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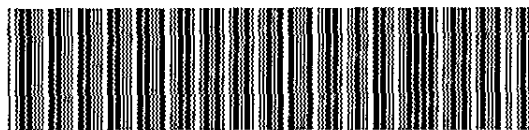
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February 20, 2004

Secretary of State, Florida  
409 East Gaines Street  
Tallahassee FL 32399

Re: Order #: 6041154 SO  
Customer Reference 1:  
Customer Reference 2:

Dear Secretary of State, Florida:

Please file the attached:

ALABAMA NATIONAL BANCORPORATION (DE)  
Merger (Discontinuing Company)  
Florida

Enclosed please find a check for the requisite fees. Please return evidence of filing(s) to my attention.

If for any reason the enclosed cannot be filed upon receipt, please contact me immediately at  
(850) 222-1092. Thank you very much for your help.

Sincerely,

Brigham Weir  
Fulfillment Specialist  
Brigham\_Weir@cch-lis.com

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF MERGER  
of  
CYPRESS BANKSHARES, INC.,  
a Florida corporation,  
with and into  
ALABAMA NATIONAL BANCORPORATION,  
a Delaware corporation**

Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act (the "Act"), Cypress Bankshares, Inc., a Florida corporation, and Alabama National BanCorporation, a Delaware corporation, do hereby adopt the following Articles of Merger:

1. The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are Cypress Bankshares, Inc. and Alabama National BanCorporation. The surviving corporation in the Merger is Alabama National BanCorporation.

2. The plan of merger is set forth in the Agreement and Plan of Merger by and between Cypress Bankshares, Inc. and Alabama National BanCorporation, dated as of October 14, 2003 (the "Plan of Merger"). A copy of the Plan of Merger is attached hereto as Exhibit A and made a part hereof by reference as if fully set forth herein.

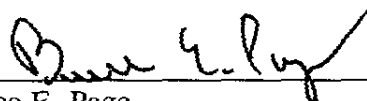
3. The effective date of the Merger shall be February 20, 2004, in accordance with the provisions of Section 607.1105(b) of the Act.

4. The Plan of Merger was duly adopted by the shareholders of Cypress Bankshares, Inc. on February 17, 2004. The Plan of Merger was duly adopted by the Board of Directors of Alabama National BanCorporation on October 7, 2003. The approval of the Plan of Merger by the shareholders of Alabama National BanCorporation is not required.

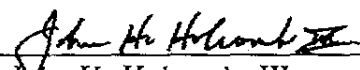
[Signature Page Follows]

IN WITNESS WHEREOF, Cypress Bankshares, Inc. and Alabama National BanCorporation have caused these Articles of Merger to be executed by their duly authorized officers as of this 17<sup>th</sup> day of February, 2004.

**CYPRESS BANKSHARES, INC.**

By:   
Bruce E. Page  
Chief Executive Officer

**ALABAMA NATIONAL BANCORPORATION**

By:   
John H. Holcomb, III  
Chairman and Chief Executive Officer

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 13 day of February, 2004, by  
Bruce E. Page, as Chief Executive Officer of Cypress Bankshares, Inc.

Jayne L. Ober  
Printed Name: JAYNE L. OBER  
Notary Public, State of Florida

Personally Known ☒ or Produced Identification ☐  
Type of Identification Produced \_\_\_\_\_



STATE OF ALABAMA  
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of February, 2004, by  
John H. Holcomb, III, as Chief Executive Officer of Alabama National BanCorporation.

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: June 19, 2007  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Cynthia D. Payton  
Printed Name: Cynthia D. Payton  
Notary Public, State of Alabama

Personally Known ☒ or Produced Identification ☐  
Type of Identification Produced \_\_\_\_\_

**Exhibit A**  
**Plan of Merger**  
**(See Attached)**

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**AGREEMENT AND PLAN OF MERGER**

**by and between**

**CYPRESS BANKSHARES, INC.**

**and**

**ALABAMA NATIONAL BANCORPORATION**

**Dated as of**

**October 14, 2003**

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## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (this "Agreement") is made and entered into as of October 14, 2003, by and between **CYPRESS BANKSHARES, INC. ("CBI")**, a corporation organized and existing under the laws of the State of Florida, with its principal office located in Palm Coast, Florida, and **ALABAMA NATIONAL BANK CORPORATION ("ANB")**, a corporation organized and existing under the laws of the State of Delaware, with its principal office located in Birmingham, Alabama.

### **Preamble**

The Boards of Directors of CBI and ANB are of the opinion that the transactions described herein are in the best interests of the parties and their respective stockholders. This Agreement provides for the merger ("Merger") of CBI with and into ANB. At the Effective Time of such Merger, the outstanding shares of the capital stock of CBI shall be converted into the right to receive shares of the common stock of ANB (except as provided herein). As a result, stockholders of CBI shall become stockholders of ANB, and ANB shall continue to conduct the business and operations of CBI. The Merger is subject to the approvals of the stockholders of CBI, the Florida Department of Financial Services and the Federal Reserve Board, and the satisfaction of certain other conditions described in this Agreement. It is the intention of the parties to this Agreement that, for federal income tax purposes, the merger shall qualify as a "reorganization" within the meaning of Section 368(a) of the IRC.

Certain terms used in this Agreement are defined in Section 11.1 of this Agreement.

**NOW, THEREFORE**, in consideration of the above and the mutual warranties, representations, covenants and agreements set forth herein, the parties agree as follows:

## **ARTICLE 1** **TRANSACTIONS AND TERMS OF MERGER**

**1.1 Merger.** Subject to the terms and conditions of this Agreement, at the Effective Time, CBI shall be merged with and into ANB in accordance with the provisions of Section 252 of the DGCL and Section 607.1107 of the FBCA and with the effect provided in Sections 259 and 261 of the DGCL and the applicable provisions of the FBCA (the "Merger"). ANB shall be the Surviving Corporation resulting from the Merger and shall continue to be governed by the Laws of the State of Delaware. The Merger shall be consummated pursuant to the terms of this Agreement, which has been approved and adopted by the ANB Board and the CBI Board.

**1.2 Time and Place of Closing.** The place of Closing shall be at the offices of Maynard, Cooper & Gale, P.C., Birmingham, Alabama, or such other place as may be mutually agreed upon by the Parties. The Closing will take place at 9:00 A.M. Central Standard Time on such date and time as the Parties, acting through their chief executive officers, presidents, or chief financial officers, may mutually agree. Subject to the terms and conditions hereof, unless otherwise mutually agreed upon in writing by the chief executive officers, presidents, or chief financial officers of each Party, the Closing shall occur on the last business day of the month in

which the closing conditions set forth in Article 9 below have been satisfied (or waived pursuant to Section 11.4 of this Agreement).

**1.3 Effective Time.** The Merger and other transactions provided for in this Agreement shall become effective: (a) on the date and at the time that the later of the following shall occur: (i) the Certificate of Merger reflecting the Merger shall be accepted for filing by the Secretary of State of Delaware, and (ii) the Articles of Merger reflecting the Merger shall be accepted for filing by the Secretary of State of Florida, or (b) on such date and at such time subsequent to the date and time established pursuant to subsection 1.3(a) above as may be specified by the Parties in the Certificate of Merger and Articles of Merger (provided that such subsequent date and time shall not be later than a time on the 30th day after the date that the Certificate of Merger is filed) (such time is hereinafter referred to as the "Effective Time"). Unless ANB and CBI otherwise mutually agree in writing, the Parties shall use their commercially reasonable efforts to cause the Effective Time to occur on the date of Closing.

## **ARTICLE 2**

### **EFFECT OF MERGER**

**2.1 Certificate of Incorporation.** The Restated Certificate of Incorporation of ANB in effect immediately prior to the Effective Time shall be the Certificate of Incorporation of the Surviving Corporation immediately following the Effective Time.

**2.2 Bylaws.** The Bylaws of ANB in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation immediately following the Effective Time, until otherwise amended or repealed.

**2.3 Directors.** The directors of the Surviving Corporation from and after the Effective Time shall consist of the incumbent directors of ANB.

## **ARTICLE 3**

### **CONVERSION OF CONSTITUENTS' CAPITAL SHARES**

**3.1 Manner of Converting Shares.** Subject to the provisions of this Article 3, at the Effective Time, by virtue of the Merger and without any further action on the part of ANB, CBI or the holders of any shares thereof, the shares of the constituent corporations shall be converted as follows:

(a) each share of ANB Common Stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding from and after the Effective Time.

(b) (1) Subject to the potential adjustment provided for in Section 3.1(b)(2) and/or Section 3.2 below, each share of CBI Common Stock (excluding shares held by any CBI Company, other than in a fiduciary capacity or as a result of debts previously contracted, and excluding shares held by stockholders who perfect their dissenters' rights of appraisal as provided in Section 3.4 of this Agreement) issued and outstanding at the Effective Time shall cease to be outstanding and shall be converted into and exchanged for the right to receive 0.6412

shares of ANB Common Stock (as such may be adjusted pursuant to the terms of this Agreement, the "Exchange Ratio"); provided that, subject to the election rights set forth in Section 3.1(c) below, each holder of CBI Common Stock shall have an opportunity to elect to receive cash consideration for such holder's shares of CBI Common Stock in lieu of receiving ANB Common Stock.

(2) (i) If the Average Quoted Price is equal to or less than \$48.00, then the Exchange Ratio automatically shall be increased to an amount to be determined in accordance with the following table:

Average Quoted Price	Adjusted Exchange Ratio
Equal to or less than \$48.00, and greater than \$47.00	0.6447
Equal to or less than \$47.00, and greater than \$46.00	0.6482
Equal to or less than \$46.00, and greater than \$45.00	0.6517
Equal to or less than \$45.00, and greater than \$44.00	0.6552
Equal to or less than \$44.00, and greater than \$43.00	0.6587
Equal to or less than \$43.00, and greater than \$42.00	0.6622
Equal to or less than \$42.00	0.6657

(ii) For purposes of this Agreement, the term "Dollar Equivalent Per Share Consideration" shall be a dollar amount (rounded to the nearest cent) equal to the product of (A) the Average Quoted Price multiplied by (B) the Exchange Ratio (as such may be adjusted). For example, if the Average Quoted Price were \$42.00, the Dollar Equivalent Per Share Consideration would be \$27.96. Notwithstanding the adjustment procedure provided for in Section 3.1(b)(2)(i) above, if the Average Quoted Price is less than \$42.00 (and, therefore, the Dollar Equivalent Per Share Consideration is less than \$27.96), the CBI Board may terminate this Agreement by providing written notice thereof to the Chief Executive Officer of ANB prior to the Closing; provided, however, that, within 5 business days of receiving any such written notice from the CBI Board, ANB may, at its sole option and election, void such termination by either (X) increasing the Exchange Ratio to an amount equal to the quotient (rounded to the nearest one ten thousandth) of \$27.96 (the "Minimum Dollar Equivalent Per Share Consideration") divided by the Average Quoted Price, such that the Dollar Equivalent Per Share Consideration is at least \$27.96, or (Y) with respect to each share of CBI Common Stock to be converted into shares of ANB Common Stock pursuant to Section 3.1(b)(1) above or into cash consideration pursuant to Section 3.1(c) below, paying the holder thereof additional consideration in an amount of cash equal to the difference of (I) the Minimum Dollar Equivalent Per Share Consideration minus (II) the product (rounded to the nearest cent) of (x) the Average Quoted Price multiplied by 0.6657. The aggregate of such cash payments, if any, is hereinafter

referred to as the "Additional Optional Cash Consideration." For example, if the Average Quoted Price were \$40.00, the CBI Board provided a notice of termination, and ANB elected to void such termination, ANB would be required to either increase the Exchange Ratio to at least 0.6990 (*i.e.*, the quotient of \$27.96 divided by \$40.00) or make a cash payment of \$1.33 (*i.e.*, the difference in \$27.96 and \$26.63) for each share of CBI Common Stock to be converted into shares of ANB Common Stock.

(c) (1) Holders of CBI Common Stock shall be provided with an opportunity to elect to receive cash consideration in lieu of receiving ANB Common Stock in the Merger, in accordance with the election procedures set forth below. Holders who elect to receive cash in lieu of exchanging their shares of CBI Common Stock for ANB Common Stock as specified below shall receive, for each share of CBI Common Stock that is so converted, an amount in cash (the "Per Share Cash Consideration") equal to the product of the Average Quoted Price multiplied by the Exchange Ratio (as such may be adjusted pursuant to the terms of this Agreement). Notwithstanding the preceding sentence, the aggregate Per Share Cash Consideration that ANB is obligated to pay to satisfy such elections (the "Maximum Cash Amount") shall not exceed 10% (unless and to the extent that ANB determines in its sole discretion to increase such amount to a percentage not in excess of 25%) of the sum of (i) the product of (A) the number of shares of ANB Common Stock to be issued in the Merger to holders of outstanding shares of CBI Common Stock as of the Effective Time multiplied by (B) the Average Quoted Price, and (ii) the aggregate Per Share Cash Consideration, and (iii) the Additional Optional Cash Consideration (if any).

(2) ANB will use its commercially reasonable efforts to cause the Exchange Agent to mail an election form in such form as ANB and CBI shall mutually agree (the "Election Form") with or following the issuance of the Proxy Statement/Prospectus and at least 20 days prior to the date of the CBI Stockholders' Meeting or on such other date as ANB and CBI shall mutually agree (the "Mailing Date") to each holder of record of CBI Common Stock for such CBI Stockholders' Meeting. Each Election Form shall permit a holder (or the beneficial owner through appropriate and customary documentation and instructions) of CBI Common Stock to elect to receive cash with respect to all or a portion of such holder's CBI Common Stock (the shares as to which the election is made being referred to as "Cash Election Shares").

(3) Any shares of CBI Common Stock with respect to which the holder shall not have submitted to the Exchange Agent an effective, properly completed Election Form prior to 5:00 p.m. Eastern Time on the day before the CBI Stockholders' Meeting (or such other time and date as ANB and CBI may mutually agree) (the "Election Deadline") shall be converted into ANB Common Stock at the Effective Time, as set forth in Section 3.1(b) of this Agreement (such shares being referred to as "No Election Shares").

(4) Any Election Form may be revoked or changed by the person submitting such Election Form at or prior to the Election Deadline. In the event an Election Form is revoked and a replacement Election Form not submitted prior to the Election Deadline, the shares of CBI Common Stock represented by such Election Form shall become No Election Shares. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have reasonable discretion to determine whether any election, revocation or change has been properly or timely made and to disregard immaterial defects in the Election Forms, and any

good faith decisions of the Exchange Agent regarding such matters shall be binding and conclusive. Neither ANB nor the Exchange Agent shall be under any obligation to notify any person of any defect in an Election Form.

(5) Within 5 business days after the Election Deadline, unless the Effective Time has not yet occurred, in which case as soon thereafter as practicable, ANB shall use commercially reasonable efforts to cause the Exchange Agent to effect the allocation among the holders of CBI Common Stock in accordance with the Election Forms as follows:

(i) Cash Elections Less Than or Equal to the Maximum Cash Amount. If the amount of cash that would be paid upon conversion in the Merger of the Cash Election Shares (the "Potential Cash Payments") is less than or equal to the Maximum Cash Amount, then:

(1) each Cash Election Share shall be converted into the right to receive the Per Share Cash Consideration pursuant to Section 3.1(c)(1); and

(2) each other share of CBI Common Stock, including each No Election Share, shall be converted into the right to receive ANB Common Stock pursuant to Section 3.1(b).

(ii) Cash Elections More Than the Maximum Cash Amount. If the amount of the Potential Cash Payments is greater than the Maximum Cash Amount, then:

(1) the number of Cash Election Shares designated by each holder of CBI Common Stock who properly submitted an Election Form shall be automatically reduced to that number of shares equal to the product of (A) the number of such holder's Cash Election Shares designated in the Election Form and (B) a fraction, the numerator of which is the maximum number of Cash Election Shares allowable such that the amount of the Potential Cash Payments is equal to the Maximum Cash Amount, and the denominator of which is the total number of Cash Election Shares designated in the Election Forms;

(2) each Cash Election Share remaining after adjustment pursuant to sub-section (1) above shall be converted into the right to receive the Per Share Cash Consideration pursuant to Section 3.1(c)(1);

(3) each share of CBI Common Stock that would have been a Cash Election Share but for the adjustment pursuant to sub-section (1) above shall automatically be deemed to be a No Election Share; and

(4) each other share of CBI Common Stock, including each No Election Share, shall be converted into the right to receive ANB Common Stock pursuant to Section 3.1(b).

(d) At the Effective Time, all outstanding and unexercised options to purchase shares of CBI Common Stock pursuant to the CBI Stock Option Plans (each, a "CBI Option") will cease to represent an option to purchase CBI Common Stock and will be converted automatically



into options to purchase ANB Common Stock (each, an "ANB Option"), and ANB will assume each CBI Option subject to its terms, including any acceleration in vesting that will occur as a consequence of the Merger according to the instruments governing the CBI Option; provided, however, that after the Effective Time:

(i) the number of shares of ANB Common Stock purchasable upon exercise of each CBI Option will equal the product of (A) the number of shares of CBI Common Stock that were purchasable under the CBI Option immediately before the Effective Time and (B) the Exchange Ratio, rounded to the nearest whole share; and

(ii) the per share exercise price for each CBI Option will equal the quotient of (A) the per share exercise price of the CBI Option in effect immediately before the Effective Time divided by (B) the Exchange Ratio, rounded to the nearest cent.

Notwithstanding the foregoing, each CBI Option that is intended to be an "incentive stock option" (as defined in Section 422 of the IRC) will be adjusted in accordance with the requirements of Section 424 of the IRC. As of the date hereof, the CBI Options provide for the purchase of no more than an aggregate of 119,900 additional shares of CBI Common Stock. As soon as practicable after the Effective Time, ANB shall file a Registration Statement on Form S-8 (or any successor or other appropriate forms), with respect to the shares of ANB Common Stock subject to converted or substitute CBI Options and shall use its reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus or prospectuses associated therewith) for so long as such converted or substitute CBI Options remain outstanding.

(e) Assuming (i) that no holders of CBI Common Stock elect to receive cash in lieu of ANB Common Stock pursuant to the cash election procedures in Section 3.1(c) above, (ii) that no holders of CBI Common Stock exercise their rights under the Dissenter Provisions, and (iii) that there is no adjustment to the Exchange Ratio pursuant to Section 3.1(b)(2) above or Section 3.2 below, the holders of CBI Common Stock (including holders of CBI Options) shall have the right to receive, in the aggregate, a maximum of 543,765 shares of ANB Common Stock as a result of the Merger. As a result of an adjustment to the Exchange Ratio pursuant to Section 3.1(b)(2)(i) above and assuming no further adjustment under Section 3.1(b)(2)(ii), holders of CBI Common Stock (including holders of CBI Options) would be entitled to receive a minimum of 2,968 and a maximum of 20,777 additional shares of ANB Common Stock in the aggregate.

**3.2 Anti-Dilution Provisions.** In the event CBI changes the number of shares of CBI Common Stock issued and outstanding prior to the Effective Time as a result of a stock split, stock dividend, recapitalization or otherwise with respect to such stock and the record date therefor shall be prior to the Effective Time, the Exchange Ratio, the Minimum Dollar Equivalent Per Share Consideration, and the amounts and formulas contained in Section 3.1(b)(2)(ii) shall be proportionately adjusted as needed to preserve the relative economic benefit to the Parties. In the event ANB changes the number of shares of ANB Common Stock issued and outstanding prior to the Effective Time as a result of a stock split, stock dividend or similar recapitalization with respect to such stock and the record date therefor shall be prior to the Effective Time, the Exchange Ratio, the Average Quoted Price thresholds contained in Section

3.1(b)(2)(i) and Section 3.1(b)(2)(ii), the other amounts and formulas contained in Section 3.1(b)(2)(ii), and the share amounts included in Section 3.1(e) shall be proportionately adjusted as needed to preserve the relative economic benefit to the Parties.

**3.3 Shares Held by CBI.** Each of the shares of CBI Common Stock held by any CBI Company, other than in a fiduciary capacity or as a result of debts previously contracted, shall be canceled and retired at the Effective Time and no consideration shall be issued in exchange therefor.

**3.4 Dissenting Stockholders.** Any holder of shares of CBI Common Stock who perfects his dissenters' rights of appraisal in accordance with and as contemplated by Section 607.1320 of the FBCA (the "Dissenter Provisions") shall be entitled to receive the value of such shares in cash as determined pursuant to such provision of Law; provided, however, that no such payment shall be made to any dissenting stockholder unless and until such dissenting stockholder has complied with the applicable provisions of the FBCA and surrendered to the Surviving Corporation the certificate or certificates representing the shares for which payment is being made; provided, further, nothing contained in this Section 3.4 shall in any way limit the right of ANB to terminate this Agreement and abandon the Merger pursuant to subsection 10.1(i) below. If any dissenting stockholder gives notice to CBI, CBI will promptly give ANB notice thereof, and ANB will have the right to participate in all negotiations and proceedings with respect to any such demands. CBI will not, except with the prior written consent of ANB, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment. In the event that after the Effective Time a dissenting stockholder of CBI fails to perfect, or effectively withdraws or loses, his right to appraisal and of payment for his shares, the Surviving Corporation shall issue and deliver the consideration to which such holder of shares of CBI Common Stock is entitled under this Article 3 (without interest) upon surrender by such holder of the certificate or certificates representing shares of CBI Common Stock held by him.

**3.5 Fractional Shares.** No certificates or scrip representing fractional shares of ANB Common Stock shall be issued upon the surrender of certificates for exchange; no dividend or distribution with respect to ANB Common Stock shall be payable on or with respect to any fractional share; and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of ANB. In lieu of any such fractional share, ANB shall pay to each former stockholder of CBI who otherwise would be entitled to receive a fractional share of ANB Common Stock an amount in cash (without interest) determined by multiplying (a) the Average Quoted Price by (b) the fraction of a share of ANB Common Stock to which such holder would otherwise be entitled.

## **ARTICLE 4**

### **EXCHANGE OF SHARES**

**4.1 Exchange Procedures.** Promptly after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to mail to the former stockholders of CBI appropriate transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the certificates theretofore representing shares of CBI Common Stock shall pass, only upon proper delivery of such certificates to the Exchange Agent). After completion of the

allocation procedure set forth in Section 3.1(c)(5) and upon surrender of a certificate or certificates for exchange and cancellation to the Exchange Agent (such shares to be free and clear of all liens, claims and encumbrances), together with a properly executed letter of transmittal, the holder of such certificate or certificates shall be entitled to receive in exchange therefore: (a) a certificate representing that number of whole shares of ANB Common Stock which such holder of CBI Common Stock became entitled to receive pursuant to the provisions of Article 3 hereof and (b) a check representing the aggregate cash consideration, if any, which such holder has the right to receive pursuant to the provisions of Article 3 hereof, and the certificate or certificates so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the Per Share Cash Consideration, any cash in lieu of fractional shares, or any unpaid dividends and distributions, if any, payable to holders of certificates for CBI Common Stock. The Surviving Corporation shall not be obligated to deliver the consideration to which any former holder of CBI Common Stock is entitled as a result of the Merger until such holder surrenders his certificate or certificates representing the shares of CBI Common Stock for exchange as provided in this Section 4.1. The certificate or certificates for CBI Common Stock so surrendered shall be duly endorsed as the Exchange Agent may require. Any other provision of this Agreement notwithstanding, neither the Surviving Corporation, ANB nor the Exchange Agent shall be liable to a holder of CBI Common Stock for any amounts paid or property delivered in good faith to a public official pursuant to any applicable abandoned property Law.

**4.2 Rights of Former CBI Stockholders.** At the Effective Time, the stock transfer books of CBI shall be closed as to holders of CBI Common Stock immediately prior to the Effective Time, and no transfer of CBI Common Stock by any such holder shall thereafter be made or recognized. Until surrendered for exchange in accordance with the provisions of Section 4.1 of this Agreement, each certificate theretofore representing shares of CBI Common Stock ("CBI Certificate"), other than shares to be canceled pursuant to Section 3.3 of this Agreement or as to which dissenters' rights of appraisal have been perfected as provided in Section 3.4 of this Agreement, shall from and after the Effective Time represent for all purposes only the right to receive the consideration provided in Section 3.1 of this Agreement in exchange therefor. To the extent permitted by Law, former stockholders of record of CBI Common Stock (excluding Cash Election Shares) shall be entitled to vote after the Effective Time at any meeting of ANB stockholders the number of whole shares of ANB Common Stock into which their respective shares of CBI Common Stock (excluding Cash Election Shares) are converted, regardless of whether such holders have exchanged their CBI Certificates for certificates representing ANB Common Stock in accordance with the provisions of this Agreement. Whenever a dividend or other distribution is declared by ANB on the ANB Common Stock, the record date for which is at or after the Effective Time, the declaration shall include dividends or other distributions on all shares issuable pursuant to this Agreement. Notwithstanding the preceding sentence, any person holding any CBI Certificate at or after six (6) months after the Effective Time (the "Cutoff") shall not be entitled to receive any dividend or other distribution payable after the Cutoff to holders of ANB Common Stock, which dividend or other distribution is attributable to such person's ANB Common Stock represented by said CBI Certificate held after the Cutoff, until such person surrenders said CBI Certificate for exchange as provided in Section 4.1 of this Agreement. However, upon surrender of such CBI Certificate, both the ANB Common Stock certificate (together with all such undelivered dividends or other distributions, without interest) and any undelivered cash payments (without interest) shall be delivered and paid with respect to each share represented by such CBI Certificate. No holder of shares of CBI

Common Stock shall be entitled to receive any dividends or distributions declared or made with respect to the ANB Common Stock with a record date before the Effective Time of the Merger.

**4.3 Identity of Recipient of ANB Common Stock.** In the event that the delivery of the consideration provided for in this Agreement is to be made to a person other than the person in whose name any certificate representing shares of CBI Common Stock surrendered is registered, such certificate so surrendered shall be properly endorsed (or accompanied by an appropriate instrument of transfer), with the signature(s) appropriately guaranteed, and otherwise in proper form for transfer, and the person requesting such delivery shall pay any transfer or other taxes required by reason of the delivery to a person other than the registered holder of such certificate surrendered or establish to the satisfaction of ANB that such tax has been paid or is not applicable.

**4.4 Lost or Stolen Certificates.** If any holder of CBI Common Stock convertible into the right to receive shares of ANB Common Stock is unable to deliver the CBI Certificate that represents CBI Common Stock, the Exchange Agent, in the absence of actual notice that any such shares have been acquired by a bona fide purchaser, shall deliver to such holder the shares of ANB Common Stock to which the holder is entitled for such shares upon presentation of the following: (a) evidence to the reasonable satisfaction of ANB that any such CBI Certificate has been lost, wrongfully taken or destroyed; (b) such security or indemnity as may be reasonably requested by ANB to indemnify and hold ANB and the Exchange Agent harmless; and (c) evidence satisfactory to ANB that such person is the owner of the shares theretofore represented by each CBI Certificate claimed by the holder to be lost, wrongfully taken or destroyed and that the holder is the person who would be entitled to present such CBI Certificate for exchange pursuant to this Agreement.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF CBI**

CBI hereby represents and warrants to ANB as follows:

**5.1 Corporate Organization, Standing and Power.** CBI is a corporation duly organized, validly existing and in good standing under the Laws of the State of Florida, and has the corporate power and authority to carry on its business as now conducted and to own, lease and operate its Assets and to incur its Liabilities. CBI is duly qualified or licensed to transact business as a foreign corporation in good standing in the states of the United States and foreign jurisdictions where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI. CBI has delivered to ANB complete and correct copies of its Articles of Incorporation and Bylaws and the articles of incorporation, bylaws and other, similar governing instruments of each of its Subsidiaries, in each case as amended through the date hereof.

## **5.2 Authority; No Breach By Agreement.**

(a) CBI has the corporate power and authority necessary to execute, deliver and perform its obligations under this Agreement and to consummate the transactions provided for herein. The execution, delivery and performance of this Agreement and the consummation of the transactions provided for herein, including the Merger, have been duly and validly authorized by all necessary corporate action on the part of CBI, subject to the approval of this Agreement by the holders of a majority of the outstanding shares of CBI Common Stock. Subject to such requisite stockholder approval and required regulatory consents, this Agreement represents a legal, valid and binding obligation of CBI, enforceable against CBI in accordance with its terms.

(b) Neither the execution and delivery of this Agreement by CBI, nor the consummation by CBI of the transactions provided for herein, nor compliance by CBI with any of the provisions hereof, will (i) conflict with or result in a breach of any provision of CBI's Articles of Incorporation or Bylaws or the Articles or Certificates of Incorporation or Bylaws of any CBI Company, or (ii) constitute or result in a Default under, or require any Consent pursuant to, or result in the creation of any Lien on any Asset of any CBI Company under, any Contract or Permit of any CBI Company, where failure to obtain such Consent is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI, or, (iii) subject to receipt of the requisite Consents and approvals referred to in this Agreement, violate or conflict with any Law or Order applicable to any CBI Company or any of their respective Assets.

(c) Other than (i) in connection or compliance with the provisions of the Securities Laws, applicable state corporate and securities Laws, (ii) Consents required from Regulatory Authorities, (iii) the approval by the stockholders of CBI of the Merger and the transactions provided for in this Agreement, (iv) notices to or filings with the Internal Revenue Service or the Pension Benefit Guaranty Corporation with respect to any employee benefit plans, and (v) Consents, filings or notifications which, if not obtained or made, are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI, no notice to, filing with or Consent of, any Person or public body or authority is necessary for the consummation by CBI of the Merger and the other transactions provided for in this Agreement.

## **5.3 Capital Stock.**

(a) The authorized capital stock of CBI consists of 3,000,000 shares of CBI Common Stock, of which 728,142 shares are issued and outstanding (none of which is held in the treasury of CBI). All of the issued and outstanding shares of CBI Common Stock are duly and validly issued and outstanding and are fully paid and nonassessable. None of the shares of capital stock of CBI has been issued in violation of the Securities Laws or any preemptive rights of the current or past stockholders of CBI. Pursuant to the terms of the CBI Stock Option Plans, there are currently outstanding options with the right to purchase a total of 119,900 shares of CBI Common Stock, as more fully set forth in Schedule 5.3 attached hereto.

(b) Except as set forth in Section 5.3(a) of this Agreement, there are no shares of capital stock or other equity securities of CBI outstanding and no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, shares of the capital stock of CBI or

contracts, commitments, understandings or arrangements by which CBI is or may be bound to issue additional shares of its capital stock or options, warrants or rights to purchase or acquire any additional shares of its capital stock. CBI has no liability for dividends declared or accrued, but unpaid, with respect to any of its capital stock.

#### **5.4 CBI Subsidiaries.**

(a) The CBI Subsidiaries include CBI Bank, which is a banking association, duly organized, validly existing and in good standing under the Laws of the State of Florida. Each of the CBI Subsidiaries has the corporate power and authority necessary for it to own, lease and operate its Assets and to incur its Liabilities and to carry on its business as now conducted. Each CBI Subsidiary is duly qualified or licensed to transact business as a foreign corporation in good standing in the states of the United States and foreign jurisdictions where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

(b) The authorized and issued and outstanding capital stock of each CBI Subsidiary, including without limitation CBI Bank, is set forth on Schedule 5.4(b). CBI or CBI Bank owns all of the issued and outstanding shares of capital stock of each CBI Subsidiary. None of the shares of capital stock of any CBI Subsidiary has been issued in violation of the Securities Laws or any preemptive rights. No equity securities of any CBI Subsidiary are or may become required to be issued by reason of any options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, shares of the capital stock of any such Subsidiary, and there are no Contracts by which any CBI Subsidiary is bound to issue additional shares of its capital stock or options, warrants or rights to purchase or acquire any additional shares of its capital stock or by which any CBI Company is or may be bound to transfer any shares of the capital stock of any CBI Subsidiary. There are no Contracts relating to the rights of any CBI Company to vote or to dispose of any shares of the capital stock of any CBI Subsidiary. All of the shares of capital stock of each CBI Subsidiary held by a CBI Company are fully paid and nonassessable under the applicable corporation Law of the jurisdiction in which such Subsidiary is incorporated and organized and are owned by the CBI Company free and clear of any Lien. No CBI Subsidiary has any liability for dividends declared or accrued, but unpaid, with respect to any of its capital stock.

(c) The minute books of CBI, CBI Bank and each CBI Subsidiary contain complete and accurate records in all material respects of all meetings and other corporate actions held or taken by their respective shareholders and Boards of Directors (including all committees thereof), since January 1, 1998 (or since such entity's formation, if later).

**5.5 Financial Statements.** Attached hereto as Schedule 5.5 are copies of all CBI Financial Statements and CBI Call Reports for periods ended prior to the date hereof, and CBI will deliver to ANB promptly copies of all CBI Financial Statements and CBI Call Reports prepared subsequent to the date hereof. The CBI Financial Statements (as of the dates thereof and for the periods covered thereby) (a) are or, if dated after the date of this Agreement, will be in accordance with the books and records of the CBI Companies, which are or will be, as the

case may be, complete and correct and which have been or will have been, as the case may be, maintained in accordance with good business practices and in accordance with applicable legal and accounting principles and reflect only actual transactions, and (b) present or will present, as the case may be, fairly the consolidated financial position of the CBI Companies as of the dates indicated and the consolidated results of operations, changes in stockholders' equity and cash flows of the CBI Companies for the periods indicated, in accordance with GAAP (subject to exceptions as to consistency specified therein or as may be indicated in the notes thereto or, in the case of interim financial statements, to normal recurring year-end audit adjustments that are not material). The CBI Call Reports have been prepared in material compliance with the rules and regulations of the respective federal or state banking regulator with which they were filed.

**5.6 Absence of Undisclosed Liabilities.** No CBI Company has any Liabilities that have or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI, except Liabilities accrued or reserved against in the consolidated balance sheets of CBI as of June 30, 2003, included in the CBI Financial Statements or reflected in the notes thereto, except as set forth on Schedule 5.6. No CBI Company has incurred or paid any Liability since June 30, 2003, except for such Liabilities incurred or paid in the ordinary course of business consistent with past business practice and which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

**5.7 Absence of Certain Changes or Events.** Except as set forth on Schedule 5.7, since December 31, 2001 (i) there have been no events, changes or occurrences that have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI or its Subsidiaries, including without limitation any change in the administrative or supervisory standing or rating of CBI or CBI Bank with any Regulatory Authority, (ii) the CBI Companies have not taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the covenants and agreements of CBI provided in Article 7 of this Agreement, and (iii) to CBI's Knowledge, no fact or condition exists which CBI believes will cause a Material Adverse Effect on CBI or its Subsidiaries in the future, subject to changes in general economic or industry conditions.

**5.8 Tax Matters.**

(a) All Tax returns required to be filed by or on behalf of any of the CBI Companies have been timely filed or requests for extensions have been timely filed, granted and have not expired for periods ended on or before December 31, 2002, and all returns filed are complete and accurate in all material respects. All Taxes shown as due on filed returns have been paid. There is no audit examination, deficiency, refund Litigation or matter in controversy pending, or to the Knowledge of CBI or CBI Bank, threatened, with respect to any Taxes that might result in a determination that would have, individually or in the aggregate, a Material Adverse Effect on CBI, except as reserved against in the CBI Financial Statements delivered prior to the date of this Agreement. All Taxes and other Liabilities due with respect to completed and settled examinations or concluded Litigation have been fully paid.

(b) None of the CBI Companies has executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax due (excluding such statutes that relate to

years currently under examination by the Internal Revenue Service or other applicable taxing authorities) that is currently in effect.

(c) Adequate provision for any Taxes due or to become due for any of the CBI Companies for the period or periods through and including the date of the respective CBI Financial Statements has been made and is reflected on such CBI Financial Statements.

(d) Any and all deferred Taxes of the CBI Companies have been provided for in accordance with GAAP.

(e) None of the CBI Companies is responsible for the Taxes of any other Person other than the CBI Companies under Treasury Regulation 1.1502-6 or any similar provision of federal or state Law.

(f) Except as set forth on Schedule 5.8(f), none of the CBI Companies has made any payment, is obligated to make any payment or is a party to any Contract that could obligate it to make any payment that would be disallowed as a deduction under Section 280G or 162(m) of the IRC.

(g) There has not been an ownership change, as defined in Section 382(g) of the IRC, that occurred during or after any taxable period in which CBI, CBI Bank or any CBI Subsidiaries incurred an operating loss that carries over to any taxable period ending after the fiscal year of CBI immediately preceding the date of this Agreement.

(h) (i) Proper and accurate amounts have been withheld by the CBI Companies from their employees and others for all prior periods in compliance in all material respects with the tax withholding provisions of all applicable federal, state and local Laws, and proper due diligence steps have been taken in connection with back-up withholding, (ii) federal, state and local returns have been filed by the CBI Companies for all periods for which returns were due with respect to withholding, Social Security and unemployment taxes or charges due to any federal, state or local taxing authority and (iii) the amounts shown on such returns to be due and payable have been paid in full or adequate provision therefore have been included by CBI in the CBI Financial Statements.

#### **5.9 Loan Portfolio; Documentation and Reports.**

(a) Except as disclosed in Schedule 5.9(a), none of the CBI Companies is a creditor as to any written or oral loan agreement, note or borrowing arrangement, including without limitation leases, credit enhancements, commitments and interest-bearing assets (the "Loans"), other than Loans the unpaid principal balance of which does not exceed \$25,000 per Loan or \$50,000 in the aggregate, under the terms of which the obligor is, as of the date of this Agreement, over 90 days delinquent in payment of principal or interest or in default of any other material provisions. Except as otherwise set forth in Schedule 5.9(a), none of the CBI Companies is a creditor as to any Loan, including without limitation any loan guaranty, to any director, executive officer or 5% stockholder thereof, or to the Knowledge of CBI or CBI Bank, any Person controlling, controlled by or under common control with any of the foregoing. All of the Loans held by any of the CBI Companies are in all respects the binding obligations of the respective obligors named therein in accordance with their respective terms, are not subject to



any defenses, setoffs or counterclaims, except as may be provided by bankruptcy, insolvency or similar Laws or by general principles of equity, and were solicited, originated and exist in material compliance with all applicable CBI loan policies, except for deviations from such policies that (a) have been approved by current management of CBI, in the case of Loans with an outstanding principal balance that exceeds \$25,000, or (b) in the judgment of CBI, will not adversely affect the ultimate collectibility of such Loan. Except as set forth in Schedule 5.9(a), none of the CBI Companies holds any Loans in the original principal amount in excess of \$25,000 per Loan or \$50,000 in the aggregate that have been classified by any bank examiner, whether regulatory or internal, or, in the exercise of reasonable diligence by CBI, CBI Bank or any Regulatory Authority, should have been classified, as "other loans Specifically Mentioned," "Special Mention," "Substandard," "Doubtful," "Loss," "Classified," "Watch List," "Criticized," "Credit Risk Assets," "concerned loans" or words of similar import. The allowance for possible loan or credit losses (the "CBI Allowance") shown on the consolidated balance sheets of CBI included in the most recent CBI Financial Statements dated prior to the date of this Agreement was, and the CBI Allowance shown on the consolidated balance sheets of CBI included in the CBI Financial Statements as of dates subsequent to the execution of this Agreement will be, as of the dates thereof, adequate (within the meaning of GAAP and applicable regulatory requirements or guidelines) to provide for losses relating to or inherent in the loan and lease portfolios (including accrued interest receivables) of the CBI Companies and other extensions of credit (including letters of credit and commitments to make loans or extend credit) by the CBI Companies as of the dates thereof. The reserve for losses with respect to other real estate owned ("OREO Reserve") shown on the most recent Financial Statements and CBI Call Reports were, and the OREO Reserve to be shown on the Financial Statements and CBI Call Reports as of any date subsequent to the execution of this Agreement will be, as of such dates, adequate to provide for losses relating to the other real estate owned portfolio of CBI and CBI Bank as of the dates thereof. The reserve for losses in respect of litigation ("Litigation Reserve") shown on the most recent Financial Statements and CBI Call Reports and the Litigation Reserve to be shown on the Financial Statements and CBI Call Reports as of any date subsequent to the execution of this Agreement will be, as of such dates, adequate to provide for losses relating to or arising out of all pending or threatened litigation applicable to CBI, CBI Bank and the CBI Subsidiaries as of the dates thereof. Each such reserve described above has been established in accordance with applicable accounting principles and regulatory requirements and guidelines.

(b) The documentation relating to each Loan made by any CBI Company and to all security interests, mortgages and other liens with respect to all collateral for loans is adequate for the enforcement of the material terms of such Loan, security interest, mortgage or other lien, except for inadequacies in such documentation which will not, individually or in the aggregate, have a Material Adverse Effect on CBI.

(c) Each of the CBI Companies has timely filed all material reports, registrations and statements, together with any amendments required to be made with respect thereto, that it was required to file since September 27, 1999 with (i) the FRB, (ii) the FDIC and (iii) any state regulatory authority ("State Regulator") and all other material reports and statements required to be filed by it since September 27, 1999, including without limitation any report, registration or statement required to be filed pursuant to the Laws of the United States, the FRB, the FDIC or any State Regulator, and has paid all fees and assessments due and payable in connection therewith. Except for normal examinations conducted by Regulatory Authorities in the regular

course of the business of the CBI Companies, to the Knowledge of CBI or CBI Bank, no Regulatory Authority has initiated any proceeding or, to the Knowledge of CBI or CBI Bank, investigation into the business or operations of any CBI Company since September 27, 1999. There is no unresolved violation, criticism or exception by any Regulatory Authority with respect to any report or statement or lien or any examinations of any CBI Company.

**5.10 Assets; Insurance.** The CBI Companies have marketable title, free and clear of all Liens, to all of their respective Assets. One of the CBI Companies has good and marketable fee simple title to the real property described in Schedule 5.10(a) and has an enforceable leasehold interest in the real property described in Schedule 5.10(b), if any, free and clear of all Liens. All tangible real and personal properties and Assets used in the businesses of the CBI Companies are in good condition, reasonable wear and tear excepted, and are usable in the ordinary course of business consistent with CBI's past practices. All Assets that are material to CBI's business on a consolidated basis, held under leases or subleases by any of the CBI Companies are held under valid Contracts enforceable in accordance with their respective terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceedings may be brought), and each such Contract is in full force and effect and there is not under any such Contract any Default or claim of Default by CBI or CBI Bank or, to the Knowledge of CBI or CBI Bank, by any other party to the Contract. Schedules 5.10(a) and 5.10(b) identify each parcel of real estate or interest therein owned, leased or subleased by any of the CBI Companies or in which any CBI Company has any ownership or leasehold interest. If applicable, Schedule 5.10(b) also lists or otherwise describes each and every written or oral lease or sublease under which any CBI Company is the lessee of any real property and which relates in any manner to the operation of the businesses of any CBI Company. None of the CBI Companies has violated, or is currently in violation of, any Law, regulation or ordinance relating to the ownership or use of the real estate and real estate interests described in Schedules 5.10(a) and 5.10(b), including without limitation any Law relating to zoning, building, occupancy, environmental or comparable matter which individually or in the aggregate would have a Material Adverse Effect on CBI. As to each parcel of real property owned or used by any CBI Company, no CBI Company has received notice of any pending or, to the Knowledge of each of the CBI Companies, threatened condemnation proceedings, litigation proceedings or mechanic's or materialmen's liens. The Assets of the CBI Companies include all assets required to operate the business of the CBI Companies as now conducted. The policies of fire, theft, liability and other insurance maintained with respect to the Assets or businesses of the CBI Companies provide adequate coverage under current industry practices against loss or Liability, and the fidelity and blanket bonds in effect as to which any of the CBI Companies is a named insured are reasonably sufficient. Schedule 5.10(c) contains a list of all such policies and bonds maintained by any of the CBI Companies, and CBI has provided true and correct copies of each such policy to ANB.

**5.11 Environmental Matters.**

(a) Each CBI Company, its Participation Facilities and its Loan Properties are, and have been, in compliance with all Environmental Laws, except for violations that are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

(b) There is no Litigation pending or, to the Knowledge of CBI and CBI Bank, threatened before any court, governmental agency or authority or other forum in which any CBI Company or any of its Participation Facilities has been or, with respect to threatened Litigation, may be named as a defendant (i) for alleged noncompliance (including by any predecessor) with any Environmental Law or (ii) relating to the release into the environment of any Hazardous Material or oil, whether or not occurring at, on, under or involving a site owned, leased or operated by any CBI Company or any of its Participation Facilities, except for such Litigation pending or threatened that is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

(c) There is no Litigation pending or, to the Knowledge of CBI and CBI Bank, threatened before any court, governmental agency or board or other forum in which any of its Loan Properties (or CBI with respect to such Loan Property) has been or, with respect to threatened Litigation, may be named as a defendant or potentially responsible party (i) for alleged noncompliance (including by any predecessor) with any Environmental Law or (ii) relating to the release into the environment of any Hazardous Material or oil, whether or not occurring at, on, under or involving a Loan Property, except for such Litigation pending or threatened that is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

(d) To the Knowledge of CBI and CBI Bank, there is no reasonable basis for any Litigation of a type described in subsections 5.11(b) or 5.11(c), except such as is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

(e) During the period of (i) any CBI Company's ownership or operation of any of its respective current properties, (ii) any CBI Company's participation in the management of any Participation Facility or (iii) any CBI Company's holding of a security interest in a Loan Property, there have been no releases of Hazardous Material or oil in, on, under or affecting such properties, except such as are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI. Prior to the period of (i) any CBI Company's ownership or operation of any of its respective current properties, (ii) any CBI Company's participation in the management of any Participation Facility, or (iii) any CBI Company's holding of a security interest in a Loan Property, to the Knowledge of CBI and CBI Bank, there were no releases of Hazardous Material or oil in, on, under or affecting any such property, Participation Facility or Loan Property, except such as are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

**5.12 Compliance with Laws.** CBI is duly registered as a bank holding company under the BHC Act. Each CBI Company has in effect all Permits necessary for it to own, lease or operate its Assets and to carry on its business as now conducted, except for those Permits the absence of which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI, and there has occurred no Default under any such Permit. None of the CBI Companies:

(a) is in material violation of any Laws, Orders or Permits applicable to its business or employees, agents or representatives conducting its business; or

(b) has received any notification or communication from any agency or department of federal, state or local government or any Regulatory Authority or the staff thereof (i) asserting that any CBI Company is not, or suggesting that any CBI Company may not be, in compliance with any of the Laws or Orders that such governmental authority or Regulatory Authority enforces, (ii) threatening to revoke any Permits, (iii) requiring any CBI Company, or suggesting that any CBI Company may be required, to enter into or consent to the issuance of a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or to adopt any board resolution or similar undertaking, or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit in any manner the operations of any CBI Company, including without limitation any restrictions on the payment of dividends, or that in any manner relates to such entity's capital adequacy, credit or reserve policies or management or business.

### **5.13 Labor Relations; Employees.**

(a) No CBI Company is the subject of any Litigation asserting that it or any other CBI Company has committed an unfair labor practice (within the meaning of the National Labor Relations Act or comparable state Law) or seeking to compel it or any other CBI Company to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other labor dispute involving any CBI Company, pending or threatened, nor to its Knowledge, is there any activity involving any CBI Company's employees seeking to certify a collective bargaining unit or engaging in any other organization activity. Each CBI Company is and has been in compliance with all Employment Laws, except for violations that are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI.

(b) Schedule 5.13(b) contains a true and complete list showing the names and current annual salaries of all current executive officers of each of the CBI Companies and lists for each such person the amounts paid, payable or expected to be paid as salary, bonus payments and other compensation for 2001, 2002 and 2003. Schedule 5.13(b) also sets forth the name and offices held by each officer and director of each of the CBI Companies.

### **5.14 Employee Benefit Plans.**

(a) Schedule 5.14(a) lists, and CBI has delivered or made available to ANB prior to the execution of this Agreement copies of, all pension, retirement, profit-sharing, salary continuation and split dollar agreements, deferred compensation, director deferred fee agreements, director retirement agreement, stock option, employee stock ownership, severance pay, vacation, bonus or other incentive plan, all other written or unwritten employee programs, arrangements or agreements, all medical, vision, dental or other health plans, all life insurance plans, and all other employee benefit plans or fringe benefit plans, including, without limitation, "employee benefit plans" as that term is defined in Section 3(3) of ERISA, currently adopted, maintained by, sponsored in whole or in part by, or contributed to by any CBI Company or Affiliate thereof for the benefit of employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries and under which employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries are eligible to participate (collectively, the "CBI Benefit Plans"). Any of the CBI Benefit Plans which is an "employee pension benefit plan," as that term is defined in Section 3(2) of ERISA, is referred to herein as a "CBI ERISA Plan." Each CBI ERISA Plan which is also a "defined benefit plan" (as defined in

Section 414(j) of the IRC) is referred to herein as a "CBI Pension Plan". No CBI Pension Plan is or has been a multi-employer plan within the meaning of Section 3(37) of ERISA.

(b) All CBI Benefit Plans and the administration thereof are in compliance with the applicable terms of ERISA, the IRC and any other applicable Laws, the breach or violation of which is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI. Each CBI ERISA Plan which is intended to be qualified under Section 401(a) of the IRC has received a favorable determination letter or opinion letter, as applicable, from the Internal Revenue Service, and CBI is not aware of any circumstances that could result in revocation of any such favorable determination letter/opinion letter. No CBI Company has engaged in a transaction with respect to any CBI Benefit Plan that, assuming the taxable period of such transaction expired as of the date hereof, would subject any CBI Company to a tax or penalty imposed by either Section 4975 of the IRC or Section 502(i) of ERISA in amounts which are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI. There are no actions, suits, arbitrations or claims, including any investigations or audits by the Internal Revenue Service or any other governmental authority, pending (other than routine claims for benefits) or threatened against, any CBI Benefit Plan or any CBI Company with regard to any CBI Benefit Plan, any trust which is a part of any CBI Benefit Plan, any trustee, fiduciary, custodian, administrator or other person or entity holding or controlling assets of any CBI Benefit Plan, and no basis to anticipate any such action, suit, arbitration, claim, investigation or audit exists.

(c) No CBI ERISA Plan which is a defined benefit pension plan has any "unfunded current liability," as that term is defined in Section 302(d)(8)(A) of ERISA, and the fair market value of the assets of any such plan exceeds the plan's "benefit liabilities," as that term is defined in Section 4001(a)(16) of ERISA, when determined under actuarial factors that would apply if the plan terminated in accordance with all applicable legal requirements. Since the date of the most recent actuarial valuation, there has been (i) no material change in the financial position of any CBI Pension Plan, (ii) no change in the actuarial assumptions with respect to any CBI Pension Plan, (iii) no increase in benefits under any CBI Pension Plan as a result of plan amendments or changes in applicable Law which is reasonably likely to materially adversely affect the funding status of any such plan. Neither any CBI Pension Plan nor any "single-employer plan," within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any CBI Company, or the single-employer plan of any entity which is considered one employer with CBI under Section 4001 of ERISA or Section 414 of the IRC or Section 302 of ERISA (whether or not waived) (an "ERISA Affiliate") has an "accumulated funding deficiency" within the meaning of Section 412 of the IRC or Section 302 of ERISA, which is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on CBI. No CBI Company has provided, or is required to provide, security to a CBI Pension Plan or to any single-employer plan of an ERISA Affiliate pursuant to Section 401(a)(29) of the IRC.

(d) No Liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by any CBI Company with respect to any ongoing, frozen or terminated single-employer plan or the single-employer plan of any ERISA Affiliate. No CBI Company has incurred any withdrawal Liability with respect to a multi-employer plan under Subtitle D of Title IV of ERISA (regardless of whether based on contributions of an ERISA Affiliate), which Liability is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect

on CBI. No notice of a "reportable event," within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived, has been required to be filed for any CBI Pension Plan or by any ERISA Affiliate within the 12-month period ending on the date hereof.

(e) Except as set forth on Schedule 5.14(e), no CBI Company has any obligations for retiree health and life benefits under any of the CBI Benefit Plans, and there are no restrictions on the rights of such CBI Company to amend or terminate any such plan without incurring any Liability thereunder, which Liability is reasonably likely to have a Material Adverse Effect on CBI.

(f) Except as set forth on Schedule 5.14(f), neither the execution and delivery of this Agreement nor the consummation of the transactions provided for herein will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute or otherwise) becoming due to any director or any employee of any CBI Company from any CBI Company under any CBI Benefit Plan, employment contract or otherwise, (ii) increase any benefits otherwise payable under any CBI Benefit Plan, or (iii) result in any acceleration of the time of payment or vesting of any such benefit.

(g) With respect to all CBI Benefit Plans (whether or not subject to ERISA and whether or not qualified under Section 401(a) of the IRC), all contributions due (including any contributions to any trust account or payments due under any insurance policy) previously declared or otherwise required by Law or contract to have been made and any employer contributions (including any contributions to any trust account or payments due under any insurance policy) accrued but unpaid as of the date hereof will be paid by the time required by Law or contract. All contributions made or required to be made under any CBI Benefit Plan have been made and such contributions meet the requirements for deductibility under the IRC, and all contributions which are required and which have not been made have been properly recorded on the books of CBI.

**5.15 Material Contracts.** Except as set forth on Schedule 5.15, none of the CBI Companies, nor any of their respective Assets, businesses or operations, is a party to, or is bound or affected by, or receives benefits under any of the following (whether written or oral, express or implied): (i) any employment, severance, termination, consulting or retirement Contract with any Person; (ii) any Contract relating to the borrowing of money by any CBI Company or the guarantee by any CBI Company of any such obligation (other than Contracts evidencing deposit liabilities, purchases of federal funds, fully-secured repurchase agreements, trade payables and Contracts relating to borrowings or guarantees made and letters of credit); (iii) any Contract relating to indemnification or defense of any director, officer or employee of any of the CBI Companies or any other Person; (iv) any Contract with any labor union; (v) any Contract relating to the disposition or acquisition of any interest in any business enterprise; (vi) any Contract relating to the extension of credit to, provision of services for, sale, lease or license of Assets to, engagement of services from, or purchase, lease or license of Assets from, any 5% stockholder, director or officer of any of the CBI Companies, any member of the immediate family of the foregoing or, to the Knowledge of CBI, any related interest (as defined in Regulation O promulgated by the FRB) ("Related Interest") of any of the foregoing; (vii) any Contract (A) which limits the freedom of any of the CBI Companies to compete in any line of business or

with any Person or (B) which limits the freedom of any other Person to compete in any line of business with any CBI Company; (viii) any Contract providing a power of attorney or similar authorization given by any of the CBI Companies, except as issued in the ordinary course of business with respect to routine matters; or (ix) any Contract (other than deposit agreements and certificates of deposits issued to customers entered into in the ordinary course of business and letters of credit) that involves the payment by any of the CBI Companies of amounts aggregating \$5,000 or more in any twelve-month period (together with all Contracts referred to in Sections 5.10 and 5.14(a) of this Agreement, the "CBI Contracts"). None of the CBI Companies is in Default under any CBI Contract. All of the indebtedness of any CBI Company for money borrowed is prepayable at any time by such CBI Company without penalty or premium.

**5.16 Legal Proceedings.** Except as set forth on Schedule 5.16, there is no Litigation instituted or pending, or, to the Knowledge of CBI or CBI Bank, threatened (or unasserted but considered probable of assertion) against any CBI Company, or against any Asset, interest, or right of any of them, nor are there any Orders of any Regulatory Authorities, other governmental authorities or arbitrators outstanding, pending or, to the knowledge of CBI or CBI Bank, threatened against any CBI Company.

**5.17 Reports.** Since September 27, 1999, each CBI Company has timely filed all reports and statements, together with any amendments required to be made with respect thereto, that it was required to file with (i) any Regulatory Authorities or (ii) any applicable state securities or banking authorities. As of their respective dates, each of such reports and documents, including the financial statements, exhibits, and schedules thereto, complied in all material respects with all applicable Laws. As of its respective date, each such report and document did not, in any material respects, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. Each such report, including but not limited to the CBI Call Reports (including the related notes, where applicable), (a) has been prepared in all material respects in accordance with regulatory accounting principles, which principles have been consistently applied during the periods involved, except as otherwise noted therein, (b) fairly presents the financial position of CBI and CBI Bank as of the respective dates thereof, and (c) fairly presents the results of operations of CBI and CBI Bank for the respective periods therein set forth.

**5.18 Statements True and Correct.** Neither this Agreement nor any statement, certificate, instrument or other writing furnished or to be furnished by any CBI Company or any Affiliate thereof to ANB pursuant to this Agreement, including the Exhibits and Schedules hereto, or any other document, agreement or instrument referred to herein, contains or will contain any untrue statement of material fact or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by any CBI Company or any Affiliate thereof for inclusion in the documents to be prepared by ANB in connection with the transactions provided for in this Agreement, including without limitation (i) documents to be filed with the SEC, including without limitation the Registration Statement on Form S-4 of ANB registering the shares of ANB Common Stock to be offered to the holders of CBI Common Stock, and all amendments thereto (as amended, the "S-4 Registration Statement") and the Proxy Statement and Prospectus in the form contained in the S-4 Registration Statement, and all

amendments and supplements thereto (as amended and supplemented, the "Proxy Statement/Prospectus"), (ii) filings pursuant to any state securities and blue sky Laws, and (iii) filings made in connection with the obtaining of Consents from Regulatory Authorities, in the case of the S-4 Registration Statement, at the time the S-4 Registration Statement is declared effective pursuant to the 1933 Act, in the case of the Proxy Statement/Prospectus, at the time of the mailing thereof and at the time of the meeting of stockholders to which the Proxy Statement/Prospectus relates, and in the case of any other documents, the time such documents are filed with a Regulatory Authority and/or at the time they are distributed to stockholders of ANB or CBI, contains or will contain any untrue statement of a material fact or fails to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. All documents that any CBI Company or any Affiliate thereof is responsible for filing with any Regulatory Authority in connection with the transactions provided for herein will comply as to form in all material respects with the provisions of applicable Law.

**5.19 Accounting, Tax and Regulatory Matters.** No CBI Company or any Affiliate thereof has taken any action or has any Knowledge of any fact or circumstance that is reasonably likely to (i) prevent the transactions provided for herein, including the Merger, from qualifying as a reorganization within the meaning of Section 368(a) of the IRC, or (ii) materially impede or delay receipt of any Consents of Regulatory Authorities referred to in subsection 9.1(b) of this Agreement or result in the imposition of a condition or restriction of the type referred to in the last sentence of such subsection 9.1(b).

**5.20 Offices.** The headquarters of each CBI Company and each other office, branch or facility maintained and operated by each CBI Company (including without limitation representative and loan production offices and operations centers) and the locations thereof are listed on Schedule 5.20. None of the CBI Companies maintains any other office or branch or conducts business at any other location, or has applied for or received permission to open any additional office or branch or to operate at any other location.

**5.21 Data Processing Systems.** The electronic data processing systems and similar systems utilized in processing the work of each of the CBI Companies, including both hardware and software, (a) are supplied by a third party provider; (b) satisfactorily perform the data processing function for which they are presently being used; and (c) are wholly within the possession and control of one of the CBI Companies or its third party provider such that physical access to all software, documentation, passwords, access codes, backups, disks and other data storage devices and similar items readily can be made accessible to and delivered into the possession of ANB or ANB's third party provider.

**5.22 Intellectual Property.** Each of the CBI Companies owns or possesses valid and binding licenses and other rights to use without additional payment all material patents, copyrights, trade secrets, trade names, service marks, trademarks, computer software and other intellectual property used in its business; and none of the CBI Companies has received any notice of conflict with respect thereto that asserts the rights of others. The CBI Companies have in all material respects performed all the obligations required to be performed by them and are not in default in any material respect under any contract, agreement, arrangement or commitment relating to any of the foregoing. Schedule 5.22 lists all of the trademarks, trade names, licenses



and other intellectual property used to conduct the businesses of the CBI Companies. Each of the CBI Companies has taken reasonable precautions to safeguard its trade secrets from disclosure to third-parties.

**5.23 Administration of Trust Accounts.** CBI Bank does not possess and does not exercise trust powers.

**5.24 Broker's Fees.** CBI has retained the CBI Financial Advisor to serve as its broker and, as of the Effective Time, shall incur a liability to the CBI Financial Advisor in the amount set forth on Schedule 5.24 (the "Broker's Fee") in connection with the Merger. Other than the CBI Financial Advisor and the Broker's Fee, neither CBI nor any of its Subsidiaries nor any of their respective officers or directors has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions provided for in this Agreement.

**5.25 Regulatory Approvals.** CBI knows of no reason why all requisite regulatory approvals regarding the Merger should not or cannot be obtained.

**5.26 Opinion of Counsel.** CBI has no Knowledge of any facts that would preclude issuance of the opinion of counsel referred to in subsection 9.2(d).

**5.27 Derivatives Contracts.** No CBI Company is a party to, nor has any CBI Company agreed to enter into any exchange-traded or over-the-counter swap, forward, future, option, cap, floor, or collar financial contract or agreement, or any other interest rate or foreign currency protection contract not included on its balance sheet which is a financial derivative contract (including various combinations thereof).

**5.28 Antitakeover Provisions.** Each CBI Company has taken all actions required to exempt such CBI Company, this Agreement and the Merger from any provisions of an antitakeover nature contained in their organizational documents or the provisions of any federal or state "antitakeover," "fair price," "moratorium," "control share acquisition" or similar laws or regulations ("Takeover Laws").

**5.29 Transactions with Management.** Except for (a) deposits, all of which are on terms and conditions comparable in all material respects to those made available to other nonaffiliated similarly situated customers of CBI Bank at the time such deposits were entered into, (b) the loans listed on Schedule 5.9(a), (c) the agreements designated on Schedule 5.15, (d) obligations under employee benefit plans of the CBI Companies set forth in Schedule 5.14(a) and (e) any items described on Schedule 5.29, there are no contracts with or commitments to present or former stockholders who own or owned more than 1% of the CBI Common Stock, directors, officers or employees (or their Related Interests) involving the expenditure of more than \$1,000 as to any one individual (including any business directly or indirectly controlled by any such person), or more than \$5,000 for all such contracts for commitments in the aggregate for all such individuals.

**5.30 Deposits.** None of the deposits of CBI Bank are "brokered" deposits or are subject to any encumbrance, legal restraint or other legal process (other than garnishments, pledges, set off rights, limitations applicable to public deposits, escrow limitations and similar

actions taken in the ordinary course of business), and no portion of deposits of CBI Bank represents a deposit of any Affiliate of CBI.

**5.31 Accounting Controls.** Each of the CBI Companies has devised and maintained systems of internal accounting control sufficient to provide reasonable assurances that: (i) all material transactions are executed in accordance with general or specific authorization of the Board of Directors and the duly authorized executive officers of the applicable CBI Company; (ii) all material transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP with respect to the applicable CBI Company or any other criteria applicable to such financial statements, and to maintain proper accountability for items therein; (iii) access to the material properties and assets of each of the CBI Companies is permitted only in accordance with general or specific authorization of the Board of Directors and the duly authorized executive officers; and (iv) the recorded accountability for items is compared with the actual levels at reasonable intervals and appropriate actions taken with respect to any differences.

**5.32 Deposit Insurance.** The deposit accounts of CBI Bank are insured by the FDIC in accordance with the provisions of the Federal Deposit Insurance Act (the "Act"). CBI Bank has paid all regular premiums and special assessments and filed all reports required under the Act.

**5.33 Registration Obligations.** Neither of CBI or CBI Bank is under any obligation, contingent or otherwise, which will survive the Merger to register its securities under the 1933 Act or any state securities laws.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF ANB**

ANB hereby represents and warrants to CBI as follows:

**6.1 Organization, Standing and Power.** ANB is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Delaware, and has the corporate power and authority to carry on its business as now conducted and to own, lease and operate its Assets and to incur its Liabilities. ANB is duly qualified or licensed to transact business as a foreign corporation in good standing in the states of the United States and foreign jurisdictions where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB.

**6.2 Authority; No Breach By Agreement.**

(a) ANB has the corporate power and authority necessary to execute, deliver and perform its obligations under this Agreement and to consummate the transactions provided for herein. The execution, delivery and performance of this Agreement and the consummation of the transactions provided for herein, including the Merger, have been, or prior to the Effective Time will be, duly and validly authorized by all necessary corporate action on the part of ANB.

Subject to required regulatory consents, this Agreement represents a legal, valid and binding obligation of ANB, enforceable against ANB in accordance with its terms.

(b) Neither the execution and delivery of this Agreement by ANB, nor the consummation by ANB of the transactions provided for herein, nor compliance by ANB with any of the provisions hereof, will (i) conflict with or result in a breach of any provision of ANB's Restated Certificate of Incorporation or Bylaws, or (ii) constitute or result in a Default under, or require any Consent pursuant to, or result in the creation of any Lien on any Asset of any ANB Company under, any Contract or Permit of any ANB Company, where failure to obtain such Consent is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB, or, (iii) subject to receipt of the requisite approvals referred to in subsection 9.1(b) of this Agreement, violate any Law or Order applicable to any ANB Company or any of their respective Assets.

(c) Other than in connection or compliance with the provisions of the Securities Laws, applicable state corporate and securities Laws, and rules of the NASD, and other than Consents required from Regulatory Authorities, and other than notices to or filings with the Internal Revenue Service or the Pension Benefit Guaranty Corporation with respect to any employee benefit plans, and other than Consents, filings or notifications which, if not obtained or made, are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB, no notice to, filing with or Consent of, any public body or authority is necessary for the consummation by ANB of the Merger and the other transactions provided for in this Agreement.

**6.3 Capital Stock.** The authorized capital stock of ANB, as of the date of this Agreement, consists of (i) 27,500,000 shares of ANB Common Stock, of which 12,819,043 shares are issued and outstanding, and (ii) 100,000 shares of preferred stock, \$1.00 par value per share, none of which is issued and outstanding. All of the issued and outstanding shares of ANB Common Stock are, and all of the shares of ANB Common Stock to be issued in exchange for shares of CBI Common Stock upon consummation of the Merger, when issued in accordance with the terms of this Agreement, will be, duly and validly issued and outstanding and fully paid and nonassessable under the DGCL. None of the outstanding shares of ANB Common Stock has been, and none of the shares of ANB Common Stock to be issued in exchange for shares of CBI Common Stock upon consummation of the Merger will be, issued in violation of any preemptive rights of the current or past stockholders of ANB. As of the date hereof, ANB has granted options to purchase no more than 308,598 shares of ANB Common Stock under its various stock plans.

**6.4 Reports and Financial Statements.** Since January 1, 2001, or the date of organization or acquisition if later, each ANB Company has filed all reports and statements, together with any amendments required to be made with respect thereto, that it was required to file with (i) the SEC, including, but not limited to, Forms 10-K, Forms 10-Q, Forms 8-K, and proxy statements, (ii) other Regulatory Authorities, and (iii) any applicable state securities or banking authorities. As of their respective dates, each of such reports and documents, including the ANB Financial Statements, exhibits, and schedules thereto, complied in all material respects with all applicable Laws. As of its respective date, each such report and document did not contain any untrue statement of a material fact or omit to state a material fact required to be

stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. The ANB Financial Statements included in such reports (as of the dates thereof and for the periods covered thereby) (i) are or if dated after the date of this Agreement, will be, in accordance with the books and records of the ANB Companies, which are or will be, as the case may be, complete and correct and which have been or will have been, as the case may be, maintained in accordance with good business practices, and (ii) present, or will present, fairly the consolidated financial position of the ANB Companies as of the dates indicated and the consolidated results of operations, changes in stockholders' equity, and cash flows of the ANB Companies for the periods indicated, in accordance with GAAP (subject to exceptions as to consistency specified therein or as may be indicated in the notes thereto or, in the case of interim financial statements, to normal year-end adjustments that are not material).

**6.5 Absence of Undisclosed Liabilities.** No ANB Company has any Liabilities that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB, except Liabilities accrued or reserved against in the consolidated balance sheets of ANB as of June 30, 2003 included in the ANB Financial Statements or reflected in the notes thereto. No ANB Company has incurred or paid any Liability since June 30, 2003, except for such Liabilities incurred or paid in the ordinary course of business consistent with past business practice and which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB.

**6.6 Absence of Certain Changes or Events.** Except as set forth on Schedule 6.6, since June 30, 2003 (i) there have been no events, changes or occurrences that have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB, (ii) the ANB Companies have not taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the covenants and agreements of ANB provided in Article 7 of this Agreement, and (iii) to ANB's Knowledge, no fact or condition exists which ANB believes will cause a Material Adverse Effect on ANB in the future, subject to changes in general economic or industry conditions.

**6.7 Compliance with Laws.** ANB is duly registered as a bank holding company under the BHC Act. Each ANB Company has in effect all Permits necessary for it to own, lease or operate its Assets and to carry on its business as now conducted, except for those Permits the absence of which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB, and there has occurred no Default under any such Permit. None of the ANB Companies:

(a) is in material violation of any Laws, Orders or Permits applicable to its business or employees conducting its business; or

(b) has received any notification or communication from any agency or department of federal, state or local government or any Regulatory Authority or the staff thereof (i) asserting that any ANB Company is not in compliance with any of the Laws or Orders that such governmental authority or Regulatory Authority enforces, (ii) threatening to revoke any Permits, or (iii) requiring any ANB Company to enter into or consent to the issuance of a cease and desist

order, formal agreement, directive, commitment or memorandum of understanding, or to adopt any board resolution or similar undertaking, that restricts materially the conduct of its business, or in any manner relates to its capital adequacy, its credit or reserve policies, its management or the payment of dividends.

**6.8 Material Contracts.** ANB has filed as an exhibit to its annual report on Form 10-K each Contract required to be so filed under the 1934 Act and the rules and regulations promulgated thereunder. None of the ANB Companies is in Default under any ANB Contract, other than Defaults which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB. All of the indebtedness of any ANB Company for money borrowed is prepayable at any time by such ANB Company without penalty or premium.

**6.9 Legal Proceedings.** Except as set forth on Schedule 6.9, there is no Litigation instituted or pending, or, to the Knowledge of ANB, threatened (or unasserted but considered probable of assertion) against any ANB Company, or against any Asset, interest, or right of any of them, that is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB, nor are there any Orders of any Regulatory Authorities, other governmental authorities or arbitrators outstanding against any ANB Company, that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on ANB.

**6.10 Statements True and Correct.** No statement, certificate, instrument or other writing furnished or to be furnished by any ANB Company or any Affiliate thereof to CBI pursuant to this Agreement, including the Exhibits or Schedules hereto, or any other document, agreement or instrument referred to herein contains or will contain any untrue statement of material fact or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by any ANB Company or any Affiliate thereof for inclusion in the Proxy Statement/Prospectus to be mailed to CBI's stockholders in connection with the CBI Stockholders' Meeting, and any other documents to be filed by an ANB Company or any Affiliate thereof with the SEC or any other Regulatory Authority in connection with the transactions provided for herein, will, at the respective time such documents are filed, and with respect to the Proxy Statement/Prospectus, when first mailed to the stockholders of CBI, be false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All documents that any ANB Company or any Affiliate thereof is responsible for filing with any Regulatory Authority in connection with the transactions provided for herein will comply as to form in all material respects with the provisions of applicable Law.

**6.11 Accounting, Tax and Regulatory Matters.** No ANB Company or any Affiliate thereof has taken any action or has any Knowledge of any fact or circumstance that is reasonably likely to (i) prevent the transactions contemplated hereby, including the Merger, from qualifying as a reorganization within the meaning of Section 368(a) of the IRC, or (ii) materially impede or delay receipt of any Consents of Regulatory Authorities referred to in subsection 9.1(b) of this Agreement or result in the imposition of a condition or restriction of the type referred to in the last sentence of such subsection.

**6.12 1934 Act Compliance.** The Proxy Statement/Prospectus will comply in all material respects with applicable provisions of the 1933 Act and the 1934 Act and the rules and regulations thereunder.

**6.13 Regulatory Approvals.** ANB knows of no reason why all requisite regulatory approvals regarding the Merger should not or cannot be obtained.

**6.14 Opinion of Counsel.** ANB has no Knowledge of any facts that would preclude issuance of the opinion of counsel referred to in subsection 9.3(d).

## **ARTICLE 7**

### **CONDUCT OF BUSINESS PENDING CONSUMMATION**

#### **7.1 Covenants of Both Parties.**

(a) Unless the prior written consent of the other Party shall have been obtained, and except as otherwise expressly provided for herein, each Party shall and shall cause each of its Subsidiaries to (i) conduct its business in the usual, regular and ordinary course consistent with past practice and prudent banking principles, (ii) preserve intact its business organization, goodwill, relationships with depositors, customers and employees, and Assets and maintain its rights and franchises, and (iii) take no action, except as required by applicable Law, which would (A) adversely affect the ability of any Party to obtain any Consents required for the transactions provided for herein without imposition of a condition or restriction of the type referred to in the last sentences of subsections 9.1(b) or 9.1(c) of this Agreement or (B) adversely affect the ability of any Party to perform its covenants and agreements under this Agreement.

(b) During the period from the date of this Agreement to the Effective Time, each of ANB and CBI shall cause its Designated Representative (and, if necessary, representatives of any of its Subsidiaries) to confer on a regular and frequent basis with the Designated Representative of the other Party hereto and to report on the general status of its and its Subsidiaries' ongoing operations. Each of ANB and CBI shall permit the other Party hereto to make such investigation of its business or properties and its Subsidiaries and of their respective financial and legal conditions as the investigating Party may reasonably request. Each of ANB and CBI shall promptly notify the other Party hereto concerning (a) any material change in the normal course of its or any of its Subsidiaries' businesses or in the operation of their respective properties or in their respective conditions; (b) any material governmental complaints, investigations or hearings (or communications indicating that the same may be contemplated) or the institution or the threat of any material Litigation involving it or any of its Subsidiaries; and (c) the occurrence or impending occurrence of any event or circumstance that would cause or constitute a breach of any of the representations, warranties or covenants contained herein; and each of ANB and CBI shall, and shall cause each of their respective Subsidiaries to, use its commercially reasonable efforts to prevent or promptly respond to same.

**7.2 Covenants of CBI.** From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, CBI covenants and agrees that it will not do or agree or commit to do, or permit any of its Subsidiaries to do or agree or commit to do, any of the following without the prior written consent of the chief executive officer, president or chief

financial officer of ANB, which consent shall not be unreasonably withheld, except for in connection with the actions referenced in sub-sections (ii), (iv) or (v), in which case such consent may be withheld for any reason or no reason:

(i) amend the Articles of Incorporation, Bylaws or other governing instruments of any CBI Company; or

(ii) incur any additional debt obligation or other obligation for borrowed money except in the ordinary course of the business of CBI Subsidiaries consistent with past practices (which shall include, for CBI Subsidiaries that are depository institutions, creation of deposit liabilities, purchases of federal funds, sales of certificates of deposit, advances from the FRB or the Federal Home Loan Bank, entry into repurchase agreements fully secured by U.S. government or agency securities and issuances of letters of credit), or impose, or suffer the imposition, on any share of stock held by any CBI Company of any Lien or permit any such Lien to exist; or

(iii) repurchase, redeem or otherwise acquire or exchange, directly or indirectly, any shares, or any securities convertible into any shares, of the capital stock of any CBI Company, or, declare or pay any dividend or make any other distribution in respect of CBI's capital stock; or

(iv) except for this Agreement and as required upon exercise of any of the CBI Options, issue, sell, pledge, encumber, enter into any Contract to issue, sell, pledge, or encumber, authorize the issuance of, or otherwise permit to become outstanding, any additional shares of CBI Common Stock or any other capital stock of any CBI Company, or any stock appreciation rights, or any option, warrant, conversion or other right to acquire any such stock, or any security convertible into any shares of such stock; or

(v) adjust, split, combine or reclassify any capital stock of any CBI Company or issue or authorize the issuance of any other securities with respect to or in substitution for shares of its capital stock or sell, lease, mortgage or otherwise encumber any shares of capital stock of any CBI Subsidiary or any Asset other than in the ordinary course of business for reasonable and adequate consideration; or

(vi) acquire any direct or indirect equity interest in any Person, other than in connection with (i) foreclosures in the ordinary course of business and (ii) acquisitions of control by a depository institution Subsidiary in its fiduciary capacity; or

(vii) grant any increase in compensation or benefits to the employees or officers of any CBI Company, except in accordance with past practices with respect to employees; pay any bonus except in accordance with past practices and pursuant to the provisions of an applicable program or plan adopted by the CBI Board prior to the date of this Agreement; enter into or amend any severance agreements with officers of any CBI Company; grant any material increase in fees or other increases in compensation or other benefits to directors of any CBI Company; or

(viii) enter into or amend any employment Contract between any CBI Company and any Person (unless such amendment is required by Law) that the CBI Company does

not have the unconditional right to terminate without Liability (other than Liability for services already rendered), at any time on or after the Effective Time; or

(ix) adopt any new employee benefit plan of any CBI Company or make any material change in or to any existing employee benefit plans of any CBI Company other than any such change that is required by Law or that, in the opinion of counsel, is necessary or advisable to maintain the tax qualified status of any such plan; or

(x) make any material change in any accounting methods or systems of internal accounting controls, except as may be appropriate to conform to changes in regulatory accounting requirements or GAAP; or

(xi) (A) commence any Litigation other than in accordance with past practice, (B) settle any Litigation involving any Liability of any CBI Company for material money damages or restrictions upon the operations of any CBI Company, or, (C) except in the ordinary course of business, modify, amend or terminate any material Contract or waive, release, compromise or assign any material rights or claims; or

(xii) enter into any material transaction or course of conduct not in the ordinary course of business, or not consistent with safe and sound banking practices, or not consistent with applicable Laws; or

(xiii) fail to file timely any report required to be filed by it with any Regulatory Authority; or

(xiv) make any Loan or advance to any 5% stockholder, director or officer of CBI or any of the CBI Subsidiaries, or any member of the immediate family of the foregoing, or any Related Interest (to the Knowledge of CBI or any of its Subsidiaries) of any of the foregoing, except for advances under unfunded loan commitments in existence on the date of this Agreement and specifically described on Schedule 7.2(xiv) or renewals of any Loan or advance outstanding as of the date of this Agreement on terms and conditions substantially similar to the original Loan or advance; or

(xv) cancel without payment in full, or modify in any material respect any Contract relating to, any loan or other obligation receivable from any 5% stockholder, director or officer of any CBI Company or any member of the immediate family of the foregoing, or any Related Interest (to the Knowledge of CBI or any of its Subsidiaries) of any of the foregoing; or

(xvi) enter into any Contract for services or otherwise with any of the 5% stockholders, directors, officers or employees of any CBI Company or any member of the immediate family of the foregoing, or any Related Interest (Known to CBI or any of its Subsidiaries) of any of the foregoing; or

(xvii) modify, amend or terminate any material Contract or waive, release, compromise or assign any material rights or claims, except in the ordinary course of business and for fair consideration; or



(xviii) file any application to relocate or terminate the operations of any banking office of it or any of its Subsidiaries; or

(xix) except in accordance with applicable Law, change its or any of its Subsidiaries' lending, investment, liability management and other material banking policies in any material respect; or

(xx) intentionally take any action that would reasonably be expected to jeopardize or delay the receipt of any of the regulatory approvals required in order to consummate the transactions provided for in this Agreement; or

(xxi) take any action that would cause the transactions provided for in this Agreement to be subject to requirements imposed by any Takeover Law, and CBI shall take all necessary steps within its control to exempt (or ensure the continued exemption of) the transactions provided for in this Agreement from, or if necessary challenge the validity or applicability of, any applicable Takeover Law, as now or hereafter in effect; or

(xxii) make or renew any Loan to any Person (including, in the case of an individual, his or her immediate family) who or that (directly or indirectly as though a Related Interest or otherwise) owes, or would as a result of such Loan or renewal owe, any CBI Company more than an aggregate of \$300,000 of secured indebtedness or more than \$50,000 of unsecured indebtedness; or

(xxiii) increase or decrease the rate of interest paid on time deposits or on certificates of deposit, except in a manner and pursuant to policies consistent with CBI and CBI Bank's past policies; or

(xxiv) purchase or otherwise acquire any investment securities for its own account having an average remaining life to maturity greater than five years (except for municipal bonds of any maturity after consultation by a Designated Representative of CBI with a Designated Representative of ANB), or any asset-backed security, other than those issued or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association or Home Loan Mortgage Corporation; or

(xxv) except for residential real property owned by and reflected on the books of CBI or CBI Bank as of the date hereof, the sale of which will not result in a material loss, sell, transfer, convey or otherwise dispose of any real property (including "other real estate owned") or interests therein having a book value in excess of or in exchange for consideration in excess of \$50,000; or

(xxvi) make any capital expenditures individually in excess of \$50,000, or in the aggregate in excess of \$100,000.

**7.3 Covenants of ANB.** From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, ANB covenants and agrees that it will not do or agree or commit to do, or permit any of its Subsidiaries to do or agree or commit to do, any of the following without the prior written consent of the chief executive officer, president or chief financial officer of CBI, which consent shall not be unreasonably withheld:

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(a) fail to file timely any report required to be filed by it with Regulatory Authorities, including the SEC; or

(b) take any action that would cause the ANB Common Stock to cease to be traded on the NASDAQ or another national securities exchange; provided, however, that any action or transaction in which the ANB Common Stock is converted into cash or another marketable security that is traded on a national securities exchange shall not be deemed a violation of this Section 7.3(b).

**7.4 Adverse Changes in Condition.** 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 that (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 commercially reasonable efforts to prevent or promptly to remedy the same.

**7.5 Reports.** Each Party and its Subsidiaries shall file all reports required to be filed by it with Regulatory Authorities between the date of this Agreement and the Effective Time, and each Party shall deliver to the other Party copies of all such reports filed by CBI or its Subsidiaries promptly after the same are filed.

**7.6 Acquisition Proposals.**

(a) Except with respect to this Agreement and the transactions provided for herein, CBI expressly agrees that neither CBI nor any of its Subsidiaries, nor any representative retained by CBI or any of its Subsidiaries or any Affiliate thereof will solicit or encourage the submission of any Acquisition Proposal by any Person until the earlier of the termination of this Agreement or the consummation of the Merger. CBI, acting through the CBI Board or otherwise, agrees that it shall not, except in accordance with Section 7.6(b) below, (i) withdraw, modify or change its recommendation to its stockholders with respect to approval of this Agreement or the Merger, (ii) resolve to engage in any Acquisition Proposal, (iii) recommend to the stockholders of CBI any Acquisition Proposal, or (iv) make any public announcement of a proposal, plan, or intention to do any of the foregoing or enter into and have any agreement, written or oral, to enter into, any agreement, contract, understanding or arrangement to engage in any of the foregoing.

(b) Notwithstanding the above, to the extent required by the fiduciary obligations of the CBI Board, as determined in good faith by a majority of the disinterested members of the CBI Board based on the written advice of CBI's outside counsel, the CBI Board may, within 60 days of the date of this Agreement:

(i) in response to a bona fide unsolicited request therefor, participate in discussions or negotiations with, or furnish information with respect to CBI (pursuant to a confidentiality agreement on terms no less favorable to it than the Confidentiality Agreement between ANB and CBI) to, any person concerning an Acquisition Proposal involving CBI or any of its Subsidiaries; and

(ii) approve or recommend (and, in connection therewith withdraw or modify its approval or recommendation of this Agreement or the Merger) a Superior Proposal.

CBI shall promptly advise ANB in writing of any Acquisition Proposal involving CBI or any of its Subsidiaries or any inquiry with respect to or which could lead to any such Superior Proposal and the identity of the Person making any such Acquisition Proposal or inquiry and will keep ANB fully informed of the status and details of any such Acquisition Proposal or inquiry. Notwithstanding anything to the contrary herein or elsewhere, neither CBI nor the CBI Board shall take any of the actions identified in Section 7.6(a) above or terminate this Agreement pursuant to subsection 10.1(j) unless and until CBI has complied with the notice requirements set forth in the preceding sentence and has provided ANB, at ANB's sole option and election, a reasonable opportunity to match the terms of any such Superior Proposal, in which case CBI shall accept ANB's reconstituted offer, if any, in lieu of such other Acquisition Proposal.

**7.7 NASDAQ Qualification.** ANB shall, prior to the Effective Time, take commercially reasonable steps to ensure that all ANB Common Stock to be issued in the Merger is designated as a NASDAQ "national market system security" within the meaning of Rule 11Aa2-1 of the SEC.

**7.8 Directors' and Officers' Indemnification.**

(a) For a period of three (3) years after the Effective Time, ANB shall (either directly or by securing insurance coverage) indemnify, defend and hold harmless each director and executive officer of CBI holding office immediately prior to the Effective Time (an "Indemnified Party") against all liabilities arising out of actions or omissions occurring upon or prior to the Effective Time (including without limitation the transactions provided for in this Agreement) to the maximum extent authorized under the articles of incorporation and bylaws of CBI as in effect on the date of this Agreement, subject to the limitations of applicable Law, including, without limitation, Section 607.0850 of the FBCA. During the period beginning on the third (3<sup>rd</sup>) anniversary of the Effective Time and ending on the sixth (6<sup>th</sup>) anniversary of the Effective Time, ANB shall (either directly or by securing insurance coverage) indemnify, defend and hold harmless each Indemnified Party against all liabilities arising out of actions or omissions occurring upon or prior to the Effective Time (including without limitation the transactions provided for in this Agreement) to the extent mandated under the articles of incorporation and bylaws of CBI as in effect on the date of this Agreement, subject to the limitations of applicable Law, including, without limitation, Section 607.0850 of the FBCA.

(b) Any Indemnified Party wishing to claim indemnification under Section 7.8(a) above upon learning of any such liability or litigation, shall promptly notify ANB thereof. In the event of any such litigation (whether arising before or after the Effective Time), (i) ANB shall have the right to assume the defense thereof, and ANB 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 ANB elects not to assume such defense or counsel for the Indemnified Parties advises that there are substantive issues which raise conflicts of interest between ANB and the Indemnified Parties, the Indemnified Parties may retain counsel satisfactory to them, and ANB shall pay all reasonable fees and expenses of such counsel for the Indemnified Parties; provided, that ANB shall be obligated to pay for only one firm of counsel for all Indemnified Parties in any jurisdiction; (ii) the Indemnified Parties will cooperate in the defense of any such litigation; and (iii) ANB shall not be liable for any settlement effected without its prior written consent; and provided

further, that ANB shall not have any obligation hereunder to any Indemnified Party when and if a court of competent jurisdiction shall determine, and such determination shall have become final, that the indemnification of such Indemnified Party in the manner provided for herein is prohibited by applicable Law.

## **ARTICLE 8**

### **ADDITIONAL AGREEMENTS**

#### **8.1 Regulatory Matters.**

(a) ANB shall promptly prepare and file the S-4 Registration Statement with the SEC after the date hereof. ANB shall use its commercially reasonable efforts to have the S-4 Registration Statement declared effective under the 1933 Act as promptly as practicable after such filing. Once the S-4 Registration Statement has been declared effective by the SEC, CBI shall mail the Proxy Statement/Prospectus to its stockholders simultaneously with delivery of notice of the meeting of stockholders called to approve the Merger. ANB shall also use its commercially reasonable efforts to obtain all necessary state securities Law or "Blue Sky" permits and approvals required to carry out the transaction provided for in this Agreement, and CBI shall furnish all information concerning CBI and the holders of CBI Common Stock as may be requested in connection with any such action. If at any time prior to the Effective Time of the Merger any event shall occur which should be set forth in an amendment of, or a supplement to, the Proxy Statement/Prospectus, CBI will promptly inform ANB and cooperate and assist ANB in preparing such amendment or supplement and mailing the same to the stockholders of CBI. Subject to Section 7.6(b) of this Agreement, the CBI Board shall recommend that the holders of CBI Common Stock vote for and adopt the Merger provided for in the Proxy Statement/Prospectus and this Agreement.

(b) The Parties shall cooperate with each other and use their commercially reasonable efforts to promptly prepare and file all necessary documentation, to effect all applications, notices, petitions and filings and to obtain as promptly as practicable all Consents of all third parties and Regulatory Authorities which are necessary or advisable to consummate the transactions provided for in this Agreement. ANB and CBI shall have the right to review in advance, and to the extent practicable each will consult the other on, in each case subject to applicable Laws relating to the exchange of information, all the information relating to ANB or CBI, as the case may be, and any of their respective Subsidiaries, which appear in any filing made with, or written materials submitted to, any third party or any Regulatory Authority in connection with the transactions provided for in this Agreement. In exercising the foregoing right, each of the Parties hereto shall act reasonably and as promptly as practicable. The Parties hereto agree that they will consult with each other with respect to the obtaining of all Permits and Consents, approvals and authorizations of all third parties and Regulatory Authorities necessary or advisable to consummate the transactions provided for in this Agreement, and each Party will keep the other apprised of the status of matters relating to completion of the transactions provided for in this Agreement.

(c) ANB and CBI shall, upon request, furnish each other all information concerning themselves, their Subsidiaries, directors, officers and stockholders and such other matters that

may be reasonably necessary or advisable in connection with the Proxy Statement/Prospectus, the S-4 Registration Statement or any other statement, filing, notice or application made by or on behalf of ANB, CBI or any of their Subsidiaries to any Regulatory Authority in connection with the Merger and the other transactions provided for in this Agreement.

(d) ANB and CBI shall promptly furnish each other with copies of all applications, notices, petitions and filings with all Regulatory Authorities, and all written communications received by ANB or CBI, as the case may be, or any of their respective Subsidiaries, Affiliates or associates from, or delivered by any of the foregoing to, any Regulatory Authority, in respect of the transactions provided for herein.

(e) ANB will indemnify and hold harmless CBI and its officers and directors and CBI will indemnify and hold harmless ANB and its directors and officers, from and against any and all actions, causes of actions, losses, damages, expenses or Liabilities to which any such entity, or any director, officer or controlling person thereof, may become subject under applicable Laws (including the 1933 Act and the 1934 Act) and rules and regulations thereunder and will reimburse the other, and any such director, officer or controlling person for any legal or other expenses reasonably incurred in connection with investigating or defending any actions, whether or not resulting in liability, insofar as such losses, damages, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any application, notice, petition, and filing with any Regulatory Authority or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein, or necessary in order to make the statement therein not misleading, but only insofar as any such statement or omission was made in reliance upon and in conformity with information furnished in writing in connection therewith by such indemnifying Party for use therein.

## **8.2 Access to Information.**

(a) Upon reasonable notice and subject to applicable Laws relating to the exchange of information, from the date of this Agreement, ANB and CBI shall, and shall cause each of their respective Subsidiaries to, afford to the officers, employees, accountants, counsel and other representatives of the other, access during the period prior to the Effective Time, to all its properties, books, contracts, commitments and records and, during such period, each of ANB and CBI shall, and shall cause each of their respective Subsidiaries to, make available to the other (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the Securities Laws or federal or state banking Laws (other than reports or documents which such Party is not permitted to disclose under applicable Law, in which case such Party shall notify the other Party of the nondisclosure and the nature of such information) and (ii) also other information concerning its business, properties and personnel as the other party may reasonably request.

(b) All information furnished by ANB to CBI or its representatives pursuant hereto shall be treated as the sole property of ANB and, if the Merger shall not occur, CBI and its representatives shall return to ANB all of such written information and all documents, notes, summaries or other materials containing, reflecting or referring to, or derived from, such information. CBI shall, and shall use its commercially reasonable efforts to cause its

representatives to, keep confidential all such information, and shall not directly or indirectly use such information for any competitive or other commercial purpose. The obligation to keep such information confidential shall continue for five years from the date the proposed Merger is abandoned and shall not apply to (i) any information which (x) was already in CBI's possession prior to the disclosure thereof by ANB; (y) was then generally known to the public; or (z) was disclosed to CBI by a third party not bound by an obligation of confidentiality, or (ii) disclosures made as required by Law.

(c) All information furnished by CBI or its Subsidiaries to ANB or its representatives pursuant hereto shall be treated as the sole property of CBI and, if the Merger shall not occur, ANB and its representatives shall return to CBI all of such written information and all documents, notes, summaries or other materials containing, reflecting or referring to, or derived from, such information. ANB shall, and shall use its commercially reasonable efforts to cause its representatives to, keep confidential all such information, and shall not directly or indirectly use such information for any competitive or other commercial purpose. The obligation to keep such information confidential shall continue for five years from the date the proposed Merger is abandoned and shall not apply to (i) any information which (x) was already in ANB's possession prior to the disclosure thereof by CBI or any of its Subsidiaries; (y) was then generally known to the public; or (z) was disclosed to ANB by a third party not bound by an obligation of confidentiality, or (ii) disclosures made as required by Law.

(d) No investigation by either of the parties or their respective representatives shall affect the representations and warranties of the other set forth herein.

**8.3 Efforts to Consummate.** Subject to the terms and conditions of this Agreement, each of CBI and ANB shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective, as soon as practicable after the date of this Agreement, the transactions provided for in this Agreement, including without limitation obtaining of all of the Consents and satisfying the conditions contained in Article 9 hereof.

**8.4 CBI Stockholders' Meeting.** CBI shall call a meeting of its stockholders (the "CBI Stockholders' Meeting") to be held as soon as reasonably practicable after the date the S-4 Registration Statement is declared effective by the SEC for the purpose of voting upon this Agreement and such other related matters as it deems appropriate. In connection with the CBI Stockholders' Meeting, (a) CBI shall prepare with the assistance of ANB a notice of meeting; (b) ANB shall furnish all information concerning it that CBI may reasonably request in connection with conducting the CBI Stockholders' Meeting; (c) ANB shall prepare and furnish to CBI for distribution to CBI's stockholders the Proxy Statement/Prospectus; (d) CBI shall furnish all information concerning it that ANB may reasonably request in connection with preparing the Proxy Statement/Prospectus; (e) subject to Section 7.6(b) of this Agreement, the CBI Board shall recommend to its stockholders the approval of this Agreement; and (f) CBI shall use its best efforts to obtain its stockholders' approval. The Parties will use their commercially reasonable efforts to prepare a preliminary draft of the Proxy Statement/Prospectus within 30 days of the date of this Agreement, and will consult with one another on the form and content of the Proxy Statement/Prospectus (including the presentation of draft copies of such proxy materials to the other) prior to delivery to CBI's stockholders. CBI will use its commercially reasonable efforts

to deliver notice of the Stockholders' Meeting and the Proxy Statement/Prospectus as soon as practicable after the S-4 Registration Statement has been declared effective by the SEC.

**8.5 Certificate of Objections.** As soon as practicable (but in no event more than three (3) business days) after the CBI Stockholders' Meeting, CBI shall deliver to ANB a certificate of the Secretary of CBI containing the names of the stockholders of CBI that both (a) gave written notice prior to the taking of the vote on this Agreement at the CBI Stockholders' Meeting that they dissent from the Merger, and (b) voted against approval of this Agreement or abstained from voting with respect to the approval of this Agreement ("Certificate of Objections"). The Certificate of Objections shall include the number of shares of CBI Common Stock held by each such stockholder and the mailing address of each such stockholder.

**8.6 Publicity.** Neither ANB nor CBI shall, or shall permit any of their respective Subsidiaries or affiliates to issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public disclosure concerning, the transactions provided for in this Agreement without the consent of the other Party, which consent will not be unreasonably withheld; provided, however, that nothing in this Section 8.6 shall be deemed to prohibit any Party from making any disclosure which it deems necessary or advisable, with the advice of counsel, in order to satisfy such Party's disclosure obligations imposed by Law or the rules of NASDAQ.

**8.7 Expenses.** All costs and expenses incurred in connection with the transactions provided for in this Agreement, including without limitation, attorneys' fees, accountants' fees, other professional fees and costs related to expenses of officers and directors of CBI and the CBI Companies, shall be paid by the party incurring such costs and expenses; provided, however, without the consent of ANB, all such costs and expenses incurred by CBI and the CBI Companies shall not exceed \$65,000, exclusive of the Broker's Fee, accountants' fees, the expenses contemplated by Sections 8.12 and 9.2(f), and the adjustments contemplated by Section 8.14, of this Agreement. Each Party hereby agrees to and shall indemnify the other Party against any liability arising from any such fee or payment incurred by such Party. Nothing contained herein shall limit either Party's rights under Article 10 to recover any damages arising out of a Party's willful breach of any provision of this Agreement.

**8.8 Failure to Close.**

(a) ANB expressly agrees to consummate the transactions provided for herein upon the completion of all conditions to Closing and shall not take any action reasonably calculated to prevent the Closing and shall not unreasonably delay any action reasonably required to be taken by it to facilitate the Closing.

(b) CBI expressly agrees to consummate the transactions provided for herein upon the completion of all conditions to Closing and shall not take any action reasonably calculated to prevent the Closing and shall not unreasonably delay any action reasonably required to be taken by it to facilitate the Closing.

**8.9 Fairness Opinion.** The CBI Board has engaged The Carson Medlin Company (the "CBI Financial Advisor") to act as advisor to the CBI Board during the transaction and to

opine separately as to the fairness from a financial point of view of the Exchange Ratio to the CBI shareholders. CBI has received from the CBI Financial Advisor an opinion that, as of the date hereof, the Exchange Ratio is fair to the shareholders of CBI from a financial point of view. The CBI Board may, at its option, elect to have the final fairness opinion updated immediately prior to the Effective Time in order to account for any Material Adverse Effect that may have occurred with regard to ANB or CBI.

**8.10 Tax Treatment.** Each of the Parties undertakes and agrees to use its commercially reasonable efforts to cause the Merger, and to take no action which would cause the Merger not to qualify as a "reorganization" within the meaning of Section 368(a) of the IRC for federal income tax purposes.

**8.11 Agreement of Affiliates.** CBI has disclosed on Schedule 8.11 each Person whom it reasonably believes is an "affiliate" of CBI for purposes of Rule 145 under the 1933 Act. CBI shall cause each such Person to deliver to ANB not later than 30 days after the date of this Agreement a written agreement, substantially in the form of Exhibit A providing that such Person will not sell, pledge, transfer, or otherwise dispose of the shares of CBI Common Stock held by such Person except as contemplated by such agreement or by this Agreement and will not sell, pledge, transfer, or otherwise dispose of the shares of ANB Common Stock to be received by such Person upon consummation of the Merger, except in compliance with applicable provisions of the 1933 Act and the rules and regulations thereunder (and ANB shall be entitled to place restrictive legends upon certificates for shares of ANB Common Stock issued to affiliates of CBI pursuant to this Agreement to enforce the provisions of this Section 8.11). ANB shall not be required to maintain the effectiveness of the Registration Statement under the 1933 Act for the purposes of resale of ANB Common Stock by such affiliates.

**8.12 Environmental Audit; Title Policy; Survey.**

(a) At the election of ANB, CBI will procure and deliver, at ANB's expense, with respect to each parcel of real property that any of the CBI Companies owns, leases, subleases or is obligated to purchase, at least thirty (30) days prior to the Effective Time, whatever environmental audits as ANB may request, which audits shall be reasonably acceptable to and shall be conducted by a firm reasonably acceptable to ANB.

(b) At the election of ANB, CBI will, at ANB's expense, with respect to each parcel of real property that CBI or CBI Bank owns, leases, subleases or is obligated to purchase, procure and deliver to ANB, at least thirty (30) days prior to the Effective Time, a commitment to issue owner's title insurance in such amounts and by such insurance company reasonably acceptable to ANB, which policy shall be free of all material Liens and exceptions to ANB's reasonable satisfaction.

(c) At the election of ANB, with respect to each parcel of real property as to which a title insurance policy is to be procured pursuant to subsection (b) above, CBI, at ANB's expense, will procure and deliver to ANB at least thirty (30) days prior to the Effective Time, a survey of such real property, which survey shall be reasonably acceptable to and shall be prepared by a licensed surveyor reasonably acceptable to ANB, disclosing the locations of all improvements, easements, sidewalks, roadways, utility lines and other matters customarily shown on such



surveys and showing access affirmatively to public streets and roads and providing the legal description of the property in a form suitable for recording and insuring the title thereof. Such surveys shall not disclose any survey defect or encroachment from or onto such real property that has not been cured or insured over prior to the Effective Time. In addition, CBI shall deliver to ANB a complete legal description for each parcel of real estate or interest owned, leased or subleased by any CBI Company or in which any CBI Company has any ownership or leasehold interest.

**8.13 Compliance Matters.** Prior to the Effective Time, CBI shall take, or cause to be taken, all commercially reasonable steps requested by ANB to cure any deficiencies in regulatory compliance by CBI or CBI Bank; provided, however, that ANB shall not be responsible for discovering such defects, shall not have any obligation to disclose the existence of such defects to CBI, and shall not have any liability resulting from such deficiencies or attempts to cure them.

**8.14 Conforming Accounting and Reserve Policies.** At the request of ANB, CBI shall immediately prior to Closing establish and take such charge offs, reserves and accruals as ANB reasonably shall request to conform CBI Bank's loan, accrual, capital, reserve and other accounting policies to the policies of ANB (collectively, the "Conforming Adjustments").

**8.15 Notice of Deadlines.** Schedule 8.15 lists the deadlines for extensions or terminations of any material leases, agreements or licenses (including specifically real property leases and data processing agreements) to which CBI or CBI Bank is a party.

**8.16 Fixed Asset Inventory.** At ANB's request, at least thirty (30) days prior to the Effective Time, CBI shall take, or shall cause to be taken, an inventory of all fixed assets of the CBI Companies to verify the presence of all items listed on their respective depreciation schedules, and CBI shall allow ANB's representatives, at the election of ANB, to participate in or be present for such inventory and shall deliver to ANB copies of all records and reports produced in connection with such inventory.

**8.17 Certain Terms of Employment.** Prior to the Closing, ANB and CBI will use their commercially reasonable efforts to negotiate mutually satisfactory terms of employment with each of Patrick Kelly and Mary Stetler.

**8.18 Section 280G Matters.** Prior to the Closing, ANB and CBI shall work together in good faith to implement mutually satisfactory arrangements such that the Merger will not trigger or result in any payment, including without limitation any "excess parachute payment" as defined in Section 280G of the IRC, that could be disallowed as a deduction or result in the payment of excise taxes under Section 280G or 162(m) of the IRC.

#### **8.19 CBI Bank.**

(a) As a result of the Merger, CBI Bank will become a wholly-owned subsidiary of ANB. It is ANB's intention that, in addition to one or more officers of ANB, the incumbent board of directors of CBI Bank will remain in place after the Merger, subject to each board member's continued willingness to serve on this board, annual re-election, shareholders' rights to appoint and remove directors, and the requirements of applicable Law and CBI Bank's articles of incorporation and bylaws.

(b) If, within six (6) months of the Effective Time, any employee of CBI Bank is terminated by ANB solely as a result of the Merger (*i.e.*, elimination of duplicative jobs, etc.), and not as a result of inadequate performance or other good cause, ANB will cause CBI Bank to pay severance to each such employee in an amount equal to one week's pay for each six (6) months of such employee's prior employment; *provided, however*, that in no event will the total amount of severance for any single employee exceed \$15,000 in the aggregate.

### **ARTICLE 9**

#### **CONDITIONS PRECEDENT TO OBLIGATIONS TO CONSUMMATE**

**9.1 Conditions to Obligations of Each Party.** The respective obligations of each Party to perform this Agreement and consummate the Merger and the other transactions provided for herein are subject to the satisfaction of the following conditions, unless waived by both Parties pursuant to Section 11.4 of this Agreement:

(a) **Stockholder Approval.** The stockholders of CBI shall have approved this Agreement by the requisite vote, and the consummation of the transactions provided for herein, as and to the extent required by Law and by the provisions of any governing instruments, and CBI shall have furnished to ANB certified copies of resolutions duly adopted by its stockholders evidencing same.

(b) **Regulatory Approvals.** All Consents of, filings and registrations with, and notifications to, all Regulatory Authorities required for consummation of the Merger shall have been obtained or made and shall be in full force and effect and all notice and waiting periods required by Law to have passed after receipt of such Consents shall have expired. No Consent obtained from any Regulatory Authority that is necessary to consummate the transactions provided for herein shall be conditioned or restricted in a manner (including without limitation requirements relating to the raising of additional capital or the disposition of Assets) which in the reasonable judgment of the Board of Directors of either Party would so materially adversely impact the economic or business benefits of the transactions provided for in this Agreement as to render inadvisable the consummation of the Merger.

(c) **Consents and Approvals.** Each Party shall have obtained any and all Consents required for consummation of the Merger (other than those referred to in Section 9.1(b) of this Agreement) or for the preventing of any Default under any Contract or Permit of such Party which, if not obtained or made, is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on such Party. No Consent so obtained which is necessary to consummate the transactions provided for herein shall be conditioned or restricted in a manner

which in the reasonable judgment of the Board of Directors of either Party would so materially adversely impact the economic or business benefits of the transactions contemplated by this Agreement as to render inadvisable the consummation of the Merger.

(d) **Legal Proceedings.** No court or Regulatory Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) or taken any other action that prohibits, restricts or makes illegal consummation of the transactions provided for in this Agreement. No action or proceeding shall have been instituted by any Person, and the Parties shall not have Knowledge of any threatened action or proceeding by any Person, which seeks to restrain the consummation of the transactions provided for in this Agreement which, in the opinion of the ANB Board or the CBI Board, renders it impossible or inadvisable to consummate the transactions provided for in this Agreement.

(e) **Tax Opinion.** CBI and ANB shall have received a written opinion of counsel from Maynard, Cooper & Gale, P.C. in form reasonably satisfactory to them (the "Tax Opinion"), to the effect that (i) the Merger will constitute a reorganization within the meaning of Section 368(a) of the IRC, (ii) the exchange in the Merger of CBI Common Stock for ANB Common Stock will not give rise to gain or loss to the stockholders of CBI with respect to such exchange (except to the extent of any cash received), and (iii) neither CBI nor ANB will recognize gain or loss as a consequence of the Merger (except for income and deferred gain recognized pursuant to Treasury regulations issued under Section 1502 of the IRC). In rendering such Tax Opinion, counsel for ANB shall be entitled to rely upon representations of officers of CBI and ANB reasonably satisfactory in form and substance to such counsel.

(f) **S-4 Registration Statement Effective.** The S-4 Registration Statement shall have been declared effective under the 1933 Act by the SEC and no stop order suspending the effectiveness of the S-4 Registration Statement shall have been issued and no action, suit, proceeding or investigation for that purpose shall have been initiated or threatened by the SEC. ANB shall have received all state securities Laws, or "blue sky" permits or other authorizations, or confirmations as to the availability of exemptions from registration requirements, as may be necessary to issue the ANB Common Stock pursuant to the terms of this Agreement.

(g) **Section 280G Matters.** Each of the Parties shall be satisfied that the Merger will not trigger or result in any payment, including without limitation any "excess parachute payment" as defined in Section 280G of the IRC, that could be disallowed as a deduction or result in the payment of excise taxes under Section 280G or 162(m) of the IRC.

**9.2 Conditions to Obligations of ANB.** The obligations of ANB to perform this Agreement and consummate the Merger and the other transactions provided for herein are subject to the satisfaction of the following conditions, unless waived by ANB pursuant to subsection 11.4(a) of this Agreement:

(a) **Representations and Warranties.** The representations and warranties of CBI set forth or referred to in this Agreement and in any certificate or document delivered pursuant to the provisions hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations

and warranties had been made on and as of the Effective Time (provided that representations and warranties which are confined to a specified date shall speak only as of such date), except as expressly contemplated by this Agreement.

(b) **Performance of Obligations.** Each and all of the agreements, obligations and covenants of CBI to be performed and complied with pursuant to this Agreement and the other agreements provided for herein prior to the Effective Time shall have been duly performed and complied with in all material respects.

(c) **Certificates.** CBI shall have delivered to ANB (i) a certificate, dated as of the Effective Time and signed on its behalf by its chief executive officer and its chief financial officer, to the effect that the conditions to ANB's obligations set forth in subsections 9.2(a) and 9.2(b) of this Agreement have been satisfied, and (ii) certified copies of resolutions duly adopted by the CBI Board and the CBI stockholders evidencing the taking of all corporate action necessary to authorize the execution, delivery and performance of this Agreement, and the consummation of the transactions provided for herein, all in such reasonable detail as ANB and its counsel shall request.

(d) **Opinion of Counsel.** CBI shall have delivered to ANB an opinion of Smith Mackinnon, P.A., counsel to CBI, dated as of the Closing, in substantially the form of Exhibit B hereto.

(e) **Net Worth and Capital Requirements.** Immediately prior to the Effective Time, each of CBI and CBI Bank shall have a minimum net worth of \$8.25 million. For purposes of this Section 9.2(e), "net worth" shall mean, without regard to the Conforming Adjustments or the results of any mutually agreeable payments or actions pursuant to Section 8.18 above, the sum of the amounts set forth on the balance sheet as stockholders' equity (including the par or stated value of all outstanding capital stock, retained earnings, additional paid-in capital, capital surplus and earned surplus), less the sum of (a) any amounts at which shares of capital stock of such person appear on the asset side of the balance sheet and (b) any amounts due from or owed by any Subsidiary thereof; provided, however, that unrealized gains or losses on securities classified as "available for sale" shall be disregarded for purposes of calculating "net worth."

(f) **Comfort Letter.** ANB shall have received from Osburn, Henning and Company, independent certified public accountants, a comfort letter dated as of the Effective Time with respect to such matters relating to the financial condition of CBI as ANB may reasonably request.

(g) **Conforming Adjustments.** The Conforming Adjustments shall have been made to the satisfaction of ANB in its sole discretion.

(h) **Employment Agreements.** (i) ANB shall have received documentation reasonably satisfactory to ANB that the Employment Agreements with Bruce Page, James Weite and Thomas Hury shall be terminated as of the Effective Time without any penalty, fee or cost to ANB or any CBI Company (except as may be agreed to by the Parties); (ii) Bruce Page and James Weite shall have entered into new Employment Agreements with CBI Bank in

substantially the form attached as Exhibit C hereto; and (iii) Thomas Hury shall have entered into a new Employment Agreement with CBI Bank in substantially the form attached hereto as Exhibit D.

(i) **Employee Matters.** ANB shall have received such evidence and documentation as it shall have reasonably requested evidencing that, effective immediately prior to the Effective Time: (i) that certain Client Service Agreement between CBI Bank and Paychex Business Solutions, Inc. (the "Paychex Agreement") has been terminated in full with no penalty or premium payable by CBI, CBI Bank or ANB; (ii) each of the employees previously leased to CBI Bank pursuant to the Paychex Agreement has become a direct employee of CBI Bank; and (iii) the assets of such employees in benefit plans maintained pursuant to the Paychex Agreement may be transferred into benefit plans maintained by ANB at no cost to ANB, CBI Bank, or such employees.

(j) **Regulatory Matters.** No agency or department of federal, state or local government or any Regulatory Authority or the staff thereof shall have (i) asserted that any CBI Company is not in material compliance with any of the Laws or Orders that such governmental authority or Regulatory Authority enforces, (ii) revoked any material Permits, or (iii) issued, or required any CBI Company to consent to the issuance or adoption of, a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or any board resolution or similar undertaking, that, in the reasonable estimation of ANB, restricts or impairs the conduct of such CBI Company's business or future prospects.

(k) **Absence of Adverse Facts.** There shall have been no determination by ANB in good faith that any fact, event or condition exists or has occurred that, in the judgment of ANB, (a) would have a Material Adverse Effect on, or which may be foreseen to have a Material Adverse Effect on, CBI or CBI Bank or the consummation of the transactions provided for in this Agreement, (b) would be of such significance with respect to the business or economic benefits expected to be obtained by ANB pursuant to this Agreement as to render inadvisable the consummation of the transactions pursuant to this Agreement, (c) would be materially adverse to the interests of ANB on a consolidated basis or (d) would render the Merger or the other transactions provided for in this Agreement impractical because of any state of war, national emergency, banking moratorium or general suspension of trading on NASDAQ, the New York Stock Exchange, Inc. or other national securities exchange.

(l) **Consents Under Agreements.** CBI shall have obtained the consent or approval of each Person (other than the Consents of the Regulatory Authorities) whose consent or approval shall be required in order to permit the succession by the Surviving Corporation to, or the continuation by CBI Bank of, as the case may be, any obligation, right or interest of CBI or CBI Bank under any loan or credit agreement, note, mortgage, indenture, lease, license, or other agreement or instrument, except those for which failure to obtain such consents and approvals would not in the reasonable opinion of ANB, individually or in the aggregate, have a Material Adverse Effect on the Surviving Corporation or CBI Bank or upon the consummation of the transactions provided for in this Agreement.

(m) **Material Condition.** There shall not be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger by any

Regulatory Authority which, in connection with the grant of any Consent by any Regulatory Authority, imposes, in the judgment of ANB, any material adverse requirement upon ANB or any ANB Subsidiary, including without limitation any requirement that ANB sell or dispose of any significant amount of the assets of CBI, CBI Bank and their respective subsidiaries, or any other ANB Subsidiary, provided that, except for any such requirement relating to the above-described sale or disposition of any significant assets of CBI or any ANB Subsidiary, no such term or condition imposed by any Regulatory Authority in connection with the grant of any Consent by any Regulatory Authority shall be deemed to be a material adverse requirement unless it materially differs from terms and conditions customarily imposed by any such entity in connection with the acquisition of banks, savings associations and bank and savings association holding companies under similar circumstances.

(n) **Certification of Claims.** CBI shall have delivered a certificate to ANB that CBI is not aware of any pending, threatened or potential claim against the directors or officers of CBI or CBI Bank or under the directors and officers insurance policy or the fidelity bond coverage of CBI or any CBI Company.

(o) **Increase in Borrowing.** As of the date of any Financial Statement of CBI, any Financial Statement of CBI Bank or any Call Report of CBI Bank subsequent to the execution of this Agreement, including the date of the Financial Statements of CBI, the Financial Statements of CBI Bank and the Call Report of CBI Bank that immediately precede the Effective Time, there shall not have been any material increase in the loan agreements, notes or borrowing arrangements described in Section 5.9(a) and in Schedule 5.9(a) except for purchases of federal funds.

**9.3 Conditions to Obligations of CBI.** The obligations of CBI to perform this Agreement and consummate the Merger and the other transactions provided for herein are subject to the satisfaction of the following conditions, unless waived by CBI pursuant to subsection 11.4(b) of this Agreement:

(a) **Representations and Warranties.** The representations and warranties of ANB set forth or referred to in this Agreement and in any certificate of document delivered pursuant to the provisions hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties which are confined to a specified date shall speak only as of such date), except as expressly contemplated by this Agreement.

(b) **Performance of Obligations.** Each and all of the agreements, obligations and covenants of ANB to be performed and complied with pursuant to this Agreement and the other agreements provided for herein prior to the Effective Time shall have been duly performed and complied with in all material respects.

(c) **Certificates.** ANB shall have delivered to CBI (i) a certificate, dated as of the Effective Time and signed on its behalf by its chief executive officer and its chief financial officer, to the effect that the conditions to CBI's obligations set forth in subsections 9.3(a) and 9.3(b) of this Agreement have been satisfied, and (ii) certified copies of resolutions duly adopted

by the ANB Board evidencing the taking of all corporate action necessary to authorize the execution, delivery and performance of this Agreement, and the consummation of the transactions provided for herein, all in such reasonable detail as CBI and its counsel shall request.

(d) **Opinion of Counsel.** ANB shall have delivered to CBI an opinion of Maynard, Cooper & Gale, P.C., counsel to ANB, dated as of the Effective Time, in substantially the form of Exhibit E hereto.

(e) **Comfort Letter.** CBI shall have received from PricewaterhouseCoopers, LLP, independent certified public accountants, a comfort letter dated as of the Effective Time with respect to such matters relating to the financial condition of ANB as CBI may reasonably request.

(f) **Fairness Opinion.** CBI shall have received from the CBI Financial Advisor the fairness opinion described in Section 8.9, dated prior to or as of the date the Proxy Statement/Prospectus is delivered to CBI's stockholders in connection with the solicitation of their approval of the Merger, stating that the Exchange Ratio provided for in this Agreement and recommended by CBI to its stockholders is fair to CBI and its stockholders from a financial point of view and such fairness opinion shall not have been withdrawn by the CBI Financial Advisor as of the Effective Time.

(g) **ANB Common Stock.** The ANB Common Stock to be issued in the Merger shall have been qualified as a NASDAQ "national market system security" pursuant to Section 7.7 hereof.

(h) **Regulatory Matters.** No agency or department of federal, state or local government, or any Regulatory Authority or the staff thereof shall have (i) asserted that any ANB Company is not in material compliance with any of the Laws or Orders that such governmental authority or Regulatory Authority enforces, or (ii) issued, or required any ANB Company to consent to the issuance or adoption of, a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or any board resolution or similar undertaking that, in the reasonable estimation of CBI, restricts or impairs the conduct of such ANB Company's business or future prospects.

## **ARTICLE 10** **TERMINATION**

**10.1 Termination.** Notwithstanding any other provision of this Agreement, and notwithstanding the approval of this Agreement by the stockholders of CBI, this Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:

- (a) by mutual written consent of the ANB Board and the CBI Board; or
- (b) by the ANB Board or the CBI Board in the event of an inaccuracy of any representation or warranty 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 inaccuracy and which inaccuracy is reasonably likely, in the opinion of the non-breaching Party, to have, individually or in the aggregate, a Material Adverse Effect on the breaching Party; or

(c) by the ANB Board or the CBI Board in the event of a material breach by the other Party of any covenant, agreement or other obligation 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; or

(d) by the ANB Board or the CBI Board (provided that the terminating Party is not then in material breach of any representation, warranty, covenant, agreement or other obligation contained in this Agreement) if (i) any Consent of any Regulatory Authority required for consummation of the Merger and the other transactions provided for herein shall have been denied by final nonappealable action of such authority or if any action taken by such Authority is not appealed within the time limit for appeal, or (ii) the stockholders of CBI fail to vote their approval of this Agreement and the transactions provided for herein as required by applicable Law at its Stockholders' Meeting where the transactions are presented to such CBI stockholders for approval and voted upon; or

(e) by the ANB Board, if, notwithstanding any disclosures in the Schedules attached hereto or otherwise, (i) there shall have occurred any Material Adverse Effect with respect to CBI, or (ii) any facts or circumstances shall develop or arise after the date of this Agreement which are reasonably likely to cause or result in any Material Adverse Effect with respect to CBI, and such Material Adverse Effect (or such facts or circumstances) shall not have been remedied within fifteen (15) days after receipt by CBI of notice in writing from ANB specifying the nature of such Material Adverse Effect and requesting that it be remedied; or

(f) by the CBI Board, if (i) there shall have occurred any Material Adverse Effect with respect to ANB, or (ii) any facts or circumstances shall develop or arise after the date of this Agreement which are reasonably likely to cause or result in any Material Adverse Effect with respect to ANB, and such Material Adverse Effect (or such facts or circumstances) shall not have been remedied within fifteen (15) days after receipt by ANB of notice in writing from CBI specifying the nature of such Material Adverse Effect and requesting that it be remedied; or

(g) by the ANB Board or the CBI Board if the Merger shall not have been consummated by April 30, 2004, if the failure to consummate the transactions provided for herein on or before such date is not caused by any breach of this Agreement by the Party electing to terminate pursuant to this Section 10.1(g); or

(h) by the ANB Board or the CBI Board if any of the conditions precedent to the obligations of such Party to consummate the Merger cannot be satisfied or fulfilled by the date specified in Section 10.1(g) of this Agreement and such failure was not the fault of the terminating party; or

(i) by the ANB Board if the holders of in excess of five percent (5%) of the outstanding shares of CBI Common Stock properly assert their dissenters' rights of appraisal pursuant to the Dissenters' Provisions; or



(j) subject to the terms and conditions of Section 7.6, by the CBI Board, if a majority of the disinterested members of the CBI Board shall have determined to enter into an agreement with respect to a Superior Proposal; or

(k) by the ANB Board if (A) the CBI Board shall have withdrawn, or adversely modified, or failed upon ANB's request to reconfirm its recommendation of the Merger or this Agreement (or determined to do so), (B) the CBI Board shall have determined to recommend to the stockholders of CBI that they approve an Acquisition Proposal other than that contemplated by this Agreement, (C) CBI fails to call the CBI Stockholders' Meeting or otherwise breaches its obligations in Section 8.4 hereof, or (D) any Person (other than CBI or an affiliate of CBI) or group becomes the beneficial owner of 50% or more of the outstanding shares of CBI Common Stock.

**10.2 Effect of Termination.** In the event of the termination and abandonment of this Agreement pursuant to Section 10.1 of this Agreement, this Agreement shall become void and have no effect, except that (i) the provisions of this Section 10.2 and Article 11 and Sections 8.2, 8.7 and 10.4 of this Agreement shall survive any such termination and abandonment, and (ii) a termination pursuant to Sections 10.1(b), 10.1(c), 10.1(g) or 10.1(h) of this Agreement shall not relieve the breaching Party from Liability for an uncured willful breach of a representation, warranty, covenant, obligation or agreement giving rise to such termination.

**10.3 Non-Survival of Representations and Covenants.** The respective representations, warranties, obligations, covenants and agreements of the Parties shall not survive the Effective Time, except for those covenants and agreements contained herein which by their terms apply in whole or in part after the Effective Time.

**10.4 Termination Fee.** In the event that this Agreement is terminated pursuant to Section 10.1(j) or Section 10.1(k), CBI shall pay to ANB within two business days of such termination a termination fee of \$1.0 million, in cash or other readily available funds, to reimburse ANB for its time, expense and lost opportunity costs of pursuing the Merger.

## **ARTICLE 11**

### **MISCELLANEOUS**

**11.1 Definitions.** Except as otherwise provided herein, the capitalized terms set forth below (in their singular and plural forms as applicable) shall have the following meanings:

**"Acquisition Proposal,"** with respect to CBI, means a tender or exchange offer, proposal for a merger, acquisition of all the stock or Assets of, consolidation or other business combination involving CBI or any of its Subsidiaries or any proposal or offer to acquire in any manner more than 15% of the voting power in, or more than 15% of the business, Assets or deposits of, CBI or any of its Subsidiaries, including a plan of liquidation of CBI or any of its Subsidiaries, other than the transactions contemplated by this Agreement.

**"Act"** shall mean the Federal Deposit Insurance Act.

**"1933 Act"** shall mean the Securities Act of 1933, as amended.

**"1934 Act"** shall mean the Securities Exchange Act of 1934, as amended.

**"Additional Optional Cash Consideration"** shall have the meaning provided in Section 3.1(b) of this Agreement.

**"Affiliate"** of a Person shall mean: (i) any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person; (ii) any officer, director, partner, employer, or direct or indirect beneficial owner of any 10% or greater equity or voting interest of such Person; or (iii) any other Person for which a Person described in clause (ii) acts in any such capacity.

**"Agreement"** shall mean this Agreement and Plan of Merger, including the Exhibits and Schedules delivered pursuant hereto and incorporated herein by reference. References to "the date of this Agreement," "the date hereof" and words of similar import shall refer to the date this Agreement was first executed, as indicated in the introductory paragraph on the first page hereof.

**"ANB"** shall mean Alabama National Bancorporation, a Delaware corporation.

**"ANB Board"** shall mean the Board of Directors of ANB.

**"ANB Common Stock"** shall mean the \$1.00 par value common stock of ANB.

**"ANB Companies"** shall mean, collectively, ANB and all ANB Subsidiaries.

**"ANB Financial Statements"** shall mean (i) the audited consolidated balance sheets (including related notes and schedules, if any) of ANB as of December 31, 2002, 2001 and 2000, and the related statements of income, changes in stockholders' equity and cash flows (including related notes and schedules, if any) for the years then ended, as delivered by ANB to CBI, and (ii) the consolidated balance sheets of ANB (including related notes and schedules, if any) and related statements of income, changes in stockholders' equity and cash flows (including related notes and schedules, if any) delivered by ANB to CBI with respect to periods ended subsequent to December 31, 2002.

**"ANB Option"** shall have the meaning given to such term in Section 3.1(d) hereof.

**"ANB Subsidiaries"** shall mean the Subsidiaries of ANB.

**"Articles of Merger"** shall mean the Articles of Merger to be signed by ANB and CBI and filed with the Secretary of State of Florida relating to the Merger as contemplated by Section 1.1 of this Agreement.

**"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.

**"Average Quoted Price"** shall mean the price derived by adding the averages of the high and low sales price of one share of ANB Common Stock as reported on NASDAQ on each of the ten (10) consecutive trading days ending on the fifth business day prior to the Effective Time, and dividing such sum by ten (10).

**"BHC Act"** shall mean the federal Bank Holding Company Act of 1956, as amended.

**"Broker's Fee"** shall have the meaning provided in Section 5.24 of the Agreement.

**"Cash Election Shares"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"CBI"** shall mean Cypress Bankshares, Inc., a Florida corporation.

**"CBI Allowance"** shall have the meaning provided for in Section 5.9(a) of this Agreement.

**"CBI Bank"** shall mean Cypress Bank, a Florida banking corporation.

**"CBI Benefit Plans"** shall have the meaning set forth in Section 5.14(a) of this Agreement.

**"CBI Board"** shall mean the Board of Directors of CBI.

**"CBI Call Reports"** shall mean (i) the Reports of Income and Condition of CBI Bank for the years ended December 31, 2002 and 2001, as filed with the FDIC; (ii) the Reports of Income and Condition of CBI Bank delivered by CBI to ANB with respect to periods ended subsequent to December 31, 2002; and (iii) the Consolidated Financial Statements for Bank Holding Companies, Form FRY 9C, delivered by CBI to ANB with respect to periods ended subsequent to December 31, 2002.

**"CBI Certificate"** shall have the meaning provided in Section 4.2 of this Agreement.

**"CBI Common Stock"** shall mean the \$5.00 par value voting common stock of CBI.

**"CBI Companies"** shall mean, collectively, CBI and all CBI Subsidiaries.

**"CBI Contracts"** shall have the meaning set forth in Section 5.15 of this Agreement.

**"CBI ERISA Plans"** shall have the meaning set forth in Section 5.14(a) of this Agreement.

**"CBI Financial Advisor"** shall have the meaning set forth in Section 8.9 of this Agreement.

**"CBI Financial Statements"** shall mean (i) the balance sheets (including related notes and schedules, if any) of CBI Bank as of December 31, 2002, 2001 and 2000, and the related statements of income, changes in stockholders' equity and cash flows (including related notes and schedules, if any) for the years then ended, as delivered by CBI to ANB, and (ii) the consolidated balance sheets of CBI (including related notes and schedules, if any) and related statements of income, changes in stockholders' equity and cash flows (including related notes and schedules, if any) delivered by CBI to ANB with respect to periods ended subsequent to December 31, 2002.

**"CBI Option"** shall have the meaning provided in Section 3.1(d) of this Agreement.

**"CBI Pension Plan"** shall have the meaning set forth in Section 5.14(a) of this Agreement.

**"CBI Stock Option Plans"** shall mean the Cypress Bank Directors' Stock Option Plan and the Cypress Bank Officers' and Employees' Stock Option Plan.

**"CBI Stockholders' Meeting"** shall mean the meeting of the stockholders of CBI to be held pursuant to Section 8.4 of this Agreement, including any adjournment or adjournments thereof.

**"CBI Subsidiaries"** shall mean the Subsidiaries of CBI, which shall include the CBI Subsidiaries described in Section 5.4 of this Agreement and any corporation, bank, savings association or other organization acquired as a Subsidiary of CBI in the future and owned by CBI at the Effective Time.

**"Certificate of Objections"** shall have the meaning provided in Section 8.5 of this Agreement.

**"Closing"** shall mean the closing of the Merger and the other transactions provided for herein, as described in Section 1.2 of this Agreement.

**"Conforming Adjustments"** shall have the meaning provided in Section 8.14 of this Agreement.

**"Consent"** shall mean any consent, approval, authorization, clearance, exemption, waiver or similar affirmation by any Person pursuant to any Contract, Law, Order or Permit.

**"Contract"** shall mean any 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.

**"Cutoff"** shall have the meaning provided in Section 4.2 of this Agreement.

**"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, where, in any such event, such Default is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on a Party.

**"DGCL"** shall mean the Delaware General Corporation Law, as amended.

**"Designated Representative"**

(a) with respect to CBI shall mean Bruce Page and/or James Weite; and

(b) with respect to ANB shall mean John H. Holcomb, III, William E. Matthews, V and/or Richard Murray, IV.

**"Dissenter Provisions"** shall have the meaning provided in Section 3.4 of this Agreement.

**"Dollar Equivalent Per Share Consideration"** shall have the meaning provided in Section 3.1(b) of this Agreement.

**"Effective Time"** shall mean the date and time at which the Merger becomes effective as provided in Section 1.3 of this Agreement.

**"Election Deadline"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"Election Form"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"Employment Laws"** shall mean all Laws relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, unemployment wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health and plant closing, including, but not limited to, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Equal Pay Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act, Workers' Compensation, Uniformed Services Employment and Re-Employment Rights Act of 1994, Older Workers Benefit Protection Act, Pregnancy Discrimination Act and the Worker Adjustment and Retraining Notification Act.

**"Environmental Laws"** shall mean all Laws which are administered, interpreted or enforced by the United States Environmental Protection Agency and state and local agencies with jurisdiction over pollution or protection of the environment.

**"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**"ERISA Affiliate"** shall have the meaning provided in Section 5.14(c) of this Agreement.

**"Exchange Agent"** shall mean SunTrust Bank, Atlanta, Georgia.

**"Exchange Ratio"** shall have the meaning given such term in Section 3.1(b) hereof.

**"FBCA"** shall mean the Florida Business Corporation Act, as amended.

**"FDIC"** shall mean the Federal Deposit Insurance Corporation.

**"FRB" or "Federal Reserve Board"** shall mean Board of Governors of the Federal Reserve System.

**"GAAP"** shall mean generally accepted accounting principles, consistently applied during the periods involved.

**"Hazardous Material"** shall mean any pollutant, contaminant, or hazardous substance within the meaning of the Comprehensive Environment Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, or any similar federal, state or local Law.

**"Internal Revenue Code"** shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**"Knowledge"** as used with respect to a Party shall mean the actual knowledge of the officers and directors of such Party and that knowledge that any director of the Party would have obtained upon a reasonable examination of the books, records and accounts of such Party and that knowledge that any officer of the Party would have obtained upon a reasonable examination of the books, records and accounts of such officer and such Party.

**"Law"** shall mean any code, law, ordinance, regulation, reporting or licensing requirement, rule, or statute applicable to a Person or its Assets, Liabilities or business, including without limitation those promulgated, interpreted or enforced by any of the Regulatory Authorities.

**"Liability"** shall mean any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including without limitation costs of investigation, collection and defense), claim, 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"** shall mean 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, (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 (ii) Liens which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on a Party.

**"Litigation"** shall mean any action, arbitration, cause of action, claim, complaint, criminal prosecution, demand letter, governmental or other examination or investigation, hearing, inquiry, administrative or other proceeding or notice (written or oral) by any Person alleging potential Liability or requesting information relating to or affecting a Party, its business, its Assets (including without limitation Contracts related to it), or the transactions provided for in this Agreement, but shall not include regular, periodic examinations of depository institutions and their Affiliates by Regulatory Authorities.

**"Litigation Reserve"** shall have the meaning set forth in Section 5.9(a) of this Agreement.

**"Loan Property"** shall mean any property owned by a 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.

**"Loans"** shall have the meaning set forth in Section 5.9(a) of this Agreement.

**"Mailing Date"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"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 that, individually or together with any other event, change or occurrence, has a material adverse impact on (i) the financial position, results of operations or business 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 provided for in 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 of 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 or the announcement of the Merger on the operating performance of the Parties.

**"Maximum Cash Amount"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"Merger"** shall mean the merger of CBI with and into ANB referred to in the Preamble of this Agreement.

**"Minimum Dollar Equivalent Per Share Consideration"** shall have the meaning provided in Section 3.1(b) of this Agreement.

**"NASD"** shall mean the National Association of Securities Dealers, Inc.

**"NASDAQ"** shall mean the National Association of Securities Dealers Automated Quotations System.

**"No Election Shares"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"OCC"** shall mean the Office of the Comptroller of the Currency.

**"Order"** shall mean any administrative decision or award, decrees, 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 Regulatory Authority.

**"OREO Reserve"** shall have the meaning set forth in Section 5.9(a) of this Agreement.

**"Participation Facility"** shall mean any facility in which the Party in question or any of its Subsidiaries participates in the management and, where required by the context, includes the owner or operator or such property, but only with respect to such property.

**"Party"** shall mean either CBI or ANB, and **"Parties"** shall mean both CBI and ANB.

**"Permit"** shall mean 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.

**"Per Share Cash Consideration"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"Person"** shall mean 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.

**"Potential Cash Payments"** shall have the meaning provided in Section 3.1(c) of this Agreement.

**"Proxy Statement/Prospectus"** shall have the meaning set forth in Section 5.18 of this Agreement.

**"Regulatory Authorities"** shall mean, collectively, the Federal Trade Commission, the United States Department of Justice, the FRB, the OCC, the FDIC, all state regulatory agencies having jurisdiction over the Parties and their respective Subsidiaries, the NASD and the SEC.

**"Related Interests"** shall have the meaning set forth in Section 5.15 of this Agreement.

**"S-4 Registration Statement"** shall have the meaning set forth in Section 5.18 of this Agreement.

**"SEC"** shall mean the United States Securities and Exchange Commission.



**"Securities Laws"** shall mean the 1933 Act, the 1934 Act, the Investment Company Act of 1940 as amended, the Investment Advisors Act of 1940, as amended, the Trust Indenture Act of 1939, as amended, and the rules and regulations of any Regulatory Authority promulgated thereunder.

**"State Regulator"** shall have the meaning set forth in Section 5.9(c) of this Agreement.

**"Subsidiaries"** shall mean all those corporations, banks, associations or other entities of which the entity in question owns or controls 50% or more of the outstanding equity securities either directly or through an unbroken chain of entities as to each of which 50% 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.

**"Superior Proposal"** means a bona fide written Acquisition Proposal which the CBI Board concludes in good faith to be more favorable from a financial point of view to its stockholders than the Merger and the other transactions contemplated hereby, (1) after receiving the advice of its financial advisors (who shall be a nationally recognized investment banking firm, ANB agreeing that the CBI Financial Advisor is a nationally recognized investment banking firm), (2) after taking into account the likelihood of consummation of such transaction on the terms set forth therein (as compared to, and with due regard for, the terms herein) and (3) after taking into account all legal (with the advice of outside counsel), financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal and any other relevant factors permitted under applicable law; provided that for purposes of the definition of "Superior Proposal", the references to "more than 15%" in the definition of Acquisition Proposal shall be deemed to be references to "a majority" and the definition of Acquisition Proposal shall only refer to a transaction involving CBI and not its Subsidiaries.

**"Surviving Corporation"** shall mean ANB as the surviving corporation in the Merger.

**"Takeover Laws"** shall have the meaning set forth in Section 5.28 of this Agreement.

**"Tax Opinion"** shall have the meaning set forth in Section 9.1(e) of this Agreement.

**"Taxes"** shall mean any federal, state, county, local, foreign and other taxes, assessments, charges, fares, and impositions, including interest and penalties thereon or with respect thereto.

**11.2 Entire Agreement.** Except as otherwise expressly provided herein, this Agreement (including the documents and instruments referred to herein) constitutes the entire agreement between the Parties with respect to the transactions provided for herein and supersedes all prior arrangements or understandings with respect thereto, written or oral.

**11.3 Amendments.** To the extent permitted by Law, this Agreement may be amended by a subsequent writing signed by each of the Parties upon the approval of the Boards of Directors of each of the Parties; provided, however, that after approval of this Agreement by the holders of CBI Common Stock, there shall be made no amendment that pursuant to applicable

Law requires further approval by the CBI stockholders without the further approval of the CBI stockholders.

**11.4 Waivers.**

(a) Prior to or at the Effective Time, ANB, acting through the ANB Board, chief executive officer or other authorized officer, shall have the right to waive any Default in the performance of any term of this Agreement by CBI, to waive or extend the time for the compliance or fulfillment by CBI of any and all of its obligations under this Agreement, and to waive any or all of the conditions precedent to the obligations of ANB under this Agreement, except any condition which, if not satisfied, would result in the violation of any Law. No such waiver shall be effective unless in writing signed by a duly authorized officer of ANB. No representation or warranty in this Agreement shall be affected or deemed waived by reason of the fact that ANB and/or its representatives knew or should have known that any such representation or warranty was, is, might be or might have been inaccurate in any respect.

(b) Prior to or at the Effective Time, CBI, acting through the CBI Board, chief executive officer or other authorized officer, shall have the right to waive any Default in the performance of any term of this Agreement by ANB, to waive or extend the time for the compliance or fulfillment by ANB of any and all of its obligations under this Agreement, and to waive any or all of the conditions precedent to the obligations of CBI under this Agreement, except any condition which, if not satisfied, would result in the violation of any Law. No such waiver shall be effective unless in writing signed by a duly authorized officer of CBI. No representation or warranty in this Agreement shall be affected or deemed waived by reason of the fact that CBI and/or its representatives knew or should have known that any such representation or warranty was, is, might be or might have been inaccurate in any respect.

**11.5 Assignment.** Except as expressly provided for herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto (whether by operation of Law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**11.6 Notices.** All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered by hand, by facsimile transmission, by registered or certified mail, postage pre-paid, or by courier or overnight carrier, to the persons at the addresses set forth below (or at such other address as may be provided hereunder), and shall be deemed to have been delivered as of the date so delivered:

If to CBI, then to:

Cypress Bankshares, Inc.  
21 Cypress Point Parkway  
Palm Coast, Florida 32164  
Telecopy Number: (386) 445-6090

Attention: Mr. Bruce Page  
Mr. James Weite

with a copy to: Smith Mackinnon, PA  
Citrus Center, Suite 800  
255 South Orange Avenue  
Orlando, Florida 32801  
Telecopy Number: (407) 843-2448  
Attention: John P. Greeley, Esq.

If to ANB, then to: Alabama National Bancorporation  
1927 First Avenue North  
Birmingham, Alabama 35203  
Telecopy Number: (205) 583-3275  
Attention: Mr. John H. Holcomb, III,  
Chief Executive Officer

with a copy to: Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203  
Telecopy Number: (205) 254-1999  
Attention: Mark L. Drew, Esq.

**11.7 Brokers and Finders.** Except as provided in Section 5.24, each of the Parties represents and warrants that neither it nor any of its officers, directors, employees or Affiliates has employed any broker or finder or incurred any Liability for any financial advisory fees, investment bankers' fees, brokerage fees, commissions or finders' fees in connection with this Agreement or the transactions provided for herein. In the event of a claim by any broker or finder based upon his or its representing or being retained by or allegedly representing or being retained by CBI or ANB, each of CBI and ANB, as the case may be, agrees to indemnify and hold the other Party harmless of and from any Liability with respect to any such claim.

**11.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to any applicable conflicts of Laws, except to the extent federal law shall be applicable.

**11.9 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document with the same force and effect as though all parties had executed the same document.

**11.10 Captions.** The captions as to contents of particular articles, sections or paragraphs contained in this Agreement and the table of contents hereto are for reference purposes only and are not part of this Agreement.

**11.11 Enforcement of Agreement; Prevailing Party.** The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they

are entitled at law or in equity. In any dispute or action between the Parties arising out of this Agreement, including any litigation, arbitration, and appellate proceedings (and efforts to enforce the judgment, award or other disposition of any of the same), the prevailing party shall be entitled to have and recover from the other party all fees, costs and expenses incurred in connection with such dispute or action (including reasonable attorneys' fees).

**11.12 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

**11.13 Construction of Terms.** Where the context so requires or permits, the use of singular form includes the plural, and the use of the plural form includes the singular, and the use of any gender includes any and all genders. Accounting terms used and not otherwise defined in this Agreement have the meanings determined by, and all calculations with respect to accounting or financial matters unless otherwise provided for herein, shall be computed in accordance with generally accepted accounting principles, consistently applied. References herein to articles, sections, paragraphs, subparagraphs or the like shall refer to the corresponding articles, sections, paragraphs, subparagraphs or the like of this Agreement. The words "hereof," "herein," and terms of similar import shall refer to this entire Agreement. Unless the context clearly requires otherwise, the use of the terms "including," "included," "such as," or terms of similar meaning, shall not be construed to imply the exclusion of any other particular elements.

**11.14 Schedules.** The disclosures in the Schedules to this Agreement, and those in any supplement thereto, must relate only to the representations and warranties in the Section of the Agreement to which they expressly relate and not to any other representation or warranty in this Agreement. In the event of any inconsistency between the covenants or statements in the body of this Agreement and those in the Schedules (other than an exception expressly set forth as such in the Schedules with respect to a specifically identified representation or warranty), the covenants and statements in the body of this Agreement will control.

**11.15 Exhibits and Schedules.** Each of the exhibits and schedules attached hereto is an integral part of this Agreement and shall be applicable as if set forth in full at the point in the Agreement where reference to it is made.

**11.16 No Third Party Beneficiaries.** Nothing in this Agreement expressed or implied is intended to confer upon any Person, other than the Parties or their respective successors, any right, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly contemplated by this Agreement.

[Remainder of page intentionally left blank.]

\_\_\_\_\_  
  
**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed on its behalf and its corporate seal to be hereunto affixed and attested by its respectively authorized officers as of the day and year first above written.

**CYPRESS BANKSHARES, INC.**

Attest:

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

Its: Secretary

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

Bruce Page

Its: Chief Executive Officer

[CORPORATE SEAL]

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

James Weite

Its: President

**ALABAMA NATIONAL BANCORPORATION**

Attest:

By: Kimberly Moore

Kimberly Moore

Its: Secretary

By: John H. Holcomb, III

John H. Holcomb, III

Its: Chief Executive Officer

[CORPORATE SEAL]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf and its corporate seal to be hereunto affixed and attested by its respectively authorized officers as of the day and year first above written.

**CYPRESS BANKSHARES, INC.**

Attest:

By: Thomas H. [Signature]  
[Thomas H. [Signature]]  
Its: Secretary

By: Bruce Page [Signature]  
Bruce Page  
Its: Chief Executive Officer

[CORPORATE SEAL]

By: James Weite [Signature]  
James Weite  
Its: President

**ALABAMA NATIONAL BANK CORPORATION**

Attest:

By: \_\_\_\_\_  
Kimberly Moore  
Its: Secretary

By: \_\_\_\_\_  
John H. Holcomb, III  
Its: Chief Executive Officer

[CORPORATE SEAL]