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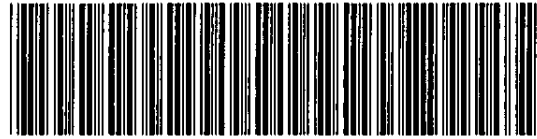
(Business Entity Name)

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EFFECTIVE DATE  
9/11/07

FILED  
07 AUG 31 PM 2:36  
SEC. (AM) OF STATE  
TALLAHASSEE, FLORIDA

merger  
sf

**SMITH MACKINNON, PA**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

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E-MAIL: [JPG7300@AOL.COM](mailto:JPG7300@AOL.COM)

JOHN P. GREELEY

August 30, 2007

***Via Federal Express***

Ms. Karon Beyer  
Department of State  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

Re: Florida Bank Group, Inc./Cygnnet Financial Corporation

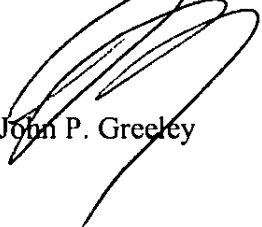
Dear Karon:

Enclosed are the following documents relating to the above-referenced corporation:

1. Original Articles of Merger submitted for filing;
2. A check in the amount of \$87.50 (\$70.00 for filing fee and \$17.50 for two certified copies of the Articles of Merger); and
3. Two photocopies of the executed Articles of Merger.

Please file the enclosed document as soon as possible and return to us two certified copies of the Articles. If you have any questions regarding the enclosed, please do not hesitate to call me at your convenience. Thank you for your assistance.

Very truly yours,



John P. Greeley

JPG:erw

Enclosures

Copy to: Robert Rothman w/o enclosure  
Florida Bank Group, Inc.

**EFFECTIVE DATE**  
9/1/07

**ARTICLES OF MERGER  
OF  
CYGNET FINANCIAL CORPORATION  
INTO  
FLORIDA BANK GROUP, INC.**

**FILED**  
**07 AUG 31 PM 2:36**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act (the "Act"), Florida Bank Group, Inc., a Florida corporation, and Cygnet Financial Corporation, a Florida corporation, do hereby adopt the following Articles of Merger:

**FIRST:** The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are Florida Bank Group, Inc. and Cygnet Financial Corporation. The surviving corporation in the Merger is Florida Bank Group, Inc.

**SECOND:** The Plan of Merger is set forth in the Agreement and Plan of Merger by and between Florida Bank Group, Inc. and Cygnet Financial Corporation dated as of May 21, 2007 (the "Plan of Merger"). A copy of the Agreement and Plan of Merger is attached hereto as Annex A and made a part hereof by reference as if fully set forth herein.

**THIRD:** The Merger shall become effective at 12:01 a.m., Jacksonville, Florida time, on September 1, 2007, in accordance with the provisions of Section 607.1105(b) of the Act.

**FOURTH:** The Merger Agreement was adopted by the board of directors of Florida Bank Group, Inc. on May 21, 2007 and by the shareholders of Cygnet Financial Corporation on July 31, 2007. Florida Bank Group, Inc. shareholder approval was not required.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of August 23, 2007.

FLORIDA BANK GROUP, INC.

By: Robert Rothman  
Robert Rothman  
Its: Chairman of the Board

CYGNET FINANCIAL CORPORATION


By: \_\_\_\_\_  
T. Edwin Stinson, Jr.  
Its: President and Chief Executive  
Officer

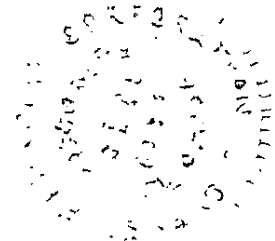
IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of August 23, 2007.

FLORIDA BANK GROUP, INC.

By: \_\_\_\_\_  
Robert Rothman  
Its: Chairman of the Board

CYGNET FINANCIAL CORPORATION

By:  \_\_\_\_\_  
T. Edwin Stinson, Jr.  
Its: President and Chief Executive  
Officer



## **ANNEX A**

EXECUTION DRAFT

**AGREEMENT AND PLAN OF MERGER**

by and between

**CYGNET FINANCIAL CORPORATION  
CYGNET PRIVATE BANK**

and

**FLORIDA BANK GROUP, INC.**

dated as of

May 21, 2007

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of this the 21<sup>st</sup> day of May 2007, by and between CYGNET FINANCIAL CORPORATION ("Acquired Corporation"), a Florida corporation, CYGNET PRIVATE BANK ("Bank"), a Florida corporation, and FLORIDA BANK GROUP, INC. ("FBG"), a Florida corporation.

### WITNESSETH

WHEREAS, Acquired Corporation operates as a bank holding company for its wholly owned subsidiary, Cygnet Private Bank (the "Bank"), duly organized and existing in good standing under the laws of the State of Florida with its principal office in St. Johns County, Florida;

WHEREAS, FBG is a bank holding company duly organized and existing in good standing under the laws of the State of Florida with a subsidiary bank, Bank of St. Petersburg, operating in Hillsborough and Pinellas Counties, Florida, a subsidiary bank, Bank of North Florida, operating in Duval County, Florida, and a subsidiary bank, Bank of Tallahassee, operating in Leon County, Florida;

WHEREAS, FBG has two additional non-banking, subsidiary corporations, FBG Holdings, Inc., a Delaware corporation, and FB Tech & Services, Inc., a Florida corporation;

WHEREAS, Acquired Corporation wishes to merge with FBG; and

WHEREAS, it is the intention of FBG and Acquired Corporation that such Merger shall qualify for federal income tax purposes as a "reorganization" within the meaning of section 368(a) of the Code, as defined herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

### ARTICLE 1 NAME

1.1 Name. The name of the corporation resulting from the Merger shall be "Florida Bank Group, Inc."

### ARTICLE 2 MERGER TERMS AND CONDITIONS

2.1 [INTENTIONALLY OMITTED]

2.2 Applicable Law. On the Effective Date, Acquired Corporation shall be merged with and into FBG (herein referred to as the "Resulting Corporation" whenever reference is made to it as of the time of merger or thereafter). The Merger shall be undertaken pursuant to the provisions



of and with the effect provided in the FBCA. The offices and facilities of Acquired Corporation and of FBG shall become the offices and facilities of the Resulting Corporation.

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

**2.4      Articles of Incorporation and Bylaws.** On the Effective Date, the articles of incorporation and bylaws of the Resulting Corporation shall be the certificate of incorporation and bylaws of FBG as they exist immediately before the Effective Date.

**2.5      Resulting Corporation's Officers and Board.** The board of directors of the Resulting Corporation on the Effective Date shall consist of those persons serving as members of the board of directors of FBG as of the Effective Date, and shall also include Charlie Tomm and Lewis Lee (the "Cygnnet Representatives"), and the officers of the Resulting Corporation on the Effective Date shall consist of those persons serving as officers of FBG as of the Effective Date. All such persons shall remain in such positions until the next annual meeting of the shareholders and of the board of directors, respectively, or until their earlier removal as provided in the Resulting Corporation's Articles of Incorporation and bylaws, resignation or death. FBG also agrees that the Cygnnet Representatives shall be included on the slate of nominees for FBG directorships recommended by the FGB Board in its proxy statement for the first annual meeting of FBG shareholders following the Effective Date. The articles of incorporation and bylaws of the Resulting Corporation following the Effective Date, shall be as set forth in Exhibit 1, hereto, until such documents are changed in accordance with applicable law.

**2.6      Approvals.** Each of FBG and the Acquired Corporation hereby represents to the other that their respective Boards of Directors have determined that this Agreement and the transactions contemplated hereby are in their respective best interests and the best interests of their respective stockholders, and have approved this Agreement at meetings of each of such Boards of Directors.

**2.7      Stockholder Approval.** This Agreement shall be submitted to the shareholders of Acquired Corporation at the Stockholders' Meeting to be held as promptly as practicable consistent with the satisfaction of the conditions set forth in this Agreement.

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

2.9 **Effective Date and Closing.** Subject to the terms of all requirements of Law and the conditions specified in this Agreement, the Merger shall become effective on the date specified in the Certificate of Merger issued by the Florida Department of Banking and Finance with respect to the Merger, and in the Articles of Merger relating to the Merger filed with the Secretary of State of the State of Florida (such time being herein called the "Effective Date") and the Parties shall utilize their best efforts to cause such certificate of merger to be issued within thirty (30) days after the satisfaction of all other conditions set forth herein. Within ten days after all conditions stated in this Agreement have been satisfied (including receipt of all requisite regulatory approvals), the Closing shall take place at the offices of LeBoeuf, Lamb, Greene & MacRae, LLP, in Jacksonville, Florida at a time and date mutually agreed to by FBG and the Acquired Corporation.

### ARTICLE 3 CONVERSION OF ACQUIRED CORPORATION STOCK

#### 3.1 **Conversion of Acquired Corporation Stock.**

(a) On the Effective Date, each share of common stock, par value \$5.00, of Acquired Corporation outstanding and held of record by Acquired Corporation's shareholders (the "Acquired Corporation Stock"), shall be converted by operation of law and without any action by any holder thereof into shares of FBG Common Stock or cash, as set forth below. Specifically, each outstanding share of Acquired Corporation Stock shall (subject to section 3.3 hereof), be converted into either 0.629 shares of FBG Common Stock (the "Exchange Rate"), or Eleven Dollars (\$11) (the "Cash Exchange Rate"); *provided that*, each of the Acquired Corporation's shareholders electing to receive shares of FBG shall (x) represent that such recipient is an "accredited investor" as defined under Rule 501(a) under the Securities Act of 1933, as amended and (y) exchange no less than 3,975 shares of Acquired Corporation Stock for shares of FBG, and *provided further that*, if the number of shares elected by the Acquired Corporation's shareholders to be converted into cash, plus the number of shares of the Acquired Corporation's common stock held by the Acquired Corporation's shareholders who exercise their right to dissent to the Merger, and perfect such right pursuant to the FBCA, exceeds Two Hundred Thousand (200,000), then FBG may, at its discretion, either convert the total number of shares of Acquired Corporation Stock, as to which such election was made, into cash at the Cash Exchange Rate or reduce the number of the Acquired Corporation's shares to be converted into cash, on a pro rata basis, among the Shareholders of the Acquired Corporation

electing to receive cash, as follows. If FBG elects to reduce the number of shares of Acquired Corporation Stock to be converted into cash, the following procedure shall be used to determine the number of shares of Acquired Corporation Stock held by each Acquired Corporation stockholder electing to receive all or a portion of such shareholder's shares in cash (each, a "Cash Election Shareholder") that will be converted into cash.

1. First, to determine the amount of cash available for such purpose, an amount equal to the number of shares of Acquired Corporation Stock as to which an effective election to dissent has been made and perfected shall be multiplied by \$11, and that product shall be subtracted from \$2,200,000 (the result is the "Available Cash");

2. Second, to determine the number of shares held by all of the Cash Election Shareholders which shall be acquired for cash, the Available Cash shall be divided by \$11 (the result is the "Number of Shares Available For Cash Purchase"); and

3. Third, to determine the number of shares of Acquired Corporation Stock held by each Cash Election Shareholder to be acquired for cash, the Number of Shares Available For Cash Purchase shall be multiplied by a fraction, the numerator of which is the number of shares that each such Cash Election Shareholder elected to be converted into cash, and the denominator of which is the total number of shares that all Cash Election Shareholders elected to be converted into cash.

Any shareholder of the Acquired Corporation who does not make any election at all regarding the conversion of shares of the Acquired Corporation's common stock held by such shareholder, shall be deemed to have elected to convert all shares held by such shareholder into shares of common stock of FBG.

(b) On the Effective Date, FBG shall assume all valid and unexercised Acquired Corporation Options outstanding, and each such option shall cease to represent a right to acquire Acquired Corporation common stock and shall, instead, represent the right to acquire FBG Common Stock on substantially the same terms applicable to the Acquired Corporation Options except as specified below in this section. The number of shares of FBG Common Stock to be issued pursuant to such options shall equal the number of shares of Acquired Corporation common stock subject to such Acquired Corporation Options multiplied by the Exchange Rate, provided that no fractions of shares of FBG Common Stock shall be issued and the number of shares of FBG Common Stock to be issued upon the exercise of Acquired Corporation Options, if a fractional share exists, shall equal the number of whole shares obtained by rounding down to the nearest whole number, and by paying for such fraction in cash, at the rate of Seventeen Dollars and Fifty Cents (\$17.50) per full share. The exercise price for the acquisition of FBG Common Stock shall be the exercise price for each share of Acquired Corporation common stock subject to such options divided by the Exchange Rate. It is intended that the assumption by FBG of the Acquired Corporation Options shall be undertaken in a manner that will not constitute a "modification" as defined in Section 424 of the Code as to any stock option which is an "incentive stock option." Schedule 3.1(b) hereto sets forth the names of all persons holding Acquired Corporation Options, the number of shares of Acquired Corporation common stock subject to such options, the exercise price and the expiration date of such options.

**3.2      Shareholder Rights; Stock Transfers.** On the Effective Date, holders of the Acquired Corporation Common Stock shall cease to be, and shall have no rights as stockholders of the Acquired Corporation, other than to receive the Merger Consideration provided under Section 3.1 above, or the amount set forth in Section 3.7, below (to the extent applicable). After the Effective Date, there shall be no transfers on the stock transfer books of the Acquired Corporation of the shares of the Common Stock which were issued and outstanding immediately prior to the Effective Date.

**3.3      Surrender of Acquired Corporation Stock.** After the Effective Date, each holder of an outstanding certificate or certificates which prior thereto represented shares of Acquired Corporation Stock who is entitled to receive FBG Common Stock shall be entitled, upon surrender to FBG of their certificate or certificates representing shares of Acquired Corporation Stock (or an affidavit or affirmation by such holder of the loss, theft, or destruction of such certificate or certificates and indemnity in such form as FBG may reasonably require), to receive in exchange therefore a certificate or certificates representing the number of whole shares of FBG Common Stock into and for which the shares of Acquired Corporation Stock so surrendered shall have been converted, such certificates to be of such denominations and registered in such names as such holder may reasonably request. Until so surrendered and exchanged, each such outstanding certificate which, prior to the Effective Date, represented shares of Acquired Corporation Stock and which is to be converted into FBG Common Stock shall for all purposes evidence ownership of the FBG Common Stock into and for which such shares shall have been so converted, except that no dividends or other distributions with respect to such FBG Common Stock shall be made until the certificates previously representing shares of Acquired Corporation Stock (or affidavit of loss, theft or destruction) shall have been properly tendered. FBG shall deliver the certificates of FBG common stock and cash, as applicable, to which the Acquired Corporation's shareholders are entitled, within ten business days after the surrender for cancellation of the certificates evidencing shares of the Acquired Corporation's common stock (or if applicable, affidavit of lost stock), together with a properly completed letter of transmittal.

**3.4      Fractional Shares.** No fractional shares of FBG Common Stock shall be issued, and each holder of shares of Acquired Corporation Stock having a fractional interest arising upon the conversion of such shares into shares of FBG Common Stock shall, at the time of surrender of the certificates previously representing Acquired Corporation Stock, be paid by FBG an amount in cash equal to the value of such fractional share at the rate of Seventeen Dollars and Fifty Cents (\$17.50) per full share.

**3.5      Adjustments.** In the event that prior to the Effective Date FBG Common Stock shall be changed into a different number of shares or a different class of shares by reason of any recapitalization or reclassification, stock dividend, combination, stock split, or reverse stock split of the FBG Common Stock, an appropriate and proportionate adjustment shall be made in the number of shares of FBG Common Stock into which the Acquired Corporation Stock shall be converted.

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

3.7 **Dissenting Rights.** Any shareholder of Acquired Corporation who shall not have voted in favor of this Agreement and who has complied with the applicable procedures set forth in the FBCA, relating to rights of dissenting shareholders, shall be entitled to receive payment for the fair value of his Acquired Corporation Stock. If after the Effective Date a dissenting shareholder of Acquired Corporation fails to perfect, or effectively withdraws or loses his right to appraisal and payment for his shares of Acquired Corporation Stock, FBG shall issue and deliver the consideration to which such holder of shares of Acquired Corporation Stock is entitled under Section 3.1 (without interest) upon surrender by such holder of the certificate or certificates representing shares of Acquired Corporation Stock held by him or her.

#### ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS OF FBG

FBG represents, warrants and covenants to and with Acquired Corporation as follows which representations, warranties and covenants shall be deemed remade as of the Effective Date:

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

4.2 **Capital Stock.**

(a) The authorized capital stock of FBG consists of (x) 5,000,000 shares of Preferred Stock, \$.01 par value per share, of which as of the date hereof, no shares have been issued and (y) 50,000,000 shares of Common Stock, \$.01 par value per share, of which as of the date hereof, 8,429,081 shares are validly issued and outstanding, fully paid and nonassessable and are not subject to preemptive rights (not counting additional shares subject to issue pursuant to stock options). The shares of FBG Common Stock to be issued in the Merger are duly authorized and, when so issued, will be validly issued and outstanding, fully paid and nonassessable. Except for the foregoing, FBG does not have any other arrangements or commitments obligating it to issue shares of its capital stock or any securities convertible into or having the right to purchase shares of its capital stock, which effectively values FBG Common Stock at less than \$17.50 per share.

(b) The authorized capital stock of each Subsidiary of FBG is validly issued and outstanding, fully paid and nonassessable, and each Subsidiary is wholly owned, directly or indirectly, by FBG.

4.3 **Financial Statements; Taxes.**

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

(i) Consolidated audited balance sheets as of December 31, 2004, 2005, and 2006, and consolidated unaudited balance sheet as of March 31, 2007;

(ii) Consolidated audited statements of operations for each of the three years ended December 31, 2004, 2005 and 2006, and the consolidated unaudited statements of operations for the three months ended March 31, 2007;

(iii) Consolidated audited statements of cash flows for each of the three years ended December 31, 2004, 2005 and 2006, and consolidated unaudited statements of cash flows for the three months ended March 31, 2007; and

(iv) Consolidated audited statements of changes in shareholders' equity for the three years ended December 31, 2004, 2005 and 2006, and consolidated unaudited statements of changes in shareholders' equity for the three months ended March 31, 2007.

All such financial statements are in all material respects in accordance with the books and records of FBG and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated unless otherwise stated, all as more particularly set forth in the notes to such statements. Each of the consolidated balance sheets presents fairly as of its date the consolidated financial condition of FBG and its Subsidiaries. Except as and to the extent reflected or reserved against in such balance sheets (including the notes thereto), FBG did not have, as of the dates of such balance sheets, any material Liabilities or obligations (absolute or contingent) of a nature customarily reflected in a balance sheet or the notes thereto. The consolidated statements of operations, cash flows and changes in shareholders' equity present fairly the results of operations and changes in financial position of FBG and its Subsidiaries for the periods indicated. The foregoing representations, insofar as they relate to the unaudited interim financial statements of FBG for the three months ended March 31, 2007, are subject in all cases to normal recurring year-end adjustments and the omission of footnote disclosure.

(b) All Tax returns required to be filed by or on behalf of FBG have been timely filed (or requests for extensions therefore have been timely filed and granted and have not expired), and all returns filed are complete and accurate in all material respects. All Taxes shown on these returns to be due and all additional assessments received have been paid. The amounts recorded for Taxes on the balance sheets provided under section 4.3(a) are, to the Knowledge of FBG, sufficient in all material respects for the payment of all unpaid federal, state, county, local, foreign or other Taxes (including any interest or penalties) of FBG accrued for or applicable to the period ended on the dates thereof, and all years and periods prior thereto and for which FBG may at such dates have been liable in its own right or as transferee of the Assets of, or as successor to, any other corporation or other party. No audit, examination or investigation is presently being conducted or, to the Knowledge of FBG, threatened by any taxing authority which is likely to result in a material Tax Liability, no material unpaid Tax deficiencies or additional liabilities of any sort have been proposed by any governmental representative and no agreements for extension of time for the assessment of any material amount of Tax have been entered into by or on behalf of FBG. FBG has not executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax due that is currently in effect.

(c) FBG and its Subsidiaries have each withheld from its employees (and timely paid to the appropriate governmental entity) proper and accurate amounts for all periods in

material compliance with all Tax withholding provisions of applicable federal, state, foreign and local Laws (including, without limitation, income, social security and employment Tax withholding for all types of compensation). FBG and its Subsidiaries are both in compliance with, and their records contain all information and documents (including properly completed IRS forms W-9) necessary to comply with, all applicable information reporting and Tax withholding requirements under federal, state and local Tax Laws.

4.4 **No Conflict with Other Instrument.** The consummation of the transactions contemplated by this Agreement will not result in a material breach of or constitute a Default (without regard to the giving of notice or the passage of time) under any material Contract, indenture, mortgage, deed of trust or other material agreement or instrument to which FBG or any of its Subsidiaries is a party or by which they or their Assets may be bound, to the knowledge of FBG, the violation of which would have a Material Adverse Effect; will not conflict with any provision of the articles of incorporation or bylaws of FBG or its Subsidiaries; and will not violate any provision of any Law, regulation, judgment or decree binding on them or any of their Assets.

4.5 **Absence of Material Adverse Change.** Since the date of the most recent balance sheet provided under section 4.3(a)(i) above, there have been no events, changes or occurrences which have had or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on FBG.

4.6 **Approval of Agreement** The board of directors of FBG has approved this Agreement and the transactions contemplated by it and has authorized the execution and delivery by FBG of this Agreement. This Agreement constitutes the legal, valid and binding obligation of FBG, enforceable against it in accordance with its terms. Approval of this Agreement by the stockholders of FBG is not required by applicable Law. Subject to the matters referred to in section 8.2, FBG has full power, authority and legal right to enter into this Agreement and to consummate the transactions contemplated by this Agreement. FBG has no Knowledge of any fact or circumstance under which the appropriate regulatory approvals required by section 8.2 will not be granted without the imposition of material conditions or material delays.

4.7 **Tax Treatment.** FBG has no present plan to sell or otherwise dispose of any of the Assets of Acquired Corporation, subsequent to the Merger, and FBG intends to continue the historic business of Acquired Corporation.

4.8 **Title and Related Matters.** FBG has title to all the properties, interests in properties and Assets, real and personal, that are material to the business of FBG, reflected in the most recent balance sheet referred to in section 4.3(a), or acquired after the date of such balance sheet (except properties, interests and Assets sold or otherwise disposed of since such date, in the ordinary course of business), free and clear of all mortgages, Liens, pledges, charges or encumbrances except (i) mortgages and other encumbrances referred to in the notes of such balance sheet, (ii) liens for current Taxes not yet due and payable and (iii) such imperfections of title and easements as do not materially detract from or interfere with the present use of the properties subject thereto or affected thereby, or otherwise materially impair present business operations at such properties. To the Knowledge of FBG, the material structures and equipment of FBG comply in all material respects with the requirements of all applicable Laws.

**4.9      Subsidiaries.** Each Subsidiary of FBG has been duly incorporated and is validly existing as a corporation in good standing under the Laws of the jurisdiction of its incorporation and each Subsidiary has been duly qualified as a foreign corporation to transact business and is in good standing under the Laws of each other jurisdiction in which it owns or leases properties, or conducts any business so as to require such qualification and in which the failure to be duly qualified could have a Material Adverse Effect upon FBG and its Subsidiaries considered as one enterprise; FBG's banking subsidiaries have their respective deposits fully insured by the Federal Deposit Insurance Corporation to the extent provided by the Federal Deposit Insurance Act.

**4.10      Contracts.** Neither FBG nor any of its Subsidiaries is in violation of its respective articles of incorporation or bylaws or in Default in the performance or observance of any material obligation, agreement, covenant or condition contained in any Contract, indenture, mortgage, loan agreement, note, lease or other instrument to which it is a party or by which it or its property may be bound, the violation of which would have a material adverse effect upon FBG and its subsidiaries and, to the Knowledge of FBG, there is no event which, with notice or lapse of time, or both, may be or become an event of Default under any such Contract, indenture, mortgage, loan agreement, note, lease or other instrument in respect of which adequate steps have not been taken to prevent such a Default from occurring.

**4.11      Litigation.** Except as disclosed in or reserved for in FBG's financial statements, there is no Litigation before or by any court or Agency, domestic or foreign, now pending, or, to the Knowledge of FBG, threatened against or affecting FBG or any of its Subsidiaries (nor is FBG aware of any facts which could give rise to any such Litigation), or which is likely to have any Material Adverse Effect or prospective Material Adverse Effect, or which is likely to materially and adversely affect the properties or Assets thereof or which is likely to materially affect or delay the consummation of the transactions contemplated by this Agreement; and neither FBG nor any of its Subsidiaries have any contingent obligations which could be considered material to FBG and its Subsidiaries considered as one enterprise which are not disclosed in the financial statements delivered pursuant to Section 4.3(a) hereof and neither FBG nor its Subsidiaries is in Default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, which Default would have a Material Adverse Effect on FBG. To the knowledge of FBG, FBG and its Subsidiaries have complied in all material respects with all material applicable Laws and Regulations including those imposing Taxes, of any applicable jurisdiction of all states, municipalities, or other political subdivisions and Agencies, in respect of the ownership of its properties and the conduct of its business, which, if not complied with, would have a Material Adverse Effect on FBG.

**4.12      Compliance.** FBG and its Subsidiaries, in the conduct of their businesses, are to the Knowledge of FBG, in compliance with all federal, state or local Laws applicable to the conduct of their businesses.

**4.13      Brokers.** Except for discussions with Allen C. Ewing, Inc. as referenced in Section 5.18 of this Agreement, all negotiations relative to this Agreement and the transactions contemplated by this Agreement have been carried on by FBG directly with Acquired Corporation and without the intervention of any other person, either as a result of any act of FBG or otherwise in



such manner as to give rights to any valid claim against FBG for finders fees, brokerage commissions or other like payments.

**4.14      Government Authorization.** FBG and its Subsidiaries have all Permits that are legally required to enable FBG or any of its Subsidiaries to conduct their businesses in all material respects as now conducted by each of them.

**4.15      Absence of Regulatory Communications.** Neither FBG nor any of its Subsidiaries is subject to, or has received during the past three (3) years, any written communication directed specifically to it from any Agency to which it is subject or pursuant to which such Agency has imposed or has indicated it may impose any material restrictions on the operations of it or the business conducted by it or in which such Agency has raised a material question concerning the condition, financial or otherwise, of such company.

**4.16      Pension and Employee Benefit Plans.** To the Knowledge of FBG, all employee benefit plans of FBG and its Subsidiaries have been established in compliance with, and such plans have been operated in material compliance with, all applicable Laws. Except as set forth in Schedule 4.16, neither FBG nor its Subsidiaries sponsors or otherwise maintains a "pension plan" within the meaning of section 3(2) of ERISA or any other retirement plan other than the Section 401(k) plan of FBG that is intended to qualify under section 401 of the Code, nor do any unfunded Liabilities exist with respect to any employee benefit plan, past or present. To the Knowledge of FBG, no employee benefit plan, any trust created thereunder or any trustee or administrator thereof has engaged in a "prohibited transaction," as defined in section 4975 of the Code, which may have a Material Adverse Effect on the condition, financial or otherwise, of FBG.

**4.17      Environmental Matters.** Except as provided in Schedule 4.17, to the Knowledge of FBG, FBG is in material compliance with all Laws and other governmental requirements relating to the generation, management, handling, transportation, treatment, disposal, storage, delivery, discharge, release or emission of any waste, pollution, or toxic, hazardous or other substance (the "Environmental Laws"), and FBG has no Knowledge that it has not complied with all regulations and requirements promulgated by the Occupational Safety and Health Administration that are applicable to it. There is no Litigation pending or threatened with respect to any violation or alleged violation of the Environmental Laws. To the Knowledge of FBG, with respect to Assets of FBG or its Subsidiaries, including any Loan Property, (i) there has been no spillage, leakage, contamination or release of any substances for which the appropriate remedial action has not been completed; (ii) no owned or leased property is contaminated with or contains any hazardous substance or waste; and (iii) there are no underground storage tanks on any premises owned or leased by FBG or its Subsidiaries. Moreover, to the Knowledge of FBG, neither FBG nor its Subsidiaries has extended credit, either on a secured or unsecured basis, to any person or other entity engaged in any activities which would require or requires such person or entity to obtain any Permits which are required under any Environmental Law which has not been obtained.

**4.18      Loans; Adequacy of Allowance for Loan Losses.** All reserves for loan losses shown on the most recent financial statements furnished by FBG have been calculated in accordance with commercially reasonable banking practices and are adequate to reflect in all material respects the risk inherent in the loans of each of the banking Subsidiaries of FBG. FBG has no Knowledge of

any fact which is likely to require a future material increase in the provision for loan losses or a material decrease in the loan loss reserve reflected in such financial statements. To the Knowledge of FBG, each loan reflected as an Asset on the financial statements of FBG and its Subsidiaries is the legal, valid and binding obligation of the obligor of each loan, enforceable in accordance with its terms subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and to general equitable principles. Neither FBG nor its Subsidiaries has in its portfolio any loan exceeding its legal lending limit, and except as disclosed on Schedule 4.18, Neither FBG nor its Subsidiaries has any known significant delinquent, substandard, doubtful, loss, nonperforming or problem loans.

## **ARTICLE 5**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF ACQUIRED CORPORATION**

Acquired Corporation represents, warrants and covenants to and with FBG, as follows which representations, warranties and covenants shall be deemed remade as of the Effective Date:

**5.1      Organization.** Acquired Corporation is a Florida corporation, and the Bank is a Florida banking corporation. Acquired Corporation and Bank are duly organized, validly existing and in active status under the Laws of the state of Florida and each has all requisite power and authority to carry on its business as it is now being conducted and is qualified to do business in every jurisdiction in which the character and location of the Assets owned by it or the nature of the business transacted by it requires qualification and in which the failure to qualify could, individually, or in the aggregate, have a Material Adverse Effect.

**5.2      Capital Stock.** As of the date of this Agreement, the authorized capital stock of Acquired Corporation consists of 5,000,000 shares of common stock, \$5.00 par value per share, 2,000,000 shares of which are issued and outstanding. All of such shares which are outstanding are validly issued, fully paid and nonassessable and, as of the Closing, shall be free and clear of all liens and not subject to preemptive rights. Acquired Corporation has 23,500 shares of its common stock subject to issuance pursuant to the exercise of stock options under its stock option plans. In addition, the board of directors of Acquired Corporation has approved the issuance of an additional 2,000 options for the purchase of Acquired Corporation Stock, which options may be issued prior to the Effective Date. Except for the foregoing, Acquired Corporation does not have any other arrangements or commitments obligating it to issue shares of its capital stock or any securities convertible into or having the right to purchase shares of its capital stock, including the grant or issuance of Acquired Corporation Options.

**5.3      Subsidiaries.** Acquired Corporation has no direct Subsidiaries other than the Bank, and there are no Subsidiaries of the Bank. Acquired Corporation owns all of the issued and outstanding capital stock of the Bank free and clear of any liens, claims or encumbrances of any kind. All of the issued and outstanding shares of capital stock of the Bank have been validly issued and are fully paid and non-assessable. As of the date of this Agreement, there were 2,000,000 shares of the common stock, par value \$5.00 per share, authorized of the Bank, 1,000,000 shares of which

are issued and outstanding and wholly owned by Acquired Corporation. The Bank has no arrangements or commitments obligating it to issue shares of its capital stock or any securities convertible into or having the right to purchase shares of its capital stock.

#### **5.4 Financial Statements; Taxes.**

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

(i) Consolidated audited balance sheets as of December 31, 2004, 2005, and 2006, and consolidated unaudited balance sheet as of March 31, 2007;

(ii) Consolidated audited statements of operations for each of the three years ended December 31, 2004, 2005 and 2006, and the consolidated unaudited statements of operations for the three months ended March 31, 2007;

(iii) Consolidated audited statements of cash flows for each of the three years ended December 31, 2004, 2005 and 2006, and consolidated unaudited statements of cash flows for the three months ended March 31, 2007; and

(iv) Consolidated audited statements of changes in shareholders' equity for the three years ended December 31, 2004, 2005 and 2006, and consolidated unaudited statements of changes in shareholders' equity for the three months ended March 31, 2007.

All of the foregoing financial statements are in all material respects in accordance with the books and records of Acquired Corporation and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, except for changes required by GAAP, all as more particularly set forth in the notes to such statements. Each of such balance sheets presents fairly as of its date the financial condition of Acquired Corporation and its Subsidiary. Except as and to the extent reflected or reserved against in such balance sheets (including the notes thereto), Acquired Corporation did not have, as of the date of such balance sheets, any material Liabilities or obligations (absolute or contingent) of a nature customarily reflected in a balance sheet or the notes thereto. The statements of income, shareholders' equity and cash flows present fairly the results of operation, changes in shareholders' equity and cash flows of Acquired Corporation for the periods indicated. The foregoing representations, insofar as they relate to the unaudited interim financial statements of Acquired Corporation for the three months ended March 31, 2007, are subject in all cases to normal recurring year-end adjustments and the omission of footnote disclosure.

(b) All Tax returns required to be filed by or on behalf of Acquired Corporation have been timely filed (or requests for extensions therefore have been timely filed and granted and have not expired), and all returns filed are complete and accurate in all material respects. All Taxes shown on these returns to be due and all additional assessments received have been paid. The amounts recorded for Taxes on the balance sheets provided under section 5.4(a) are, to the Knowledge of Acquired Corporation, sufficient in all material respects for the payment of all unpaid federal, state, county, local, foreign and other Taxes (including any interest or penalties) of Acquired Corporation accrued for or applicable to the period ended on the dates thereof, and all years and

periods prior thereto and for which Acquired Corporation may at such dates have been liable in its own right or as a transferee of the Assets of, or as successor to, any other corporation or other party. No audit, examination or investigation is presently being conducted or, to the Knowledge of Acquired Corporation, threatened by any taxing authority which is likely to result in a material Tax Liability, no material unpaid Tax deficiencies or additional liability of any sort has been proposed by any governmental representative and no agreements for extension of time for the assessment of any material amount of Tax have been entered into by or on behalf of Acquired Corporation. Acquired Corporation has not executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax due that is currently in effect.

(c) Acquired Corporation and Bank have each withheld from its employees (and timely paid to the appropriate governmental entity) proper and accurate amounts for all periods in material compliance with all Tax withholding provisions of applicable federal, state, foreign and local Laws (including without limitation, income, social security and employment Tax withholding for all types of compensation). Acquired Corporation and Bank are both in compliance with, and their records contain all information and documents (including properly completed IRS Forms W-9) necessary to comply with, all applicable information reporting and Tax withholding requirements under federal, state and local Tax Laws.

**5.5 Absence of Certain Changes or Events.** Except as set forth on Schedule 5.5, since the date of the most recent balance sheet provided under section 5.4(a)(i) above, and except as provided in, or is a result of, this Agreement and the transactions contemplated hereby, neither the Acquired Corporation nor the Bank has:

(a) issued, delivered or agreed to issue or deliver any stock, bonds or other corporate securities (whether authorized and unissued or held in the treasury) except shares of common stock issued upon the exercise of existing Acquired Corporation Options and except for the issuance of its common stock pursuant to the exercise of existing options;

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

(c) paid any material obligation or Liability (absolute or contingent) other than current Liabilities reflected in or shown on the most recent balance sheet referred to in section 5.4(a)(i) and current Liabilities incurred since that date in the ordinary course of business and consistent with past practice;

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

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

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

(g) suffered any Losses or waived any rights of value which in either event in the aggregate constitute a Material Adverse Effect;

(h) except in the ordinary course of business, made or permitted any amendment or termination of any Contract, agreement or license to which it is a party if such amendment or termination would result in a Material Adverse Effect;

(i) except in the ordinary course of business and consistent with past practice, made any accrual or arrangement for or payment of bonuses or special compensation of any kind or any severance or termination pay to any present or former officer or employee, other than agreements to pay severance upon termination of an employee, that do not exceed \$246,000 in the aggregate, and retention bonuses that do not exceed \$35,000 in the aggregate.

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

(k) received notice or had Knowledge that any of its substantial customers has terminated or intends to terminate its relationship, which termination would have a Material Adverse Effect on its financial condition, results of operations, business, Assets or properties;

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

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

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

Between the date hereof and the Effective Date, neither the Acquired Corporation nor the Bank, without the express written approval of FBG, not to be unreasonably withheld, delayed or conditioned, will do any of the things listed in clauses (a) through (n) of this section 5.5 except as permitted therein or as contemplated in this Agreement.

#### **5.6 Title and Related Matters.**

(a) Title. Each of the Acquired Corporation and the Bank has title to all the properties, interest in properties and Assets, real and personal, that are material to the business of the

Acquired Corporation and the Bank, reflected in the most recent balance sheet referred to in section 5.4(a)(i), or acquired after the date of such balance sheet (except properties, interests and Assets sold or otherwise disposed of since such date, in the ordinary course of business and properties shown on the books of the Acquired Corporation and Bank as leased), free and clear of all mortgages, Liens, pledges, charges or encumbrances except (i) mortgages and other encumbrances referred to in the notes to such balance sheet, (ii) Liens for current Taxes not yet due and payable and (iii) such imperfections of title and easements as do not materially detract from or interfere with the present use of the properties subject thereto or affected thereby, or otherwise materially impair present business operations at such properties. To the Knowledge of Acquired Corporation, the material structures and equipment of Acquired Corporation and Bank comply in all material respects with the requirements of all applicable Laws.

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

5.7 Commitments. Except as set forth in Schedule 5.7, neither Acquired Corporation nor Bank is a party to any oral or written (i) Contract for the employment of any officer or employee which is not terminable on 30 days' (or less) notice, (ii) profit sharing, bonus, deferred compensation, savings, stock option, severance pay, pension or retirement plan, agreement or arrangement, (iii) loan agreement, indenture or similar agreement relating to the borrowing of money by any officer, director or employee, (iv) guaranty of any obligation for the borrowing of money or otherwise, excluding endorsements made for collection, and guaranties made in the ordinary course of business, (v) consulting or other similar material Contracts, (vi) collective bargaining agreement, (vii) material agreement with any present or former officer, director or shareholder of such party, or (viii) other Contract, agreement or other commitment which is material to the business, operations, property, prospects or Assets or to the condition, financial or otherwise, of Acquired Corporation or Bank which is not terminable on 30 days (or less) notice.

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

5.9 Litigation. There is no Litigation (whether or not purportedly on behalf of Acquired Corporation) pending or, to the Knowledge of Acquired Corporation, threatened against or affecting Acquired Corporation or Bank (nor does Acquired Corporation have Knowledge of any facts which are likely to give rise to any such Litigation) at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind, which involves the possibility of any judgment or Liability not fully covered by insurance in excess of a reasonable deductible amount or which may have a Material Adverse Effect on Acquired Corporation, and neither Acquired Corporation nor Bank is in Default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, which Default would have a Material Adverse Effect on Acquired Corporation. To the Knowledge of Acquired Corporation, Acquired Corporation and Bank have complied in all material respects with all material applicable Laws and Regulations including those imposing Taxes,

of any applicable jurisdiction and of all states, municipalities, other political subdivisions and Agencies, in respect of the ownership of its properties and the conduct of its business, which, if not complied with, would have a Material Adverse Effect on Acquired Corporation.

**5.10 Contracts.** Except as disclosed on Schedule 5.10, neither Acquired Corporation nor Bank is in violation of its respective articles of incorporation or bylaws or in Default in any material respect under the terms of any material obligation, covenant or condition contained in any material obligation, agreement, covenant or condition contained in any material Contract, indenture, mortgage, loan agreement, note, lease or other instrument to which it is a party or by which it or its property may be bound, the violation of which would have a Material Adverse Effect upon Acquired Corporation and its Subsidiaries, and, to the Knowledge of Acquired Corporation, there is no event which, with notice or lapse of time, or both, may be or become an event of Default by the Acquired Corporation or the Bank under any such material Contract, indenture, mortgage, loan agreement, note, lease or other instrument in respect of which adequate steps have not been taken to prevent such a Default from occurring.

**5.11 No Conflict with Other Instrument.** The consummation of the transactions contemplated by this Agreement will not result in the breach of any term or provision of, or constitute a Default (without regard to the giving of notice or the passage of time) under any material Contract, indenture, mortgage, deed of trust or other material agreement or instrument to which Acquired Corporation or Bank is a party, or by which they or their Assets may be bound, to the knowledge of Acquired Corporation, the violation of which should have a Material Adverse Effect, and will not conflict with any provision of the certificate of incorporation or bylaws of Acquired Corporation or Bank; or by which they or their assets may be bound and will not violate any provision of any Law, regulation, judgment or decree binding on either of them or any of their assets.

**5.12 Compliance.** Acquired Corporation and Bank, in the conduct of their businesses, are, to the knowledge of Acquired Corporation and Bank, in compliance with all Federal, state or local Laws applicable to the conduct of their businesses.

**5.13 Governmental Authorization.** Acquired Corporation and Bank have all Permits that are or will be legally required to enable Acquired Corporation and Bank to conduct their business in all material respects as now conducted.

**5.14 Absence of Regulatory Communications.** Except as provided in Schedule 5.14, neither Acquired Corporation nor Bank is subject to, nor has Acquired Corporation nor Bank received during the past three years, any written communication directed specifically to it from any Agency to which it is subject or pursuant to which such Agency has imposed or has indicated it may impose any material restrictions on the operations of it or the business conducted by it or in which such Agency has raised any material question concerning the condition, financial or otherwise, of such company.

**5.15 Absence of Material Adverse Change.** To the Knowledge of Acquired Corporation, since the date of the most recent balance sheet provided under section 5.4(a)(i), there have been no events, changes or occurrences which have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on Acquired Corporation or Bank.

**5.16      Insurance.** Acquired Corporation and Bank have in effect insurance coverage and bonds with reputable insurers which, in respect to amounts, types and risks insured, adequate for the type of business conducted by such company. Neither Acquired Corporation nor Bank is liable for any material retroactive premium adjustment. All insurance policies and bonds are valid, enforceable and in full force and effect, and neither Acquired Corporation nor Bank has received any notice of any material premium increase or cancellation with respect to any of its insurance policies or bonds. Within the last three years, neither Acquired Corporation nor Bank has been refused any insurance coverage which it has sought or applied for, and nothing has come to its attention which would lead it to believe that existing insurance coverage cannot be renewed as and when the same shall expire, upon terms and conditions as favorable as those presently in effect, other than possible increases in premiums that do not result from any extraordinary loss experience. All policies of insurance presently held or policies containing substantially equivalent coverage will be outstanding and in full force with respect to Acquired Corporation and Bank at all times from the date hereof to the Effective Date.

**5.17      Pension and Employee Benefit Plans.**

(a) To the Knowledge of Acquired Corporation, all employee benefit plans of Acquired Corporation and Bank have been established in compliance with, and such plans have been operated in material compliance with, all applicable Laws. Except as set forth in Schedule 5.17, neither Acquired Corporation nor Bank sponsors or otherwise maintains a "pension plan" within the meaning of section 3(2) of ERISA or any other retirement plan other than the Section 401(k) plan of Acquired Corporation that is intended to qualify under section 401 of the Code, nor do any unfunded Liabilities exist with respect to any employee benefit plan, past or present. To the Knowledge of Acquired Corporation, no employee benefit plan, any trust created thereunder or any trustee or administrator thereof has engaged in a "prohibited transaction," as defined in section 4975 of the Code, which may have a Material Adverse Effect on the condition, financial or otherwise, of Acquired Corporation or Bank.

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

**5.18      Brokers.** Except for services provided to Acquired Corporation by Allen C. Ewing, Inc., all negotiations relative to this Agreement and the transactions contemplated by this Agreement have been carried on by Acquired Corporation directly with FBG and without the intervention of any other person, either as a result of any act of Acquired Corporation, or otherwise, in such manner as to give rise to any valid claim against Acquired Corporation for a finder's fee, brokerage commission or other like payment.

**5.19      Approval of Agreements.** The board of directors of Acquired Corporation has approved this Agreement and the transactions contemplated by this Agreement and has authorized the execution and delivery by Acquired Corporation of this Agreement. Subject to the matters referred to in section 8.2, Acquired Corporation has full power, authority and legal right to enter into this Agreement, and, upon appropriate vote of the shareholders of Acquired Corporation in



accordance with this Agreement, Acquired Corporation shall have full power, authority and legal right to consummate the transactions contemplated by this Agreement.

**5.20      Loans; Adequacy of Allowance for Loan Losses.** All reserves for loan losses shown on the most recent financial statements furnished by Acquired Corporation have been calculated in accordance with commercially reasonable banking practices and are adequate to reflect in all material respects the risk inherent in the loans of Acquired Corporation and its Subsidiaries. Acquired Corporation has no Knowledge of any fact which is likely to require a future material increase in the provision for loan losses or a material decrease in the loan loss reserve reflected in such financial statements. To the Knowledge of Acquired Corporation, each loan reflected as an Asset on the financial statements of Acquired Corporation and its Subsidiaries is the legal, valid and binding obligation of the obligor of each loan, enforceable in accordance with its terms subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and to general equitable principles. Neither Acquired Corporation nor its Subsidiaries has in its portfolio any loan exceeding its legal lending limit, and except as disclosed on Schedule 5.20, neither Acquired Corporation nor its Subsidiaries has any known significant delinquent, substandard, doubtful, loss, nonperforming or problem loans.

**5.21      Environmental Matters.** Except as provided in Schedule 5.21, to the Knowledge of Acquired Corporation, Acquired Corporation and Bank are in material compliance with all Environmental Laws, and Acquired Corporation has no Knowledge that it has not complied with all regulations and requirements promulgated by the Occupational Safety and Health Administration that are applicable to it. There is no Litigation pending or threatened with respect to any violation or alleged violation of the Environmental Laws. To the Knowledge of Acquired Corporation, with respect to Assets of Acquired Corporation or Bank, including any Loan Property, (i) there has been no spillage, leakage, contamination or release of any substances for which the appropriate remedial action has not been completed; (ii) no owned or leased property is contaminated with or contains any hazardous substance or waste; and (iii) there are no underground storage tanks on any premises owned or leased by Acquired Corporation or Bank. Moreover, to the Knowledge of Acquired Corporation, neither Acquired Corporation nor Bank has extended credit, either on a secured or unsecured basis, to any person or other entity engaged in any activities which would require or requires such person or entity to obtain any Permits which are required under any Environmental Law which has not been obtained.

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

**5.23      Labor Disputes.** Acquired Corporation and Bank are in material compliance with all federal and state laws respecting employment and employment practices, terms and conditions of employment, wages and hours. Neither Acquired Corporation nor Bank is or has been engaged in any unfair labor practice, nor is any unfair labor practice complaint against Acquired Corporation nor Bank pending before the National Labor Relations Board. There have not been, nor to the Knowledge of Acquired Corporation, are there presently, any attempts to organize employees, nor to the Knowledge of Acquired Corporation, are there plans for any such attempts.

## ARTICLE 6 ADDITIONAL COVENANTS

6.1 Additional Covenants of FBG. FBG covenants to and with Acquired Corporation from the date hereof through the Closing or termination of this Agreement as follows:

(a) Financial Statements. FBG shall furnish to Acquired Corporation:

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

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

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

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

(b) No Control of Acquired Corporation by FBG. Notwithstanding any other provision hereof, until the Effective Date, the authority to operate the Acquired Corporation and the Bank and establish and implement the business policies of Acquired Corporation and the Bank shall continue to reside solely in Acquired Corporation's and Bank's respective officers and boards of directors.

(c) Employee Benefit Matters. On the Effective Date, all employees of any Acquired Corporation and Bank shall, at FBG's option, either become employees of the Resulting Corporation or its Subsidiaries or be entitled to severance benefits in accordance with Bank's severance policy as of the date of this Agreement. FBG shall honor all accrued vacation time of the employees of the Acquired Corporation or Bank. All employees of Acquired Corporation or Bank who become employees of the Resulting Corporation or its Subsidiaries on the Effective Date shall be entitled, to the extent permitted by applicable Law, to participate in all benefit plans of FBG, including retirement plans, to the same extent as FBG and its Subsidiaries' employees, except as stated otherwise in this section. Employees of Acquired Corporation or Bank who become employees of the Resulting Corporation or its Subsidiaries on the Effective Date shall be allowed to participate as of the Effective Date in the medical and dental benefits plan of Bank as new employees of FBG, and the time of employment of such employees who are employed at least 30 hours per week with Acquired Corporation or Bank as of the Effective Date shall be counted as employment

under such dental and medical plans of FBG for purposes of calculating any 30 day waiting period and pre-existing condition limitations. To the extent permitted by applicable Law, the period of service with the Acquired Corporation or Bank of all employees who become employees of the Resulting Corporation or its Subsidiaries on the Effective Date shall be recognized only for vesting and eligibility purposes under FBG's benefit plans, including retirement plans. In addition, if the Effective Date falls within an annual period of coverage under the medical plan of the Resulting Corporation and its Subsidiaries, Acquired Corporation and Bank employee shall be given credit for covered expenses paid by that employee under comparable employee benefit plans of the Acquired Corporation and Bank during the applicable coverage period through the Effective Date towards satisfaction of any annual deductible limitation and out-of-pocket maximum that may apply under that group health plan of the Resulting Corporation and its Subsidiaries.

(d) Tax Treatment. FBG will take no action that would prevent or impede the merger from qualifying as a tax-free reorganization within the meaning of Section 368 of the Code.

(e) Indemnification. From and after the Effective Date, FBG shall, and shall cause its Subsidiaries to, indemnify, defend and hold harmless the present and former directors, officers, employees, and agents of Acquired Corporation and Bank (each, an "Indemnified Party") after the Effective Date against all costs, fees, or expenses (including reasonable attorneys' fees), judgments, fines, penalties, losses, claims, damages, liabilities, and amounts paid in settlement in connection with any Litigation as incurred, in connection with any claim, action or proceeding arising out of actions or omissions occurring at or prior to the Effective Date (including the transactions contemplated by this Agreement), whether asserted or claimed prior to, at or after the Effective Date, to the fullest extent that the Bank would have been permitted under applicable law and the Articles of Incorporation and Bylaws of the Acquired Corporation and the Bank, as in effect on the date hereof, including provisions relating to advances of expenses incurred in the defense of any Litigation and to no less extent than FBG indemnifies its own officers and directors. Without limiting the foregoing, in any case in which approval of FBG is required to effectuate any indemnification, FBG shall direct or cause such subsidiary of FBG to direct, at the election of the Indemnified Party, that the determination of any such approval shall be made by independent counsel mutually agreed upon between FBG and the Indemnified Party. FBG shall, and shall cause all other relevant subsidiaries of FBG, to apply such rights of indemnification in good faith and to the fullest extent permitted by applicable Law.

(i) If FBG or any of its successors or assigns shall consolidate with or merge into any other Person and shall not be the continuing or surviving Person of such consolidation or merger or shall transfer all or substantially all of its assets to any Person, then and in each case, proper provision shall be made so that the successors and assigns of FBG shall assume the obligations set forth in this Section 6.1(e).

(ii) The provisions of this Section 6.1(e) are intended to be for the benefit of and shall be enforceable by, each Indemnified Party, his or her heirs and representatives.

(f) Directors and Officer's Insurance. For a period of five years from the Effective Date, FBG shall use its commercially reasonable efforts to provide or cause Bank to provide that portion of director's and officer's liability insurance ("D&O Insurance") that serves to

reimburse the present and former officers and directors (determined as of the Effective Date) of the Bank (as opposed to the portion that serves to reimburse Bank) with respect to claims against such directors and officers arising from facts or events which occurred before the Effective Date, which D&O Insurance shall contain at least the same coverage and amounts, and contain terms and conditions not materially less advantageous, as that coverage provided by Bank as of the date hereof; provided, however, that in no event shall FBG be required to expend or cause Bank to expend on an annual basis more than 150% of the last annual premium paid prior to the date hereof (the "Insurance Cap") to maintain or procure such D&O Insurance; provided further, however, that if FBG is unable to maintain or obtain the D&O Insurance called for by this Section 6.1, FBG shall use its commercially reasonable efforts to obtain as much comparable insurance as is available for the Insurance Cap; provided further that officers and directors of the Bank may be required to make application and provide customary representations and warranties to FBG's insurance carrier for the purpose of obtaining such D&O Insurance.

(g) Prohibited Transactions. FBG agrees that it will not enter into any transaction, solicit or seek to enter into any transaction, nor engage in negotiations that, in each case, would likely render FBG unable, as a practical matter, to consummate the transactions contemplated herein.

(h) Dividends. FBG shall not declare, make, agree to declare or make, any payment of dividends or distributions of any Assets of any kind whatsoever to shareholders; or purchase or redeem, or agree to purchase or redeem, directly or indirectly, or otherwise acquire, any of its outstanding securities, except in a manner consistent with past practices.

(i) Additional Expenses. In the event the Merger is not consummated as a result of any cause whatsoever, other than as a result of Acquired Corporation's failure to close the transaction despite the satisfaction of all conditions precedent to its obligation to do so, FBG agrees that it shall reimburse Acquired Corporation for all costs and expenses that are incurred by Acquired Corporation including, without limitation, the costs of consultants and employees, to the extent that FBG requests Acquired Corporation to undertake planning or preparation for the Merger prior to the Closing, and authorizes such expenditures, in writing.

**6.2 Additional Covenants of Acquired Corporation and the Bank.** From the date hereof until the Effective Date or termination of this Agreement, except as otherwise contemplated by this Agreement, Acquired Corporation and Bank covenant to and with FBG as follows:

(a) Operations. Acquired Corporation and the Bank will conduct their businesses in a commercially reasonable, proper and prudent manner, consistent with past practices, and each will use its reasonable good faith efforts to maintain its relationships with its depositors, customers and employees. Except for this Agreement and the transactions contemplated hereby, neither Acquired Corporation nor Bank will engage in any material transaction outside the ordinary course of business or make any material change in its accounting policies or methods of operation, neither declare, nor pay, nor set aside for payment, any dividends, nor will Acquired Corporation or Bank permit the occurrence of any change or event which would render any of the representations and warranties in Article 5 hereof untrue in any material respect at and as of the Effective Date with the same effect as though such representations and warranties had been made at and as of such Effective

Date hereof to request such undertaking and shall take reasonable steps to try to obtain such undertaking.

(b) Other Actions Pending Merger. Except as otherwise contemplated by this Agreement, from the date hereof until the Effective Date, the Acquired Corporation and the Bank shall not, without the prior consent of FBG not to be unreasonably withheld, delayed or conditioned, and provided, however, that if the Board of the Bank determines in good faith that any of the following actions are required for the financial condition of the Bank and FBG does not approve such action, than the Acquired Corporation shall have the right to terminate this Agreement and proceed with such action and, provided further, however, that if FBG fails to respond to any request for consent within two banking days, FBG shall be deemed to have consented to such action:

(i) Hire any person as an employee or promote any employee, except (provided that FBG is given five (5) Business Days advance written notice thereof) persons hired to fill any vacancies and whose employment is terminable at the will of the Bank, as the case may be, and whose base salary or wage rate, including any guaranteed bonus or any similar bonus, does not exceed \$40,000 per annum.

(ii) Acquire (other than by way of foreclosures or acquisitions of control of property other than real estate in a bona fide fiduciary capacity or in satisfaction of indebtedness previously contracted in good faith, in each case in the ordinary and usual course of business consistent with past practice) all or any portion of the assets, deposits, business or properties of any other person except in the ordinary and usual course of business consistent with past practice and in a transaction that, together with all other such transactions, is not material either to the Acquired Corporation or the Bank, as the case may be.

(iii) Make any capital expenditures other than (i) capital expenditures provided for in the capital budget furnished to FBG prior to the date of this Agreement, if any, (ii) other capital expenditures in the ordinary and usual course of business consistent with past practice in amounts not exceeding \$20,000 individually or \$100,000 in the aggregate, and (iii) emergency repairs and replacements.

(iv) Amend or otherwise change their respective Organizational Documents or any similar governing instruments.

(v) Enter into any settlement, compromise or similar agreement with respect to any litigation, claim, action, hearing or other proceeding which would involve the payment of an amount in excess of \$25,000, and/or which would result in the imposition of any material penalty or restriction.

(vi) (1) Make any loan or loan commitment or renewal or extension thereof to any person which would, when aggregated with all outstanding loans or loan commitments thereof made to such person and any Affiliate or immediate family member of such person, exceed \$1,500,000 (on a secured basis) and \$500,000 (on an unsecured basis) with respect to any new loan or loan commitment; (2) take any action that would result in any discretionary releases of collateral or guarantees or otherwise restructure any loan or commitment for any loan with a principal balance

in excess of \$250,000 (on a secured basis) and \$100,000 (on an unsecured basis) or (3) purchase or sell any loan or loan participation exceeding \$250,000 (on a secured basis) and \$100,000 (on an unsecured basis).

(vii) (1) Other than in the ordinary and usual course of business in amounts not to exceed \$150,000 individually and \$250,000 in the aggregate or sales of overnight federal funds (limited to 25% of the shareholders' equity of the Bank) or in securities transactions as provided in (2) below, make any investment either by contributions to capital, property transfers or purchases of any property or assets of any person and (2) other than purchases of direct obligations of the United States of America or obligations of U.S. government agencies which are entitled to the full faith and credit of the United States of America, in any case with a remaining maturity at the time of purchase of one year or less, purchase or acquire securities of any type; *provided, however*, that in the case of investment securities, the Bank may purchase investment securities if, within five (5) Business Days after the Bank requests in writing (which request shall describe in detail the investment securities to be purchased and the price thereof) that FBG consent to making of any such purchase, FBG has approved such request in writing or has not responded in writing to such request.

(viii) Other than such acts which are not material, commence, compromise or settle any litigation or proceeding with respect to any liability for Taxes, make or change any Tax election, file any amended Tax Return, enter into any closing agreement, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Acquired Corporation or the Bank, or

(ix) Commit to do any of the foregoing.

(c) Proxy Statement.

(i) The Acquired Corporation shall as promptly as practicable following the date hereof in conjunction with FBG prepare and mail to its stockholders at its own expense a notice of meeting, proxy statement and form of proxy in accordance with applicable Law (the "Proxy Statement"). FBG shall provide an initial draft of the Proxy Statement for the Parties to mutually work upon, review and finalize. Each party shall have the opportunity to review and comment on the Proxy Statement and the Acquired Corporation shall not mail the Proxy Statement without FBG's prior written consent (such consent not to be unreasonably withheld or delayed). The Proxy Statement shall include the recommendation of the Acquired Board of Directors in favor of adoption and approval of this Agreement and the transactions contemplated hereby.

(ii) The Acquired Corporation agrees that the Proxy Statement and any amendment or supplement thereto shall, at the date of mailing to stockholders at the time of the Stockholders Meeting, not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that FBG and not the Acquired Corporation shall be responsible for insuring that, with respect to all facts and forward looking statements relating to FBG, the Proxy Statement shall not contain any untrue

statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Each of the Acquired Corporation and FBG agrees that if such party shall become aware prior to the time of the Stockholders Meeting of any information furnished by such party that would cause any of the statements in the Proxy Statement to be false or misleading with respect to any material fact, or to omit to state any material fact necessary to make the statements therein not false or misleading, to promptly inform the other party thereof and to take the necessary steps to correct the Proxy Statement.

(d) Stockholders' Meeting; Best Efforts. Acquired Corporation will cooperate with FBG in the preparation of any regulatory filings and will cause the Stockholders' Meeting to be held for the purpose of approving the Merger as soon as practicable, and will use its reasonable good faith efforts to bring about the transactions contemplated by this Agreement, including shareholder approval of this Agreement, as soon as practicable unless this Agreement is terminated as provided herein. Acquired Corporation will take no action that would prevent or impede the Merger from qualifying as a tax-free reorganization within the meaning of Section 368 of the Code.

(e) Prohibited Negotiations. Except with respect to this Agreement and the transactions contemplated hereby, and so long as this Agreement is in effect, neither Acquired Corporation nor any affiliate thereof nor any investment banker, attorney, accountant, or other representative (collectively, "Representatives") retained by Acquired Corporation shall directly or indirectly solicit any Acquisition Proposal by any Person. Except to the extent necessary to comply with the fiduciary duties of Acquired Corporation's Board of Directors as advised by counsel to such Board of Directors, neither Acquired Corporation nor any Representative thereof shall furnish any non-public information that it is not legally obligated to furnish, negotiate with respect to, or enter into any Contract with respect to, any Acquisition Proposal, and Acquired Corporation shall direct and use its reasonable efforts to cause all of its Representatives not to engage in any of the foregoing, but Acquired Corporation may communicate information about such an Acquisition Proposal to its shareholders if and to the extent that it is required to do so in order to comply with its legal obligations as advised by counsel to such Board of Directors. Acquired Corporation shall promptly notify FBG in writing in the event that Acquired Corporation or Bank receives any inquiry or proposal relating to any such Acquisition Proposal. Acquired Corporation shall immediately cease and cause to be terminated any existing activities, discussions, or negotiations with any Persons other than FBG conducted heretofore with respect to any of the foregoing.

(f) Director Recommendation. Except to the extent necessary to comply with their fiduciary duties, the members of the Board of Directors of Acquired Corporation agree to support publicly the Merger and to recommend that Acquired Corporation's shareholders vote to approve the Merger at any meeting of the shareholders in which the Merger is considered.

(g) Financial Statements and Monthly Status Reports. Acquired Corporation shall furnish to FBG:

(i) As soon as practicable and in any event within 45 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year, consolidated statements of operations of Acquired Corporation for such period and for the period beginning at the

commencement of the fiscal year and ending at the end of such quarterly period, and a consolidated statement of financial condition of Acquired Corporation as of the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding periods ending in the preceding fiscal year, subject to changes resulting from year-end adjustments;

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

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

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

(v) Within 10 calendar days after the end of each month (or, if the financial statements referred to in clause (g) are not then available, as soon as possible thereafter) commencing with the next calendar month following the date of this Agreement and ending at the Effective Date, a written description of (a) any non-compliance with the terms of this Agreement; (b) the status, as of the date of the report, of all existing or threatened litigation against any Acquired Corporation; and (c) monthly financial statements, including a balance sheet and income statement.

## ARTICLE 7 MUTUAL COVENANTS AND AGREEMENTS

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

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



the text of such disclosure sufficiently in advance to enable the other Party to have a reasonable opportunity to comment thereon.

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

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

## **ARTICLE 8**

### **CONDITIONS TO OBLIGATIONS OF ALL PARTIES**

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

**8.1      Approval by Shareholders.** At the Stockholders Meeting, this Agreement and the matters contemplated by this Agreement shall have been duly approved by the vote of the holders of not less than the requisite number of the issued and outstanding voting securities of Acquired Corporation as is required by applicable Law and Acquired Corporation's articles of incorporation and bylaws.

**8.2      Regulatory Authority Approval.**

(a) Orders, Consents and approvals, in form and substance reasonably satisfactory to FBG and Acquired Corporation, shall have been entered by appropriate bank regulatory Agencies (i) granting the authority necessary for the consummation of the transactions contemplated by this Agreement and (ii) satisfying all other requirements prescribed by Law. No Order, Consent or approval so obtained which is necessary to consummate the transactions as contemplated hereby shall be conditioned or restricted in a manner which in the reasonable good faith judgment of the Board of Directors of FBG would so materially adversely impact the economic benefits of the transaction as contemplated by this Agreement so as to render inadvisable the consummation of the Merger.

(b) Each Party shall have obtained any and all other Consents required for consummation of the Merger (other than those referred to in Section 8.2(a) of this Agreement) 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 obtained which is necessary to consummate the transactions contemplated hereby shall be conditioned or restricted in a manner which in the reasonable judgment of the Board of Directors of FBG would so materially adversely impact the economic or business benefits of the transactions contemplated by this Agreement so as to render inadvisable the consummation of the Merger.

**8.3      No Prohibition.** There not being in effect any law, order, decree or injunction of any court or agency of competent jurisdiction that restrains, enjoins or otherwise prohibits or makes illegal consummation of the Merger or which could be reasonably expected to result in a material diminution of the benefits of the transaction to FBG or the Acquired Corporation, and there shall not be pending or threatened on the Effective Date any action or proceeding which could reasonably be expected to result in the enactment or issuance of any such law, order, decree or injunction.

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

## **ARTICLE 9**

### **CONDITIONS TO OBLIGATIONS OF ACQUIRED CORPORATION**

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

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

**9.2      Adverse Changes.** There shall have been no changes after the date of the most recent balance sheet provided under section 4.3(a)(i) hereof in the results of operations (as compared with the corresponding period of the prior fiscal year), Assets, Liabilities, financial condition or affairs of FBG which in their total effect constitute a Material Adverse Effect.

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

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

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

(c) the certificate of incorporation and bylaws of FBG referenced in section 4.4 hereof remain in full force and effect;

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

(e) each of the representations and warranties of FBG made in Article 4 of the Agreement (other than such representations and warranties which speak as of a date prior to the date hereof) are true in all material respects as of the date hereof).

9.4 **Opinion of Counsel.** Acquired Corporation shall have received an opinion of Leboeuf, Lamb, Greene & MacRae, LLP, counsel to FBG, dated as of the Closing, in form and substance reasonably satisfactory to Acquired Corporation, which shall include a tax opinion that the transaction qualifies as a tax free exchange under the Internal Revenue Code.

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

9.6 **Fairness Opinion.** Acquired Corporation shall have received from Bankers Bank Capital Corporation a letter, setting forth its opinion that the Merger Consideration to be received by the shareholders of Acquired Corporation under the terms of this Agreement is not unfair to them from a financial point of view.

## ARTICLE 10 CONDITIONS TO OBLIGATIONS OF FBG

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

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

10.2 **Adverse Changes.** There shall have been no changes after the date of the most recent balance sheet provided under section 5.4(a)(i) hereof in the results of operations (as compared with the corresponding period of the prior fiscal year), Assets, Liabilities, financial condition, or affairs of Acquired Corporation which constitute a Material Adverse Effect, nor shall there have been any material changes in the Laws governing the business of Acquired Corporation which would impair FBG's rights pursuant to this Agreement.

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

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

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

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

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

(e) each of the representations and warranties of Acquired Corporation and Bank made in Articles 5 of the Agreement (other than any of such representations and warranties which speak as of a date prior to the date hereof) are true in all material respects as of the date hereof, and

the conditions set forth in this Article 10 of the Agreement insofar as they relate to Acquired Corporation and Bank have been satisfied.

**10.4     Securities Agreements.** FBG shall have received a completed and executed securities agreement from each of the Acquired Corporation's shareholders receiving shares of FBG Common Stock in the Merger acknowledging that such shares were not registered under the applicable provisions of the Securities Act, or any state securities laws, and are subject to the restrictions on transferability set forth in such laws.

**10.5     Shareholders' Equity.** The shareholders' equity on the last day of the calendar month immediately preceding the Effective Date, as determined in accordance with GAAP (except that any expenses related to the transactions contemplated herein shall not be included in the determination of shareholders' equity, and no loss reserve shall be included with respect to the amount of new loans or increases in existing loans entered into subsequent to the date hereof) of the Acquired Corporation shall not be less than \$16,500,000, without regard to the Conforming Adjustments and any unrealized gains or losses of securities classified as "available for sale."

**10.6     Allowance for Loan Losses.** The allowance for loan losses on the last day of the calendar month immediately preceding the Effective Date, as determined in accordance with GAAP of the Bank shall not be less than 1.31% of its total loans (not including new loans entered into subsequent to the date hereof).

**10.7     Transaction Expenses.** The Acquired Corporation and the Bank shall have used its reasonable best efforts to cause its advisors to submit final bills or estimates of the final bills for all professional fees to the Acquired Corporation and to the Bank at least two (2) Business Days prior to the Closing Date. Based upon such final bills, or estimates of such final bills, the Bank shall have endeavored to have paid all professional fees in full prior to the Effective Date.

**10.8     FIRPTA.** The Acquired Corporation shall deliver to FBG at the Closing a duly executed and acknowledged certificate, in form and substance acceptable to FBG and in compliance with the Code and Treasury Regulations, certifying such facts as to establish that the sale of the Shares and any other transactions contemplated hereby are exempt from withholding pursuant to Section 1445 of the Code.

**10.9     Opinion of Counsel.** FBG shall have received an opinion of Smith, Gambrell & Russell, LLP, counsel to Acquired Corporation, dated as of the Closing, in form and substance reasonably satisfactory to FBG.

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

**10.11    Dissenters.** The number of shares as to which shareholders of Acquired Corporation have exercised dissenters rights of appraisal under section 3.7 does not exceed 10% of the outstanding shares of common stock of Acquired Corporation.

**ARTICLE 11**  
**TERMINATION OF REPRESENTATIONS AND WARRANTIES**

All representations and warranties provided in Articles 4 and 5 of this Agreement or in any closing certificate pursuant to Articles 9 and 10 shall survive for a period of one year following the Effective Date. All covenants, agreements and undertakings required by this Agreement to be performed by any Party hereto following the Effective Date shall survive such Effective Date and be binding upon such Party. If the Merger is not consummated, all representations, warranties, obligations, covenants, or agreements hereunder or in any certificate delivered hereunder relating to the transaction which is not consummated shall be deemed to be terminated or extinguished, except that the last sentence of Section 7.3, and Sections 7.2, 13.3, Article 11, Article 12, Article 15, any applicable definitions of Article 14 and the Confidentiality Agreement shall survive.

**ARTICLE 12**  
**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 received:

(a) If to Acquired Corporation, to

Luther Coggin  
4306 Pablo Oaks Court  
Jacksonville, Florida 32224

with copies to:

Lewis Lee  
6080 St. Andrews Court  
Ponte Vedra Beach, Florida

And

Smith, Gambrell & Russell, LLP  
50 N. Laura Street, Suite 2600  
Jacksonville, FL 32202  
Attention: Adam J. Buss, Esq.

or as may otherwise be specified by Acquired Corporation in writing to FBG.

- (b) If to FBG, to  
Florida Bank Group, Inc.  
201 North Franklin Street  
One Tampa City Center, Suite 2800  
Tampa, Florida 33602  
Attention: Robert Rothman  
Facsimile Number 813-277-0546

with copies to:

LeBoeuf, Lamb, Greene & MacRae LLP  
50 North Laura Street, Suite 2800  
Jacksonville, Florida 32202  
Attention: Thomas E. Gibbs, Esq.  
Facsimile Number 904-354-9317

or as may otherwise be specified in writing by FBG to Acquired Corporation.

### ARTICLE 13 AMENDMENT OR TERMINATION

**13.1 Amendment.** This Agreement may be amended by the mutual consent of FBG and Acquired Corporation before or after approval of the transactions contemplated herein by the shareholders of Acquired Corporation:

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

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

(b) by the board of directors of either Party (provided that the terminating Party is not then in material breach of any representation, warranty, covenant, or other agreement contained in this Agreement) in the event of a material breach by the other Party of any representation or warranty, covenant or agreement contained in this Agreement which cannot be or has not been cured

within thirty (30) days after the giving of written notice to the breaching Party of such breach and which breach would provide the non-breaching Party the ability to refuse to consummate the Merger under the standard set forth in section 10.1 of this Agreement in the case of FBG and section 9.1 of this Agreement in the case of Acquired Corporation;

(c) by the board of directors of either FBG or Acquired Corporation if all transactions contemplated by this Agreement shall not have been consummated on or prior to October 15, 2007, if the failure to consummate the transactions provided for in this Agreement on or before such date is not caused by any breach of this Agreement by the Party electing to terminate pursuant to this Section 13.2(d).

### **13.3      Effect of Termination.**

(a) In the event of termination pursuant to section 13.2, this Agreement shall become void and have no effect except as provided in Article 11, and except that Acquired Corporation and FBG shall be liable for damages for any willful breach of a warranty, representation, covenant or other agreement contained in this Agreement.

(b) In the event that either Party willfully fails to consummate the transactions contemplated herein, despite the satisfaction or waiver of the conditions to such Party's obligations to close, as set forth in Articles 8, 9 and 10, as applicable, such Party shall reimburse the other Party for the other Party's reasonable out-of-pocket expenses relating to the Merger in an amount not to exceed \$100,000 which amount shall not be deemed an exclusive remedy or liquidated damages and such party shall also be liable for damages at law.

## **ARTICLE 14 DEFINITIONS**

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

Acquired Corporation	Cygnit Financial Corporation., a Florida corporation.
Acquired Corporation Options	Options respecting the issuance of a maximum of 25,500 shares of Acquired Corporation common stock pursuant to Acquired Corporation's stock option plans.
Acquired Corporation Stock	Shares of common stock, par value \$5.00 per share, of Acquired Corporation.
Acquisition Proposal	Shall mean, with respect to a Party, any tender offer or exchange offer or any proposal for a merger, acquisition of all of the stock or assets of, or other business combination involving such Party or any of its Subsidiaries or the acquisition of an equity interest in such Party in an amount



greater than 25%, or substantially all of the assets of, such Party or any of its Subsidiaries.

Agencies	Shall mean, collectively, the Federal Trade Commission, the United States Department of Justice, the Board of the Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, all state regulatory agencies having jurisdiction over the Parties and their respective Subsidiaries, HUD, the VA, the FHA, the GNMA, the FNMA, the FHLMC, the NYSE, and the SEC.
Agreement	Shall mean this Agreement and Plan of Merger and the Exhibits and Schedules delivered pursuant hereto and incorporated herein by reference.
Assets	Of a Person shall mean all of the assets, properties, businesses and rights of such Person of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, accrued or contingent, or otherwise relating to or utilized in such Person's business, directly or indirectly, in whole or in part, whether or not carried on the books and records of such Person, and whether or not owned in the name of such Person or any Affiliate of such Person and wherever located.
Bank	Cygnet Private Bank.
Closing	The submission of the certificates of officers, legal opinions and other actions required to be taken in order to consummate the Merger in accordance with this Agreement.
Code	The Internal Revenue Code of 1986, as amended.
Common Stock	FBG's Common Stock authorized and defined in the certificate of incorporation of FBG, as amended.
Confidentiality Agreement	Confidentiality Agreement executed by FBG and Acquired Corporation on or around February 28, 2007.
Consent	Any consent, approval, authorization, clearance, exemption, waiver, or similar affirmation by any Person pursuant to any Contract, Law, Order, or Permit.
Contract	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.
Default	Shall mean (i) any breach or violation of or default under any Contract, Order or Permit, (ii) any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of or default under any Contract, Order or Permit, or (iii) any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right to terminate or revoke, change the current terms of, or renegotiate, or to accelerate, increase, or impose any Liability under, any Contract, Order or Permit.
Effective Date	Means the date and time at which the Merger becomes effective as defined in section 2.9 hereof.
Environmental Laws	Means the laws, regulations and governmental requirements referred to in section 5.21 hereof.
ERISA	The Employee Retirement Income Security Act of 1974, as amended.
Exchange Rate	The appropriate ratio calculated in the manner set forth in Section 3.1(a).
FBCA	The Florida Business Corporation Act
FBG	Florida Bank Group, Inc.
GAAP	Means generally accepted accounting principles applicable to banks and bank holding companies in the United States consistently applied during the periods involved.
Knowledge	Means the actual knowledge (or the knowledge that should have been obtained) after due investigation and inquiry of any of the following as exist the Chairman, President, Chief Financial Officer, Chief Operating Officer, or any Senior or Executive Vice President of FBG, in the case of knowledge of FBG. In the case of Acquired Corporation it means the actual knowledge (or the knowledge that should have been obtained) after due investigation and inquiry by any of the following as exist the Chairman, President, Chief Financial Officer, Senior or Executive Vice President or any other Executive Officer of

Acquired Corporation or the Bank, in the case of knowledge of Acquired Corporation.

Law

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 Agency.

Liability

Any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including, without limitation, costs of investigation, collection and defense), deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks, and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.

Lien

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, (iii) Liens in the form of easements and restrictive covenants on real property which do not materially adversely affect the use of such property by the current owner thereof, and (iv) Liens which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on a Party.

Litigation

Any action, arbitration, complaint, criminal prosecution, governmental or other examination or investigation, hearing, inquiry, administrative or other proceeding but shall not include regular, periodic examinations of depository institutions and their Affiliates by Regulatory Authorities, relating to or affecting a Party, its business, its Assets (including Contracts related to it), or the transactions contemplated by this Agreement.

Loan Property

Any property owned by the Party in question or by any of its Subsidiaries or in which such Party or Subsidiary holds a

security interest, and, where required by the context, includes the owner or operator of such property, but only with respect to such property.

**Loss**

Any and all direct or indirect payments, obligations, recoveries, deficiencies, fines, penalties, interest, assessments, losses, diminution in the value of Assets, damages, punitive, exemplary or consequential damages (including, but not limited to, lost income and profits and interruptions of business), liabilities, costs, expenses (including without limitation, reasonable attorneys' fees and expenses, and consultant's fees and other costs of defense or investigation), and interest on any amount payable to a third party as a result of the foregoing.

**Material**

For purposes of this Agreement, "material" (whether or not capitalized) shall be determined in light of the facts and circumstances of the matter in question; provided that any specific monetary amount stated in this Agreement shall determine materiality in that instance.

**Material Adverse Effect**

On a Party shall mean an event, change or occurrence which has a material adverse impact on (i) the financial position, Assets, business, or results of operations of such Party and its Subsidiaries, taken as a whole, provided that, with respect to Acquired Corporation, such determination shall be made without the inclusion of any merger-related expenses in any calculation of financial position or results of operations, or (ii) the ability of such Party to perform its obligations under this Agreement or to consummate the Merger or the other transactions contemplated by this Agreement, provided that "Material Adverse Effect" shall not be deemed to include the impact of (w) changes in banking and similar laws of general applicability or interpretations thereof by courts or governmental authorities, (x) changes in generally accepted accounting principles or regulatory accounting principles generally applicable to banks and their holding companies, (y) actions and omissions of a Party (or any of its Subsidiaries) taken with the prior informed written consent of the other Party in contemplation of the transactions contemplated hereby, and (z) the Merger and compliance with the provisions of this Agreement on the operating performance of the Parties.

Merger	The merger of Acquired Corporation with FBG as contemplated in this Agreement.
Merger Consideration	The distribution of FBG Common Stock and/or cash for each share of Acquired Corporation Stock (and cash for fractional shares) as provided in section 3.1(a) hereof.
Net Income	Net income as calculated in accordance with GAAP.
Order	Any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling, or writ of any federal, state, local or foreign or other court, arbitrator, mediator, tribunal, administrative agency or Agency.
Organizational Documents	With respect to any entity, such entity's: (i) charter, (ii) bylaws, (iii) articles or certificate of incorporation, or (iv) other similar organizational or constituent documents.
Party	Shall mean Acquired Corporation or FBG, and "Parties" shall mean both Acquired Corporation and FBG.
Permit	Any federal, state, local, and foreign governmental approval, authorization, certificate, easement, filing, franchise, license, notice, permit, or right to which any Person is a party or that is or may be binding upon or inure to the benefit of any Person or its securities, Assets or business.
Person	A natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.
Resulting Corporation	FBG, as the surviving corporation resulting from the Merger.
SEC	United States Securities and Exchange Commission.
Stockholders Meeting	The special meeting of shareholders of Acquired Corporation called to approve the transactions contemplated by this Agreement.
Subsidiaries	Shall mean all those corporations, banks, associations, or other entities of which the entity in question owns or controls

5% or more of the outstanding equity securities either directly or through an unbroken chain of entities as to each of which 5% or more of the outstanding equity securities is owned directly or indirectly by its parent; provided, however, there shall not be included any such entity acquired through foreclosure or any such entity the equity securities of which are owned or controlled in a fiduciary capacity.

Tax or Taxes	Means any federal, state, county, local, foreign, and other taxes, assessments, charges, fares, and impositions, including interest and penalties thereon or with respect thereto.
1933 Act	The Securities Act of 1933, as amended.
1934 Act	The Securities Exchange Act of 1934, as amended.

## ARTICLE 15 MISCELLANEOUS

### 15.1 Expenses.

(a) Except as set forth below, FBG shall cause all direct costs and expenses incurred by the Parties in connection with the transactions contemplated hereunder, including filing, registration and application fees, printing fees, and fees and expenses of financial or other consultants, investment bankers, accountants, and counsel to be paid. Notwithstanding the foregoing, and except as otherwise provided in Section 6.1(i) 13.3(b), in the event the Merger is not consummated as a result of (i) Acquired Corporation's failure to obtain the required shareholder consent, (ii) Acquired Corporation's failure to Close the transaction despite the satisfaction of all conditions precedent to its obligations to Close, or (iii) the Parties' failure to obtain regulatory approval for the Merger, each Party shall bear its own costs and expenses for its financial advisors, consultants, investment bankers, accountants and counsel incurred in connection with the transaction.

15.2 Benefit and Assignment. Except as expressly contemplated hereby, 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.

15.3 Governing Law; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Florida without regard to any conflict of Laws. Each party acknowledges and agrees that any controversy which may arise under this agreement is likely to involve complicated and difficult issues, and therefore, each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this agreement, or the transactions

contemplated by this agreement. Each party certifies and acknowledges that (i) no representative, agent or attorney of the other party has represented, expressly or otherwise, that such party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) each party understands and has considered the implications of this waiver, (iii) each party makes this waiver voluntarily, and (iv) each party has been induced to enter into this agreement by, among other things, the mutual waivers and certifications in this Section 15.

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

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

**15.6      Severability.** Any term or provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining terms and provisions thereof or affecting the validity or enforceability of such provision in any other jurisdiction, and if any term or provision of this Agreement is held by any court of competent jurisdiction to be void, voidable, invalid or unenforceable in any given circumstance or situation, then all other terms and provisions, being severable, shall remain in full force and effect in such circumstance or situation and the term or provision shall remain valid and in effect in any other circumstances or situation, except if such omitted term or provision would so materially adversely impact the economic benefits of the transaction to a Party as contemplated by this Agreement so as to render inadvisable the consummation of the Merger.

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

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

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

remedies by the non-breaching Party that would preclude the non-breaching Party from obtaining any remedies at law to which it would otherwise be entitled.

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

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

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

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



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

ATTEST:

FLORIDA BANK GROUP, INC.

BY: \_\_\_\_\_

BY: Robert Rothman

ITS:

ITS:

(CORPORATE SEAL)

ATTEST:

CYGNET FINANCIAL CORPORATION.

BY: \_\_\_\_\_

BY: Butler Coggin

ITS:

ITS:

(CORPORATE SEAL)

ATTEST:

CYGNET PRIVATE BANK.

BY: \_\_\_\_\_

BY: Butler Coggin

ITS:

ITS:

(CORPORATE SEAL)