446653

INTER-OFFICE COMMUNICATION

COMPTROLLER OF FLORIDA
DIVISION OF BANKING

DATE: April 16, 1998

TO: Louise Flemming-Jackson, Department of State
Division of Corporations

FROM: Bruce Ricca, Licensing and Chartering BR

SUBJ: Merger of Florida International Bank with and into Totalbank, and under the title of Totalbank

100002491977--4
-04/17/98--01004--015
****227.50 ****227.50

Please file the attached "Merger Documents" for the above-referenced institutions, using *the close of business on April 17, 1998*, as the effective date.

FILED
98 APR 16 PM 4:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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
Suite 1600, One Atlantic Center
1201 West Peachtree Street, N.E.
Atlanta, Georgia 30309-3449 Federal

(3) One copy to: Mr. David L. Schlosberg
Totalbank
2720 Coral Way
Miami, Florida 33145

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:mergeart

EFFECTIVE DATE
4-17-98

cc: Bureau of Financial Institutions - District II

Merger
LFS 4-17-98

ARTICLES OF MERGER
Merger Sheet

MERGING:

FLORIDA INTERNATIONAL BANK, a Florida corporation (Document #216338)

INTO

TOTALBANK, a Florida corporation, 446653

File date: April 16, 1998, effective April 17, 1998

Corporate Specialist: Louise Flemming-Jackson

OFFICE OF COMPTROLLER
DEPARTMENT OF BANKING AND FINANCE
STATE OF FLORIDA
TALLAHASSEE
32399-0350

ROBERT F. MILLIGAN
COMPTROLLER OF FLORIDA

Having given my approval on March 12, 1998, to merge Florida International Bank, Perrine, 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 at the close of business on April 17TH, 1998, they shall read as stated herein.

Signed on this 15TH day of April, 1998.

Comptroller

February 11, 1998

Mr. Bruce Ricca
Office of the Comptroller
Department of Banking and Finance
Licensing & Chartering
Division of Banking
The Capitol, Suite 1401
Tallahassee, Florida 32399

CERTIFICATE OF SOLE SHAREHOLDER
APPROVING AGREEMENT AND PLAN OF MERGER

ALFREDO QUINTERO, as Trustee, HEREBY CERTIFIES as follows:

1. He is the legal owner of all issued and outstanding shares of FLORIDA INTERNATIONAL BANK by virtue of that certain Trust Agreement Dated as of November 29, 1989 and court Order of the Miami-Dade Circuit Court.

2., He has duly approved the AGREEMENT AND PLAN OF MERGER by and between Totalbank and Florida International Bank dated as of November 25, 1997 and the merger contemplated thereby.

3. All requirements of Florida Statute 658.44 (Dissenters' Rights) have been duly complied with or waived and there are no dissenters to the proposed transaction.

By: _____
ALFREDO QUINTERO, TRUSTEE

CERTIFIED EXCERPTS OF MINUTES OF SHAREHOLDERS MEETING HELD ON MARCH 26, 1998

I, DAVID I. SCHLOSBERG, Secretary 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 10:30 a.m. on Thursday, March 26, 1998 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.

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:

Name of Shareholder	Number of Shares
Adrienne Arsht	4.5575
Myer Feldman	1,590.2000
William J. Heffernan	2.2800
Gary P. Eidelstein	2.2800
Kevin P. O'Connor	4.5575
Bruce A. Keller	4.5575
Alberto G. Manrara	4.3050
Hugo Castro, Trustee	8.6100
TOTAL	1,621.3475

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

Name of Shareholder	Number of Shares
Cathy Beck	51.3550
Jamie Beck Gordon	51.3550
Paul Golob	1.3400
James A. Feldman	36.1800
TOTAL BY PROXY	140.2300

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 February 25, 1998, to all shareholders of record of the corporation as of December 31, 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 50% of the 1,812.50 shares outstanding 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 by and between TotalBank and Florida International Bank dated as of November 25, 1997, whereby TotalBank will purchase Florida International Bank and merge it into TotalBank. Upon motion made by Mr. Feldman and seconded by Mr. Heffernan, the shareholders unanimously, and without dissent: a) approved and ratified the Agreement and Plan of Merger and b) approved and ratified the Resolution of the Board of Directors dated December 4, 1997 authorizing and approving the Agreement and Plan of Merger and the transactions contemplated by it. The full text of the subject Resolution is set forth on the attached Page 3 of these excerpts.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary and have affixed the seal of this Corporation this 8th day of April, 1998.

David I. Schlosberg, Secretary

(Corporate Seal)

RESOLUTION OF THE SHAREHOLDERS OF TOTALBANK APPROVING AND RATIFYING AGREEMENT AND PLAN OF MERGER BY AND BETWEEN TOTALBANK AND FLORIDA INTERNATIONAL BANK DATED AS OF NOVEMBER 25, 1997.

WHEREAS, the Shareholders have determined that it is in the best interests of TotalBank and its shareholders to acquire FLORIDA INTERNATIONAL BANK in accordance with the terms, conditions and transactions set forth in that AGREEMENT AND PLAN OF MERGER dated November 25, 1997 (hereinafter "Agreement"); and,

WHEREAS, the Board of Directors has approved and authorized the transaction pursuant to its Resolution dated December 4, 1997 and,

WHEREAS, approval or ratification of this transaction by shareholders is required of bank regulatory authorities;

NOW THEREFORE, IT IS RESOLVED as follows:

The Agreement and Plan of Merger by and between TOTALBANK and FLORIDA INTERNATIONAL BANK dated as of November 25, 1997, together with the Resolution of the Board of Directors dated December 4, 1997 authorizing and approving the Agreement and Plan of Merger and the transactions contemplated by it, be and are hereby ratified and approved.

original

AGREEMENT AND PLAN OF MERGER

by and between

TOTALBANK

and

FLORIDA INTERNATIONAL BANK
dated as of

November 25, 1997

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EFFECTIVE DATE
4-17-98

FILED
98 APR 16 PM 4:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of the 25th day of November 1997, by and between **FLORIDA INTERNATIONAL BANK** ("Acquired Corporation"), a Florida-chartered commercial bank, and **TOTALBANK** ("Acquiring Corporation), a Florida-chartered commercial bank.

RECITALS

A. Acquired Corporation is a Florida-chartered commercial bank with its principal office in Perrine, Florida; and

B. Acquiring Corporation is a Florida-chartered commercial bank with its principal office in Miami, Florida; and

C. Acquired Corporation wishes to merge with Acquiring Corporation.

ARTICLE 1
DEFINITIONS

The following terms, which are capitalized in this Agreement, shall have the meanings set forth below for the purpose of this Agreement:

Acquired Corporation	Florida International Bank, a Florida banking corporation.
Acquired Corporation Company	Acquired Corporation, any Subsidiary of Acquired Corporation, or any person or entity acquired as a Subsidiary of Acquired Corporation in the future and owned by Acquired Corporation at the Effective Date.
Acquired Corporation Stock	Shares of common stock, par value $10.00 per share, of Acquired Corporation.
Acquiring Corporation	Totalbank, a Florida-chartered bank.
Acquisition Proposal	With respect to a Party, any tender offer or exchange offer or any proposal for a merger, acquisition of all of the stock or assets of, or other business combination involving such Party or any of its Subsidiaries or the acquisition of a substantial equity interest in, or a

	substantial portion of the assets of, such Party or any of its Subsidiaries.
Agencies	Collectively, the Federal Trade Commission, the United States Department of Justice, the Board of the Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of the Comptroller of the Currency, all state regulatory agencies having jurisdiction over the Parties and their respective Subsidiaries, HUD, the VA, the FHA, the GNMA, the FNMA, the FHLMC, the NYSE, and the SEC.
Agreement	This Agreement and Plan of Merger and the Exhibits and Schedules delivered pursuant hereto and incorporated herein by reference.
Assets	Of a Person shall mean all of the assets, properties, businesses and rights of such Person of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, accrued or contingent, or otherwise relating to or utilized in such Person's business, directly or indirectly, in whole or in part, whether or not carried on the books and records of such Person, and whether or not owned in the name of such Person or any Affiliate of such Person and wherever located.
Closing	The closing of the transactions contemplated hereby as described in Section 2.6 of this Agreement.
Code	The Internal Revenue Code of 1986, as amended.
Common Stock	Acquiring Corporation's Common Stock authorized and defined in the restated articles of incorporation of Acquiring Corporation, as amended.
Consent	Any consent, approval, authorization, clearance, exemption, waiver, or similar affirmation by any Person pursuant to any Contract, Law, Order, or Permit.

Contract	Any material written or oral agreement, arrangement, authorization, commitment, contract, indenture, instrument, lease, obligation, plan, practice, restriction, understanding or undertaking of any kind or character, or other document to which any Person is a party or that is binding on any Person or its capital stock, Assets or business.
Default	Shall mean (i) any breach or violation of or default under any Contract, Order or Permit, (ii) any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of or default under any Contract, Order or Permit, or (iii) any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right to terminate or revoke, change the current terms of, or renegotiate, or to accelerate, increase, or impose any Liability under, any Contract, Order or Permit.
Effective Date	Means the date and time at which the Merger becomes effective as defined in Section 2.6 hereof.
Environmental Laws	Means the laws, regulations, and governmental requirements referred to in Section 5.23 hereof.
ERISA	The Employee Retirement Income Security Act of 1974, as amended.
Exhibits	A and B, shall mean the Exhibits so marked, copies of which are attached to this Agreement. Such Exhibits are hereby incorporated by reference herein and made a part hereof, and may be referred to in this Agreement and any other related instrument or document without being attached hereto.
Florida Acts	Chapters 607, 655, and 658 of the Florida Statutes.
GAAP	Means generally accepted accounting principles applicable to banks and bank holding companies.

Knowledge	Means the actual knowledge of the Chairman, President, Chief Financial Officer, Chief Accounting Officer, Chief Credit Officer, In-house Counsel or any Senior or Executive Vice President of Acquiring Corporation, in the case of knowledge of Acquiring Corporation, or of Acquired Corporation in the case of knowledge of Acquired Corporation.
Law	Means any code, law, ordinance, regulation, reporting or licensing requirement, rule, or statute applicable to a Person or its Assets, Liabilities or business, including those promulgated, interpreted or enforced by any Agency.
Liability	Means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense), deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks, and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.
Lien	Means any conditional sale agreement, default of title, easement, encroachment, encumbrance, hypothecation, infringement, lien, mortgage, pledge, reservation, restriction, security interest, title retention or other security arrangement, or any adverse right or interest, charge, or claim of any nature whatsoever of, on, or with respect to any property or property interest, other than (i) Liens for current property Taxes not yet due and payable, and (ii) for depository institution Subsidiaries of a Party, pledges to secure deposits and other liens incurred in the ordinary course of the banking business, and (iii) Liens in the form of easements and restrictive covenants on real property which do not materially adversely affect the current use of such property by the current owner thereof.
Litigation	Any action, arbitration, complaint, criminal prosecution governmental or other examination or investigation,

	hearing, inquiry, administrative or other proceeding relating to or affecting a Party, its business, its Assets (including Contracts related to it), or the transactions contemplated by this Agreement.
Loan Property	Any property owned by the Party in question or by any of its Subsidiaries or in which such Party or Subsidiary holds a security interest, and, where required by the context, includes the owner or operator of such property, but only with respect to such property.
Loss	Any and all direct or indirect payments, obligations, recoveries, deficiencies, fines, penalties, interest, assessments, losses, diminution in the value of Assets, damages, punitive, exemplary or consequential damages (including, but not limited to, lost income and profits and interruptions of business), liabilities, costs, expenses (including without limitation, reasonable attorneys' fees and expenses, and consultant's fees and other costs of defense or investigation), and interest on any amount payable to a third party as a result of the foregoing.
Material	For purposes of this Agreement shall be determined in light of the facts and circumstances of the matter in question; provided that any specific monetary amount stated in this Agreement shall determine materiality in that instance.
Material Adverse Effect	On a Party shall mean an event, change or occurrence which has a material adverse impact on (i) the financial position, Assets, business, or results of operations of such Party and its Subsidiaries, taken as a whole, or (ii) the ability of such Party to perform its obligations under this Agreement or to consummate the Merger or the other transactions contemplated by this Agreement, provided that "material adverse impact" shall not be deemed to include the impact of (x) changes in banking and similar laws of general applicability or interpretations thereof by courts or governmental authorities, (y) changes in generally accepted accounting principles or regulatory accounting principles generally applicable to banks and

	their holding companies, and (z) the Merger and compliance with the provisions of this Agreement on the operating performance of the Parties.
Merger	The merger of Acquired Corporation with Acquiring Corporation as contemplated in this Agreement.
Merger Consideration	The distribution of cash for Acquired Corporation Stock as provided in Section 3.2 hereof.
Order	Any administrative decision or award, decree, injunction, judgment, order, quasi judicial decision or award, ruling, or writ of any federal, state, local or foreign or other court, arbitrator, mediator, tribunal, administrative agency or Agency.
Party	Shall mean Acquired Corporation or Acquiring Corporation, and "Parties" shall mean both Acquired Corporation and Acquiring Corporation.
Permit	Any federal, state, local, and foreign governmental approval, authorization, certificate, easement, filing, franchise, license, notice, permit, or right to which any Person is a party or that is or may be binding upon or inure to the benefit of any Person or its securities, Assets or business.
Person	A natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.
Resulting Corporation	Acquiring Corporation, as the surviving corporation resulting from the Merger.
SEC	United States Securities and Exchange Commission.
Stockholder	Mr. Alfredo Quintero, acting pursuant to authority granted in the Trust Agreement.

Subsidiaries	Shall mean all those corporations, banks, associations, or other entities of which the entity in question owns or controls 5% or more of the outstanding equity securities either directly or through an unbroken chain of entities as to each of which 5% or more of the outstanding equity securities is owned directly or indirectly by its parent; provided, however, there shall not be included any such entity acquired through foreclosure or any such entity the equity securities of which are owned or controlled in a fiduciary capacity.
Tax or Taxes	Means any federal, state, county, local, foreign, and other taxes, assessments, charges, fares, and impositions, including interest and penalties thereon or with respect thereto.
Trust Agreement	The Trust Agreement dated November 29, 1989 by and between Juan B. Echeverri, as Trustee, Felix Correa Maya, and Banco Nacional and the Order on Plaintiff's Motion for Approval of the Appointment of a Substitute Trustee issued on May 16, 1997 in *Republic of Colombia v. Felix Correa-Maya*, Case No. 83-31191 CA 10 (Fla. Cir. Ct.), pursuant to which the Stockholder, as trustee under the Trust Agreement, is the record owner of the Acquired Corporation Stock.
Trust Beneficiaries	The beneficiaries under the Trust Agreement.
1933 Act	The Securities Act of 1933, as amended.
1934 Act	The Securities Exchange Act of 1934, as amended.

ARTICLE 2
MERGER -- TERMS AND CONDITIONS

2.1 The Merger. On the Effective Date, Acquired Corporation shall be merged with and into Acquiring Corporation (herein sometimes referred to as the "Resulting Corporation" when reference is made to it as of the time of Merger or thereafter). The Merger shall be undertaken pursuant to the provisions of and with the effect provided in the

Florida Acts. The offices and facilities of Acquired Corporation and of Acquiring Corporation shall become the offices and facilities of the Resulting Corporation.

2.2 Corporate Existence. On the Effective Date, the corporate existence of Acquired Corporation and of Acquiring Corporation shall, as provided in the Florida Acts, be merged into and continued in the Resulting Corporation, and the Resulting Corporation shall be deemed to be the same corporation as Acquired Corporation and Acquiring Corporation. The name of the Resulting Corporation shall be "Totalbank". All rights, franchises and interests of Acquired Corporation and Acquiring Corporation, respectively, in and to every type of property (real, personal and mixed) and choses in action shall be transferred to and vested in the Resulting Corporation by virtue of the Merger without any deed or other transfer. The Resulting Corporation on the Effective Date, without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises and interests, including appointments, designations and nominations and all other rights and interests as trustee, executor, administrator, transfer agent and registrar of stocks and bonds, guardian of estates, assignee, and receiver and in every other fiduciary capacity and in every agency, and capacity, in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by Acquired Corporation and Acquiring Corporation, respectively, on the Effective Date.

2.3 Articles of Incorporation and Bylaws. On the Effective Date, the articles of incorporation and bylaws of the Resulting Corporation shall be the Amended and Restated Articles of Incorporation and Bylaws of Acquiring Corporation as they exist immediately before the Effective Date.

2.4 Resulting Corporation's Officers and Board. The board of directors and the executive officers of the Resulting Corporation on the Effective Date shall consist of those persons serving in such capacities of Acquiring Corporation as of the Effective Date.

2.5 Further Acts. If, at any time after the Effective Date, the Resulting Corporation shall consider or be advised that any further assignments or assurances in law or any other acts are necessary or desirable (i) to vest, perfect, confirm or record, in the Resulting Corporation, title to and possession of any property or right of Acquired Corporation or Acquiring Corporation, acquired as a result of the Merger, or (ii) otherwise to carry out the purposes of this Agreement, Acquiring Corporation and its officers and directors shall execute and deliver all such proper deeds, assignments and assurances in law and do all acts necessary or proper to vest, perfect or confirm title to, and possession of, such property or rights in the Resulting Corporation and otherwise to carry out the purposes of this Agreement; and the proper officers and directors of the Resulting Corporation are fully authorized in the name of Acquired Corporation or Acquiring Corporation, or otherwise, to take any and all such action.

2.6 **Effective Date and Closing.** Subject to the terms of all requirements of Law and the conditions specified in this Agreement, the Merger shall become effective on the date specified in the Certificate of Merger to be issued by the Secretary of State of the State of Florida (such time being herein called the "Effective Date"). Assuming all other conditions to the Closing have been or will be satisfied as of the Closing, the Closing shall take place at the offices of Shutts & Bowen LLP at 201 South Biscayne Boulevard, Suite 1500, Miami, Florida, at 5:00 p.m. on a date specified by Acquiring Corporation that shall be as soon as reasonably practicable after the later to occur of all required regulatory approvals under Section 8.1 or court approval under Section 8.3, or at such other place and time that the Parties may mutually agree, provided that the Parties acknowledge that the Closing may also take place by mail and facsimile transmission.

ARTICLE 3
CONVERSION OF ACQUIRED CORPORATION STOCK

3.1 **Conversion of Acquired Corporation Stock.** On the Effective Date, each share of common stock of Acquired Corporation outstanding and held by Stockholder (the "Acquired Corporation Stock"), shall be converted by operation of law and without any action by Stockholder into the right to receive the Merger Consideration, as defined in Section 3.2 hereof.

3.2 **Merger Consideration.** For purposes of this Agreement, the term "Merger Consideration" shall mean the amount to be paid by Acquiring Corporation to Stockholder upon the effectiveness of the Merger, which shall be equal to $20,100,001.00 minus: (i) the Excess Transaction Costs, as defined in Section 3.3 hereof, and (ii) the Special Costs, as defined in Section 3.4 hereof.

3.3 **Excess Transaction Costs.** For purposes of this Agreement, the term "Excess Transaction Costs" shall mean all expenses in excess of $35,000 incurred by Acquired Corporation in connection with this Agreement and the transactions contemplated herein, including but not limited to attorney fees, accountant fees, trustee fees, broker fees, and investment banker fees.

3.4 **Special Costs.** For purposes of this Agreement, the term "Special Costs" shall mean the payments to Donald L. Burgess and Leif K. Gunderson referenced in Section 5.5(i) and any other performance bonuses and other special compensation paid (or agreed to be paid) to Donald L. Burgess, Leif K. Gunderson, or any other officer of Acquired Corporation on or after the date of this Agreement and up to and including the date of the Closing, including payments resulting from (i) termination of the payee's employment prior to the Closing, or (ii) the change of control of Acquired Corporation as of the Closing, in each case

other than payments made in the ordinary course of business consistent with past practice and Acquired Corporation's current policies regarding such payments.

3.5 Schedule of Excess Transaction Costs and Special Costs. On or prior to the date which is five business days prior to the Closing, Acquired Corporation shall provide Acquiring Corporation with a correct and detailed schedule of Excess Transaction Costs (as defined in Section 3.3) and Special Costs (as defined in Section 3.4), together with such reasonable documentation in support thereof as may be requested by Acquiring Corporation, for the purpose of the Merger Consideration calculation.

3.6 Payment for Acquired Corporation Stock.

(a) At the Closing, Acquiring Corporation shall deliver the Merger Consideration to Stockholder, by wire transfer of immediately available funds, provided Stockholder surrenders to Acquiring Corporation at the Closing the certificate or certificates representing all of the shares of Acquired Corporation, duly executed in blank for transfer to Acquiring Corporation and with such other documentation that Acquiring Corporation may reasonably require.

(b) No interest shall be payable on the Merger Consideration to the extent that Acquiring Corporation complies with the foregoing requirements.

3.7 Acquiring Corporation Stock. The shares of Common Stock of Acquiring Corporation issued and outstanding immediately before the Effective Date shall continue to be issued and outstanding shares of the Resulting Corporation.

ARTICLE 4
REPRESENTATIONS, WARRANTIES AND COVENANTS OF ACQUIRING CORPORATION

Acquiring Corporation represents, warrants and covenants to and with Acquired Corporation as follows:

4.1 Organization. Acquiring Corporation is a corporation duly organized, validly existing and in good standing under the Laws of the State of Florida. Acquiring Corporation has the necessary corporate powers to carry on its business as presently conducted and is qualified to do business in every jurisdiction in which the character and location of the Assets owned by it or the nature of the business transacted by it requires qualification and in which the failure to qualify could, individually or in the aggregate, have a Material Adverse Effect.

4.2 **Financial Statements; Call Report.**

(a) Acquiring Corporation has delivered to Acquired Corporation copies of the following financial statements of Acquiring Corporation

(i) Consolidated balance sheets as of December 31, 1995, December 31, 1996;

(ii) Consolidated statements of operations for each of the three years ended December 31, 1994, 1995 and 1996;

(iii) Consolidated statements of cash flows for each of the three years ended December 31, 1994, 1995 and 1996; and

(iv) Consolidated statements of changes in shareholders' equity for the three years ended December 31, 1994, 1995 and 1996.

All such financial statements are in all material respects in accordance with the books and records of Acquiring Corporation and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, all as more particularly set forth in the notes to such statements. Each of the consolidated balance sheets presents fairly as of its date the consolidated financial condition of Acquiring Corporation. Except as and to the extent reflected or reserved against in such balance sheets (including the notes thereto), Acquiring Corporation did not have, as of the dates of such balance sheets, any material Liabilities or obligations (absolute or contingent) of a nature customarily reflected in a balance sheet or the notes thereto. The statements of consolidated income, shareholders' equity and changes in consolidated financial position present fairly the results of operations and changes in financial position of Acquiring Corporation for the periods indicated.

(b) Acquiring Corporation has delivered to Acquired Corporation copies of its September 30, 1997 call report.

4.3 **No Conflict with Other Instrument.** The consummation of the transactions contemplated by this Agreement will not result in a breach of or constitute a Default (without regard to the giving of notice or the passage of time) under any material Contract, indenture, mortgage, deed of trust or other material agreement or instrument to which Acquiring Corporation is a party or by which it or its Assets may be bound; will not conflict with any provision of the amended and restated articles of incorporation or bylaws of Acquiring Corporation; and will not violate any provision of any Law, regulation, judgment or decree binding on it or any of its Assets.

4.4 **Approval of Agreement.** The board of directors of Acquiring Corporation has approved this Agreement and the transactions contemplated by it. This Agreement constitutes the legal, valid and binding obligation of Acquiring Corporation, enforceable against it in accordance with its terms. Approval of this Agreement by the stockholders of Acquiring Corporation is not required by applicable Law. Subject to the matters referred to in Section 8.1, Acquiring Corporation has full power, authority and legal right to enter into this Agreement and to consummate the transactions contemplated by this Agreement. Acquiring Corporation has no Knowledge of any fact or circumstance under which the appropriate regulatory approvals required by Section 8.1 will not be granted without the imposition of material conditions or material delays.

4.5 **Absence of Regulatory Communications.** Except as provided in Schedule 4.5, Acquiring Corporation is not subject to, and has not received during the past two years, any written communication directed specifically to it from any Agency pursuant to which it is subject or pursuant to which such Agency has imposed or has indicated it may impose any material restrictions on the operations of it or the business conducted by it or in which such Agency has raised an material question concerning the condition, financial or otherwise, of such company.

4.6 **Subsidiaries.** Each Subsidiary of Acquiring Corporation has been duly incorporated and is validly existing as a corporation in good standing under the Laws of the jurisdiction of its incorporation and each Subsidiary has been duly qualified as a foreign corporation to transact business and is in good standing under the Laws of each other jurisdiction in which it owns or leases properties, or conducts any business so as to require such qualification and in which the failure to be duly qualified could have a Material Adverse Effect upon Acquiring Corporation and its Subsidiaries considered as one enterprise, and the businesses of the non-bank Subsidiaries of Acquiring Corporation are permissible for such subsidiaries under applicable federal and state banking law.

4.7 **SEC Filings.** Acquiring Corporation is not required to file periodic reports with the Securities and Exchange Commission.

4.8 **Brokers.** All negotiations relative to this Agreement and the transactions contemplated by this Agreement have been carried on by Acquiring Corporation directly with Acquired Corporation and without the intervention of any other person, either as a result of any act of Acquiring Corporation or otherwise in such manner as to give rights to any valid claim against Acquiring Corporation for finders fees, brokerage commissions or other like payments.

4.9 **Disclosure.** No representation or warranty, or any statement or certificate furnished or to be furnished to Acquired Corporation by Acquiring Corporation, contains or

will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained in this Agreement or in any such statement or certificate not misleading.

ARTICLE 5
REPRESENTATIONS, WARRANTIES AND COVENANTS OF ACQUIRED CORPORATION

Acquired Corporation represents, warrants and covenants to and with Acquiring Corporation, as follows:

5.1 Organization. Acquired Corporation is a Florida-chartered bank. Each Acquired Corporation Company is duly organized, validly existing and in good standing under the Laws of Florida and has all requisite power and authority to carry on its business as it is now being conducted and is qualified to do business in every jurisdiction in which the character and location of the Assets owned by it or the nature of the business transacted by it requires qualification or in which the failure to qualify could, individually, or in the aggregate, have a Material Adverse Effect.

5.2 Capital Stock.

(a) The authorized capital stock of Acquired Corporation consists of 87,000 shares of common stock, $10.00 par value per share, all of which are issued and outstanding. All of such shares which are outstanding are validly issued, fully paid and nonassessable and not subject to preemptive rights. Acquired Corporation has no arrangements or commitments obligating it to issue shares of its capital stock or any securities convertible into or having the right to purchase shares of its capital stock.

(b) Stockholder is the record owner of all of the issued and outstanding shares of Acquired Corporation pursuant to the Trust Agreement.

5.3 Subsidiaries. Acquired Corporation has no Subsidiaries other than F.I.B. Realty Corporation. Acquired Corporation owns all of the issued and outstanding capital stock of F.I.B. Realty Corporation, free and clear of any liens, claims or encumbrances of any kind. All of the issued and outstanding shares of capital stock of F.I.B. Realty Corporation have been validly issued and are fully paid and non-assessable. F.I.B. Realty Corporation has no arrangements or commitments obligating it to issue shares of its capital stock or any securities convertible into or having the right to purchase shares of its capital stock.

5.4 **Financial Statements; Taxes; Call Report.**

(a) Acquired Corporation has delivered to Acquiring Corporation copies of the following financial statements of Acquired Corporation:

(i) Consolidated statements of financial condition as of December 31, 1995 and 1996;

(ii) Consolidated statements of income for each of the three years ended December 31, 1994, 1995 and 1996;

(iii) Consolidated statements of stockholders' equity for each of the three years ended December 31, 1994, 1995, and 1996; and

(iv) Consolidated statements of cash flows for the three years ended December 31, 1994, 1995 and 1996.

All of the foregoing financial statements are in all material respects in accordance with the books and records of Acquired Corporation and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, except for changes required by GAAP, all as more particularly set forth in the notes to such statements. Each of such balance sheets presents fairly as of its date the financial condition of Acquired Corporation. Except as and to the extent reflected or reserved against in such balance sheets (including the notes thereto), Acquired Corporation did not have, as of the date of such balance sheets, any material Liabilities of a nature customarily reflected in a balance sheet or the notes thereto. The statements of income, stockholders' equity and cash flows present fairly the results of operation, changes in shareholders equity and cash flows of Acquired Corporation for the periods indicated.

(b) Except as set forth on Schedule 5.4(b), all Tax returns required to be filed by or on behalf of Acquired Corporation have been timely filed (or requests for extensions therefor have been timely filed and granted and have not expired), and all returns filed are complete and accurate in all material respects. Except as set forth on Schedule 5.4(b), all Taxes shown on these returns to be due and all additional assessments received have been paid. The amounts recorded for Taxes on the balance sheets provided under Section 5.4(a) are, to the Knowledge of Acquired Corporation, sufficient in all material respects for the payment of all unpaid federal, state, county, local, foreign and other Taxes (including any interest or penalties) of Acquired Corporation accrued for or applicable to the period ended on the dates thereof, and all years and periods prior thereto and for which Acquired Corporation may at such dates have been liable in its own right or as a transferee of the Assets of, or as successor to, any other corporation or other party. No audit,

examination or investigation is presently being conducted or, to the Knowledge of Acquired Corporation, threatened by any taxing authority which is likely to result in a material Tax Liability, no material unpaid Tax deficiencies have been proposed by any governmental representative and no agreements for extension of time for the assessment of any material amount of Tax have been entered into by or on behalf of Acquired Corporation. Acquired Corporation has not executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax due that is currently in effect.

(c) Each Acquired Corporation Company has withheld from its employees (and timely paid to the appropriate governmental entity) proper and accurate amounts for all periods in material compliance with all Tax withholding provisions of applicable federal, state, foreign and local Laws (including without limitation, income, social security and employment Tax withholding for all types of compensation). Each Acquired Corporation Company is in material compliance with, and its records contain all information and documents (including properly completed IRS Forms W-9) necessary to materially comply with, all applicable information reporting and Tax withholding requirements under federal, state and local Tax Laws, and such records identify with specificity all accounts subject to backup withholding under Section 3406 of the Code.

(d) Acquired Corporation has delivered to Acquiring Corporation copies of its September 30, 1997 call report.

5.5 Absence of Certain Changes or Events. Except as set forth on Schedule 5.5, since the date of the call report provided under Section 5.4(d) above, no Acquired Corporation Company has:

(a) issued, delivered or agreed to issue or deliver any stock, bonds or other corporate securities (whether authorized and unissued or held in the treasury);

(b) borrowed or agreed to borrow any funds or incurred, or become subject to, any Liability (absolute or contingent) except borrowings, obligations (including purchase of federal funds) and Liabilities incurred in the ordinary course of business and consistent with past practice;

(c) paid any material Liability other than current Liabilities reflected in or shown on the call report provided under Section 5.4(d) and current Liabilities incurred since that date in the ordinary course of business and consistent with past practice;

(d) declared or made, or agreed to declare or make, any payment of dividends or distributions of any Assets of any kind whatsoever to shareholders, or purchased or redeemed, or agreed to purchase or redeem, directly or indirectly, or otherwise acquire, any

of its outstanding securities except for cash dividends declared and paid in the ordinary course of business;

(e) except in the ordinary course of business, sold or transferred, or agreed to sell or transfer, any of its Assets, or canceled, or agreed to cancel, any debts or claims;

(f) except in the ordinary course of business, entered or agreed to enter into any agreement or arrangement granting any preferential rights to purchase any of its Assets, or requiring the consent of any party to the transfer and assignment of any of its Assets;

(g) suffered any Losses or waived any rights of value which in either event in the aggregate are material considering its business as a whole;

(h) except in the ordinary course of business, made or permitted any amendment or termination of any Contract, agreement or license to which it is a party if such amendment or termination is material considering its business as a whole, except that Acquired Corporation has modified and extended its existing data processing contract with Fiserv Solutions, Inc.;

(i) except in accordance with normal and usual practice, made any accrual or arrangement for or payment of bonuses or special compensation of any kind or any severance or termination pay to any present or former officer or employee, except for arrangements made for the payment of performance bonuses to Donald L. Burgess and Leif K. Gunderson;

(j) except in accordance with normal and usual practice, increased the rate of compensation payable to or to become payable to any of its officers or employees or made any material increase in any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement or other employee benefit plan, payment or arrangement made to, for or with any of its officers or employees;

(k) received notice or had Knowledge that any of its substantial customers has terminated or intends to terminate its relationship, which termination would have a Material Adverse Effect;

(l) failed to operate its business in the ordinary course so as to preserve its business intact and to preserve the goodwill of its customers and others with whom it has business relations;

(m) entered into any other material transaction other than in the ordinary course of business; or

(n) agreed in writing, or otherwise, to take any action described in clauses (a) through (m) above.

Between the date hereof and the Effective Date, no Acquired Corporation Company, without the express written approval of Acquiring Corporation, will do any of the things listed in clauses (a) through (n) of this Section 5.5 except as permitted therein or as contemplated in this Agreement, and no Acquired Corporation Company will enter into or amend any material Contract, other than Loans or renewals thereof entered into in the ordinary course of business, without the express written consent of Acquiring Corporation.

5.6 Title and Related Matters.

(a) Title. Except as provided in Schedule 5.6(a), Acquired Corporation has good and marketable title to all the properties, interest in properties and Assets, real and personal, reflected in the most recent balance sheet referred to in Section 5.4(a)(i), or acquired after the date of such balance sheet (except properties, interests and Assets sold or otherwise disposed of since such date, in the ordinary course of business), free and clear of all Liens, except (i) mortgages and other encumbrances referred to in the notes to such balance sheet, (ii) Liens for current Taxes not yet due and payable and (iii) such imperfections of title and easements as do not materially detract from or interfere with the present use of the properties subject thereto or affected thereby, or otherwise materially impair present business operations at such properties. To the knowledge of Acquired Corporation, the material structures and equipment of each Acquired Corporation Company comply in all material respects with the requirements of all applicable Laws.

(b) Leases. Schedule 5.6(b) sets forth a list and description of all real and personal property leased by any Acquired Corporation Company, either as lessor or lessee.

(c) Personal Property. Schedule 5.6(c) sets forth a depreciation schedule of each Acquired Corporation Company's fixed Assets as of May 31, 1997.

(d) Computer Hardware and Software. Schedule 5.6(d) contains a description of all agreements relating to data processing computer software and hardware now being used in the business operations of each Acquired Corporation Company. Except as disclosed on Schedule 5.6(d), Acquired Corporation is not aware of any defects, irregularities or problems with any of its computer hardware or software which renders such hardware or software unable to satisfactorily perform the tasks and functions to be performed by them in the business of any Acquired Corporation Company.

5.7 Commitments. Except as set forth in Schedule 5.7, no Acquired Corporation Company is a party to any oral or written (i) Contracts for the employment of any officer or employee which is not terminable on 30 days' (or less) notice, (ii) profit sharing, bonus, deferred compensation, savings, stock option, severance pay, pension or retirement plan, agreement or arrangement, (iii) loan agreement, indenture or similar agreement relating to the borrowing of money by such party, (iv) guaranty of any obligation for the borrowing of money or otherwise, excluding endorsements made for collection, and guaranties made and letters of credit issued in the ordinary course of business, (v) consulting or other similar material Contract, (vi) collective bargaining agreement, (vii) agreement with any present or former officer, director or shareholder of such party, or (viii) other Contract which is material to the business, operations, property, prospects or Assets or to the condition, financial or otherwise, of any Acquired Corporation Company (excluding loan agreements in the amount of $250,000 or less). Complete and accurate copies of all Contracts, plans and other items so listed have been made or will be made available to Acquiring Corporation for inspection.

5.8 Articles and Bylaws. Schedule 5.8 contains true and correct copies of the articles of incorporation and bylaws of each Acquired Corporation Company, including all amendments thereto, as currently in effect. There will be no changes in such articles of incorporation or bylaws prior to the Effective Date, without the prior written consent of Acquiring Corporation.

5.9 Litigation. Except as disclosed on Schedule 5.9, there is no Litigation (whether or not purportedly on behalf of Acquired Corporation) pending or, to the Knowledge of Acquired Corporation, threatened against any Acquired Corporation Company (nor does Acquired Corporation have knowledge of any facts which are likely to give rise to any such Litigation) at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind, which involves the possibility of any judgment or Liability not fully covered by insurance in excess of the applicable deductible amount or which may have a Material Adverse Effect on Acquired Corporation, and no Acquired Corporation Company is in Default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, which Default would have a Material Adverse Effect on Acquired Corporation. To the Knowledge of Acquired Corporation, each Acquired Corporation Company has complied in all material respects with all material applicable Laws and Regulations including those imposing Taxes, of any applicable jurisdiction and of all states, municipalities, other political subdivisions and Agencies, in respect of the ownership of its properties and the conduct of its business, which, if not complied with, would have a Material Adverse Effect on Acquired Corporation.

5.10 Material Contract Defaults. Except as disclosed on Schedule 5.10, no Acquired Corporation Company is in Default in any material respect under the terms of any Contract which is or may be material to the business, operations, properties or Assets, or the condition, financial or otherwise, of such Company, and, to the Knowledge of Acquired Corporation, there is no event which, with notice or lapse of time, or both, may be or become an event of Default under any such material Contract in respect of which adequate steps have not been taken to prevent such a Default from occurring.

5.11 No Conflict with Other Instrument. Except as disclosed on Schedule 5.11, the consummation of the transactions contemplated by this Agreement will not result in the breach of any term or provision of or constitute a Default under any material Contract to which any Acquired Corporation Company is a party and will not conflict with any provision of the charter or bylaws of any Acquired Corporation Company.

5.12 Governmental Authorization. Each Acquired Corporation Company has all Permits that, to the Knowledge of Acquired Corporation, are legally required to enable such company to conduct its business in all material respects as now conducted.

5.13 Absence of Regulatory Communications. Except as provided in Schedule 5.13, no Acquired Corporation Company is subject to, nor has any Acquired Corporation Company received during the past two years, any written communication directed specifically to it from any Agency pursuant to which it is subject or pursuant to which such Agency has imposed or has indicated it may impose any material restrictions on the operations of it or the business conducted by it or in which such Agency has raised an material question concerning the condition, financial or otherwise, of such company.

5.14 Absence of Material Adverse Change. To the Knowledge of Acquired Corporation, since the date of the call report provided under Section 5.4(d), there have been no events, changes or occurrences which have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Acquired Corporation.

5.15 Insurance. Each Acquired Corporation Company has in effect insurance coverage and bonds with reputable insurers which, in respect to amounts, types and risks insured, management of Acquired Corporation reasonably believes to be adequate for the type of business conducted. No Acquired Corporation Company is liable for any material retroactive premium adjustment. All insurance policies and bonds are valid, enforceable and in full force and effect, and no Acquired Corporation Company has received any notice of any material premium increase or cancellation with respect to any of its insurance policies or bonds. Within the last three years, no Acquired Corporation Company has been refused any insurance coverage which it has sought or applied for, and Acquired Corporation has no reason to believe that existing insurance coverage cannot be renewed as and when the same

shall expire, upon terms and conditions as favorable as those presently in effect, other than possible increases in premiums that do not result from any extraordinary loss experience. All policies of insurance presently held or policies containing substantially equivalent coverage will be outstanding and in full force with respect to the relevant Acquired Corporation Companies at all times from the date hereof to the Effective Date. Notwithstanding anything in this Agreement to the contrary, Acquiring Corporation acknowledges that Acquired Corporation intends to discontinue its existing self-insured health insurance plan and to replace such existing plan with a health insurance plan that is not self-insured, and Acquiring Corporation consents to such actions.

5.16 Pension and Employee Benefit Plans.

(a) To the Knowledge of Acquired Corporation, all employee benefit plans of each Acquired Corporation Company have been established in compliance with, and such plans have been operated in material compliance with, all applicable Laws. Except as set forth in Schedule 5.16, no Acquired Corporation Company sponsors or otherwise maintains a "pension plan" within the meaning of Section 3(2) of ERISA or any other retirement plan that is intended to qualify under Section 401 of the Code, nor do any unfunded Liabilities exist with respect to any employee benefit plan, past or present. To the Knowledge of Acquired Corporation, no employee benefit plan, any trust created thereunder or any trustee or administrator thereof has engaged in a "prohibited transaction," as defined in Section 4975 of the Code, which may have a Material Adverse Effect on Acquired Corporation.

(b) To the Knowledge of Acquired Corporation, no amounts payable to any employee of any Acquired Corporation Company will fail to be deductible for federal income tax purposes by virtue of Section 280G of the Code and regulations thereunder.

5.17 Buy-Sell Agreement. To the Knowledge of Acquired Corporation, there are no agreements granting to any person or persons a right of first refusal in respect of the sale, transfer, or other disposition of shares of outstanding securities of Acquired Corporation by Stockholder, or any voting agreement or voting trust in respect of any such shares other than the Trust Agreement.

5.18 Brokers. All negotiations relative to this Agreement and the transactions contemplated by this Agreement have been carried on by Acquired Corporation directly with Acquiring Corporation and without the intervention of any other person, either as a result of any act of Acquired Corporation, or otherwise, in such manner as to give rise to any valid claim against Acquired Corporation for finders fees, brokerage commissions or other like payments; provided, however, that Acquired Corporation has retained The Carson Medlin Company to act as financial adviser (and Stockholder has retained The Carson Medlin

Company to act as investment banker) in connection with such transactions, and will pay a fee in connection therewith.

5.19 Stockholder Approval of Agreement. Stockholder has approved this Agreement and the transactions contemplated by this Agreement, subject to receipt of court approval in accordance with Section 8.3.

5.20 Board Approval of Agreement. The board of directors of Acquired Corporation has approved this Agreement and the transactions contemplated by this Agreement and has authorized the execution and delivery by Acquired Corporation of this Agreement. Subject to receipt of all necessary regulatory approvals and court approval in accordance with Sections 8.1 and 8.3, respectively, Acquired Corporation has full power, authority and legal right to enter into this Agreement and full power, authority and legal right to consummate the transactions contemplated by this Agreement.

5.21 Disclosure. No representation or warranty, nor any statement or certificate furnished or to be furnished in writing to Acquiring Corporation by Acquired Corporation, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained in this Agreement or in any such statement or certificate not misleading. Information disclosed in relation to any representation or warranty contained in this Agreement, including on any Schedule, shall be deemed to be disclosed in relation to all representations and warranties contained in this Agreement with respect to which disclosure of such information is required.

5.22 Loans; Adequacy of Allowance for Loan Losses. All reserves for loan losses shown on the most recent financial statements furnished by Acquired Corporation have been calculated in accordance with customary banking practices and, to the knowledge of Acquired Corporation, are adequate to reflect the risk inherent in the loans of Acquired Corporation. Acquired Corporation has no Knowledge of any fact which is likely to require a future material increase in the provision for loan losses or a material decrease in the loan loss reserve reflected in such financial statements. Each loan reflected as an Asset on the financial statements of Acquired Corporation is the legal, valid and binding obligation of the obligor of each loan, enforceable in accordance with its terms subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and to general equitable principles. Acquired Corporation does not have in its portfolio any loan (net of participations sold) exceeding its legal lending limit, and except as disclosed on Schedule 5.22, Acquired Corporation has no known material delinquent, substandard, doubtful, loss, nonperforming or problem loans.

5.23 Environmental Matters. Except as provided in Schedule 5.23, to the Knowledge of Acquired Corporation, each Acquired Corporation Company is in material

compliance with all Laws and other governmental requirements relating to the generation, management, handling, transportation, treatment, disposal, storage, delivery, discharge, release or emission of any waste, pollution, or toxic, hazardous or other substance (the "Environmental Laws"), and all regulations and requirements promulgated by the Occupational Safety and Health Administration that are applicable to such company. To the Knowledge of Acquired Corporation, there is no Litigation pending or threatened with respect to any violation or alleged violation of the Environmental Laws by any Acquired Corporation Company. To the Knowledge of Acquired Corporation, with respect to Assets of or owned by any Acquired Corporation Company, including any Loan Property, (i) there has been no spillage, leakage, contamination or release of any substances for which the appropriate remedial action has not been completed; (ii) no owned or leased property is contaminated with or contains any hazardous substance or waste; and (iii) there are no underground storage tanks on any premises owned or leased by any Acquired Corporation Company. Acquired Corporation has no Knowledge of any facts which might suggest that Acquired Corporation has engaged in any management practice with respect to any of its past or existing borrowers which could reasonably be expected to subject Acquired Corporation to any Liability, either directly or indirectly, under the principles of law as set forth in United States v. Fleet Factors Corp., 901 F.2d 1550 (llth Cir. 1990) or any similar principles.

5.24 **Collective Bargaining.** There are no labor contracts, collective bargaining agreements, letters of undertakings or other arrangements, formal or informal, between any Acquired Corporation Company and any union or labor organization covering any Acquired Corporation Company's employees and none of said employees are represented by any union or labor organization.

5.25 **Labor Disputes.** To the Knowledge of Acquired Corporation, each Acquired Corporation Company is in material compliance with all federal and state laws respecting employment and employment practices, terms and conditions of employment, wages and hours. No Acquired Corporation Company is or has been engaged in any unfair labor practices, and, to the Knowledge of Acquired Corporation, no unfair labor practice complaint against any Acquired Corporation Company is pending before the National Labor Relations Board. Relations between management of each Acquired Corporation Company and the employees are amicable and there have not been, nor to the Knowledge of Acquired Corporation, are there presently, any attempts to organize employees, nor to the Knowledge of Acquired Corporation, are there plans for any such attempts.

5.26 **Derivative Contracts.** No Acquired Corporation Company is a party to or has agreed to enter into a swap, forward, future, option, cap, floor or collar financial contract, or any other interest rate or foreign currency protection contract or derivative security not included in Acquired Corporation's financial statements delivered under Section 5.4 hereof which is a financial derivative contract (including various combinations thereof).

ARTICLE 6
ADDITIONAL COVENANTS

6.1 **Additional Covenants of Acquiring Corporation.** Acquiring Corporation covenants to and with Acquired Corporation as follows:

(a) Filings. As soon as reasonably practicable with the use of its best efforts, Acquiring Corporation shall prepare and submit all necessary filings to any Agencies which may be necessary for approval to consummate the transactions contemplated by this Agreement, and shall use its best efforts to obtain approval of such transactions. Copies of all such filings shall be furnished to Acquired Corporation and its counsel for their review and comment not less than three days prior to filing. Acquiring Corporation shall take, as expeditiously as possible, all actions necessary for such filings to be approved in the minimum amount of time practicable and permissible under applicable law and will provide Acquired Corporation with copies of all correspondence and notices to or from the Agencies concerning such filings. Nothing in this paragraph shall, however, be deemed to give Acquired Corporation any right to approve the form or the content of such filings, or be deemed to require Acquiring Corporation to incorporate any comments of Acquired Corporation into such filings.

(b) Financial Statements. Acquiring Corporation shall furnish to Acquired Corporation:

(i) As soon as practicable and in any event within forty-five (45) days after the end of each quarterly period (other than the last quarterly period) in each fiscal year, consolidated statements of operations of Acquiring Corporation for such period and for the period beginning at the commencement of the fiscal year and ending at the end of such quarterly period, and a consolidated statement of financial condition of Acquiring Corporation as of the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding periods ending in the preceding fiscal year, subject to changes resulting from year-end adjustments;

(ii) Promptly upon receipt thereof, copies of all audit reports submitted to Acquiring Corporation by independent auditors in connection with each annual, interim or special audit of the books of Acquiring Corporation made by such accountants;

(iii) As soon as practicable, copies of all such financial statements and reports as it shall send to its stockholders and of such regular and periodic reports as Acquiring Corporation may file with the SEC or any other Agency; and

(iv) With reasonable promptness, such additional financial data as Acquired Corporation may reasonably request.

(c) No Control of Acquired Corporation by Acquiring Corporation. Notwithstanding any other provision hereof, until the Effective Date, the authority to establish and implement the business policies of Acquired Corporation shall continue to reside solely in Acquired Corporation's officers and board of directors.

(d) Employee Benefit Matters. On the Effective Date, all employees of any Acquired Corporation Company shall, at Acquiring Corporation's option, either become employees of the Resulting Corporation or its Subsidiaries or be entitled to severance benefits in accordance with Acquiring Corporation's severance policy as of the date of this Agreement. All employees of any Acquired Corporation Company who become employees of the Resulting Corporation or its Subsidiaries on the Effective Date shall be entitled, to the extent permitted by applicable Law, to participate in all benefit plans of the Resulting Corporation to the same extent as Acquiring Corporation employees, except as stated otherwise in this Section. Employees of any Acquired Corporation Company who become employees of the Resulting Corporation or its Subsidiaries on the Effective Date shall be allowed to participate as of the Effective Date in the medical and dental benefits plan of Resulting Corporation as new employees of Resulting Corporation, and the time of employment of such employees who are employed at least 30 hours per week with any Acquired Corporation Company as of the Effective Date shall be counted as employment under such dental and medical plans of Resulting Corporation for purposes of calculating any 30 day waiting period and pre-existing condition limitations. To the extent permitted by applicable Law, the period of service with the appropriate Acquired Corporation Company of all employees who become employees of the Resulting Corporation or its Subsidiaries on the Effective Date shall be recognized only for vesting and eligibility purposes under Resulting Corporation's benefit plans. In addition, if the Effective Date falls within an annual period of coverage under any group health plan of the Resulting Corporation and its Subsidiaries, each such Acquired Corporation Company employee shall be given credit for covered expenses paid by that employee under comparable employee benefit plans of the Acquired Corporation Company during the applicable coverage period through the Effective Date towards satisfaction of any annual deductible limitation and out-of-pocket maximum that may apply under that group health plan of the Resulting Corporation and its Subsidiaries.

(e) Indemnification; Directors and Officers Insurance. (i) From and after the Effective Date, Acquiring Corporation shall indemnify and advance costs and expenses (including reasonable attorneys fees, disbursements and expenses) and hold harmless each present and former director and/or officer of any Acquired Corporation Company determined as of the Effective Date (the "Indemnified Parties"), against any costs or expenses (including reasonable attorney's fees), judgments, fines, losses, claims, damages, settlements or liabilities

(collectively, "Costs") incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (each a "Claim"), arising out of or pertaining to matters existing or occurring at or prior to the Effective Date, whether asserted or claimed prior to, at or after the Effective Date to the fullest extent that Acquired Corporation or any of its Subsidiaries would have been permitted under Florida Law and its Articles of Incorporation or Bylaws in effect on the date hereof, to indemnify such person (and also advance expenses as incurred to the fullest extent permitted under applicable Law).

(ii) Any Indemnified Party wishing to claim indemnification under this Section 6.1(e) shall notify Acquiring Corporation within forty-five (45) days of the Indemnified Party's receipt of a notice of any Claim, but the failure to so notify shall not relieve Acquiring Corporation of any liability it may have to such Indemnified Party if such failure does not materially prejudice Acquiring Corporation. In the event of any claim (whether arising before or after the Effective Date), (i) Acquiring Corporation shall have the right to assume the defense thereof, and Acquiring Corporation shall not be liable to such Indemnified Parties for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Parties in connection with the defense thereof, except that if Acquiring Corporation elects not to assume such defense, or counsel for the Indemnified Parties advises that there are issues which raise conflicts of interest between Acquiring Corporation and the Indemnified Parties, the Indemnified Parties may retain counsel satisfactory to them, and Acquiring Corporation shall pay the reasonable fees and expenses of such counsel for the Indemnified Parties promptly after statements therefore are received; provided, however, that Acquiring Corporation shall be obligated pursuant to this paragraph (ii) to pay for only one firm of counsel for all Indemnified Parties in any jurisdiction unless the use of one counsel for such Indemnified Parties will present such counsel with a conflict of interest, (ii) the Indemnified Parties will cooperate in the defense of any such matter, and (iii) Acquiring Corporation shall not be liable for any settlement effected without its prior written consent which shall not be unreasonably withheld. If such indemnity with respect to any Indemnified Party is unenforceable against Acquiring Corporation, then Acquiring Corporation and the Indemnified Party shall contribute to the amount payable in such proportion as is appropriate to reflect relative faults and benefits.

(iii) For a period of six (6) years after the Effective Date, Acquiring Corporation shall cause to be maintained in effect the current policies of directors and officer liability insurance maintained by Acquired Corporation (provided that Acquiring Corporation may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are no less advantageous to such directors and officers) with respect to claims arising from facts or events which occurred before the Effective Date.

(iv) If Acquiring Corporation or any of its successors and assigns, (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing

or surviving corporation or entity of such consolidation or merger, or (ii) shall transfer all or substantially all of its property and assets to any individual, corporation or other entity, then, in each such case, proper provision shall be made so that the successors and assigns of Acquiring Corporation and its Subsidiaries shall assume the obligations set forth in this Section.

(v) The provisions of this Section 6.1(e) are intended to be for the benefit of, and shall be enforceable by each Indemnified Party, and each Indemnified Party's heirs and representatives.

(vi) Acquired Corporation hereby represents and warrants to Acquiring Corporation that it has no Knowledge of any claim, pending or threatened that could give rise to any obligation by Acquiring Corporation to provide the indemnification required by this Section 6.1(e) other than as described in any schedule to this Agreement and claims arising from any transaction contemplated by this Agreement.

6.2 **Additional Covenants of Acquired Corporation.** Acquired Corporation covenants to and with Acquiring Corporation as follows:

(a) Operations. (i) Acquired Corporation will conduct its business and the business of each Acquired Corporation Company in a proper and prudent manner and will use its best efforts to maintain its relationships with its depositors, customers and employees. Without the prior consent of Acquiring Corporation, no Acquired Corporation Company will engage in any material transaction outside the ordinary course of business or make any material change in its accounting policies or methods of operation, nor will Acquired Corporation permit the occurrence of any change or event which would render any of the representations and warranties in Article 5 hereof untrue in any material respect at and as of the Effective Date with the same effect as though such representations and warranties had been made at and as of such Effective Date.

(b) Best Efforts. Acquired Corporation will cooperate with Acquiring Corporation in the preparation of any regulatory filings and, consistent with fiduciary obligations, will use its best efforts to bring about the transactions contemplated by this Agreement as soon as practicable unless this Agreement is terminated as provided herein

(c) Prohibited Negotiations. Except with respect to this Agreement and the transactions contemplated hereby, no Acquired Corporation Company nor any officer or director thereof nor any investment banker, attorney, accountant, or other representative (collectively, "Representatives") retained by an Acquired Corporation Company shall directly or indirectly solicit any Acquisition Proposal by any Person. Except to the extent necessary to comply with the fiduciary duties of Acquired Corporation's Board of Directors as advised

in writing by counsel to such Board of Directors, no Acquired Corporation Company or any Representative thereof shall furnish any non-public information that it is not legally obligated to furnish, negotiate with respect to, or enter into any Contract with respect to, any Acquisition Proposal, and each Acquired Corporation Company shall direct and use its reasonable efforts to cause all of its Representatives not to engage in any of the foregoing, but Acquired Corporation may communicate information about such an Acquisition Proposal to the Stockholder if and to the extent that it is required to do so in order to comply with its legal obligations as advised in writing by counsel to such Board of Directors. Acquired Corporation shall promptly notify Acquiring Corporation orally and in writing in the event that any Acquired Corporation Company receives any inquiry or proposal relating to any such Acquisition Proposal. Acquired Corporation shall immediately cease and cause to be terminated any existing activities, discussions, or negotiations with any Persons other than Acquiring Corporation conducted heretofore with respect to any of the foregoing.

(d) Director Recommendation. The members of the Board of Directors of Acquired Corporation agree to support publicly the Merger; provided, however, that nothing contained herein shall be deemed to prohibit any officer or director of Acquired Corporation from fulfilling his or her fiduciary duty or from taking any action that is required by Law.

(e) Financial Statements and Monthly Status Reports. Acquired Corporation shall furnish to Acquiring Corporation:

(i) As soon as practicable and in any event within 45 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year, consolidated statements of operations of Acquired Corporation for such period and for the period beginning at the commencement of the fiscal year and ending at the end of such quarterly period, and a consolidated statement of financial condition of Acquired Corporation as of the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding periods ending in the preceding fiscal year, subject to changes resulting from year-end adjustments;

(ii) Promptly upon receipt thereof, copies of all audit reports submitted to Acquired Corporation by independent auditors in connection with each annual, interim or special audit of the books of Acquired Corporation made by such accountants;

(iii) As soon a practicable, copies of all such financial statements and reports as it shall send to its stockholders and of such regular and periodic reports as Acquired Corporation may file with any Agency;

(iv) With reasonable promptness, such additional financial data as Acquiring Corporation may reasonably request; and

(v) Within 20 calendar days after the end of each month (or, if the financial statements referred to in clause (d) are not then available, as soon as possible thereafter) commencing with the next calendar month following the date of this Agreement and ending at the Effective Date, a written description of (a) any non-compliance with the terms of this Agreement; (b) the status, as of the date of the report, of all existing or threatened litigation against any Acquired Corporation Company; (c) copies of minutes of any meeting of the board of directors of any Acquired Corporation Company and any committee thereof occurring in the month for which such report is made, including all documents presented to the directors at such meetings, but excluding all portions relating to the transactions contemplated by this Agreement or relating to communication with any other potential acquiror of any Acquired Corporation Company; and (d) monthly financial statements, including a balance sheet and income statement.

(f) Certain Practices. At the request of Acquiring Corporation, (i) Acquired Corporation shall advise Acquiring Corporation of all of Acquired Corporation's loan requests over $500,000 that are not single-family residential loan requests or of any other loan request outside the normal course of business, and (ii) Acquired Corporation will consult with Acquiring Corporation to coordinate various business issues on a basis mutually satisfactory to Acquired Corporation and Acquiring Corporation. Acquired Corporation shall not be required to undertake any of such activities, however, except as such activities may be in compliance with existing Law and Regulations.

ARTICLE 7
MUTUAL COVENANTS AND AGREEMENTS

7.1 Best Efforts; Cooperation. Subject to the terms and conditions herein provided, Acquiring Corporation and Acquired Corporation each agrees to use its best efforts promptly to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable under applicable Laws or otherwise, including, without limitation, attempting to obtain all necessary Consents and waivers and regulatory approvals, including the holding of any regular or special board meetings, to consummate and make effective, as soon as practicable, the transactions contemplated by this Agreement. The officers of each Party to this Agreement shall fully cooperate with officers and employees, accountants, counsel and other representatives of the other Parties not only in fulfilling the duties hereunder of the Party of which they are officers but also in assisting, directly or through direction of employees and other persons under their supervision or control, such as stock transfer agents for the Party, the other Parties requiring information which is reasonably available from such Party.

7.2 **Press Release.** Each Party hereto agrees that, unless approved by the other Party in advance, such Party will not make any public announcement, issue any press release or other publicity or confirm any statements by any person not a Party to this Agreement concerning the transactions contemplated hereby. Notwithstanding the foregoing, each Party hereto reserves the right to make any disclosure if such Party, in its reasonable discretion, deems such disclosure required by Law. In that event, such Party shall provide to the other Party the text of such disclosure sufficiently in advance to enable the other Party to have a reasonable opportunity to comment thereon.

7.3 **Mutual Disclosure.** Each Party hereto agrees to promptly furnish to each other Party hereto its public disclosures and filings not precluded from disclosure by Law including but not limited to call reports, Y-3 applications, reports on Form Y-6, quarterly or special reports to shareholders, Tax returns, and similar documents.

7.4 **Access to Properties and Records.** Subject to any restrictions under applicable Law, each Party hereto shall afford the officers and authorized representatives of the other Party full access to the Assets, books and records of such Party in order that such other Parties may have full opportunity to make such investigation as they shall desire of the affairs of such Party and shall furnish to such Party such additional financial and operating data and other information as to its businesses and Assets as shall be from time to time reasonably requested. All such information that may be obtained by any such Party will be held in confidence by such Party, will not be disclosed by such Party or any of its representatives except in accordance with this Agreement, and will not be used by such Party for any purpose other than the accomplishment of the Merger as provided herein.

7.5 **Notice of Adverse Changes.** Each Party agrees to give written notice promptly to the other Party upon becoming aware of the occurrence or impending occurrence of any event or circumstance relating to it or any of its Subsidiaries which (i) is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on it or (ii) would cause or constitute a material breach of any of its representations, warranties, or covenants contained herein, and to use its reasonable efforts to prevent or promptly to remedy the same.

ARTICLE 8
CONDITIONS TO OBLIGATIONS OF ALL PARTIES

The obligations of Acquiring Corporation and Acquired Corporation to cause the transactions contemplated by this Agreement to be consummated shall be subject to the satisfaction, in the sole discretion of the Party relying upon such conditions, on or before the Effective Date of all the following conditions, except as such Parties may waive such conditions in writing:

8.1 **Regulatory Authority Approval.** All necessary Orders, Consents and approvals, in form and substance reasonably satisfactory to Acquiring Corporation and Acquired Corporation, shall have been entered by all appropriate bank regulatory Agencies (i) granting the authority necessary for the consummation of the transactions contemplated by this Agreement, and (ii) satisfying all other requirements prescribed by Law.

8.2 **Litigation.** There shall be no pending or threatened Litigation in any court or any pending or threatened proceeding by any governmental commission, board or Agency, with a view to seeking or in which it is sought to restrain or prohibit consummation of the transactions contemplated by this Agreement or in which it is sought to obtain divestiture, rescission or damages in connection with the transactions contemplated by this Agreement, and no investigation by any Agency shall be pending or threatened which might result in any such suit, action or other proceeding.

8.3 **Court Approval.** Stockholder shall have received approval of the transactions contemplated by this Agreement from a court in Dade County, Florida having both in personam and subject matter jurisdiction over the Trust Agreement and the Trust Beneficiaries. Such court approval shall: (i) be a final order, and shall not have been appealed during the applicable appeal period; (ii) be based on the consent of the Trust Beneficiaries or entered only after valid notice to, and an appearance, response or opportunity to be heard on the part of, each Trust Beneficiary; (iii) specifically rule that the Trust Agreement is legal, valid, and binding, and enforceable in accordance with its terms; (iv) based upon the consent of the Trust Beneficiaries, specifically rule that: (a) the transactions contemplated by this Agreement satisfy and comply with all the terms and conditions of the Trust Agreement, and (b) upon the consummation of such transactions, Acquiring Corporation will receive valid record and beneficial ownership of and title to the Acquired Corporation Stock, free of all claims of the Trust Beneficiaries; and (v) not be contested by any of the Trust Beneficiaries at or before the Closing.

ARTICLE 9
CONDITIONS TO OBLIGATIONS OF ACQUIRED CORPORATION

The obligations of Acquired Corporation to cause the transactions contemplated by this Agreement to be consummated shall be subject to the satisfaction on or before the Effective Date of all the following conditions except as Acquired Corporation may waive such conditions in writing:

9.1 **Representations, Warranties and Covenants.** Notwithstanding any investigation made by or on behalf of Acquired Corporation, all representations and warranties of Acquiring Corporation contained in this Agreement shall be true in all material respects on and as of the Effective Date as if such representations and warranties were made

on and as of such Effective Date, and Acquiring Corporation shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by it on or prior to the Effective Date.

9.2 **Adverse Changes.** There shall have been no changes after the date of the call report provided under Section 4.2(b) hereof in the Assets, Liabilities, financial condition or affairs of Acquiring Corporation which in their total effect constitute a Material Adverse Effect, nor shall there have been any material changes in the Laws governing the business of Acquiring Corporation which would impair the rights of Acquired Corporation or Stockholder pursuant to this Agreement.

9.3 **Closing Certificate.** In addition to any other items required to be delivered hereunder, Acquired Corporation shall have received a certificate from the President or a Vice President and from the Secretary or Assistant Secretary of Acquiring Corporation dated as of the Closing certifying that:

(a) the Board of Directors of Acquiring Corporation has duly adopted resolutions approving the substantive terms of this Agreement and authorizing the consummation of the transactions contemplated by this Agreement and such resolutions have not been amended or modified and remain in full force and effect;

(b) each person executing this Agreement on behalf of Acquiring Corporation is an officer of Acquiring Corporation holding the office or offices specified therein and the signature of each person set forth on such certificate is his or her genuine signature;

(c) such persons have no knowledge of a basis for any material claim, in any court or before any Agency or arbitration or otherwise against, by or affecting Acquiring Corporation or the business, prospects, condition (financial or otherwise), or Assets of Acquiring Corporation which would prevent the performance of this Agreement or the transactions contemplated by this Agreement or declare the same unlawful or cause the rescission thereof; and

(d) the conditions set forth in this Article 9 insofar as they relate to Acquiring Corporation have been satisfied.

9.4 **Opinion of Counsel.** Acquired Corporation shall have received an opinion of David I. Scholsberg, Esq., counsel to Acquiring Corporation, dated as of the Closing, substantially in the form set forth in Exhibit A hereto.

9.5 **Other Matters.** There shall have been furnished to counsel for Acquired Corporation certified copies of such corporate records of Acquiring Corporation and copies of such other documents as such counsel may reasonably have requested.

9.6 **Material Events.** There shall have been no determination by the board of directors of Acquired Corporation that the transactions contemplated by this Agreement have become impractical because of any state of war, declaration of a banking moratorium in the United States or a general suspension of trading on any exchange on which Acquiring Corporation Common Stock may be traded.

ARTICLE 10
CONDITIONS TO OBLIGATIONS OF ACQUIRING CORPORATION

The obligations of Acquiring Corporation to cause the transactions contemplated by this Agreement to be consummated shall be subject to the satisfaction on or before the Effective Date of all of the following conditions except as Acquiring Corporation may waive such conditions in writing:

10.1 **Representations, Warranties and Covenants.** Notwithstanding any investigation made by or on behalf of Acquiring Corporation, all representations and warranties of Acquired Corporation contained in this Agreement shall be true in all material respects on and as of the Effective Date as if such representations and warranties were made on and as of the Effective Date, and Acquired Corporation shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by it on or prior to the Effective Date.

10.2 **Adverse Changes.** There shall have been no changes after the date of the call report provided under Section 5.4(d) hereof in the Assets, Liabilities, financial condition, or affairs of Acquired Corporation which constitute a Material Adverse Effect, nor shall there have been any material changes in the Laws governing the business of Acquired Corporation which would impair Acquiring Corporation's rights pursuant to this Agreement.

10.3 **Closing Certificate.** In addition to any other items required to be delivered hereunder, Acquiring Corporation shall have received a certificate from Acquired Corporation executed by the President or Vice President and from the Secretary or Assistant Secretary of Acquired Corporation dated as of the Closing certifying that:

(a) the Board of Directors of Acquired Corporation has duly adopted resolutions approving the substantive terms of this Agreement and authorizing the consummation of the transactions contemplated by this Agreement and such resolutions have not been amended or modified and remain in full force and effect;

(b) Stockholder has duly adopted resolutions approving the substantive terms of the Merger and the transactions contemplated thereby and such resolutions have not been amended or modified and remain in full force and effect;

(c) each person executing this Agreement on behalf of Acquired Corporation is an officer of Acquired Corporation holding the office or offices specified therein and the signature of each person set forth on such certificate is his or her genuine signature;

(d) the articles of incorporation and bylaws of Acquired Corporation referenced in Section 5.8 hereof remain in full force and effect and have not been amended or modified since the date hereof; and

(e) the conditions set forth in this Article 10 insofar as they relate to Acquired Corporation have been satisfied.

10.4 Opinion of Counsel. Acquiring Corporation shall have received an opinion of Holland & Knight LLP, counsel to Acquired Corporation, dated as of the Closing, substantially as set forth in Exhibit B hereto.

10.5 Other Matters. There shall have been furnished to counsel for Acquiring Corporation certified copies of such corporate records of Acquired Corporation and copies of such other documents as such counsel may reasonably have requested.

10.6 Material Events. There shall have been no determination by the board of directors of Acquiring Corporation that the transactions contemplated by this Agreement have become impractical because of any state of war, declaration of a banking moratorium in the United States or general suspension of trading on any exchange on which Acquiring Corporation Common Stock may be traded.

ARTICLE 11
TERMINATION OF REPRESENTATIONS AND WARRANTIES

All representations and warranties provided in Articles 4 and 5 of this Agreement or in any closing certificate pursuant to Articles 9 and 10 shall terminate and be extinguished at and shall not survive the Effective Date. All covenants, agreements and undertakings required by this Agreement to be performed by any Party hereto following the Effective Date shall survive such Effective Date and be binding upon such Party. If the Merger is not consummated, all representations, warranties, obligations, covenants, or agreements hereunder or in any certificate delivered hereunder relating to the transaction which is not consummated shall be deemed to be terminated or extinguished, except that Section 7.2, the confidentiality

provisions of Section 7.4, Section 13.3, this Article 11, Article 14 and any applicable definitions of Article 1, shall survive. Items disclosed in the Exhibits and Schedules attached hereto are incorporated into this Agreement and form a part of the representations, warranties, covenants or agreements to which they relate.

ARTICLE 12
NOTICES

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given at the time given or mailed, first class postage prepaid:

(a) If to Acquired Corporation, to Donald L. Burgess, Florida International Bank, 17945 Franjo Road, Miami, Florida 33157 (facsimile 305-232-4918), with copies to Jose E. Sirven, Esq., Holland & Knight LLP, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131 (facsimile 305-789-7799), Alfredo Quintero, Bancafe International, 801 Brickell Avenue, Penthouse One, Miami, Florida 33131 (facsimile 305-374-6147), and Bowman Brown, Esq., Shutts & Bowen LLP, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131 (facsimile 305-381-9982), or as may otherwise be specified by Acquired Corporation in writing to Acquiring Corporation.

(b) If to Acquiring Corporation, to William J. Heffernan, President, c/o Totalbank, 2720 Coral Way, Miami, Florida 33145 (facsimile 305-448-8201), with a copy to David I Scholsberg, General Counsel, c/o Totalbank, 2720 Coral Way, Miami, Florida 33145 (facsimile 305-448-8201), or as may otherwise be specified in writing by Acquiring Corporation to Acquired Corporation.

ARTICLE 13
AMENDMENT OR TERMINATION

13.1 Amendment. This Agreement may be amended by the mutual written consent of Acquiring Corporation and Acquired Corporation at any time.

13.2 Termination. This Agreement may be terminated at any time prior to or on the Effective Date whether before or after action thereon by Stockholder, as follows:

(a) by the mutual consent of the respective boards of directors of Acquired Corporation and Acquiring Corporation;

(b) by the board of directors of either Party in the event of a material breach by the other Party of any representation, warranty, covenant or agreement contained in this

Agreement which cannot be or has not been cured within thirty (30) days after the giving of written notice to the breaching Party of such breach and which breach would provide the non-breaching Party the ability to refuse to consummate the Merger under the standard set forth in Section 10.1 of this Agreement in the case of Acquiring Corporation and Section 9.1 of this Agreement in the case of Acquired Corporation; or

(c) by the board of directors of either Party if all transactions contemplated by this Agreement shall not have been consummated within nine (9) months of the date of this Agreement, if the failure to consummate the transactions provided for in this Agreement within such period is not caused by any breach of this Agreement by the terminating Party.

13.3 Damages. In the event of termination pursuant to Section 13.2, Acquired Corporation and Acquiring Corporation shall not be liable for damages for any breach of warranty or representation contained in this Agreement made in good faith, and, in that case, the expenses incurred shall be borne as set forth in Section 14.1 hereof.

ARTICLE 14
MISCELLANEOUS

14.1 Expenses. Subject to the provisions of Article 3 hereof, each Party hereto shall bear its own legal, auditing, trustee, investment banking, brokerage, regulatory and other expenses in connection with this Agreement and the transactions contemplated hereby.

14.2 Benefit. This Agreement shall inure to the benefit of and be binding upon Acquired Corporation and Acquiring Corporation, and their respective successors. This Agreement shall not be assignable by any Party without the prior written consent of the other Party.

14.3 Governing Law. This Agreement shall be governed by, and construed in accordance with the Laws of the State of Florida without regard to any conflict of Laws provisions.

14.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original. Each such counterpart shall become effective when one counterpart has been signed by each Party thereto.

14.5 Headings. The headings of the various articles and Sections of this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement or considered in construing the provisions thereof.

14.6 **Severability.** Any term or provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining terms and provisions thereof or affecting the validity or enforceability of such provision in any other jurisdiction, and if any term or provision of this Agreement is held by any court of competent jurisdiction to be void, voidable, invalid or unenforceable in any given circumstance or situation, then all other terms and provisions, being severable, shall remain in full force and effect in such circumstance or situation and the term or provision shall remain valid and in effect in any other circumstances or situation.

14.7 **Construction.** Use of the masculine pronoun herein shall be deemed to refer to the feminine and neuter genders and the use of singular references shall be deemed to include the plural and vice versa, as appropriate. No inference in favor of or against any Party shall be drawn from the fact that such Party or such Party's counsel has drafted any portion of this Agreement.

14.8 **Return of Information.** In the event of termination of this Agreement prior to the Effective Date, each Party shall return to the other, without retaining copies thereof, all confidential or non-public documents, work papers and other materials obtained from the other Party in connection with the transactions contemplated in this Agreement and shall keep such information confidential, not disclose such information to any other person or entity, and not use such information in connection with its business.

14.9 **Equitable Remedies.** The parties hereto agree that, in the event of a material breach of this Agreement by either Party, the other Party may be without an adequate remedy at law owing to the unique nature of the contemplated transactions. In recognition thereof, in addition to (and not in lieu of) any remedies at law that may be available to the non-breaching Party, the non-breaching Party shall be entitled to obtain equitable relief, including the remedies of specific performance and injunction, in the event of a material breach of this Agreement by the other Party, and no attempt on the part of the non-breaching Party to obtain such equitable relief shall be deemed to constitute an election of remedies by the non-breaching Party that would preclude the non-breaching Party from obtaining any remedies at law to which it would otherwise be entitled.

14.10 **Attorneys' Fees.** If any Party hereto shall bring an action at law or in equity to enforce its rights under this Agreement (including an action based upon a misrepresentation or the breach of any warranty, covenant, agreement or obligation contained herein), the prevailing Party in such action shall be entitled to recover from the other Party its reasonable costs and expenses incurred in connection with such action (including fees, disbursements and expenses of attorneys and costs of investigation).

14.11 No Waiver. No failure, delay or omission of or by any Party in exercising any right, power or remedy upon any breach or Default of any other Party shall impair any such rights, powers or remedies of the Party not in breach or Default, nor shall it be construed to be a waiver of any such right, power or remedy, or an acquiescence in any similar breach or Default; nor shall any waiver of any single breach or Default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any provisions of this Agreement must be in writing and be executed by the Parties to this Agreement and shall be effective only to the extent specifically set forth in such writing.

14.12 Remedies Cumulative. All remedies provided in this Agreement, by law or otherwise, shall be cumulative and not alternative.

14.13 Entire Contract. This Agreement and the documents and instruments referred to herein constitute the entire contract between the parties to this Agreement and supersede all other understandings with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, Acquired Corporation and Acquiring Corporation have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

ATTEST:

BY: _____
NAME: Leslie Torres-Vallejo
ITS: _____
(CORPORATE SEAL)

FLORIDA INTERNATIONAL BANK

BY: _____
NAME: Donald L. Burgess
ITS: President

ATTEST:

BY: _____
NAME: David Schlosberg
ITS: Secretary

(CORPORATE SEAL)

TOTALBANK

BY: _____
NAME: Adrienne Arsht
ITS: Chairman

FILED

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF TOTALBANK

ARTICLE I

The name of the corporation (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 the Corporation shall be that of a general banking business with all 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 500,000 shares with a par value of $10.00 per share. Upon the filing of these Amended and Restated Articles of Incorporation (such date hereinafter referred to as the "Effective Date"), each 100 shares of the issued and outstanding common stock of the Corporation shall be reclassified into one share of common stock of the Corporation. This reverse split shall affect only issued and outstanding shares and shall not affect the total number of shares authorized. Each record holder of shares of common stock of the Corporation whose aggregate number of shares owned immediately prior to the Effective Date is less than 100 shall be deemed by the Corporation to hold a fractional share of common stock. All such fractional shares of the Corporation's common stock held by a record holder owning in the aggregate less than 100 shares immediately prior to the Effective Date are hereby immediately canceled. The holder of such fractional share shall be entitled to a cash payment in an amount equal to $284.98 per share of common stock owned immediately prior to the Effective Date upon proper surrender of the holder's certificate or certificates.

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 amount of capital stock 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, and (3) amendments to these Amended and Restated Articles of Incorporation which may be necessary to accomplish the foregoing may be adopted.

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

ARTICLE IV

The term for which the Corporation shall exist shall be perpetual.

ARTICLE V

The business and affairs of the Corporation shall be managed and conducted by:

A. A Board of not less than five and not more than 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 first four months of each year. A majority of the full board of directors may, at any time during the year following the annual meeting of shareholders, increase the number of directors within the limits specified above, and appoint persons to fill the resulting vacancies, provided that in any one year not more than two such additional directors shall be appointed pursuant to these 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. Not less than a majority of the directors must, during their whole term of service, be citizens of the United States, and at least 60% 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. Not less than a majority of the directors must, during their whole term of service, be citizens of the United States,

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)
   380 Harbour Drive
   Key Biscayne, Florida 33149

2. MYER FELDMAN (Vice Chairman)
   380 Harbour Drive
   Key Biscayne, Florida 33149

3. WILLIAM J. HEFFERNAN
351 N.E. 105th Street
Miami Shores, Florida 33138

4. GARY EIDELSTEIN
Grand Bay Plaza, #908
2665 South Bayshore Drive
Miami, Florida 33133

5. KEVIN O'CONNOR
2801 Ponce de Leon Blvd.
Coral Gables, Florida 33134

6. BRUCE KELLER
982 N.E. 126th Street
North Miami, Florida 33161

7. PATRICK WARD
2009 North 14th Street, #509
Arlington, Virginia 22201

8. RAQUEL MATAS
The Colonnade, Suite 650
2333 Ponce de Leon Blvd.
Coral Gables, Florida 33134

ARTICLE VII

1. Certain Definitions. For purposes of this Article VII:

a. "Affiliate" means, when used in reference to any Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person.

b. "Associate" means, when used in reference to any Person, (1) any corporation or organization of which such Person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such Person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person.

c. "Capital Stock" means the capital stock of the Corporation.

i. "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

d. "Disqualified Person" means any Person which is not permitted to be a stockholder of a "small business corporation" pursuant to the provisions of 26 U.S.C. §1361(b)(1)(B) or (C), as amended, or by any successor provision.

e. "Disqualifying Transfer" means any transfer (whether by operation of law or otherwise) of any shares of Capital Stock, the result of which would cause the Corporation to have more than the maximum number of stockholders permitted for an S Corporation.

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

g. "Redemption Date" means (i) with respect to a redemption of shares of Capital Stock from a Disqualified Person the date immediately prior to the date on which such Person became a Disqualified Person and (ii) with respect to shares of Capital Stock which are the subject of a proposed Disqualifying Transfer, the date fixed by action of the Board of Directors for the redemption of any shares of Capital Stock pursuant to paragraph 7 of this Article VII.

h. "S Corporation" means a corporation which is an "S corporation" (as defined in 26 U.S.C. § 1361(a)(1), as amended, or in any successor provision).

i. "S Election" means the written consent of a stockholder of the Corporation to the Corporation making the election provided for under 26 U.S.C. §1362(a), as amended, or under any successor provision.

2. General. Consistent with 26 U.S.C. § 1361 et. seq., as amended, or any successor provision, and to prevent the loss by the Corporation of its status as an S Corporation, it is the policy of the Corporation that, subject to the provisions of this Article VII, no Person shall be permitted to hold, own, acquire or transfer any shares of Capital Stock if, as a result thereof, the Corporation would fail to qualify as an S Corporation.

3. Effectiveness. The limitations of the rights of holders of shares of Capital Stock provided for in this Article VII shall be effective notwithstanding any other provision of these Articles of Incorporation to the contrary but only for so long as the Corporation (a) is qualified as an S Corporation or (b) if not then qualified as an S Corporation, intends to reinstate its qualification as an S Corporation within a reasonable time after ceasing to be so qualified.

4. Disqualified Persons. A Disqualified Person may not hold shares of Capital Stock. An acquisition or purported acquisition of shares of Capital Stock by a Disqualified Person shall be void ab initio to the fullest extent permitted under applicable law, and the intended transferee of the subject shares of Capital Stock shall be deemed never to have had an interest therein.

In the event that any holder of shares of Capital Stock becomes a Disqualified Person, the shares of Capital Stock held by such Disqualified Person shall cease to be regarded as outstanding and any and all rights attaching to such shares of whatever nature shall cease and terminate and such shares shall thereafter only represent the right to receive the redemption price for such shares pursuant to paragraph 7 of this Article VII.

5. Disqualifying Transfers. If at any time a Disqualifying Transfer shall be proposed, the Board of Directors shall have the right to refuse to transfer any shares of Capital Stock purportedly transferred pursuant to the Disqualifying Transfer for a period not to exceed 90 days following the date on which such shares shall be presented to the Corporation for transfer. During such 90-day period, the Corporation shall use its reasonable best efforts to obtain all necessary approvals, waivers and authorizations of, and to make all necessary filings and registrations with, and notifications to, all applicable governmental authorities to permit the Corporation to redeem such shares of Capital Stock. During such 90-day period, the Corporation shall be permitted to treat the record holder of the shares of Capital Stock, as shown on the record books of the Corporation, as the true owner of such shares for all purposes, and the Board of Directors shall have the right, in its sole discretion, but shall not be required to, redeem the shares which are the subject of the proposed Disqualifying Transfer pursuant to the provisions of paragraph 7 of this Article VII. If any approval, waiver or authorization of any applicable governmental authorities shall not be obtained (other than as a result of the fault of the stockholder who shall have proposed the Disqualifying Transfer or any Affiliate thereof), then the Corporation shall have the right for a period of an additional 90 days from the date on which the Corporation is notified that such approval, waiver or authorization shall not be obtained to use its reasonable best efforts to assign the right of redemption provided for hereunder to a third party whose purchase of such shares of Capital Stock would not result in a Disqualifying Transfer, and shall be permitted to treat the record holder of the shares of Capital Stock, as shown on the record books of the Corporation, as the true owner of such shares for all purposes. If the Corporation shall not exercise its right of redemption, or otherwise cause such shares to be purchased in a manner which would not constitute a Disqualifying Transfer, within such additional 90-day period (other than as a result of the fault of the stockholder who shall have proposed the Disqualifying Transfer or any Affiliate thereof), then the Corporation shall, as promptly thereafter as practicable, permit the transfer of such shares of Capital Stock, and the Disqualifying Transfer shall be deemed to have been effected at the end of such additional 90-day period.

6. Ownership Inquiry.

a. Whenever it is deemed by the Board of Directors, in their sole discretion, to be prudent to prevent the Corporation from failing to qualify or to continue qualification as an S Corporation, the Corporation may by notice in writing (which may be included in the form of proxy or ballot distributed to stockholders of the Corporation in connection with any annual or special meeting of the stockholders of the Corporation, or otherwise) require a Person that is a holder of

record of shares of Capital Stock or that the Corporation knows to have, or has reasonable cause to believe has, beneficial ownership of shares of Capital Stock to certify to the Corporation in such manner as the Corporation shall deem appropriate (including by way of execution of any form of proxy, ballot or affidavit by such person) that, to the knowledge of such person all shares of Capital Stock as to which such person has record ownership or beneficial ownership are owned and controlled only by Persons who are not Disqualified Persons.

b. With respect to any Capital Stock identified by such person in response to subsection (a) of this paragraph 6, the Corporation may require such person to provide such further information as the Corporation may reasonably require to implement the provisions of this Article VII.

c. For purposes of applying the provisions of this Article VII with respect to any shares of Capital Stock, in the event of the failure of any Person to provide the certificate or other information to which the Corporation is entitled pursuant to this paragraph 6, the Corporation may presume that the shares of Capital Stock in question are beneficially owned or controlled by Disqualified Persons.

d. The Board of Directors shall have the right, but shall not be required, to refuse to transfer any shares of Capital Stock purportedly transferred if a statement or affidavit requested pursuant to this paragraph 6 of this Article VII has not been received.

7. Redemption; Governmental Authorization. Notwithstanding any other provision of these Articles of Incorporation to the contrary, the Corporation may redeem those shares of Capital Stock from a Disqualified Person pursuant to paragraph 4 of this Article VII or which are the subject of a proposed Disqualifying Transfer, to the extent determined by the Board of Directors, in its sole discretion, to be necessary to preserve the Corporation's status as an S Corporation. The terms and conditions of such redemption shall be as follows:

a. The redemption price of the shares to be redeemed pursuant to this Article VII shall be equal to the lower of (i) the book value of the shares to be redeemed, to be determined on a fully diluted basis and calculated based upon the last monthly financial statement of Totalbank reflecting total shareholders' equity filed with the Division of Banking or, (ii) if applicable, the sales price offered to the stockholder in the proposed Disqualifying Transfer, provided such offer is made in good faith, in an arm's length, non-collusive manner by a Person who is not related to or an Affiliate or Associate of the offeree stockholder.

b. From and after the Redemption Date, shares to be redeemed shall cease to be regarded as outstanding and any and all rights attaching to such shares of whatever nature (including without limitation any rights to vote or participate in dividends or other distributions declared on stock of the same class or series as such shares) shall cease and terminate, and the holders thereof thenceforth shall be entitled only to receive the cash payable upon redemption.

The foregoing notwithstanding, the Corporation shall be permitted to redeem shares of Capital Stock pursuant to the provisions of this paragraph 7 only if all necessary approvals, waivers and

authorizations of, filings and registrations with, and notifications to, all applicable governmental authorities shall have been obtained or made and shall be in full force and effect and all applicable waiting periods shall have expired. In the event that any such approval, waiver or authorization shall not have been obtained, the Corporation shall have the right to assign the right of redemption provided for in this paragraph 7 to any Person or Persons who in its reasonable judgment are not Disqualified Persons, and such Person shall thereafter have the right to acquire such shares of Capital Stock on the same terms as the Corporation, provided that the transfer of such shares to such assignee would not result in a Disqualifying Transfer.

8. S Elections. Notwithstanding anything in these Articles of Incorporation to the contrary, the Board of Directors shall have the right, but shall not be required, to refuse to transfer any shares of Capital Stock purportedly transferred if the proposed transferee shall refuse to deliver to the Corporation a duly and validly executed consent to be bound by the restrictions on transfer of Capital Stock set forth in these Articles of Incorporation, as amended from time to time.

9. Bylaws. The Bylaws of the Corporation may make appropriate provisions to effectuate the requirements of this Article VII.

10. Factual Determinations. The Board of Directors shall have the power to construe and apply the provisions of this Article VII and to make all determinations necessary or desirable to implement such provisions, including but not limited to whether (a) the number of shares of voting stock that are beneficially owned by any Person; (b) whether a Person is an Affiliate or Associate of another Person; (c) whether a Person has an agreement, arrangement or understanding with another Person as to matters bearing on beneficial ownership; (d) whether a Person is a Disqualified Person; (e) whether a transfer is a Disqualifying Transfer; (f) the application of any other definition of these Articles of Incorporation to a given fact; (g) the book value of the shares of Capital Stock; and (h) any other matter relating to the applicability or effect of this Article VII.

11. Restrictive Legend. In furtherance of the foregoing provisions of this Article VII, the Corporation shall be entitled to place on every certificate representing shares of Capital Stock a legend which shall state that such shares are restricted as to transfer and shall set forth or fairly summarize such restrictions upon the certificates or shall state that the Corporation will furnish to any stockholder upon request and without charge a full statement of such restrictions.

12. Severability. If any paragraph or provision of this Article VII is determined to be invalid, void, illegal or unenforceable to any extent, then the remainder of such paragraph or provision and the remaining sections and provisions of this Article VII shall continue to be valid and enforceable and shall in no way be affected, impaired or invalidated by such invalidity, voidness, illegality or unenforceability.

ARTICLE VIII

This corporation shall indemnify any officer or director of the Corporation to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned Chairman of the Board and Secretary of the Corporation each has executed these Amended and Restated Articles of Incorporation in their respective capacities as such this 25 day of September, 1997.

TOTALBANK

By: _____
Adrienne Arsht, Chairman

By: _____
David I. Schlosberg, Secretary

The foregoing amendment is hereby approved this 29th day of October, 1997.

_____
Comptroller of Florida and Head of the
Department of Banking and Finance

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SECRETARY'S CERTIFICATION OF SHAREHOLDER CONSENT
TO AMENDED AND RE-STATED ARTICLES OF INCORPORATION

I HEREBY CERTIFY as follows:

1. That I am the duly elected and qualified Secretary of TOTALBANK.

2. That there are presently issued and outstanding 181,388.25 shares of common voting stock in Totalbank, which is the only class of stock authorized and issued.

3. That shareholders representing 181,295.25 shares (approximately 99% of the issued and outstanding shares) have consented and approved the Amended and Restated Articles of Incorporation which were approved by the Board of Directors on September 25, 1997, and said shareholders resolved as follows:

[T]hat the amendments to the Articles of Incorporation of Totalbank as set forth in the Amended and Restated Articles of Incorporation of Totalbank, a copy of which is attached as Exhibit A (the "Restated Articles") and made a part hereof, are hereby approved and adopted in all respects, and that the officers of Totalbank be, and each of them hereby is, authorized, empowered and directed to execute and file the Restated Articles with the Secretary of State of Florida in order to carry out fully the purpose and intent of this resolution.

4. The consents of the requisite number of shareholders necessary to authorize the action was received on October 21, 1997.

5. The undersigned secretary further certifies that said action of the shareholders of Totalbank has not been rescinded and is in full force and effect.

Dated October 21st, 1997

DAVID I. SCHLOSBERG, Secretary

TOTALBANK CORPORATE SEAL 1974 FLORIDA

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