by way of stock split or dividend) (other than issuances of Company Common Stock pursuant to a valid exercise of Options outstanding on the date of this Agreement) or any subscriptions, options, warrants, rights or convertible securities, or enter into any agreements or commitments of any character obligating it to issue or sell any such securities; redeem, purchase or otherwise acquire, directly or indirectly, any shares of its capital stock or debt securities or any option, warrant or other right to purchase or acquire any such shares; declare or pay any dividend or other distribution (whether in cash, stock or other property) with respect to its capital stock;
- (c) acquire any material assets, except expenditures made in the ordinary course of business as reasonably necessary to enable the Company or any Company Subsidiary to conduct its business in a manner consistent with past practices; acquire (by merger, consolidation, or acquisition of stock or assets) any corporation, partnership or other business organization or division or substantial part thereof;
- (d) voluntarily sell, transfer, surrender, abandon or dispose of any of its material assets or property rights (tangible or intangible), as determined either individually or in the aggregate;
- (e) grant or make any mortgage or pledge or subject itself or any of its properties or assets to any material Lien, except liens for taxes not currently due;
- (f) enhance, expand, modify, replace or alter any computer or data processing system owned, leased or licensed by the Company or the Company Subsidiaries (including any software associated with any such computer or system), except customary enhancements and modifications consistent with past practice;
- (g) create, incur or assume any liability or indebtedness, other than the taking of deposits and other liabilities incurred in the ordinary course of business consistent with past practices;
- (h) make or commit to make any capital expenditures in excess of twenty five thousand dollars (\$25,000) in the aggregate;

(i) apply any of its assets to the direct or indirect payment, discharge, satisfaction or reduction of any amount payable directly or indirectly to or for the benefit of any Affiliate of the Company or of any Company Subsidiary or to the prepayment of any such amounts, other than transactions which are made (i) in the ordinary course of business consistent with past practices and (ii) on terms no less favorable to the Company or the Company Subsidiaries than terms generally available with third parties in arms length transactions;

(j) pay any bonus or grant any increase in the compensation or benefits payable or to become payable to directors, officers or employees (including, without limitation, any such increase pursuant to any Plan or otherwise), except for increases in base salaries specified in Section 5.27(o) hereof and except for retention bonuses and severance benefits which would constitute Employee Benefit Costs under this Agreement;

(k) grant any increase in fees or other increases in compensation or other benefits to any of its directors; effect any change in retirement benefits for any class of its employees or officers (unless such change is required by applicable law) that would increase the retirement benefit liabilities of the Company or any Company Subsidiary;

(l) enter into any new written employment contract or other arrangement not terminable by the Company upon not more than five (5) days notice given at any time without payment of compensation or damages or any other liability;

(m) adopt any new employee benefit plan or make any material change in or to any existing employee benefit plan other than any such change that is required by law or this Agreement;

(n) make, originate or otherwise acquire one or more loans, or one or more loan commitments for one or more loans, or one or more lines of credit, including extensions, renewals or modifications of loans or lines of credit, in an individual amount in excess of fifty thousand dollars (\$50,000) or in an aggregate amount in excess of two hundred fifty thousand dollars (\$250,000) or enter into any contract, agreement, commitment or arrangement with respect to any of the foregoing;

(o) compromise or otherwise settle or adjust any assertion or claim of a deficiency in Taxes (or interest thereon or penalties in connection therewith) or file any appeal from an asserted deficiency;

(p) enter into any related party transaction of the type contemplated by Section 5.29 hereof, except for transactions relating to deposit relationships or the extension of credit in the ordinary course of business, on substantially the same terms, including interest rate and collateral, as those prevailing for comparable transactions with unaffiliated parties, and which do not present more than the normal risk of collectibility or other unfavorable features and which comply in all respects with the provisions of Regulation O and all other applicable laws and regulations;

- (q) open, or file an application with any state, federal or other regulatory agency with respect to the opening of any additional office, branch or banking facility, or the acquisition or establishment of any additional banking or nonbanking facility or close any of its existing offices or branches;
- (r) make any investments other than in federal funds or government securities with maturities of less than one (1) year or make any change to its current pricing practices relating to its deposit accounts;
- (s) materially increase the amount of its foreign deposits or change in any material respect the nature of its solicitation, taking or gathering of foreign deposits;
- (t) knowingly take any action which would adversely affect the ability to obtain the necessary approvals of the Applicable Governmental Authorities required for the transactions contemplated hereby; or take or omit to take any action which would render any of its representations or warranties untrue or misleading in any material respect, or which would be a breach of any of its covenants;
- (u) increase the level of its operating expenses in any material respect;
- (v) alter the manner of keeping its books, accounts or records, or change in any manner the accounting practices therein reflected, including, without limitation, the methods used in allocating income, charging costs, accounting for income, charging off of loans or maintenance of reserves for possible loan losses, except as required by GAAP;
- (w) change any classification of securities held in its investment portfolio;
- (x) sell any investment securities resulting in aggregate losses of greater than five thousand dollars (\$5,000);
- (y) enter into any agreement which would be a Commitment;
- (z) enter into any lease of real property, and in connection with renewals of existing leases of real property as lessee, the Company shall use its best efforts to negotiate a month to month lease term or a lease cancelable without liability on ninety (90) days prior written notice but in no event shall any such renewal be for a lease term of more than one (1) year from the date of this Agreement;
- (aa) enter into any commitment or transaction other than in the ordinary course of business consistent with past practices;
- (bb) take any action which is reasonably likely to have a material adverse effect on its financial condition, results of operations, assets, liabilities, properties, business or prospects; or

(cc) agree, whether in writing or otherwise, to do any of the foregoing.

6.3 Access and Inspection. The Company and the Bank shall allow Totalbank and its authorized representatives reasonable full access during normal business hours from and after the date hereof and through the Effective Date to all of the Company's and the Company Subsidiaries' formally called meetings (which access shall permit attendance but not participation), properties, books, contracts, commitments and records for the purpose of making such investigation as Totalbank may desire, and shall cause the Company and the Company Subsidiaries to furnish Totalbank such information concerning their affairs as Totalbank may request. The Company and the Bank shall cause their respective personnel to assist Totalbank in making such investigation and shall use their best efforts to cause the counsel, accountants, and other non-employee representatives of the Company and the Company Subsidiaries to be reasonably available to Totalbank for such purposes.

6.4 Confidential Treatment of Information. Until this Agreement is fully performed, or if this Agreement is abandoned or terminated, the parties hereto and their representatives shall hold in confidence all data and information obtained with respect to the other parties or their business, and shall not use such data or information or disclose the same to others, except such data or information as is already known to such party or is published or is a matter of public record, or as otherwise required by law. In the event this Agreement is abandoned or terminated, each party shall upon request promptly return to the other(s) any statements, documents, schedules, exhibits or other written information obtained from them in connection with this Agreement. Further, Totalbank agrees that for a period of one (1) year from the date of termination of this Agreement, it shall not actively solicit employees of the Company and the Bank or customers of the Company and the Bank not previously identified by Totalbank, it being understood that mass mailings and general advertising do not constitute active solicitation.

6.5 Public Announcements. The parties will notify each other before issuing any press releases or otherwise making any public statement with respect to this Agreement or any of the transactions contemplated hereby and will not issue any such press release or make any such public statement without the prior written consent of the other parties, except as may be required by applicable law.

6.6 Notification. Each party to this Agreement shall promptly notify the other parties in writing of the occurrence, or threatened occurrence, of any event that would constitute a breach or violation of this Agreement by any party or that would cause any representation or warranty made by the notifying party in this Agreement to be false or misleading in any respect. The Company will promptly notify Totalbank of any event of which the Company or any Company Subsidiary obtains knowledge which could have a material adverse effect on the financial condition, results of operations, assets, liabilities, business, properties or prospects of the Company and the Company Subsidiaries.

6.7 Consent of Governmental Authorities and Others.

(a) Each of the Company and the Bank and Totalbank shall cooperate and use their respective best reasonable efforts to file, submit or request (or cause to be filed, submitted or requested) as soon as practicable after the date of this Agreement, but not later than the fifteenth (15th) business day following the date specified in Section 9.1(g), and to prosecute diligently any and all (i) applications, notices or waiver requests required to be filed or submitted to any Applicable Governmental Authorities, as specified in Section 2.4 and (ii) in the case of the Company and the Bank, requests for consents and approvals of private Persons required to be obtained, as specified in Section 5.3. The Company and the Company Subsidiaries shall promptly make available to Totalbank within two (2) business days after request such information as Totalbank may reasonably request relative to their business, assets and property as may be required by Totalbank to prepare and file or submit such applications and notices and any additional information requested by any governmental authority, and shall update by amendment or supplement any such information given in writing. The Company and the Bank represent and warrant to Totalbank that such information, as amended or supplemented, shall be true and not misleading. The fees payable in connection with the filings with Applicable Governmental Authorities contemplated herein shall be borne by the party making such filing.

(b) The Company and the Bank shall or shall permit Totalbank no later than the periods established by applicable regulation to take such actions as reasonably necessary (i) to conform the terms of the Bank's account relationships to the terms offered by Totalbank and (ii) to permit Totalbank to close, consolidate or relocate any office or branch of the Company or the Bank on the Effective Date, but in no event shall such actions materially adversely impair or interfere with the business operations of the Company and the Bank prior to the Effective Date.

6.8 Management Reports. The Company will provide to Totalbank, on or before the fifteenth (15th) day of each calendar month, (i) the report of management of the Bank to the Board of Directors of the Company or the Bank for the prior month, including delinquency schedules, additions to loan loss reserves, minutes of all meetings of the Board of Directors of the Company or the Bank and each committee thereof during the prior month and the payroll report for the prior month, (ii) monthly financial statements prepared by the Company or the Bank for the preceding calendar month, including a statement of financial condition and an income statement for the Company and the Company Subsidiaries and (iii) a description of any material changes with respect to the representations and warranties of the Company and the Bank made herein or in any of the schedules as of a specified date. Throughout the period prior to the Effective Date, the Company shall cause one or more of its designated representatives to confer on a regular and frequent basis with representatives of Totalbank and to report the general status of the ongoing operations of the Company and the Company Subsidiaries, and any governmental approvals related thereto.

6.9 Risk Management Reporting. The Company agrees that, from the date hereof, it shall regularly inform and consult with Totalbank concerning its asset/liability and interest rate risk management.

6.10 Employee Matters. Totalbank may provide the Company no later than ten (10) business days prior to Closing with a list of officers and employees of the Company or any Company Subsidiary whose employment is to be terminated by Totalbank on the Effective Date and Totalbank shall be responsible for terminating such officers and employees on the Effective Date. The Company shall be solely responsible for the payment of all severance benefits, accrued vacation and sick time and other amounts, if any, payable to those officers and employees terminated in accordance with this Section 6.10 and such payments (or provision for the payment) shall be in accordance with the Company's or applicable Company Subsidiary's severance policies and shall constitute Employee Benefits Costs for purposes of Section 3.1 hereof.

6.11 Acquisition Proposals; No Solicitation. Except for the transactions contemplated by this Agreement, unless and until this Agreement shall have been terminated, neither the Company nor the Bank shall, nor will they permit any Company Subsidiary or any of their respective directors, officers, employees or agents to, directly or indirectly (i) solicit, encourage, initiate or participate in any negotiations or discussions with respect to any offer or proposal (an "Acquisition Proposal") to acquire all or substantially all of the business, properties or capital stock of the Company or the Company Subsidiaries, whether by merger, purchase of assets or otherwise, or (ii) except as required by law, disclose to any Person any information not customarily disclosed concerning the business and properties of the Company and the Company Subsidiaries, afford to any Person other than Totalbank and its designees and the Company's and the Company Subsidiaries' directors, officers and employees access to the properties, books or records of the Company and the Company Subsidiaries or otherwise assist or encourage any Person in connection with an Acquisition Proposal. If the Company or any Company Subsidiary shall receive an Acquisition Proposal, written or otherwise, the Company shall promptly inform Totalbank of such offer or proposal and the material terms thereof and furnish Totalbank with a copy thereof if such Acquisition Proposal is in writing. The Company may, with respect to unsolicited Acquisition Proposals not received as a consequence of a breach of this Section 6.11, (i) furnish or cause to be furnished information subject to a confidentiality agreement, and (ii) in response to an Acquisition Proposal, issue a communication to its shareholders or otherwise communicate the Board's position with respect to such Acquisition Proposal to the shareholders of the Company, and (iii) participate in discussions and/or negotiations with Persons who have sought the same, if the Company's Board determines, based as to legal matters on the advice of outside legal counsel, that the failure to furnish such information or to hold discussions and/or negotiations with such entity or group or to take and disclose such position would be inconsistent with the proper exercise of the fiduciary duties of the Company's Board.

6.12 Interim. Totalbank shall take all necessary corporate and other action to create and form Interim and to cause Interim to enter into or ratify and approve this Agreement and the transactions contemplated hereby.



6.13 Best Efforts. Subject to the terms and conditions provided in this Agreement, each of the parties shall use its best efforts in good faith to take or cause to be taken as promptly as practicable all reasonable actions that are within its power to cause to be fulfilled those conditions precedent to its obligations or the obligations of the other parties to consummate the transactions contemplated by this Agreement that are dependent upon its actions.

## ARTICLE VII

### ADDITIONAL AGREEMENTS OF THE COMPANY, THE BANK AND TOTALBANK

7.1 Stockholders' Approval. The Company will take all steps necessary to submit this Agreement for the approval of its stockholders. In the event such approval is not obtained by the action of a majority of the Company's stockholders without a meeting, such approval shall be sought at a meeting of the stockholders (the "Meeting") for the purpose of acting on this Agreement. The Company agrees to hold such Meeting as promptly as practicable but in no event later than April 24, 1997. The Company will cooperate and consult with Totalbank with respect to the foregoing matters. The Company will use its best efforts to obtain the necessary approvals of this Agreement and the transactions contemplated hereby by its stockholders. Any approval sought by action of the stockholders without a meeting or sought at the Meeting shall include the approval of any future amendment to this Agreement by agreement of the Company's Board of Directors without any additional stockholder approval provided that any such amendment does not reduce the Purchase Price by more than ten percent (10%) of the amount otherwise payable pursuant to Section 3.1 hereof.

7.2 Meeting Materials. In the event that a meeting of the stockholders of the Company is to be held, as soon as practicable following the execution and delivery of this Agreement by each of the parties hereto, the Company will prepare and mail to the holders of Company Common Stock appropriate materials (the "Meeting Materials"), including a notice of the Meeting, which shall comply in all respects with the Company's Articles of Incorporation and by-laws and applicable law. Totalbank will furnish to the Company all information concerning Totalbank required for inclusion in the Meeting Materials in writing and all such information will be true and correct in all material respects without omission of any material fact required to be stated to make the information stated therein not misleading. In the Meeting Materials, the Company shall present this Agreement and the transactions contemplated hereby for approval by the holders of Company Common Stock at the Meeting, include the recommendation of the Company's Board of Directors to its shareholders that they vote in favor of the Agreement and include a description of the availability of dissenters' rights as required by law. Prior to submitting the Meeting Materials and any amendment, supplement or revision thereof to the stockholders of the Company, the Company shall submit such materials to Totalbank and its counsel and provide Totalbank and its counsel with a reasonable opportunity to review and comment upon such materials. The Company covenants to Totalbank that the Meeting Materials will not contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein not false or

misleading; in no event, however, shall the Company be liable for any untrue statement of a material fact or omission to state a material fact in the Meeting Materials made in reliance upon, and in conformity with, written information concerning Totalbank furnished by it specifically for use in the Meeting Materials. In the event no meeting of the stockholders of the Company is to be held and approval of the transactions contemplated herein is obtained through an action by a majority of the stockholders without a meeting, the Company will duly and timely mail notice of the action taken and notice of dissenters' rights to the remaining stockholders of the Company all in accordance with applicable law.

7.3 Certain Real Property. The Company and the Bank shall use their best reasonable efforts to assist Totalbank in the purchase or lease of certain of the Bank's branch offices located at 17701 Biscayne Boulevard, Miami Florida and at Universal Plaza and the parties shall negotiate in good faith during the twenty (20) day period following execution of this Agreement in order to reach mutually acceptable purchase or lease terms.

7.4 Insurance. The Company shall obtain director's and officer's liability tail insurance coverage for directors and officers of the Company and each of the Company Subsidiaries covering a period of no more than six (6) years after the Effective Date, in a form and from a carrier reasonably acceptable to Totalbank at a cost reasonably acceptable to Totalbank.

7.5 Disclosure Schedules. The parties acknowledge that they are executing this Agreement prior to the delivery of the disclosure schedules which are to be delivered by the Company to Totalbank pursuant to this Agreement (the "Disclosure Schedules"). The Company agrees and covenants that it will prepare and complete the Disclosure Schedules and deliver the same (together with all documents referred to therein) to the Company and its counsel no later than five (5) business days after the date of this Agreement.

#### ARTICLE VIII CONDITIONS PRECEDENT

8.1 Conditions Precedent to the Obligations of Totalbank. The obligations of Totalbank to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Effective Date of the following conditions.

(a) Representations and Warranties True. The representations and warranties of the Company and the Bank contained in this Agreement and in any certificate or other document delivered pursuant to this Agreement shall be true and correct in all material respects (except for representations and warranties which are by their terms qualified by materiality, which shall be true and correct in all respects) as of the Effective Date with the same force and effect as though made on and as of such date, except that those representations and warranties which address matters only as of a particular date shall remain true and correct in all material

respects (except for representations and warranties which are by their terms qualified by materiality, which shall be true and correct in all respects) as of such date.

(b) *Covenants Performed.* The covenants of the Company and the Bank contained in this Agreement to be performed or complied with on or prior to the Effective Date shall have been duly performed or complied with in all material respects.

(c) *No Material Adverse Change.* There shall not have occurred any event or condition which has adversely affected or may adversely affect in any material respect the condition (financial or otherwise), assets, liabilities (whether absolute, accrued, contingent or otherwise), properties, earnings, book value, business, operations or prospects of the Company and the Company Subsidiaries taken as a whole.

(d) *Regulatory Approvals.* All approvals, waivers and authorizations of, filings and registrations with, and notifications to, all Applicable Governmental Authorities required for consummation of the transactions contemplated by this Agreement shall have been obtained or made and shall be in full force and effect and all applicable waiting periods shall have expired. No such approvals or authorizations shall contain or be subject to any terms or conditions (other than those generally imposed in similar transactions) which in the reasonable judgment of Totalbank are unduly burdensome. Such approvals, and the transactions contemplated hereby, shall not have been contested by any federal or state governmental authority.

(e) *Consents.* The Company shall have obtained all consents and approvals required to be obtained in connection with the consummation of the transactions contemplated hereby, including, without limitation, any consents required to be obtained in connection with those instruments and agreements listed on Schedule 5.3 hereto and consents necessary to enable the business and operations of the Company and the Company Subsidiaries after the Effective Date to continue to be conducted by the Resulting Bank in the same manner as currently conducted. Each such consent shall have been obtained without the imposition of any adverse terms or conditions or without the imposition of any cost.

(f) *No Litigation.* No litigation, arbitration or other proceeding shall be pending or, to the knowledge of the parties, threatened by or before any court, arbitration panel or governmental authority; no law or regulation shall have been enacted after the date of this Agreement; and no judicial or administrative decision shall have been rendered; in each case, which enjoins, prohibits or materially restricts, or seeks to enjoin, prohibit or materially restrict, the consummation of the transactions contemplated by this Agreement.

(g) *Opinions of Counsel.* Totalbank shall have received from legal counsel to the Company reasonably acceptable to Totalbank, an opinion letter, dated the Effective Date, in form and substance reasonably satisfactory to Totalbank.

(h) *Certificate.* The Company shall have delivered to Totalbank one or more certificates, dated the Effective Date and executed by the chief executive officer of each of the

Company and the Bank, certifying in such detail as Totalbank may reasonably request, that the conditions specified in Sections 8.1(a), (b) and (c) above have been fulfilled and as to such other matters as Totalbank may reasonably request.

(i) *Stockholder Approval.* This Agreement and the transactions contemplated hereby, including without limitation, the Interim Merger, shall have been approved by the requisite holders of Company Common Stock according to applicable law and the Articles of Incorporation and by-laws of the Company.

(j) *Stockholder Agreements.* Any agreements or arrangements among any stockholders of the Company restricting or limiting in any way the voting or transfer of Company Common Stock (including any right of first refusal in favor of any shareholders, directors or officers) shall have been terminated and Totalbank shall have received copies of documentation to that effect reasonably satisfactory to Totalbank.

(k) *Employee Benefit Costs.* The Company shall have delivered to Totalbank a true and correct itemized list of all Employee Benefit Costs in accordance with Section 3.1 hereof for the purpose of determining the Purchase Price pursuant to Section 3.1.

(l) *Dissenters' Rights.* Holders representing not more than five percent (5%) of the outstanding shares of Company Common Stock shall have exercised, or shall remain entitled to exercise, dissenters' rights in connection with the Interim Merger in accordance with Florida law.

(m) *Certain Real Property.* There shall be in full force and effect a purchase contract or a lease with respect to each of the Bank's offices located at 17701 Biscayne Boulevard and at Universal Plaza substantially on the terms negotiated in accordance with the provisions of Section 7.3, and in the event that there is a purchase contract with respect to either or both of such office locations, the closing under such contract or contracts shall occur simultaneously with the Closing under this Agreement.

(n) *Insurance.* The Company shall have used its reasonable best efforts to obtain director's and officer's tail liability insurance coverage in accordance with Section 7.4 hereof.

8.2 Conditions Precedent to the Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Effective Date of the following conditions.

(a) *Representations and Warranties True.* The representations and warranties of Totalbank contained in this Agreement or in any certificate or other document delivered pursuant to this Agreement shall be true and correct in all material respects (except for representations and warranties which are by their terms qualified by materiality, which shall be true and correct in all respects) as of the Effective Date with the same force and effect as though

made on and as of such date, except that those representations and warranties which address matters only as of a particular date shall remain true and correct in all material respects (except for representations and warranties which are by their terms qualified by materiality, which shall be true and correct in all respects) as of such date.

(b) *Covenants Performed.* The covenants of Totalbank contained in this Agreement to be performed or complied with on or prior to the Effective Date shall have been duly performed or complied with in all material respects.

(c) *Regulatory Approvals.* All approvals, waivers and authorizations of, filings and registrations with, and notifications to, all Applicable Governmental Authorities required for consummation of the transactions contemplated by this Agreement shall have been obtained or made and shall be in full force and effect and all applicable waiting periods shall have expired. Such approvals, and the transactions contemplated hereby, shall not have been contested by any federal or state governmental authority.

(d) *No Litigation.* No litigation, arbitration or other proceeding shall be pending or, to the knowledge of the parties, threatened by or before any court, arbitration panel or governmental authority; no law or regulation shall have been enacted after the date of this Agreement; and no judicial or administrative decision shall have been rendered; in each case, which enjoins, prohibits or materially restricts, or seeks to enjoin, prohibit or materially restrict, the consummation of the transactions contemplated by this Agreement.

(e) *Certificate.* Totalbank shall have delivered to the Company a certificate executed by its Chief Executive Officer, President or a Vice President, dated the Effective Date, certifying in such detail as the Company may reasonably request, that the conditions specified in Sections 8.2(a) and (b) above have been fulfilled.

(f) *Deposit of Funds With Exchange Agent.* Totalbank shall have deposited with the Exchange Agent an amount of cash equal to the Purchase Price less (i) an amount equal to the product of the Per Share Amount multiplied by the number of Dissenting Shares, if any, and (ii) any Deposit, together with interest thereon.

(g) *Insurance.* The Company shall have obtained director's and officer's liability insurance coverage in accordance with Section 7.4 hereof or Totalbank shall have contractually obligated itself to maintain in effect for a period of no more than six (6) years after the Effective Date the indemnification currently provided to the Company's and the Bank's directors, officers and employees.

(h) *Certain Real Property.* There shall be in full force and effect a purchase contract or a lease with respect to each of the Bank's offices located at 17701 Biscayne Boulevard and at Universal Plaza substantially on the terms negotiated in accordance with the provisions of Section 7.3, and in the event that there is a purchase contract with respect to either

or both of such office locations, the closing under such contract or contracts shall occur simultaneously with the Closing under this Agreement.

ARTICLE IX  
MISCELLANEOUS

9.1 Termination. This Agreement may be terminated:

- (a) By the mutual consent of the Company and Totalbank;
- (b) By the Company or Totalbank, at any time after the Final Closing Date if the Closing shall not have occurred on or before that date;
- (c) By Totalbank, upon written notice provided to the Company, if there has been any material misrepresentation in this Agreement by the Company or the Bank or a material breach by the Company or the Bank of any of their warranties or covenants set forth herein; provided that if such misrepresentation or breach is curable, it is not cured within ten (10) business days after notice thereof;
- (d) By the Company, upon written notice provided to Totalbank, if there has been any material misrepresentation in this Agreement by Totalbank, or a material breach by Totalbank of any of its warranties or covenants set forth herein; provided that if such misrepresentation or breach is curable, it is not cured within ten (10) business days after notice thereof;
- (e) By Totalbank, if any event or circumstance shall occur that renders the satisfaction of any condition to the obligations of Totalbank set forth in Section 8.1 impossible and such condition has not been waived by Totalbank;
- (f) By the Company, if any event or circumstance shall occur that renders the satisfaction of any condition to the obligations of the Company or the Bank set forth in Section 8.2 impossible and such condition has not been waived by the Company; or
- (g) By Totalbank, in its sole discretion, at any time prior to the date which is the later of (i) thirty (30) days after all Disclosure Schedules to be delivered by the Company hereunder shall have been delivered and (ii) five (5) business days after delivery by the Company to Totalbank of the Company's audited consolidated financial statements for the year ended December 31, 1996. Notwithstanding the foregoing, the time period set forth in sub-clause (ii) above shall be waived by Totalbank if the Company has delivered to Totalbank a draft of such audited financial statements at least five (5) business days prior to the termination of the time period in sub-clause (i) and the subsequently delivered final audited financial statements contain no material changes from such draft audited financial statements.

(h) By the Company or Totalbank, at any time after the date which is twenty (20) days after execution of this Agreement, if terms for the purchase and/or lease of certain of the Bank's offices have not been agreed upon as contemplated by Section 7.3 hereof.

If this Agreement is terminated pursuant to this Section 9.1, written notice thereof shall promptly be given by the party electing such termination to the other party and, subject to the expiration of the cure periods provided in clauses (c) and (d) above, if any, this Agreement shall terminate without further actions by the parties and, except as set forth in Sections 2.2 (including the retention of the Deposit held by the Company), 6.4 and 9.11, no party shall have any liability or further obligation under this Agreement, provided that if this Agreement is terminated because of the willful and intentional failure of the Company or the Bank to fulfill its obligations hereunder or as a result of a breach of the representations, warranties or covenants of the Company or the Bank, then Totalbank shall have available to it all legal and equitable rights and remedies.

9.2 Investigation. Notwithstanding any provisions contained herein to the contrary, the representations, warranties, covenants and agreements of this Agreement shall not be affected or diminished in any way by the receipt of any notice pursuant to Section 6.6 or by any investigation (or failure to investigate) at any time by or on behalf of the party for whose benefit such representations, warranties, covenants and agreements were made. All statements relating to the Company or the Company Subsidiaries contained herein, or in any schedule, certificate, or exhibit delivered pursuant hereto shall be deemed to be representations and warranties for purposes of this Agreement.

9.3 Notices. Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, postage prepaid, or sent by facsimile or prepaid overnight courier to the parties at the addresses set forth below their names below (or at such other addresses as shall be specified by the parties by like notice).

If to the Company or the Bank:

Universal Bancorp, Inc.  
17701 Biscayne Boulevard  
Miami, FL 33160  
Attn: George Feldenkreis  
Facsimile No.: (305) 937-2078

with a copy to:

Broad and Cassel  
201 S. Biscayne Boulevard  
Suite 3000  
Miami, FL 33131  
Attn: Nina S. Gordon, P.A.  
Facsimile No.: (305) 373-9493

If to Totalbank:

Totalbank  
2720 Coral Way  
Miami, Florida 33145  
Attn: Adrienne Arsht, Chairman of the Board  
William Heffernan, President  
Facsimile No.: (305) 448-8201

with a copy to:

Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Suite 2400  
Miami, FL 33130  
Attn: Alison W. Miller, Esq.  
Facsimile No.: (305) 789-3395

Such notices, demands, claims and other communications shall be deemed given when actually received or (a) in the case of delivery by overnight service with guaranteed next day delivery, the next day or the day designated for delivery; (b) in the case of certified U.S. mail, five days after deposit in the U.S. mail, or (c) in the case of facsimile, the date upon which the transmitting party received confirmation of receipt by facsimile, telephone or otherwise.

9.4 Further Assurances. The parties shall deliver any and all other instruments or documents required to be delivered pursuant to, or necessary or proper in order to give effect to, the provisions of this Agreement, including without limitation, all certificates or plans of merger as may be necessary or desirable to consummate the Mergers.

9.5 Entire Agreement. This Agreement and the exhibits and schedules to this Agreement contain every obligation and understanding between the parties relating to the subject matter hereof and merge all prior discussions, negotiations and agreements, if any, between them, and none of the parties shall be bound by any representations, warranties, covenants, or other understandings, other than as expressly provided or referred to herein.



9.6 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns. No party hereto may assign this Agreement or any rights hereunder, in whole or in part, without the prior written consent of the other parties hereto.

9.7 Waiver. Any representation, warranty, covenant, term or condition of this Agreement which may legally be waived, may be waived, or the time of performance thereof extended, at any time by the party hereto entitled to the benefit thereof. Any such waiver or extension shall be evidenced by an instrument in writing executed on behalf of the appropriate party. No waiver by any party hereto of its rights under any provision of this Agreement shall constitute a waiver of such party's rights under such provisions at any other time or a waiver of such party's rights under any other provision of this Agreement. No failure by any party hereto to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by such other party.

9.8 Amendment. This Agreement may be amended by the parties hereto at any time prior to the Effective Date; provided, however, that after the receipt of any approvals or waivers from any of the Applicable Governmental Authorities, no amendment may be made without complying with the requirements of such Applicable Governmental Authorities regarding amendments; provided, further, that after the approval of this Agreement by the respective stockholders of the parties hereto entitled to vote hereon, additional amendments may only be made subject to the limitations contained in Section 7.1 hereof or as are permitted to be made without stockholder approval under applicable law. This Agreement may not be amended except by an instrument in writing executed by the parties hereto.

9.9 No Third Party Beneficiary. Except for the undertaking by Totalbank to provide indemnity to directors, officers and employees of the Company and the Bank pursuant to Section 8.2(g) hereof, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any Person other than the parties hereto and their respective heirs, personal representatives, legal representatives, successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

9.10 Severability. In the event that any one or more of the provisions contained in this Agreement shall be declared invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect, and such invalid, void or unenforceable provision shall be interpreted as closely as possible to the manner in which it was written.

9.11 Expenses and Other Matters. All expenses (including, without limitation, financial advisory fees, legal fees and expenses, broker and finder fees, fees and expenses of accountants) incurred by each party in connection with the transactions contemplated hereby (hereunder referred to as "Expenses") will be borne by the party incurring such Expenses; provided, however, that the Expenses of the Company and the Bank shall be reasonable in amount and

shall in no event exceed twenty five thousand dollars (\$25,000) unless agreed to in writing by Totalbank. Notwithstanding anything herein to the contrary, in the event that there exists or existed an Acquisition Proposal and this Agreement is terminated (a) by Totalbank pursuant to Section 9.1(c) hereof or (b) upon the failure of the stockholders of the Company to approve this Agreement and the transactions contemplated hereby, the Company shall on demand pay to Totalbank in immediately available funds a fee of two hundred fifty thousand dollars (\$250,000).

9.12 Headings. Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The schedules and exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The specification of any dollar amount in the representations or warranties contained in this Agreement or the inclusion of any specific item in any schedules hereto is not intended to imply that such amounts, or higher or lower amounts, or the items so included or other items, are or are not material, and neither party shall use the fact of the setting of such amounts or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in a schedule is or is not material for purposes of this Agreement.

9.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9.14 Injunctive Relief. It is possible that remedies at law may be inadequate and, therefore, the parties hereto shall be entitled to equitable relief including, without limitation, injunctive relief, specific performance or other equitable remedies in addition to all other remedies provided hereunder or available to the parties hereto at law or in equity.

9.15 Governing Law. This Agreement has been entered into and shall be construed and enforced in accordance with the laws of the State of Florida.

9.16 Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the successful party shall be entitled to receive reasonable attorneys' fees in addition to any other remedy.

9.17 Non-Survival of Representations, Warranties and Covenants Following the Effective Date. With the exception of Article III and any undertaking to provide indemnity pursuant to Section 8.2(g), none of the respective representations, warranties, obligations, covenants and agreements of the parties shall survive the Effective Date.

9.18 The effective date and time of the merger will be as indicated on the CERTIFICATE OF MERGER issued by the Florida Department of Banking and Finance. The MERGER is to be effective on JUNE 20, 1997.

IN WITNESS WHEREOF, the parties hereto have each executed and delivered this Agreement as of the day and year first above written.

TOTALBANK

By: Adrienne Becht  
Name: Adrienne Becht  
Title: Chairman of the Board

UNIVERSAL BANCORP, INC.

By: [Signature]  
Name: GEORGE FELDENKREIS  
Title: Chairman

UNIVERSAL NATIONAL BANK

By: [Signature]  
Name: GEORGE FELDENKREIS  
Title: Chairman

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**ARTICLES OF INCORPORATION  
OF  
TOTALBANK**

ARTICLE I

The name of the corporation shall be TOTALBANK and its principal place of business shall be: 2720 Coral Way in the City of Miami, in the County of Dade, and the State of Florida.

ARTICLE II

The general nature of the business to be transacted by this corporation shall be: That of a general banking business with all the rights, powers and privileges granted and conferred by the laws of the State of Florida including laws regulating the organization, powers, and management of banking corporations.

ARTICLE III

The authorized capital stock of the corporation shall be Five Hundred Thousand (500,000) shares with a par value of \$10.00 per share.

Pursuant to action taken by the Board of Directors, and after obtaining the written approval of the Division of Banking and the approval of stockholders holding a majority of the voting stock of the bank evidenced either in writing signed by the stockholders; or, by a vote at a stockholders' meeting called for such stated purpose after giving ten days' notice by registered or certified mail: (1) The capital may be increased (2) Preferred stock of one or more classes in the amount and with a par value approved by the Division of Banking may be issued. (3) Amendments to these Articles of Incorporation which may be necessary to accomplish the foregoing may be adopted.

The holders of the preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of the bank and shall not be liable for assessment.

ARTICLE IV

The term for which said corporation shall exist shall be perpetual.

ARTICLE V

The business and affairs of this corporation shall be managed and conducted by:

- A. A Board of not less than five (5) and not more than twenty-five (25) Directors

who shall be elected annually by the stockholders at their annual meeting to be held at its place of business in Miami, Florida, during the months of January or February each year. If so authorized by a majority of the stockholders at the next preceding annual meeting, a majority of the full board of directors may, at any time during the year following the annual meeting of stockholders in which such action has been authorized, increase the number of directors within the limits specified above, and appoint persons to fill the resulting vacancies, provided further, that in any one year not more than two such additional directors shall be authorized pursuant to this provisions;

and

B. A President, who shall be a Director, and one or more Vice Presidents, and a Cashier and such other officers as may be designated in the by-laws of the corporation, and shall be elected by the Board of Directors at the same place, on the same day, and immediately after said Board of Directors shall be elected by the stockholders; provided that the office(s) of Vice President and Cashier may be combined in one and the same person. Every director must, during his whole term of service, be a citizen of the United States, and at least 3/5's of the directors must have resided in this State for at least one year preceding their election, and must be residents therein during their continuance in office.

#### ARTICLE VI

Until their resignation or disqualification, or the election and qualification of new Directors, the following shall serve as Directors of TOTALBANK:

1. ADRIENNE ARSHT (Chairman)  
2720 Coral Way  
Miami, FL 33145
2. MYER FELDMAN (Vice Chairman)  
1250 Connecticut Ave., N.W.  
Washington, D.C. 20036
3. WILLIAM J. HEFFERNAN  
2720 Coral Way  
Miami, FL 33145
4. GARY P. EIDELSTEIN  
Grand Bay Plaza, #200  
2665 South Bayshore Drive  
Miami, Florida 33133
5. RAMON OYARZUN  
Silver Eagle Dist.  
1000 Park of Commerce Blvd.  
Homestead, Florida 33055

6. KEVIN O'CONNOR  
2801 Ponce de Leon Blvd.  
Coral Gables, FL 33134
7. BRUCE KELLER  
982 N.E. 126th Street  
North Miami, FL 33161
8. PATRICK WARD  
2009 North 14th St. #509  
Arlington, VA. 22201
9. RAQUEL MATAS  
*The Colonnade, Suite 650*  
2333 Ponce de Leon Blvd.  
Coral Gables, FL 33134
10. GEORGE FELDENKREIS  
5760 North Bay Road  
Miami Beach, FL 33140
11. LARRY PERL  
1866 South Bayshore Terrace  
Miami, FL 33133