

# P96000056855

Document Number Only

C T CORPORATION SYSTEM

Requestor's Name

660 East Jefferson Street

Address

Tallahassee, Florida 32301

City

State

Zip

Phone

CORPORATION(S) NAME

000001885530  
-07/05/96--01053--024  
\*\*\*\*122.50 \*\*\*\*122.50

Compass Florida Community, Inc

☒ Profit - Articles

☐ NonProfit

☐ Limited Liability Company

☐ Foreign

☐ Limited Partnership

☐ Reinstatement

☐ Limited Liability Partnership

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**ARTICLES OF INCORPORATION**  
**OF**  
**COMPASS FLORIDA COMMUNITY, INC.**  

---

FILED  
06 JUL -5 PM 3:06  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned, for the purpose of forming a corporation under the Florida Business Corporation Act, adopt the following Articles of Incorporation:

**ARTICLE I**

**Name**

The name of this corporation (the "Corporation") shall be:

**COMPASS FLORIDA COMMUNITY, INC.**

**ARTICLE II**

**Purposes**

The nature of the business of the Corporation and its objects, purposes and powers are:

- (a) To serve as an interim holding company to facilitate acquisition transactions;
- (b) To manage, purchase or acquire by assignment, transfer or otherwise, and hold, mortgage or otherwise pledge, and to sell, exchange, transfer, deal in and in any manner dispose of, real or personal property of any kind, class, interest, or type, wheresoever situated, and to exercise, carry out and enjoy any license, power, authority, concession, right or privilege which any corporation may make or grant in connection therewith;
- (c) To subscribe for, acquire, hold, sell, assign, transfer, mortgage, pledge, or in any manner dispose of shares of stock, bonds or other evidences of indebtedness or securities issued or created by any other corporation of Alabama or any other state or any foreign country and,

while the owner thereof, to exercise the rights, privileges and powers of ownership, including the rights to vote thereon, to the same extent as a natural person may do, subject to the limitations, if any, on such rights now or hereafter provided by the laws of Alabama;

(d) To acquire the goodwill, rights, assets and properties, and to undertake the whole or any part of the liabilities, of any person, firm, association or corporation; to pay for the same in cash, the stock or other securities of the Corporation, or otherwise, to hold, or in any manner dispose of, the whole or any part of the property so acquired; to conduct in any lawful manner the whole or any part of the business so acquired; and to exercise all the powers necessary or convenient in and about the conduct and management of such business; and

(e) To make contracts, including guarantee and suretyship contracts and indemnity agreements, incur liabilities, borrow money, issue its notes, bonds and other obligations (which may be convertible into or include the option to purchase other securities of the Corporation), secure any of its obligations (or the obligations of others for whom it can make guarantees, whether or not a guarantee is made) by mortgage or pledge of or creation of security interests in any of its property, franchises, or income, and, without limiting the generality of the foregoing; (a) make contracts of guarantee and suretyship and indemnity agreements that are necessary or convenience to the conduct, promotion or attainment of the business of the contracting Corporation, (b) make contracts of guarantee and suretyship and indemnity agreements that are necessary or convenient to the conduct, promotion or attainment of the business of (i) an entity that is wholly owned, directly or indirectly, by the contracting Corporation or (ii) a person that owns, directly or indirectly, all of the outstanding stock of the contracting Corporation or (iii) an entity that is wholly owned, directly or indirectly, by a person that owns, directly or indirectly, all of the outstanding stock of the Corporation;

(f) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) To be a promoter, incorporator, partner, member, trustee, associate, or manager of any domestic or foreign corporation, partnership, joint venture, trust or other entity;

(h) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, or other welfare, benefit or incentive plans for any or all of its current, future or former directors, officers, employees and agents;

(i) To make donations for the public welfare or for charitable, scientific or educational purposes;

(j) In general, to carry on any other lawful business whatsoever in connection with the foregoing or which is calculated, directly or indirectly, to promote the interest of the Corporation or to enhance the value of its properties.

The enumeration herein of the powers, objects and purposes of the Corporation shall not be deemed to exclude or in any way limit by inference any powers, objects or purposes which the Corporation is empowered to exercise, whether expressly by purpose or by any of the laws of the State of Alabama or any reasonable construction of such laws.

### **ARTICLE III**

#### **Capital Stock**

3.01 The aggregate number of shares that the Corporation has authority to issue is One Thousand (1,000), all of which shall be common shares ("Shares"), consisting of One Thousand (1,000) shares of \$1.00 par value common stock.

3.02 Distributions with respect to all classes and series of Shares shall be made only when, as and if authorized by the Board of Directors; provided, however, that no distribution may be made if, after giving it effect, (i) the Corporation would not be able to pay its debts as they become due in the usual course of business; or (ii) the Corporation's total assets would be less than the sum of its total liabilities.

3.03 The Board of Directors is expressly authorized to create and issue, by resolution(s) adopted from time to time, warrants, rights or options entitling the holders thereof to purchase Corporation Shares of any kind, class or series, whether or not in connection with the issuance and sale of any Shares or other securities or evidences of indebtedness. The Board of Directors is also authorized expressly to determine the terms, including, without limit, the time and times within which, the price or prices and any adjustments thereto, whereby Corporation Shares may be purchased upon the exercise of any such warrant, right or option. The judgment of the Board of Directors shall be conclusive as to the adequacy of the consideration received for any such rights or options.

3.04 Each shareholder shall have preemptive rights only in the portion of Shares being issued or sold equal to the proportion that the number of Shares then held by the shareholder bears to the total number of Shares of the same class then outstanding.

## **ARTICLE IV**

### **Registered Office and Agent**

4.01 The street address of the initial registered office of the Corporation is 1200 South Pine Island Road, Plantation, Florida 33324, and the name of the initial registered agent at that address is C T Corporation System.

4.02 The mailing address of the Corporation is 15 South 20th Street, Birmingham, Alabama 35233.

4.03 The address of the principal place of business of the Corporation is 15 South 20th Street, Birmingham, Alabama 35233.

## **ARTICLE VI**

### **Board of Directors**

The Corporation's initial Board of Directors shall consist of three (3) persons who shall serve until the first annual meeting of the shareholders and until their successors are elected and qualified. The names and addresses of the members of the Board of Directors are as follows:

<b><u>Name</u></b>	<b><u>Address</u></b>
Garrett R. Hegel	15 South 20th Street Birmingham, Alabama 35233
Jerry W. Powell	15 South 20th Street Birmingham, Alabama 35233
Byrd Williams	15 South 20th Street Birmingham, Alabama 35233

**ARTICLE VII**

**Incorporator**

The name and address of the Incorporator of the Corporation is as follows:

**Name**

**Address**

Suzanne Ashe

1901 Sixth Avenue North  
Suite 2600  
Birmingham, Alabama 35203

Dated the 3rd day of July, 1996.



Suzanne Ashe  
Incorporator

This Instrument was prepared by:

Suzanne Ashe  
Baich & Bingham  
1901 Sixth Avenue North, Suite 2600  
Birmingham, Alabama 35203  
(205) 251-8100

HAVING BEEN NAMED AS REGISTERED AGENT AND TO RECEIVE SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THESE PROVISIONS, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

CT CORPORATION SYSTEM

DATE: 7/9/76

BY: Connie Bryan

Connie Bryan,  
Special Assistant Secretary

FILED  
96 JUL -5 PM 3:06  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

# P96000056855

BALCH & BINGHAM

ATTORNEYS AND COUNSELORS

POST OFFICE BOX 308

BIRMINGHAM, ALABAMA 35201

(205) 251-8100

WINTER'S OFFICE:

1901 SIXTH AVENUE NORTH

SUITE 8000

BIRMINGHAM, ALABAMA 35203

FACSIMILE (205) 256-8700

DIRECT DIAL TELEPHONE:

(205) 226-3431

BIRMINGHAM ADLW

August 22, 1996

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-08/28/96--01053--007  
\*\*\*\*\*35.00 \*\*\*\*\*35.00

By Federal Express

**PERSONAL & CONFIDENTIAL**

Ms. Susan Payne  
Florida Department of State  
Division of Corporations  
409 East Gaines Street  
Tallahassee, Florida 32399

Dear Ms. Payne:

Enclosed are the following documents for filing on Friday, August 23, 1996, subject to our telephone authorization to do so.

1. An original and one copy of Articles of Merger of CFB Bank and Compass Florida Community, Inc. with a copy of the Agreement and Plan of Merger attached along with filing fee of \$35.00 for each company.
2. An original and one copy of Articles of Dissolution of Compass Florida Community, Inc. along with the filing fee of \$35.00. This filing should be made immediately after the Articles of Merger above.

As we discussed, you already have received from the Department of Banking and Finance the Articles and Plan of Merger of Compass Bank and Community First Bank with the appropriate filing fee. We also will confirm with you by telephone Friday prior to filing of this document. Thank you again for your assistance.

Yours very truly,

*Suzanne Ashe*  
Suzanne Ashe

SA/bs

4974.1

Dissolution  
38  
8/23/96



THIS DOCUMENT PREPARED BY:

Suzanne Ashe  
Batch & Bingham  
P.O. Box 306  
Birmingham, Alabama 35201

FILED

96 AUG 23 PM 3:27

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

---

**ARTICLES OF DISSOLUTION  
OF  
COMPASS FLORIDA COMMUNITY, INC.**

---

Pursuant to the provisions of Section 607.1403 of the Florida Business Corporation Act, Compass Florida Community, Inc. hereby adopts the following Articles of Dissolution:

**FIRST:** The name of the corporation is Compass Florida Community, Inc.

**SECOND:** The dissolution was authorized on August 20, 1996.

**THIRD:** The dissolution was approved and adopted by unanimous written consent of the sole shareholder of Compass Florida Community, Inc. in accordance with the provisions of Section 607.1402 of the Florida Business Corporation Act.

IN WITNESS WHEREOF, said corporation has caused these Articles of Dissolution to be signed by its Vice President and attested by its Assistant Secretary, this 20th day of August, 1996.

ATTEST:

COMPASS FLORIDA COMMUNITY, INC.

By: *David B. Warren*  
Its: Assistant Secretary

By: *David R. Hight*  
Its: Vice President

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Carol Turner Smalley, a Notary Public in and for said County in said State, do hereby certify that on this 20<sup>th</sup> day of August, 1996, personally appeared before me Garrett R. Hegel who, being by me first duly sworn, declared that he is the Vice President of Compass Florida Community, Inc., that he signed the foregoing document as Vice President of the Corporation and that the statements therein contained are true.

WITNESS my hand and official seal on the date aforesaid.

[NOTARIAL SEAL]

Carol Turner Smalley

My Commission Expires: 3-17-99

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Carol Turner Smalley, a Notary Public in and for said County in said State, do hereby certify that on this 20<sup>th</sup> day of August, 1996, personally appeared before me Daniel B. Graves who, being by me first duly sworn, declared that he is the Assistant Secretary of Compass Florida Community, Inc., that he signed the foregoing document as Assistant Secretary of the Corporation and that the statements therein contained are true.

WITNESS my hand and official seal on the date aforesaid.

[NOTARIAL SEAL]

Carol Turner Smalley

My Commission Expires: 3-17-99

P96000056855

BALCH & BINGHAM

ATTORNEYS AND COUNSELORS  
POST OFFICE BOX 308  
BIRMINGHAM, ALABAMA 35201  
(205) 251-8100

WHITEHALL OFFICE:  
1901 SIXTH AVENUE NORTH  
SUITE 2000  
BIRMINGHAM, ALABAMA 35203  
FACSIMILE (205) 251-8700

DIRECT DIAL TELEPHONE:

(205) 226-3431

Birmingham Area

August 22, 1996

300001834253  
-08/28/96--01045--012  
\*\*\*\*\*70.00 \*\*\*\*\*70.00

By Federal Express

**PERSONAL & CONFIDENTIAL**

Ms. Susan Payne  
Florida Department of State  
Division of Corporations  
409 East Gaines Street  
Tallahassee, Florida 32399

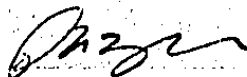
Dear Ms. Payne:

Enclosed are the following documents for filing on Friday, August 23, 1996, subject to our telephone authorization to do so.

1. An original and one copy of Articles of Merger of CFB Bancorp., Inc. and Compass Florida Community, Inc. with a copy of the Agreement and Plan of Merger attached along with filing fee of \$35.00 for each company.
2. An original and one copy of Articles of Dissolution of Compass Florida Community, Inc. along with the filing fee of \$35.00. This filing should be made immediately after the Articles of Merger above.

As we discussed, you already have received from the Department of Banking and Finance the Articles and Plan of Merger of Compass Bank and Community First Bank with the appropriate filing fee. We also will confirm with you by telephone Friday prior to filing of this document. Thank you again for your assistance.

Yours very truly,



Suzanne Ashe

SA/bs

4974.1

merger  
SA

8/23/96

1710 SIXTH AVENUE NORTH  
BIRMINGHAM, ALABAMA 35203  
(205) 251-8100

1901 SIXTH AVENUE NORTH  
BIRMINGHAM, ALABAMA 35203  
(205) 251-8100

2 DEXTER AVENUE  
MONTGOMERY, ALABAMA 36104  
(334) 834-6500

204 GATES AVENUE  
HUNTSVILLE, ALABAMA 35891  
(205) 551-0171

811 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D. C. 20036  
(202) 296-0387

**ARTICLES OF MERGER  
Merger Sheet**

**MERGING:** -----

**CFB BANCORP, INC., #P84000052606, a FL corp.**

**INTO**

**COMPASS FLORIDA COMMUNITY, INC., a Florida corporation,  
P88000058355.**

**File date: August 23, 1996**

**Corporate Specialist: Susan Payne**

THIS DOCUMENT PREPARED BY:

Suzanne Ashe  
Dale & Elingham  
P.O. Box 306  
Birmingham, Alabama 35201

FILED

96 AUG 23 PM 3:22

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

---

**ARTICLES OF MERGER  
OF  
CFB BANCORP, INC.  
AND  
COMPASS FLORIDA COMMUNITY, INC.**

---

Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act, CFB Bancorp, Inc., a Florida corporation ("CFB"), and Compass Florida Community, Inc., a Florida corporation ("Compass Florida"), hereby adopt the following Articles of Merger for the purpose of merging CFB into Compass Florida.

**FIRST:** Attached hereto as Exhibit A and incorporated herein by this reference is the Agreement and Plan of Merger ("Plan of Merger") which was approved by the Board of Directors and shareholders of CFB and Compass Florida in the manner prescribed by the Florida Business Corporation Act.

**SECOND:** The effective date of the Plan of Merger is February 13, 1996, as amended as of July 31, 1996.

**THIRD:** As to each of the undersigned corporations, the number of shares outstanding, and the designation and number of outstanding shares of each class entitled to vote as a class on such Plan of Merger are as follows:

<u>Entitled to Vote as a Class</u>			
<u>Name of Corporation</u>	<u>Shares Outstanding</u>	<u>Designation of Class</u>	<u>Number of Shares</u>
CFB	1,962,280	Voting	1,962,280
Compass Florida	1,000	Voting	1,000

**FOURTH:** The Plan of Merger was approved and adopted by the shareholders of CFB on August 16, 1996, and by the sole shareholder of Compass Florida on July 31, 1996.

**FIFTH:** As to each of the undersigned corporations, the total number of shares voted for and against such Plan of Merger, respectively, is as follows:

<u>Name of Corporation</u>	<u>Voted For</u>	<u>Voted Against</u>	<u>Class</u>
CFB	1,529,854	3,578	Voting
Compass Florida	1,000	0	Voting

Dated as of August 22, 1996, to be effective August 23, 1996.

**ATTEST:**

**CFB BANCORP, INC.**

By: Henry Y. Biel  
Its: Secretary

By: [Signature]  
Its: President

**ATTEST:**

**COMPASS FLORIDA COMMUNITY, INC.**

By: [Signature]  
Its: ~~Secretary~~ **ASSISTANT SECRETARY**

By: [Signature]  
Its: Vice President

STATE OF FLORIDA )

COUNTY OF DUVAL )

I, Vickie L. Jellie, a Notary Public in and for said County in said State, do hereby certify that on this 22 day of August, 1996, personally appeared before me A. Richardson Tosh who, being by me first duly sworn, declared that he is the President of CFB Bancorp, Inc., that he signed the foregoing document as President of the Corporation and that the statements therein contained are true.

WITNESS my hand and official seal on the date aforesaid.

[NOTARIAL SEAL]

Vickie L. Jellie



STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, Carol Turner Smedley, a Notary Public in and for said County in said State, do hereby certify that on this 20<sup>th</sup> day of August, 1996, personally appeared before me Garrett R. Hegel who, being by me first duly sworn, declared that he is the Vice President of Compass Florida Community, Inc., that he signed the foregoing document as Vice President of the Corporation and that the statements therein contained are true.

WITNESS my hand and official seal on the date aforesaid.

[NOTARIAL SEAL]

Carol Turner Smedley

My Commission Expires: 3-17-99

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER ("Agreement") dated as of February 13, 1996, by and among Compass Bancshares, Inc. a Delaware corporation ("Compass"), its wholly-owned subsidiary, Compass Bank, a Florida banking corporation ("Compass Bank"), CFB Bancorp, Inc., a Florida corporation ("Company") and its wholly owned subsidiary, Community First Bank, a Florida banking corporation ("Bank").

WHEREAS, Compass desires to affiliate with the Company, and the Company and the Bank desire to affiliate with Compass in the manner provided in this Agreement;

WHEREAS, Compass and the Company believe that the Merger (as defined herein) of the Company with an existing or to-be-formed subsidiary ("Compass Florida") of Compass incorporated under the laws of the State of Florida to be added as a party to this Agreement after the date hereof in the manner provided by, and subject to the terms and conditions set forth in, this Agreement and all exhibits, schedules and supplements hereto is desirable and in the best interests of their respective institutions and shareholders;

WHEREAS, the parties intend that the Bank will be merged with and into Compass Bank contemporaneously with the Merger; and

WHEREAS, the respective boards of directors of the Company, the Bank and Compass have approved this Agreement and the proposed transactions substantially on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I.

#### THE MERGER

**SECTION 1.1** The Merger. Upon the terms and subject to the conditions hereof, and in accordance with the Florida Business Corporation Act ("FBCA"), the Company shall be merged with and into Compass Florida (the "Merger") as soon as practicable following the satisfaction or waiver, if permissible, of the conditions set forth in Article VII hereof. Following the Merger, Compass Florida shall continue as the surviving corporation (the "Surviving Corporation") and the separate corporate existence of the Company shall cease. Compass shall not be deemed a party to the Merger for the purposes of Section 607.1106(1)(a) of the FBCA.

**SECTION 1.2** Effective Time. The Merger shall be consummated upon the filing of Articles of Merger with the Florida Department of State, in the form required by and executed in accordance with the relevant provisions of the FBCA. The effective time of the



Merger shall be the close of business on the day of the Closing (as defined herein) or such other time and date within two business days after the Closing as the parties may mutually agree and specify in the Articles of Merger (the "Effective Time").

**SECTION 1.3**      Certain Effects of the Merger. The Merger shall have the effects set forth in Section 607.1106 of the FBCA.

**SECTION 1.4**      Articles of Incorporation and By-Laws. The Articles of Incorporation and the By-Laws of Compass Florida, in each case as in effect at the Effective Time, shall be the Articles of Incorporation and By-Laws of the Surviving Corporation.

**SECTION 1.5**      Directors and Officers. The directors and officers of Compass Florida at the Effective Time shall be the directors and officers of the Surviving Corporation and shall hold office from the Effective Time until their respective successors are duly elected or appointed and qualified in the manner provided in the Articles of Incorporation and By-Laws of the Surviving Corporation, or as otherwise provided by law.

**SECTION 1.6**      Conversion of Shares. (a) Each share of the Company's common stock, par value \$.01 per share ("Company Common Stock"), issued and outstanding immediately prior to the Effective Time (the Company Common Stock is sometimes called the "Shares"), shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and represent the right to receive the consideration payable as set forth below, subject to the provisions of Section 1.8 (the "Merger Consideration"), to the holder of record thereof, without interest thereon, upon surrender of the certificate representing such Share. For the purposes of determining the number of Shares issued and outstanding, the number of Shares issued and outstanding shall be increased by the number of Shares that may be acquired upon exercise of any option or other security entitling the holder thereof to acquire Shares which is in effect or outstanding immediately prior to the Effective Time.

(b) Except as set forth in Section 1.8, each holder of Company Common Stock shall, for each such Share, receive Merger Consideration equal to the number of shares of Compass common stock, par value \$2.00 per share ("Compass Common Stock") determined by dividing the applicable number of shares of Compass Common Stock set forth below (the "Aggregate Merger Consideration") by the number of Shares outstanding immediately prior to the Effective Time:

(i) in the event that the average closing sale price of Compass Common Stock as reported by the National Association of Securities Dealers, Inc., National Market System for the 15 days of trading immediately preceding the fifth business day prior to the Closing (as defined in Section 1.11 hereof) (the "Market Price") is equal to or greater than \$32.50, but not greater than \$34.50, the Aggregate Merger Consideration shall be 1,326,154 shares of Compass Common Stock less the number of shares of Compass Common Stock required to pay for options cancelled pursuant to Section 1.6(c) hereof (the "Option Payment Shares");

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**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**COMPASS BANCSHARES, INC.,**

**COMPASS BANK,**

**CFB BANCORP, INC.,**

**AND**

**COMMUNITY FIRST BANK**

**Dated as of February 13, 1996**

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## TABLE OF CONTENTS

	Page
ARTICLE I. . . . .	1
THE MERGER . . . . .	1
SECTION 1.1 <u>The Merger</u> . . . . .	1
SECTION 1.2 <u>Effective Time</u> . . . . .	1
SECTION 1.3 <u>Certain Effects of the Merger</u> . . . . .	2
SECTION 1.4 <u>Articles of Incorporation and By-Laws</u> . . . . .	2
SECTION 1.5 <u>Directors and Officers</u> . . . . .	2
SECTION 1.6 <u>Conversion of Shares</u> . . . . .	2
SECTION 1.7 <u>Intentionally Left Blank</u> . . . . .	5
SECTION 1.8 <u>Escrow Agreement</u> . . . . .	5
SECTION 1.9 <u>Shareholders' Meeting</u> . . . . .	6
SECTION 1.10 <u>Registration of the Compass Common Stock</u> . . . . .	6
SECTION 1.11 <u>Closing</u> . . . . .	6
SECTION 1.12 <u>Merger of Bank</u> . . . . .	7
ARTICLE II. . . . .	7
DISSENTERS' RIGHTS; EXCHANGE OF SHARES . . . . .	7
SECTION 2.1 <u>Dissenters' Rights</u> . . . . .	7
SECTION 2.2 <u>Exchange of Shares</u> . . . . .	7
ARTICLE III. . . . .	8
REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE	
BANK . . . . .	8
SECTION 3.1 <u>Organization and Qualification</u> . . . . .	8
SECTION 3.2 <u>Company Capitalization</u> . . . . .	9
SECTION 3.3 <u>Bank Capitalization; Other Securities</u> . . . . .	9
SECTION 3.4 <u>Authority Relative to the Agreement</u> . . . . .	10
SECTION 3.5 <u>No Violation</u> . . . . .	10
SECTION 3.6 <u>Consents and Approvals</u> . . . . .	11
SECTION 3.7 <u>Regulatory Reports</u> . . . . .	11
SECTION 3.8 <u>SEC Reports; Securities Issuances</u> . . . . .	11
SECTION 3.9 <u>Financial Statements</u> . . . . .	11
SECTION 3.10 <u>Absence of Certain Changes</u> . . . . .	13
SECTION 3.11 <u>Company Indebtedness</u> . . . . .	15
SECTION 3.12 <u>Litigation</u> . . . . .	15
SECTION 3.13 <u>Tax Matters</u> . . . . .	15
SECTION 3.14 <u>Employee Benefit Plans</u> . . . . .	16
SECTION 3.15 <u>Employment Matters</u> . . . . .	18
SECTION 3.16 <u>Leases, Contracts and Agreements</u> . . . . .	18
SECTION 3.17 <u>Related Company Transactions</u> . . . . .	19
SECTION 3.18 <u>Compliance with Laws</u> . . . . .	19

SECTION 3.19	<u>Insurance</u>	20
SECTION 3.20	<u>Loans</u>	20
SECTION 3.21	<u>Fiduciary Responsibilities</u>	20
SECTION 3.22	<u>Patents, Trademarks and Copyrights</u>	20
SECTION 3.23	<u>Environmental Compliance</u>	20
SECTION 3.24	<u>Regulatory Actions</u>	22
SECTION 3.25	<u>Title to Properties; Encumbrances</u>	22
SECTION 3.26	<u>Shareholder List</u>	23
SECTION 3.27	<u>Proxy Statement</u>	23
SECTION 3.28	<u>Opinion of Investment Bankers</u>	23
SECTION 3.29	<u>Section 368 Representations</u>	23
SECTION 3.30	<u>Employee Stock Options</u>	24
SECTION 3.31	<u>Representations Not Misleading</u>	25
ARTICLE IV.		25
REPRESENTATIONS AND WARRANTIES OF COMPASS		25
SECTION 4.1	<u>Organization and Authority</u>	25
SECTION 4.2	<u>Authority Relative to Agreement</u>	25
SECTION 4.3	<u>Financial Reports</u>	26
SECTION 4.4	<u>Capitalization</u>	27
SECTION 4.5	<u>Consents and Approvals</u>	27
SECTION 4.6	<u>Proxy Statement</u>	27
SECTION 4.7	<u>Availability of Compass Common Stock</u>	28
SECTION 4.8	<u>Representations Not Misleading</u>	28
ARTICLE V.		28
COVENANTS OF THE COMPANY		28
SECTION 5.1	<u>Affirmative Covenants of the Company</u>	28
SECTION 5.2	<u>Negative Covenants of the Company</u>	30
ARTICLE VI.		32
ADDITIONAL AGREEMENTS		32
SECTION 6.1	<u>Access To, and Information Concerning, Properties and Records</u>	32
SECTION 6.2	<u>Filing of Regulatory Approvals</u>	33
SECTION 6.3	<u>Miscellaneous Agreements and Consents</u>	33
SECTION 6.4	<u>Company Indebtedness</u>	33
SECTION 6.5	<u>Best Good Faith Efforts</u>	33
SECTION 6.6	<u>Acquisition Proposals</u>	33
SECTION 6.7	<u>Public Announcement</u>	34
SECTION 6.8	<u>Employee Benefit Plans</u>	34
SECTION 6.9	<u>Employment and Severance Agreement Payments</u>	35
SECTION 6.10	<u>Proxies</u>	35

SECTION 6.11	<u>Exchange Agreement</u>	35
SECTION 6.12	<u>Shareholder Agent</u>	35
ARTICLE VII.		36
CONDITIONS TO CONSUMMATION OF THE MERGER		36
SECTION 7.1	<u>Conditions to Each Party's Obligation to Effect the Merger</u>	36
SECTION 7.2	<u>Conditions to the Obligations of Compass and Compass Florida to Effect the Merger</u>	36
SECTION 7.3	<u>Conditions to the Obligations of the Company to Effect the Merger</u>	38
ARTICLE VIII.		39
TERMINATION; AMENDMENT; WAIVER		39
SECTION 8.1	<u>Termination</u>	39
SECTION 8.2	<u>Effect of Termination</u>	40
SECTION 8.3	<u>Amendment</u>	40
SECTION 8.4	<u>Extension; Waiver</u>	40
SECTION 8.5	<u>Termination Fee</u>	40
ARTICLE IX.		41
SURVIVAL OF REPRESENTATIONS AND WARRANTIES		41
ARTICLE X.		41
MISCELLANEOUS		41
SECTION 10.1	<u>Expenses</u>	41
SECTION 10.2	<u>Brokers and Finders</u>	41
SECTION 10.3	<u>Entire Agreement; Assignment</u>	41
SECTION 10.4	<u>Further Assurances</u>	41
SECTION 10.5	<u>Enforcement of the Agreement</u>	42
SECTION 10.6	<u>Severability</u>	42
SECTION 10.7	<u>Notices</u>	42
SECTION 10.8	<u>Governing Law</u>	43
SECTION 10.9	<u>Descriptive Headings</u>	43
SECTION 10.10	<u>Parties in Interest</u>	43
SECTION 10.11	<u>Counterparts</u>	43
SECTION 10.12	<u>Incorporation by References</u>	43
SECTION 10.13	<u>Certain Definitions</u>	44

## **ATTACHMENTS**

### **EXHIBITS**

- A. Escrow Agreement**
- B. Exchange Agent Agreement**
- C. Voting Agreement and Irrevocable Proxy**
- D. Opinion of Counsel for the Company and the Bank**
- E. Noncompetition Agreement**
- F. Opinion of Counsel for Compass**

### **LIST OF SCHEDULES**

- |                         |   |
|-------------------------|---|
| <b>Schedule 1.6(c)</b>  | <b>List of Outstanding Options</b>  |
| <b>Schedule 3.2</b>     | <b>Company Capitalization</b>   |
| <b>Schedule 3.3</b>     | <b>Bank Capitalization; List of Equity Ownership</b>  |
| <b>Schedule 3.5</b>     | <b>Violations of Law; Conflicts of Interest; Share Litigation; Termination of Existence</b> |
| <b>Schedule 3.6</b>     | <b>Company Prior Consents</b>   |
| <b>Schedule 3.7</b>     | <b>Regulatory Reports</b>   |
| <b>Schedule 3.10</b>    | <b>Absence of Material Changes or Adverse Effects</b>                                       |
| <b>Schedule 3.12</b>    | <b>Company Legal Proceedings</b>  |
| <b>Schedule 3.13</b>    | <b>Tax Liabilities</b>  |
| <b>Schedule 3.14(a)</b> | <b>Employee Welfare Benefit Plans</b>   |
| <b>Schedule 3.14(b)</b> | <b>Employee Pension Benefit Plans</b>   |
| <b>Schedule 3.14(c)</b> | <b>Deferred Compensation, Bonus and Stock Purchase Plans</b>                                |

Schedule 3.14(l)	Additional Payments Due Under Deferred Compensation, Bonus, Employee Welfare Benefit Plans and Employee Pension Benefit Plans
Schedule 3.15	Employment Contracts and Collective Bargaining Agreements
Schedule 3.16	Leases, Subleases, Contracts and Agreements; Participations; Default of Contracts; Marketable Title
Schedule 3.17	Related Company Transactions
Schedule 3.18	Compliance with Laws
Schedule 3.19	Insurance Policies
Schedule 3.20	Loans Exceeding Legal Lending Limit, Troubled Loans
Schedule 3.22	Patents, Trademarks and Copyrights
Schedule 3.23	Environmental Compliance
Schedule 3.24	Regulatory Actions: Agreements
Schedule 3.25	Title to Properties; Title Policies; Property
Schedule 3.29	Company Shareholders Disposing of Stock
Schedule 3.30	Stock Option Plans
Schedule 4.2	Compass Prior Consents
Schedule 5.1(d)	Insurance Policies to be Maintained
Schedule 5.1(j)	List of Accounts and Safe Deposit Boxes
Schedule 5.1(k)	List of Liabilities and Obligations of the Company and the Bank
Schedule 6.10	List of Proxy Holders Voting Affirmatively for the Agreement
Schedule 7.2(e)	Officer Releases
Schedule 10.2	Brokers and Finders

(ii) In the event that the Market Price is greater than \$34.50, the Aggregate Merger Consideration shall be the number of shares of Compass Common Stock equal to the quotient of \$45,752,313 divided by the Market Price, less the Option Payment Shares;

(iii) In the event that the Market Price is less than \$32.50, but not less than \$30.50, the aggregate Merger Consideration shall be the number of shares of Compass Common Stock equal to the quotient of \$43,100,000 divided by the Market Price, less the Option Payment Shares;

(iv) In the event that the Market Price is less than \$30.50, this Agreement shall automatically terminate, unless such termination is avoided by application of subsection (v) below; and

(v) notwithstanding the above, in the event that the Market Price is less than \$30.50, by written notice at least two days before the date set for Closing, (A) Compass shall have the right to cause this Agreement to remain in effect by agreeing to pay Aggregate Merger Consideration of a number of shares of Compass Common Stock equal to the quotient of \$43,100,000 divided by the Market Price, less the Option Payment Shares, and (B) the Company shall have the right to cause this Agreement to remain in effect by agreeing to accept Aggregate Merger Consideration of 1,413,114 shares of Compass Common Stock, less the Option Payment Shares.

The ratio and number of shares of Compass Common Stock to be exchanged for each Share, respectively, shall be adjusted appropriately to reflect any stock dividends or splits with respect to Compass Common Stock, with respect to which the record date or payment occurs prior to the Effective Time.

(c) Effective as of the Closing, the Company shall take such action as is required to cause each outstanding option to purchase Shares (an "Option" and plural "Options") granted under any stock option plan of the Company, to be canceled, whether or not exercisable at such time. A list of all such outstanding Options is set forth on Schedule 1.6(c). The Aggregate Option Payment Shares (as defined herein) shall be a number of shares of Compass Common Stock as determined using the following formula: first, determine the aggregate dollar value of the Aggregate Merger Consideration ("Aggregate Dollar Value") by multiplying the number of shares of Compass Common Stock to be paid as consideration times the Market Price; second, determine the selling price per share of the Shares ("Selling Price Per Share") by dividing the sum of the Aggregate Dollar Value and the total consideration to be paid by Option Holders if the Option Holders were to exercise each and every Option (average exercise price times number of options outstanding) by the number of Shares issued and outstanding, and finally, determine the Aggregate Option Payment Shares ("Aggregate Option Payment Shares") by subtracting the average exercise price per share from the Selling Price Per Share and multiplying that difference times the number of Options outstanding and dividing that product by the Market Price. The following is a summary of the above stated formula.



Step 1	Aggregate Dollar Value =	Aggregate Merger Consideration in terms of Number of Shares of Compass Common Stock times the Market Price;
Step 2	Selling Price Per Share =	[Aggregate Dollar Value plus (average exercise price times number of options outstanding)], divided by (shares outstanding plus options outstanding);
Step 3	Aggregate Option Payment Shares =	[(Selling Price Per Share minus average exercise price per share) times (number of options outstanding)], divided by the Market Price.

Each holder of an Option shall receive, in consideration for the cancellation of each of his or her Options, a number of shares of Compass Common Stock determined by subtracting the exercise price per share for each share of stock which might have been acquired by exercise of the Options from the Selling Price Per Share and dividing that difference by the Market Price.

For example, if the Market Price of Compass Common Stock is \$32.50, then the formula would be applied as follows:

Step 1	Aggregate Dollar Value =	\$43,100,000
Step 2	Selling Price Per Share =	$\$43,100,000 + \$1,868,796 = \$44,968,796$ $\$44,968,796 + 2,262,040 = \$19.88 \text{ per Share}$
Step 3	Aggregate Option Payment Shares =	$\$19.88 - \$6.10 = \$13.78 \times 306,360 =$ $4,221,641 \div \$32.50 = 129,896$

The Aggregate Option Payment Shares in this hypothetical is 129,896 shares of Compass Common Stock. The Option Payment Shares for an individual Option Holder whose options have an exercise price of \$5.00 would be  $\$19.88 - \$5.00 = \$14.88 \div \$32.50 = .457846$  shares of Compass Common Stock per share of stock which might have been acquired upon exercise.

Compass shall deliver to holders of Options at the Closing, the number of shares of Compass Common Stock required to be paid in consideration for the cancellation thereof. Except as provided herein, or as otherwise agreed to by the parties, (i) the Company shall terminate, as of the Effective Time, the Stock Option Program and any other employee stock option plans and all provisions in any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of the capital stock of the Company or its Subsidiaries (as defined herein), and (ii) the Company shall obtain any required consents of holders of Options for the cancellation of all Options pursuant to this Agreement and ensure that following the Effective Time no holder of an Option, or any participant in any employee stock option plan or other plans, programs or arrangements shall have any right thereunder to acquire

equity securities of the Company or its Subsidiaries, the Surviving Corporation or any other entity.

(d) Each share of common stock of Compass Florida issued and outstanding immediately prior to the Effective Time shall continue to be outstanding at and after the Effective Time without any change therein and shall continue as a share of common stock of the Surviving Corporation.

(e) Compass will not issue any certificates for any fractional shares of Compass Common Stock otherwise issuable pursuant to the Merger. In lieu of issuing such fractional shares, Compass shall pay cash to any holder of Shares otherwise entitled to receive such fractional share. Such cash payment shall be based on the average closing sale price for Compass Common Stock as reported by the NASDAQ National Market System for the 15 days of trading of Compass Common Stock immediately preceding the fifth business day prior to the Effective Time.

**SECTION 1.7**      Intentionally Left Blank

**SECTION 1.8**      Escrow Agreement. At the Closing, the parties shall enter into an escrow agreement in the form of Exhibit A hereto (the "Escrow Agreement"), pursuant to which the Escrow Agent shall hold and distribute the portion of the Aggregate Merger Consideration delivered to the Escrow Agent pursuant to this Section 1.8. A number of shares of Compass Common Stock equal to \$1,791,270, divided by the Market Price (the "Escrow Consideration") shall be delivered to the Escrow Agent pursuant to this Section 1.8 only if, at the time of the Closing: (i) the Florida Insurance Commissioner has not given final approval to the debt-to-equity conversion contemplated by that certain application for approval of the acquisition of controlling interest of a domestic insurer filed by Pafco Insurance Company Ltd. with the Florida Department of Insurance on November 10, 1995, and (ii) the debt to equity conversion contemplated by such application has not been consummated. The Escrow Consideration represents the amount due from American Surety & Casualty Holding Company to the Bank upon the payment in full of that certain debenture dated March 4, 1994, in the principal amount of \$1,835,000, payable to American Surety & Casualty Holding Company and due June 30, 1997, as amended by a letter dated December 15, 1995, reducing the principal amount to \$1,791,270 (the "Debenture"). The Debenture is part of the consideration for the sale by the Bank of its previously wholly-owned subsidiary, American Surety & Casualty Holding Company. In the event shares of Compass Common Stock are delivered to the Escrow Agent pursuant to this Section 1.8, the number of shares of Compass Common Stock which otherwise would be included in the Aggregate Merger Consideration distributed pursuant to Section 1.6 shall be reduced by the Escrow Consideration. The shareholders of the Company shall be entitled to receive the Escrow Consideration, pursuant to the Escrow Agreement, if and when the Florida Insurance Commissioner gives final approval to the debt-to-equity conversion contemplated by the above described application and such debt-to-equity conversion has been consummated. If the above described approval and transaction consummation have not occurred prior to June 30, 1997, the Escrow Consideration shall be returned to Compass in exchange for

the Debenture, and thereafter shall not be considered a part of the Merger Consideration paid to the shareholders. The Debenture shall thereafter be considered the property of the former Company shareholders, and the Shareholder Agent will have the authority and discretion to collect or liquidate the Debenture on behalf of the former Company shareholders.

**SECTION 1.9 Shareholders' Meeting.** The Company, acting through its Board of Directors, shall, in accordance with applicable law:

(a) duly call, give notice of, convene and hold a meeting (the "Shareholders' Meeting") of its shareholders approximately sixty days prior to the Closing for the purpose of approving and adopting this Agreement;

(b) require no greater than the minimum vote required by applicable law of each class of the Shares in order to approve the Merger;

(c) include in the Proxy Statement (defined in paragraph (d) below) the unanimous recommendation of its Board of Directors that the shareholders of the Company vote in favor of the approval and adoption of this Agreement; and

(d) use its best efforts (i) to obtain and furnish the information required to be included by it in the Proxy Statement and cause the Proxy Statement to be mailed to its shareholders at the earliest practicable time following the date of this Agreement, and (ii) to obtain the approval and adoption of the Merger by shareholders holding at least the minimum number of Shares of each class of the Shares entitled to vote at the Shareholders' Meeting to approve the Merger under applicable law. The letter to shareholders, notice of meeting, proxy statement and form of proxy to be distributed to shareholders in connection with the Merger shall be in form and substance reasonably satisfactory to Compass, and are collectively referred to herein as the "Proxy Statement."

**SECTION 1.10 Registration of the Compass Common Stock.** Compass shall file a registration statement (the "Registration Statement") with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933 ("Securities Act") covering the shares of Compass Common Stock to be issued to Company shareholders in the Merger.

**SECTION 1.11 Closing.** Upon the terms and subject to the conditions hereof, as soon as practicable after the vote of the shareholders of the Company in favor of the approval and adoption of this Agreement has been obtained, and the satisfaction or waiver, if permissible, of the conditions set forth in Article VII hereof, the Company and Compass Florida shall execute and file the Articles of Merger and the Certificate of Merger, as described in Section 1.2, and the parties hereto shall take all such other and further actions as may be required by law to make the Merger effective. Prior to the filing referred to in this Section, a closing (the "Closing") will be held at the office of Balch & Bingham in Birmingham, Alabama (or such other place as the parties may agree) for the purpose of confirming all of the foregoing. The parties hereto presently intend that the Closing will take place on July 31, 1996; provided, however, in any

Letter of Transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor cash and Company Common Stock in the amount provided in Section 1.6, and such Certificate shall forthwith be canceled. Company shall provide the Exchange Agent with certificates for Company Common Stock, as requested by the Exchange Agent, in the amounts provided in Section 1.6 hereof. No interest will be paid or accrued on the cash payable upon surrender of the Certificate and no declared dividend will be distributed with respect to the shares of Company Common Stock until the holder's shares are surrendered in exchange therefor. If payment or delivery of Company Common Stock is to be made to a person other than the person in whose name the Certificate surrendered is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such payment shall pay any transfer or other taxes required by reason of the payment and delivery of Company Common Stock to a person other than the registered holder of the Certificate surrendered or established to the satisfaction of the Surviving Corporation that such tax has been paid or is not applicable. Until surrendered in accordance with the provisions of this Section 2.3, each Certificate shall represent for all purposes the right to receive the Merger Consideration without any interest thereon.

(c) After the Effective Time, the stock transfer ledger of the Company shall be closed and there shall be no transfers on the stock transfer books of the Company of the shares which were outstanding immediately prior to such time of filing. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be promptly presented to the Exchange Agent and exchanged as provided in this Article II.

(d) Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains unclaimed by the shareholders of the Company for six months after the Effective Time shall be paid to Company, which shall assume all duties and responsibilities of the Exchange Agent regarding payment of the Merger Consideration to holders of shares who tender their shares thereafter, and the holders of shares not thereafter presented to the Exchange Agent shall look to Company only, and not the Exchange Agent, for the payment of any Merger Consideration in respect of such shares.

### ARTICLE III.

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE BANK

The Company and the Bank hereby make the representations and warranties set forth in this Article III to Company. The Company has delivered to Company the Schedules to this Agreement referred to in this Article III on the date hereof. The Company agrees at the Closing to provide Company with supplemental Schedules (other than Schedule 3.23) reflecting any specific changes thereto between the date of such Schedules and the date of the Closing.

**SECTION 3.1 Organization and Qualification.** The Company is a Florida corporation and a bank holding company under the Bank Holding Company Act of 1956, as amended, and is duly organized, validly existing and in good standing under the laws of the

event, if the Closing shall not have occurred prior thereto, the Closing shall take place on the business day next preceding the permitted termination date referred to in Section 8.1(d) hereof.

**SECTION 1.13 Merger of Banks.** At Compass' election, Compass may cause the Bank to merge into Compass Bank immediately after the Merger, and the Company and the Bank agree to execute documents and take actions (conditioned on the Merger being effective) and otherwise agree to cooperate with Compass during the time the Merger transaction is pending in order to facilitate such merger of the Bank into Compass Bank immediately after the Closing.

## ARTICLE II.

### DISSENTERS' RIGHTS; EXCHANGE OF SHARES

**SECTION 2.1 Dissenters' Rights.** The parties acknowledge that pursuant to Section 607.302 of the FBCA, the holders of Company Common Stock are not entitled to dissenters' rights under the FBCA.

### SECTION 2.2 Exchange of Shares

(a) Compass shall deposit or cause to be deposited in trust with Compass Bank, Birmingham, Alabama, an affiliate of Compass (the "Exchange Agent"), pursuant to an exchange agent agreement in substantially the form attached hereto as Exhibit B (the "Exchange Agreement"), prior to the Effective Time cash in an aggregate amount estimated to be sufficient to make the cash payments in lieu of fractional shares of Compass Common Stock pursuant to Section 1.6 hereof (such amounts being hereinafter referred to as the "Exchange Fund"). The Exchange Agent shall, pursuant to irrevocable instructions jointly given by the Company and Compass, promptly make the payments in lieu of fractional shares out of the Exchange Fund upon surrender of Shares in accordance with Section 2.2(b). Subject to holding sufficient cash to make prompt payments to holders of Shares, the Exchange Agent shall invest the Exchange Fund in The Standard Government Money Market Fund, managed by the Exchange Agent; provided, however, no interest will be paid or accrued on the cash payable to holders of Company Common Stock. The Exchange Fund shall not be used for any other purpose, except as provided in this Agreement.

(b) Promptly after the Effective Time, the Exchange Agent shall mail to each record holder of an outstanding certificate or certificates which as of the Effective Time represented Shares, or proof of loss thereof (the "Certificates"), a form letter of transmittal approved by the Company and Compass (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent) and instructions for use in effecting the surrender of the Certificates for payment therefor in substantially the form attached hereto as Exhibit B to the Exchange Agreement (the "Letter of Transmittal"). Upon surrender to the Exchange Agent of a Certificate, together with such

State of Florida and all laws, rules, and regulations applicable to bank holding companies. The Bank is a Florida banking corporation, duly organized, validly existing and in good standing under the laws of the State of Florida. Each of the Company and the Bank has all requisite corporate power and authority to carry on its business as now being conducted and to own, lease and operate its properties and assets as now owned, leased or operated. Except as set forth on Schedule 3.17, the Company does not own or control any Affiliate (as defined in Section 3.17) or Subsidiary (as defined in Section 10.13(a)) other than the Bank. True and correct copies of the Articles of Incorporation and Bylaws of the Company and the Bank, with all amendments thereto through the date of this Agreement, have been delivered by the Company to Compass. The Bank is duly qualified or licensed to do business in the State of Florida. The nature of the business of the Company and the Bank and their respective activities, as currently conducted, do not require them to be qualified to do business in any jurisdiction other than the State of Florida.

**SECTION 3.2      Company Capitalization.** As of the date hereof, the authorized capital stock of the Company consists solely of (a) 15,000,000 shares of Company Common Stock per value, \$.01 per share, of which 1,955,680 shares are issued and outstanding, and none of which are held in treasury. Except as set forth on Schedule 3.2, there are no outstanding subscriptions, options, convertible securities, rights, warrants, calls, or other agreements or commitments of any kind issued or granted by, or binding upon, the Company or the Bank to purchase or otherwise acquire any security of or equity interest in the Company or the Bank. Except as set forth on Schedule 3.2, there are no outstanding subscriptions, options, rights, warrants, calls, convertible securities or other agreements or commitments obligating the Company to issue any shares of the Company, or to the knowledge of the Company, irrevocable proxies or any agreements restricting the transfer of or otherwise relating to shares of its capital stock of any class. All of the Shares that have been issued have been duly authorized, validly issued and are fully paid and non-assessable, and are free of preemptive rights. There are no restrictions applicable to the payment of dividends on the Shares except pursuant to the FBCA and applicable banking laws and regulations and all dividends declared prior to the date hereof have been paid.

**SECTION 3.3      Bank Capitalization; Other Securities.** All of the issued and outstanding shares of the capital stock of the Bank (i) are duly authorized, validly issued, fully paid and nonassessable, (ii) except as referred to in Schedule 3.3 are free and clear of any liens, claims, security interests and encumbrances of any kind, and (iii) there are no irrevocable proxies with respect to such shares and there are no outstanding or authorized subscriptions, options, warrants, calls, rights, or other agreements or commitments of any kind restricting the transfer of, requiring the issuance or sale of, or otherwise relating to any of such shares of capital stock to any person. The Company owns, directly, all of the issued and outstanding capital stock of the Bank. Set forth on Schedule 3.3 hereto is a list of all equity ownership by the Company or the Bank for the account of the Company or the Bank in any other person other than the Bank (the "Other Securities"). The Company or the Bank owns each Other Security free and clear of any lien, encumbrance, security interest or charge.

**SECTION 3.4**      Authority Relative to the Agreement. The Company has full corporate power and authority, and, except for the approval by the Company's shareholders, no further proceedings on the part of the Company are necessary, to execute and deliver this Agreement and to consummate the transactions contemplated hereby which have been duly and validly authorized by its Board of Directors. This Agreement has been duly executed and delivered by the Company and is a duly authorized, valid, legally binding and enforceable obligation of the Company, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and general equitable principles, and subject to such shareholder approvals and such approval of regulatory agencies and other governmental authorities having authority over the Company as may be required by statute or regulation. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in any violation or breach of or default under the respective Articles of Incorporation or By-Laws of the Company or the Bank or any agreement, document or instrument by which the Company or the Bank is obligated or bound.

**SECTION 3.5**      No Violation. Except as set forth on Schedule 3.5, neither the execution, delivery nor performance of this Agreement in its entirety, nor the consummation of all of the transactions contemplated hereby, following the receipt of such approvals as may be required from the Company's shareholders, the SEC, the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("FRB"), and the Florida Department of Banking and Finance ("Department") will (i) violate (with or without the giving of notice or the passage of time), any law, order, writ, judgment, injunction, award, decree, rule, statute, ordinance or regulation applicable to the Company or the Bank or (ii) be in conflict with, result in a breach or termination of any provision of, cause the acceleration of the maturity of any debt or obligation pursuant to, constitute a default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of any security interest, lien, charge or other encumbrance upon any property or assets of the Company or the Bank pursuant to, any terms, conditions or provisions of any note, license, instrument, indenture, mortgage, deed of trust or other agreement or understanding or any other restriction of any kind or character, to which the Company or the Bank is a party or by which any of their assets or properties are subject or bound. Except as set forth on Schedule 3.5, there are no proceedings pending or, to the knowledge of the Company or the Bank, threatened, against the Company, the Bank or involving the Shares, at law or in equity or before or by any foreign, federal, state, municipal or other governmental court, department, commission, board, bureau, agency, instrumentality or other person which may result in liability to Compass or Compass Florida upon the consummation of the transactions contemplated hereby or which would prevent or delay such consummation. Except as set forth in Schedule 3.5, or as contemplated hereby, the corporate existence, business organization, assets, licenses, permits, authorizations and contracts of the Company and the Bank will not be terminated or impaired by reason of the execution, delivery or performance by the Company of this Agreement or consummation by the Company of the transactions contemplated hereby, assuming the receipt of required shareholder and regulatory approvals.

**SECTION 3.6**      Consents and Approvals. The Company's Board of Directors (at a meeting called and duly held) has unanimously determined that the Merger is fair to the Company's shareholders and has unanimously resolved to recommend approval and adoption of this Agreement by the Company's shareholders. Except as described in Schedule 3.6 hereto, no prior consent, approval or authorization of, or declaration, filing or registration with any person, domestic or foreign, is required of the Company in connection with the execution, delivery and performance by the Company of this Agreement and the transactions contemplated hereby or the resulting change of control of the Bank, except the filing of the Articles of Merger under the FBCA and such approvals as may be required from the SEC, the FRB, the FDIC and the Department and holders of Shares under the FBCA.

**SECTION 3.7**      Regulatory Reports. Except as set forth on Schedule 3.7, the Company and the Bank have filed all reports, registrations and statements, together with any amendments required to be made thereto, that are required to be filed with the FRB, the Department, the FDIC, or any other regulatory authority having jurisdiction over any such persons, other than plans, reports or information.

**SECTION 3.8**      SEC Reports; Securities Issuances. The Company is subject, and prior to the Company's formation on July 15, 1994, the Bank was subject, to the registration provisions of Section 12 of the Exchange Act of 1934, as amended ("Exchange Act") and the rules and regulations of the SEC promulgated under Section 12 of the Exchange Act. The Company or the Bank, as appropriate, has filed all required forms, reports and documents with the SEC or the FDIC required to be filed by it pursuant to the Exchange Act and the SEC or FDIC rules and regulations thereunder, all of which, as thereafter amended, have to the knowledge of the Company complied in all material respects with all applicable requirements of the Exchange Act and the rules promulgated thereunder (collectively, the "SEC Reports"). None of such forms, reports or documents, including without limitation any financial statements or schedules included therein, at the time filed, as thereafter amended, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. No amendment to any SEC Report, or the facts or circumstances underlying the need for such amendment, have subjected or, to the knowledge of the Company, could in the future subject the Company or the Bank to any liability, fine, restriction or other penalty. Until the Effective Time, the Company will provide Compass with a copy of each SEC Report promptly after such report is filed. All issuances of securities by the Company and the Bank have been registered under the Securities Act, the Florida Securities Investor Protection Act, and all other applicable laws or were exempt from any such registration requirements.

**SECTION 3.9**      Financial Statements.

(a) The Company has previously furnished Compass with a true and complete copy of  
(i) its annual report on Form 10-K for the year ended December 31, 1994, including the 1994 Annual Report to Shareholders, which report (the "Company 1994 Annual Report") includes, among other things, consolidated balance sheets of the Company and the Bank as of December



31, 1994, the related consolidated statements of income, shareholders' equity and changes in cash flows for the year ended December 31, 1994, plus consolidating financial statements of the Bank, and (ii) the Company's quarterly reports on Form 10-Q for the quarters ended March 31, June 30 and September 30, 1995 (the "Quarterly Reports"), which reports include, among other things, unaudited consolidated balance sheets of the Company and the Bank as of March 31, June 30 and September 30, 1995 and December 31, 1994, and the related unaudited consolidated statements of income, shareholders' equity and changes in cash flows for the three-, six- and nine-month periods ended March 31, June 30 and September 30, 1995, and promptly following their availability the Company will provide Compass with the Company's 1995 Annual Report to Shareholders (the "Company 1995 Annual Report"), which report includes, among other things, consolidated balance sheets of the Company and the Bank as of December 31, 1995 and 1994 and the related consolidated statements of income, shareholders' equity and changes in cash flow for the years ended December 31, 1995 and 1994 (such balance sheets and the related consolidated statements of income, shareholders' equity and changes in cash flows, plus all consolidating financial statements for the Bank and all related notes and schedules are collectively referred to as the "Company Financial Statements").

(b) The Bank has previously furnished Compass with a true and complete copy of (i) the 1993 Annual Report to Shareholders, which report ("Bank 1993 Annual Report") includes, among other things, consolidated balance sheets of the Bank as of December 31, 1993 and 1992, the related consolidated statements of income, shareholders' equity and changes in cash flows for the year ended December 31, 1993 and 1992, and (ii) the Bank's quarterly reports on Form 10-Q for the quarters ended March 31, June 30 and September 30, 1994 (the "Quarterly Reports"), which reports include, among other things, unaudited consolidated balance sheets of the Bank as of March 31, June 30 and September 30, 1994 and December 31, 1993, and the related unaudited consolidated statements of income, shareholders' equity and changes in cash flows for the three-, six- and nine-month periods ended March 31, June 30 and September 30, 1994 and 1993 (such balance sheets and the related consolidated statements of income, shareholders' equity and changes in cash flows, and all related notes and schedules are collectively referred to herein as the "Bank Financial Statements").

The Bank Financial Statements and the Company Financial Statements are together referred to herein as the "Financial Statements."

(c) Except as described in the notes to the Financial Statements, the Financial Statements, including the consolidated balance sheets and the related consolidated statements of income, shareholders' equity and changes in cash flows (including the related notes thereto) of the Company and the Bank, fairly present the financial position of the Company and the Bank as of the dates thereof and the results of operations and changes in consolidated financial position of the Company and the Bank for the periods then ended, in conformity with Generally Accepted Accounting Principles ("GAAP") applied on a basis consistent with prior periods (subject, in the case of the unaudited interim financial statements, to normal year-end adjustments and the fact that they do not contain all of the footnote disclosures required by GAAP), except as otherwise noted therein, and the accounting records underlying the Financial Statements accurately and

fairly reflect in all material respects the transactions of the Company and the Bank. As of their dates, the Financial Statements conformed, or will conform when delivered, in all material respects with all applicable rules and regulations promulgated by the FRB, the Department, and the FDIC, to the extent that such rules and regulations are consistent with GAAP. None of the Company, the Bank or its Subsidiaries have any liabilities or obligations of a type which should be included in or reflected on the Financial Statements if prepared in accordance with GAAP, whether related to tax or non-tax matters, accrued or contingent, due or not yet due, liquidated or unliquidated, or otherwise, except as and to the extent disclosed or reflected in the Financial Statements. With the exception of commitments to sell mortgage-backed securities in the ordinary course of business, the Company and the Bank have no off balance sheet liabilities associated with financial derivative products or potential liabilities associated with financial derivative products.

(d) The Company will provide Compass with the unaudited consolidated and unconsolidated balance sheets of the Bank as of the end of each month hereafter, prepared on a basis consistent with prior periods and promptly following their availability, the Company will provide Compass with the quarterly reports of the Company on form 10-Q and the Reports of Condition and Statements of Income ("Call Reports") of the Bank for all periods ending after September 30, 1995.

**SECTION 3.10 Absence of Certain Changes.** Except as and to the extent set forth on Schedule 3.10, since September 30, 1995 (the "Balance Sheet Date") neither the Company nor the Bank has:

- (a) made any amendment to its Articles of Incorporation or Bylaws or changed the character of its business in any material manner;
- (b) suffered any Material Adverse Effect (as defined in Section 10.13(b));
- (c) entered into any agreement, commitment or transaction except in the ordinary course of business and consistent with prudent banking practices;
- (d) except in the ordinary course of business and consistent with prudent banking practices, incurred, assumed or become subject to, whether directly or by way of any guarantee or otherwise, any obligations or liabilities (absolute, accrued, contingent or otherwise);
- (e) permitted or allowed any of its property or assets to be subject to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge of any kind (other than statutory liens not yet delinquent) except in the ordinary course of business and consistent with prudent banking practices;
- (f) except in the ordinary course of business and consistent with prudent banking practices, canceled any debts, waived any claims or rights, or sold, transferred, or otherwise disposed of any of its properties or assets;

(g) disposed of or permitted to lapse any rights to the use of any trademark, service mark, trade name or copyright, or disposed of or disclosed to any person other than its employees or agents, any trade secret not theretofore a matter of public knowledge;

(h) except as set forth on Schedule 3.10 and except for regular salary increases granted in the ordinary course of business within the Company's or the Bank's 1995 budget and consistent with prior practices, granted any increase in compensation or paid or agreed to pay or accrue any bonus, percentage compensation, service award, severance payment or like benefit to or for the credit of any director, officer, employee or agent, or entered into any employment or consulting contract or other agreement with any director, officer or employee or adopted, amended or terminated any pension, employee welfare, retirement, stock purchase, stock option, stock appreciation rights, termination, severance, income protection, golden parachute, savings or profit-sharing plan (including trust agreements and insurance contracts embodying such plans), any deferred compensation, or collective bargaining agreement, any group insurance contract or any other incentive, welfare or employee benefit plan program or agreement maintained by the Company or the Bank, for the directors, employees or former employees of the Company or the Bank ("Employee Benefit Plan");

(i) directly or indirectly declared, set aside or paid any dividend or made any distribution in respect to its capital stock or redeemed, purchased or otherwise acquired, or arranged for the redemption, purchase or acquisition of, any shares of its capital stock or other of its securities, except for dividends paid to the Company by the Bank;

(j) organized or acquired any capital stock or other equity securities or acquired any equity or ownership interest in any person (except through settlement of indebtedness, foreclosure, the exercise of creditors' remedies or in a fiduciary capacity, the ownership of which does not expose the Company or the Bank to any liability from the business, operations or liabilities of such person);

(k) issued, reserved for issuance, granted, sold or authorized the issuance of any shares of its capital stock or subscriptions, options, warrants, calls, rights or commitments of any kind relating to the issuance or sale of or conversion into shares of its capital stock;

(l) made any or acquiesced with any change in any accounting methods, principles or practices;

(m) experienced any significant change with respect to any branch or line of business of the Company or the Bank, with the exception of the possible sale of all or part of the mortgage servicing portfolio;

(n) except for the transactions contemplated by this Agreement or as otherwise permitted hereunder, entered into any transaction, or entered into, modified or amended any contract or commitment, other than in the ordinary course of business and consistent with prudent banking practices; or

(c) agreed, whether in writing or otherwise, to take any action the performance of which would change the representations contained in this Section 3.10 in the future so that any such representation would not be true in all material respects as of the Closing.

**SECTION 3.11 Company Indebtedness.** The Company has delivered to Compass true and complete copies of all loan documents ("Company Loan Documents") related to indebtedness of the Company, the Bank and its Subsidiaries, other than deposits ("Company Indebtedness"), and made available to Compass all material correspondence concerning the status of Company Indebtedness.

**SECTION 3.12 Litigation.** Except as set forth on Schedule 3.12, there are no actions, suits, claims, investigations, reviews or other proceedings pending or, to the knowledge of the Company or the Bank, threatened against the Company or the Bank or involving any of their respective properties or assets, at law or in equity or before or by any foreign, federal, state, municipal, or other governmental court, department, commission, board, bureau, agency, or other instrumentality or person or any board of arbitration or similar entity ("Proceeding"). The Company will notify Compass immediately in writing of any Proceeding against the Company or the Bank.

**SECTION 3.13 Tax Matters.** The Company and the Bank have duly filed all tax returns required to be filed by them involving a tax liability or other material potential detriment for failure to file (the "Filed Returns"). The Company and the Bank have paid, or have established adequate reserves for the payment of, all federal income taxes and all state and local income taxes and all franchise, property, sales, employment, foreign or other taxes required to be paid with respect to the periods covered by the Filed Returns. With respect to the periods for which returns have not yet been filed, the Company and the Bank have established adequate reserves determined in accordance with GAAP for the payment of all federal income taxes and all state and local income taxes and all franchise, property, sales, employment, foreign or other taxes. Except as described in Schedule 3.13, the Company and the Bank have no direct or indirect liability for the payment of federal income taxes, state and local income taxes, and franchise, property, sales, employment or other taxes in excess of amounts paid or reserves established. Except as set forth on Schedule 3.13, the Company has not entered into any tax sharing agreement or other agreement regarding the allocation of the tax liability of the Company or the Bank or similar arrangement with its Subsidiaries. Set forth on Schedule 3.13 are the dates of filing of all Filed Returns and any amendments thereto which relate to federal or state income or franchise taxes for the last five years beginning with 1990. Neither the Company nor the Bank have filed any Internal Revenue Service ("IRS") Forms 1139 (Application for Tentative Refund). Except as set forth on Schedule 3.13, there are no pending questions raised in writing by the IRS or other taxing authority for taxes or assessments of the Company or the Bank, nor are there any outstanding agreements or waivers extending the statutory period of limitation applicable to any tax return of the Company or the Bank for any period. The Company and the Bank have withheld from employee wages and paid over to the proper governmental authorities all amounts required to be so withheld and paid over. For the purposes of this Agreement, the term "tax" shall include all federal, state and local taxes and

related governmental charges and any interest or penalties payable in connection with the payment of taxes.

**SECTION 3.14      Employee Benefit Plans.** With respect to all employee benefit plans and programs in which employees of the Company or the Bank participate the following are true and correct:

(a)      Schedule 3.14(a) lists each "employee welfare benefit plan" (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) maintained by the Company or the Bank or to which the Company or the Bank contributes or is required to contribute, including any multiemployer welfare plan (such employee welfare benefit plans being hereinafter collectively referred to as the "Welfare Benefit Plans") and sets forth (i) the amount of any liability of the Company or the Bank for contributions more than thirty days past due with respect to each Welfare Benefit Plan as of the date hereof and as of the end of any subsequent month ending prior to the Closing and (ii) the annual cost attributable to each of the Welfare Benefit Plans; no Welfare Benefit Plan provides for continuing benefits or coverage for any participant, beneficiary or former employee after such participant's or former employee's termination of employment except as may be required by Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code") and Sections 601-608 of ERISA;

(b)      Schedule 3.14(b) lists each "employee pension benefit plan" (as defined in Section 3(2) of ERISA and not exempted under Section 4(b) or 201 of ERISA) maintained by the Company or the Bank or to which the Company or the Bank contributes or is required to contribute, including any multiemployer plan (as defined in Section 3(37) of ERISA) (such employee pension benefit plans being hereinafter collectively referred to as the "Pension Benefit Plans");

(c)      Schedule 3.14(c) lists each deferred compensation plan, bonus plan, stock option plan, employee stock purchase plan, restricted stock, excess benefit plan, incentive compensation, stock bonus, cash bonus, severance pay, golden parachute, life insurance, all nonqualified deferred compensation arrangements, rabbi trusts, cafeteria plans, dependant care plans, all unfunded plans and any other employee benefit plans or programs, agreements, arrangements or commitments not required under a previous subsection to be listed (other than normal policies concerning holidays, vacations and salary continuation during short absences for illness or other reasons) maintained by the Company or the Bank (referred to as "Other Programs");

(d)      All of the Pension Benefit Plans and Welfare Benefit Plans and any related trust agreements or annuity contracts (or any other funding instruments) and all Other Programs comply currently, and have complied in the past, both as to form and operation, with the provisions of ERISA, the Code and with all other applicable laws, rules and regulations governing the establishment and operation of the Pension Benefit Plans, Welfare Benefit Plans and all Other Programs; all necessary governmental approvals relating to the establishment of the Pension Benefit Plans have been obtained; and with respect to each Pension Benefit Plan that

is intended to be tax-qualified under Section 401(a) or 403(a) of the Code, a favorable determination letter as to the qualification under the Code of each such Pension Benefit Plan and each material amendment thereto has been issued by the Internal Revenue Service (and nothing has occurred since the date of the last such determination letter which resulted in, or is likely to result in the revocation of such determination);

(e) Each Welfare Benefit Plan, each Pension Benefit Plan and each Other Program has been administered in compliance with the requirements of the Code, ERISA and all other applicable laws, and all reports and disclosures required by ERISA, the Code and any other applicable laws with respect to each Welfare Benefit Plan, Pension Benefit Plan and each Other Program have been timely filed;

(f) On and after January 1, 1975, neither the Company, the Bank nor any plan fiduciary of any Welfare Benefit Plan or Pension Benefit Plan has engaged in any transaction in violation of Section 406 of ERISA (for which transaction no exemption exists under Section 408 of ERISA) or in any "prohibited transaction" as defined in Section 4975(c)(1) of the Code (for which no exemption exists under Section 4975(c)(2) or 4975(d) of the Code);

(g) Neither the Company, the Bank nor any corporation or other trade or business controlled by or under common control with the Company (as determined under Sections 414(b) and 414(c) of the Code) ("Common Control Entity") is, or has been within the past five years, a contributing sponsor (as defined in Section 4001(a)(13) of ERISA) of a Pension Benefit Plan subject to the provisions of Title IV of ERISA, nor has the Company, the Bank or a Common Control Entity maintained or participated in any employee pension benefit plan (defined in Section 3(2) of ERISA) subject to the provision of Title IV of ERISA. In addition, neither the Company, nor the Bank nor a Common Control Entity (i) is a party to a collective bargaining agreement, (ii) has maintained or contributed to, or has participated in or agreed to participate in, a multiemployer plan (as defined in Section 3(37) of ERISA), or (iii) has made a complete or partial withdrawal from a multiemployer plan (as defined in Section 3(37) of ERISA) so as to incur withdrawal liability as defined in Section 4201 of ERISA (without regard to subsequent reduction or waiver of such liability under Section 4207 or 4208 of ERISA);

(h) True and complete copies of each Welfare Benefit Plan, Pension Benefit Plan and each Other Program, related trust agreements or annuity contracts (or any other funding instruments), summary plan descriptions, the most recent determination letter issued by the Internal Revenue Service with respect to each Pension Benefit Plan, the most recent application for a determination letter from the Internal Revenue Service with respect to each Pension Benefit Plan and Annual Reports on Form 5500 Series filed with any governmental agency for each Welfare Benefit Plan, Pension Benefit Plan and Other Program for the two most recent plan years, have been furnished to Compass;

(i) All Welfare Benefit Plans, Pension Benefit Plans, and Other Programs, related trust agreements or annuity contracts (or any other funding instruments), are legally valid and binding and in full force and effect and there are no promised increases in benefits (whether

expressed, implied, oral or written) under any of these plans nor any obligations, commitments or understandings to continue any of these plans, (whether expressed, implied, oral or written) except as required by Section 4980B of the Code and Sections 601-608 of ERISA;

(j) There are no claims pending with respect to, or under, any Pension Benefit Plan, Welfare Benefit Plan or any Other Program, other than routine claims for plan benefits, and there are no disputes or litigation pending or threatened with respect to any such plans;

(k) No action has been taken, nor has there been a failure to take any action that would subject any person or entity to any liability for any income, excise or other tax or penalty in connection with any Pension Benefit Plan, Welfare Benefit Plan or any Other Program, other than for income taxes due with respect to benefits paid; and

(l) Except as otherwise set forth in Schedule 3.14(l), neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby will (i) result in any payment to be made by the Company or the Bank (including, without limitation, severance, unemployment compensation, golden parachute (defined in Section 280G of the Code), or otherwise) becoming due to any employee, director or consultant or (ii) increase any benefits otherwise payable under any Welfare Benefit Plan, Pension Benefit Plan, or any Other Program.

**SECTION 3.15      Employment Matters.** Except as disclosed on Schedule 3.15, neither the Company nor the Bank is a party to any oral or written contracts or agreements granting benefits or rights to employees or any collective bargaining agreement or to any conciliation agreement with the Department of Labor, the Equal Employment Opportunity Commission or any federal, state or local agency which requires equal employment opportunities or affirmative action in employment. To the knowledge of the Company, except as disclosed on Schedule 3.15, there are no unfair labor practice complaints pending against the Company or the Bank before the National Labor Relations Board and no similar claims pending before any similar state, local or foreign agency. To the knowledge of the Company, there is no activity or proceeding of any labor organization (or representative thereof) or employee group to organize any employees of the Company or the Bank, nor of any strikes, slowdowns, work stoppages, lockouts, or threats thereof, by or with respect to any such employees. The Company and the Bank are in compliance in all material respects with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and neither the Company nor the Bank is engaged in any unfair labor practice.

**SECTION 3.16      Leases, Contracts and Agreements.** Schedule 3.16 sets forth an accurate and complete list of all leases, subleases, licenses, contracts and agreements to which the Company or the Bank is a party or by which the Company or the Bank is bound which obligate or may obligate the Company or the Bank in the aggregate for an amount in excess of \$50,000 over the entire term of any such agreement or related contracts of a similar nature which in the aggregate obligate or may obligate the Company or the Bank in the aggregate for an amount in excess of \$50,000 over the entire term of such related contracts (the "Contracts").

The Company has delivered to Compass true and correct copies of all Contracts. For the purposes of this Agreement, the Contracts shall be deemed not to include loans made by, repurchase agreements made by, spot foreign exchange transactions of, bankers acceptances of, agreements with Bank customers for trust services, or deposits by the Company or the Bank, but do include unfunded loan commitments and letters of credit issued by the Company or the Bank as of December 31, 1995 where the borrowers' total direct and indirect indebtedness to the Bank is in excess of \$250,000. Except for early default provisions pursuant to loans sold with servicing rights released, no participations or loans have been sold which have buy back, recourse or guaranty provisions which create contingent or direct liabilities of the Company or the Bank. All of the Contracts are legal, valid and binding obligations of the parties to the Contracts enforceable in accordance with their terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and to general equitable principles, and are in full force and effect. Except as described in Schedule 3.15, all rent and other payments by the Company and the Bank under the Contracts are current, there are no existing defaults by the Company or the Bank under the Contracts and no termination, condition or other event has occurred which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default. Each of the Company and the Bank has a good and marketable leasehold interest in each parcel of real property leased by such entity free and clear of all mortgages, pledges, liens, encumbrances and security interests.

**SECTION 3.17**      Related Company Transactions. Except as set forth on Schedule 3.17, there are no agreements, instruments, commitments, extensions of credit or other contractual agreements of any kind between or among the Company, whether on its own behalf or in its capacity as trustee or custodian for the funds of any employee benefit plan (as defined in ERISA), and any of its Affiliates (including the Bank). The term "Affiliate" as used in this Agreement means, with respect to any person, any person that, directly or indirectly, controls, is controlled by, or is under common control with, such person in question. For the purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with") as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities or by contract or otherwise.

**SECTION 3.18**      Compliance with Laws. To the knowledge of the Company, except as set forth on Schedule 3.18, neither the Company nor the Bank is in default in respect to or is in violation of (i) any judgment, order, writ, injunction or decree of any court or (ii) any statute, law, ordinance, rule, order or regulation of any governmental department, commission, board, bureau, agency or instrumentality, federal, state or local, including (for purposes of illustration and not limitation) capital and FRB reserve requirements, capital ratios and loan limitations of the FRB, the FDIC or the Department; and the consummation of the transactions contemplated by this Agreement will not constitute such a default or violation as to the Company or the Bank. The Company and the Bank have all permits, licenses, and franchises from governmental agencies required to conduct their businesses as they are now being conducted.



**SECTION 3.19 Insurance.** The Company and the Bank have in effect the insurance coverage (including fidelity bonds) described in Schedule 3.19 and have had similar insurance in force for the last 5 years. Except as set forth on Schedule 3.19, there have been no claims under such bonds within the last 5 years and neither the Company nor the Bank is aware of any facts which would form the basis of a claim under such bonds. Neither the Company nor the Bank has any reason to believe that the existing fidelity coverage would not be renewed by its carrier on substantially the same terms.

**SECTION 3.20 Loans.** Each loan reflected as an asset in the Financial Statements 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. The Bank does not have in its portfolio any loan exceeding its legal lending limit, and except as disclosed on Schedule 3.20, the Bank has no known significant delinquent, substandard, doubtful, loss or nonperforming loans as defined by the Company.

**SECTION 3.21 Fiduciary Responsibilities.** To the knowledge of the Company, the Company and the Bank have performed in all material respects all of their respective duties as a trustee, custodian, guardian or as an escrow agent in a manner which complies in all respects with all applicable laws, regulations, orders, agreements, instruments and common law standards.

**SECTION 3.22 Patents, Trademarks and Copyrights.** Except as set forth in Schedule 3.22, neither the Company nor the Bank require the use of any material patent, patent application, invention, process, trademark (whether registered or unregistered), trademark application, trade name, service mark, copyright, or any material trade secret for the business or operations of the Company or the Bank. The Company and the Bank own or are licensed or otherwise have the right to use any items listed in Schedule 3.22.

**SECTION 3.23 Environmental Compliance.** The representations and warranties in this Section 3.23 are made only as of the date of this Agreement, and the Company and the Bank shall have no obligation to inform Compass of any change therein at the Closing or otherwise. The representations and warranties in this Section 3.23 are made only to the actual knowledge of the senior officers of the Company and the Bank, and neither Compass nor any of its affiliates shall have any ground to claim it was misled by any untrue statement contained in this Section 3.23 unless it is established that a senior officer of the Company or the Bank intentionally withheld information related to such statement. Subject to the foregoing, except as set forth in Schedule 3.23:

(a) The Company, the Bank and any property owned or operated by them are in compliance with all applicable Environmental Laws (as defined in Section 10.13(c)) and have obtained and are in compliance with all permits, licenses and other authorizations (individually a "Permit", and collectively "Permits") required under any Environmental Law. There is no past or present event, condition or circumstance that could (1) interfere with the conduct of the

business of the Company or the Bank in the manner now conducted relating to such entity's compliance with Environmental Laws, (2) constitute a violation of any Environmental Law or (3) which could have a Material Adverse Effect upon the Company or the Bank;

(b) None of the Company or its Subsidiaries currently leases, operates, owns, or exercises managerial functions at, nor has formerly leased, operated, owned, or exercised managerial functions at, any facility or real property that is subject to any actual or potential or threatened Proceeding under any Environmental Law;

(c) There is no Proceeding pending or threatened against the Company or the Bank under any Environmental Law or relating to the release, threatened release, management, treatment, storage, or disposal of, or exposure to Polluting Substances, and neither the Company nor the Bank has received any notice (whether from any regulatory body or private person) of any claim under or violation of, or potential or threatened violation of, any Environmental Law;

(d) There is no action or Proceeding pending or threatened under any Environmental Law involving the release or threat of release of any Polluting Substances (as defined in Section 10.14(d)) at or on any property where Polluting Substances generated by the Company or the Bank have been disposed, treated or stored;

(e) There is no Property for which the Company or the Bank is or was required to obtain, or is or was required to have, any Permit under an Environmental Law to construct, demolish, renovate, occupy, operate, or use such Property or any portion of such Property;

(f) Neither the Company nor the Bank has generated any Polluting Substances for which it was required under an Environmental Law to execute any waste disposal manifest or receipt;

(g) There has been no release of Polluting Substances in or on any Property in violation of any Environmental Laws or which would require remediation or any report or notification (other than routine, non-incident specific, annual reporting under applicable Environmental Laws) to any governmental or regulatory authority;

(h) There are no underground or above ground storage tanks on or under any Property which are not in compliance with Environmental Laws and any Property previously containing such tanks has been remediated in compliance with all Environmental Laws;

(i) There is no asbestos containing material on any Current Controlled Property (as defined below) or any Collateral Property (as defined below); and

(j) The Company and the Bank have fully complied in all material respects with the guidelines issued by the FDIC on February 25, 1993, and any other governmental authority with jurisdiction over the Bank or the Company, that direct banks to implement programs to reduce

the potential for banks to incur liability under, or to assess the compliance of borrowers or Collateral Property with, Environmental Laws.

(k) For purposes of this Section 3.23, "Property" includes (1) any property (whether real or personal) which the Company or the Bank currently or in the past has leased, operated or owned or managed in any manner including without limitation any property acquired by foreclosure or deed in lieu thereof (respectively, "Current Controlled Property" and "Former Controlled Property," and collectively "Controlled Property") and (2) property now held as security for a loan or other indebtedness to the Company or the Bank or property currently proposed as security for loans or other credit the Bank or the Company is currently evaluating whether to extend or has committed to extend a loan ("Collateral Property").

**SECTION 3.24 Regulatory Actions.** Except as set forth on Schedule 3.24, there is no action or Proceeding pending or, to the knowledge of the Company and the Bank, threatened against the Company or the Bank by or before the FRB, the FDIC, the Department, the Environmental Protection Agency, the Florida Department of Environmental Protection, or any other nation or government, any state or political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government. Except as set forth on Schedule 3.24, neither the Bank nor the Company is subject to a formal or informal agreement, memorandum of understanding, enforcement action with or any type of financial assistance by any regulatory authority having jurisdiction over such entity. Neither the Company nor the Bank has taken or agreed to take any action or has knowledge of any fact or circumstance that would materially impede or delay receipt of any required regulatory approval. Except as set forth in Schedule 3.24, the Company and the Bank have not received or been made aware of any complaints or inquiries under the Community Reinvestment Act, the Fair Housing Act, the Equal Credit Opportunity Act or any other state or federal anti-discrimination fair lending law and, to the knowledge of the Company and the Bank, there is no fact or circumstance that would form the basis of any such complaint or inquiry.

**SECTION 3.25 Title to Properties; Encumbrances.** Except as set forth on Schedule 3.25, each of the Company and the Bank has unencumbered, good, legal, and marketable title to all its properties and assets, real and personal, including, without limitation, all the properties and assets reflected in the Financial Statements except for those properties and assets disposed of for fair market value in the ordinary course of business and consistent with prudent banking practice since the date of the Financial Statements. Except as set forth on Schedule 3.25, the Company has a title policy in full force and effect from a title insurance company which, to the best of Company's knowledge, is solvent, insuring good and indefeasible title to all real property owned by the Company and the Bank in favor of the Company or the Bank, whichever is applicable. The Company has made available to Compass all of the files and information in the possession of the Company or the Bank concerning such properties, including any title exceptions which might affect marketable title or value of such property. The Company and the Bank each hold good and legal title or good and valid leasehold rights to all assets that are necessary for them to conduct their respective businesses as they are currently being conducted.

Except as set forth on Schedule 3.16, the Company owns all furniture, equipment, art and other property used to transact business presently located on its premises. Except as set forth on Schedule 3.25, no Property has been identified in public records or should have been so identified as containing Polluting Substances.

**SECTION 3.26     Shareholder List.** The Company has provided to Compass prior to the date of this Agreement a list of the holders of Shares and the holders of any outstanding warrant, option, convertible debenture or other security entitling the holder thereof to acquire Shares as of August 12, 1995 containing the names, addresses and number of Shares or such other securities held of record, which is accurate in all respects as of such date, and the Company will promptly, and in any event prior to the mailing of the Proxy Statement, advise Compass of any significant changes thereto.

**SECTION 3.27     Proxy Statement.** None of the information supplied or to be supplied by the Company or the Bank, or, to the knowledge of the Company, any of its respective directors, officers, employees or agents for inclusion in:

- (a) the Proxy Statement; or
- (b) any registration statement or other documents to be filed with the SEC or any regulatory or governmental agency or authority in connection with the transactions contemplated hereby, at the respective times such documents are filed, and, with respect to the Proxy Statement, when first mailed to the shareholders of Company;

will be false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or, in the case of the Proxy Statement or any amendment thereof or supplement thereto, at the time of the Shareholders' Meeting, be false or misleading with respect to any material fact, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of any proxy for the Shareholders' Meeting. All documents that the Company or the Bank is responsible for filing with any regulatory or governmental agency in connection with the Merger will comply in all material respects with the provisions of applicable law.

**SECTION 3.28     Opinion of Investment Bankers.** The Company has received the written opinion of Robert W. Baird & Co. Incorporated, Tampa, Florida, that the Merger Consideration is fair, from a financial point of view, to the shareholders of the Company as of the date of such opinion.

**SECTION 3.29     Section 368 Representations.**

- (a) To the knowledge of the Company and its directors and executive officers, there is no plan or intention by any Company shareholder who is anticipated to receive five percent (5%)

or more of the total Merger Consideration ("5% Shareholder"), and there is no plan or intention by any of the remaining Company shareholders, to sell or otherwise dispose of shares of Compass Common Stock received pursuant to the Merger that would reduce all such shareholders' holdings to a number of shares having a total fair market value at the Effective Time of less than fifty percent (50%) of the total fair market value of all of the Company's capital stock outstanding immediately prior to the Effective Time. For purposes of this Section 3.29, shares of the Company's capital stock sold, redeemed or otherwise disposed of prior or subsequent to and as a part of the overall transaction contemplated by the Merger will be considered to be capital stock of the Company outstanding immediately prior to the Merger.

(b) The Company has provided to Compass true and correct copies of statements received from each 5% Shareholder who is known to the Company with respect to his or her plan or intention to sell or otherwise dispose of the Compass Common Stock to be received pursuant to the Merger, and has set forth on Schedule 3.29 all knowledge of the Company and the Bank and their respective directors about the plans or intentions of any other Company shareholders to sell or otherwise dispose of the Compass Common Stock to be received pursuant to the Merger.

(c) Neither Compass nor Compass Florida will assume any debts or obligations of the holders of the Shares as part of the Merger.

(d) To the knowledge of the Company, except as set forth on Schedule 3.29, there have not been any sales or redemptions of the Company's capital stock in contemplation of the Merger. Schedule 3.29 sets forth all transactions in the capital stock of the Company since September 30, 1995.

(e) The liabilities of the Company assumed by Compass as a part of the Merger and the liabilities to which the transferred assets of the Company are subject were incurred by the Company in the ordinary course of its business.

(f) The Company and its shareholders will pay their own expenses which are incurred in connection with the Merger.

(g) The Company has not disposed of any assets (either as a dividend or otherwise) constituting more than 10% of the fair market value of all of its assets (ignoring any liabilities) at any time either during the past twelve months or in contemplation of the Merger.

(h) The Company is not an investment company as defined in Section 368(a)(2)(F)(iii) and (iv) of the Code.

(i) The Company is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Section 368(a)(3)(A) of the Code.

**SECTION 3.30**     Employee Stock Options. Except as set forth on Schedule 3.2, there are no Company employee stock option plans or provisions in any other plan, program, or arrangement providing for the issuance or grant of any other interest in respect of the capital stock of the Company or the Bank.

**SECTION 3.31**     Representations Not Misleading. No representation or warranty by the Company in this Agreement, nor any statement, summary, exhibit or schedule furnished to Compass or Compass Florida by the Company or the Bank under and pursuant to, or in anticipation of this Agreement, contains or will contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading.

#### **ARTICLE IV.**

#### **REPRESENTATIONS AND WARRANTIES OF COMPASS**

Compass hereby makes the representations and warranties set forth in this Article IV to the Company and the Bank.

**SECTION 4.1**     Organization and Authority.

(a) Compass is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to conduct its business as now conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and carry out its obligations under this Agreement.

(b) Compass is a bank holding company under the Bank Holding Company Act of 1956, as amended, and in good standing under all laws, rules and regulations applicable to bank holding companies. Compass is duly qualified or licensed and in good standing in each jurisdiction which requires such qualification where it owns or leases properties or conducts business.

**SECTION 4.2**     Authority Relative to Agreement. Compass has full corporate power and authority and no further corporate proceedings on the part of Compass are necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby, all of which have been duly and validly authorized by Compass' Board of Directors. This Agreement has been duly executed and delivered by Compass and is a duly authorized, valid, legally binding and enforceable obligation of Compass, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to creditors' rights generally and general equitable principles, and subject to such shareholder approvals and such approval of regulatory agencies and other governmental authorities having authority over Compass as may be required by statute or regulation. Compass is not in violation of or default under its Certificate of Incorporation or By-Laws or any agreement, document or instrument

under which Compass is obligated or bound, or any law, order, judgment, injunction, award, decree, statute, rule, ordinance or regulation applicable to Compass or any of its Subsidiaries, the violation or breach of which could have a Material Adverse Effect on Compass and its Subsidiaries taken as a whole. Except as set forth on Schedule 4.2, neither the execution, delivery nor performance of this Agreement in its entirety, nor the consummation of all the transactions contemplated hereby, following the receipt of such approvals as may be required from the SEC, the FRB, the FDIC, and the Department will (i) violate (with or without the giving of notice or passage of time), any law, order, writ, judgment, injunction, award, decree, rule, statute, ordinance or regulation applicable to Compass, or (ii) be in conflict with, result in a breach or termination of any provision of, cause the acceleration of the maturity of any debt or obligation pursuant to, constitute a default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of any security interest, lien, charge or other encumbrance upon any property or assets of Compass pursuant to, any terms, conditions or provisions of any note, license, instrument, indenture, mortgage, deed of trust or other agreement or understanding or any other restriction of any kind or character, to which Compass is a party or by which any of its assets or properties are bound. Except as set forth on Schedule 4.2, there are no proceedings pending or, to the knowledge of Compass, threatened, against Compass, at law or in equity or before any foreign, federal, state, municipal or other governmental court, department, commission, board, bureau, agency, instrumentality or other person which may result in liability to the Company or the Bank on the consummation of the transactions contemplated hereby or which would prevent or delay such consummation. Except as set forth in Schedule 4.2, or as contemplated hereby, the corporate existence, business, organization, assets, licenses, permits, authorizations and contracts of Compass will not be terminated or impaired by reason of the execution, delivery or performance by Compass of this Agreement or consummation by Compass of the transactions contemplated hereby, assuming receipt of the required regulatory approvals.

**SECTION 4.3 Financial Reports.** Compass has previously furnished the Company a true and complete copy of (i) the 1994 Annual Report to Shareholders, which report (the "Compass 1994 Annual Report") includes, among other things, consolidated balance sheets of Compass and its Subsidiaries as of December 31, 1994 and 1993, the related consolidated statements of income, shareholders' equity and cash flows for the years ended December 31, 1994, 1993 and 1992 and (ii) Compass' quarterly reports on Form 10-Q for the quarters ended March 31, June 30, and September 30, 1995 (the "Quarterly Reports") which reports include among other things unaudited balance sheets of Compass and its Subsidiaries as of March 31, June 30, and September 30, 1995 and December 31, 1994, and the related unaudited consolidated statements of income and cash flows for the three-, six- and nine-month periods ending March 31, June 30, and September 30, 1995 and 1994. The financial statements contained in the Compass 1994 Annual Report and such Quarterly Reports have been prepared in conformity with GAAP applied on a basis consistent with prior periods. The consolidated balance sheets of Compass and its Subsidiaries as of December 31, 1994 and 1993 contained in the Compass 1994 Annual Report fairly present the consolidated financial condition of Compass and its Subsidiaries as of the dates thereof, and the related consolidated statements of income, shareholders' equity and cash flows of Compass and its Subsidiaries contained therein fairly

present the results of operations and cash flows thereof for the fiscal years then ended. The unaudited consolidated financial statements of Compass and its Subsidiaries as of March 31, June 30, and September 30, 1995 and 1994, contained in Compass' Quarterly Reports, fairly present the financial condition, the results of the operations and changes in cash flows thereof as at such dates and for the periods indicated. For the purposes of this Agreement, all financial statements referred to in this Section 4.3 shall be deemed to include any notes to such financial statements. Compass has made all filings required to be made in compliance with the Exchange Act. None of the information contained in the Compass 1994 Annual Report or Compass' Quarterly Reports is false or misleading with respect to any material fact, or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of Compass or its Subsidiaries have any liabilities or obligations of a type which should be included in or reflected on the Compass 1994 Annual Report and the Quarterly Reports if prepared in accordance with GAAP, whether related to tax or non-tax matters, accrued or contingent, due or not yet due, liquidated or unliquidated, or otherwise, except as and to the extent disclosed in the Compass 1994 Annual Report and the Quarterly Reports. Compass will provide the Company with its 1995 Annual Report to Shareholders and its quarterly reports on Form 10-Q for the quarters ended March 31, June 30, and September 31, 1995, as such reports become available prior to Closing, and none of the information contained in such reports will be false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

**SECTION 4.4**      Capitalization. The shares of Compass Common Stock to be issued pursuant to this Agreement, when so issued, will be duly and validly authorized and issued, fully paid and nonassessable, and not issued in violation of any preemptive rights. As of December 31, 1995, Compass had 38,138,465 shares of common stock, \$2.00 per share par value, issued and outstanding. None of the shares of Compass Common Stock to be issued pursuant to this Agreement will be subject to any lien, charge, encumbrance, claim, rights of others, mortgage, pledge or security interest, and none will be subject to any agreements or understandings among any persons with respect to the voting or transfer of such shares of Compass Common Stock except as contemplated hereby.

**SECTION 4.5**      Consents and Approvals. No prior consent, approval or authorization of, or declaration, filing or registration with any person, domestic or foreign, is required of or by Compass in connection with the execution, delivery and performance by Compass of this Agreement and the transactions contemplated hereby or the resulting change in control of the Company and the Bank, except the filing of Articles of Merger under the FBCA, and such approvals as may be required from the SEC, the FRB, the FDIC and the Department.

**SECTION 4.6**      Proxy Statement. None of the information supplied or to be supplied by Compass, or, to the best knowledge of Compass, any of its directors, officers, employees or agents for inclusion in:

- (a) the Proxy Statement; or



- (b) any registration statement or other documents to filed with the SEC or any regulatory or governmental agency or authority in connection with the transactions contemplated herein, at the respective times such documents are filed, and, with respect to the Proxy Statement, when first mailed to the shareholders of the Company;

will be false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or, in the case of the Proxy Statement or any amendment thereof or supplement thereto, at the time of the Shareholders' Meeting, be false or misleading with respect to any material fact, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of any proxy for the Shareholders' Meeting. All documents that Compass is responsible for filing with any regulatory or governmental agency in connection with the Merger will comply in all material respects with the provisions of applicable law.

**SECTION 4.7**      Availability of Compass Common Stock. Compass has available a sufficient number of authorized and unissued shares of Compass Common Stock to pay the Merger Consideration, and Compass will not take any action during the term of this Agreement that will cause it not to have a sufficient number of authorized and unissued shares of Compass Common Stock to pay the Merger Consideration.

**SECTION 4.8**      Representations Not Misleading. No representation or warranty by Compass in this Agreement, nor any statement or exhibit furnished to the Company or the Bank under and pursuant to, or in anticipation of this Agreement, contains or will contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading.

## **ARTICLE V.**

### **COVENANTS OF THE COMPANY**

**SECTION 5.1**      Affirmative Covenants of the Company. For so long as this Agreement is in effect, the Company shall, and shall use its best efforts to cause the Bank and its Subsidiaries (collectively, the "Acquired Companies") to, from the date of this Agreement to the Closing, except as specifically contemplated by this Agreement:

- (a) operate and conduct the businesses of the Acquired Companies in the ordinary course of business and consistent with prudent banking practices;
- (b) preserve intact the Acquired Companies' corporate existence, business organization, assets, licenses, permits, authorizations, and business opportunities;

(c) comply with all material contractual obligations applicable to the Acquired Companies' operations;

(d) maintain all the Acquired Companies' properties in good repair, order and condition, reasonable wear and tear excepted, and maintain the insurance coverages described in Schedule 5.1(d) (which shall list all Property insured by such coverages) or obtain comparable insurance coverages from reputable insurers which, in respect to amounts, types and risks insured, are adequate for the business conducted by the Acquired Companies and consistent with the existing insurance coverages;

(e) in good faith and in a timely manner (i) cooperate with Compass and Compass Florida in satisfying the conditions in this Agreement, (ii) assist Compass and Compass Florida in obtaining as promptly as possible all consents, approvals, authorizations and rulings, whether regulatory, corporate or otherwise, as are necessary for Compass and Compass Florida and the Company (or any of them) to carry out and consummate the transactions contemplated by this Agreement, including all consents, approvals and authorizations required by any agreement or understanding existing at the Closing between the Company and any governmental agency or other third party, (iii) furnish information concerning the Acquired Companies not previously provided to Compass required for inclusion in any filings or applications that may be necessary in that regard and (iv) perform all acts and execute and deliver all documents necessary to cause the transactions contemplated by this Agreement to be consummated at the earliest possible date;

(f) timely file with the FRB, the Department, and the FDIC, all financial statements and other reports required to be so filed by any of the Acquired Companies and to the extent permitted by applicable law, promptly thereafter deliver to Compass copies of all financial statements and other reports required to be so filed;

(g) comply in all material respects with all applicable laws and regulations;

(h) promptly notify Compass upon obtaining knowledge of any default, event of default or condition with which the passage of time or giving of notice would constitute a default or an event of default under the Company Loan Documents and promptly notify and provide copies to Compass of any material written communications concerning the Company Loan Documents;

(i) between the date of this Agreement and Closing, promptly give written notice to Compass upon obtaining knowledge of any event or fact that would cause any of the representations or warranties of the Company contained in or referred to in this Agreement to be untrue or misleading in any material respect;

(j) deliver to Compass a list (Schedule 5.1(j)), dated as of the Effective Time, showing (i) the name of each bank or institution where the Company and the Bank have accounts or safe deposit boxes, (ii) the name(s) in which such accounts or boxes are held and (iii) the name of each person authorized to draw thereon or have access thereto;

(k) deliver to Compass a list (Schedule 5.1(k)), dated as of the Closing, showing all liabilities and obligations of Company and the Bank, except those arising in the ordinary course of their respective businesses, incurred since the Balance Sheet Date, certified by an officer of Company;

(l) promptly notify Compass of any material change or material inaccuracy in any data previously given or made available to Compass or Compass Florida pursuant to this Agreement; and

(m) provide reasonable access, to the extent that the Company or the Bank have the right to provide access, to any or all Property (as defined in Section 3.23) so as to enable Compass to physically inspect any structure or components of any structure on such Property, including without limitation surface and subsurface testing and analyses.

**SECTION 5.2 Negative Covenants of the Company.** Except with the prior written consent of Compass, which consent shall not be unreasonably withheld, or as otherwise specifically permitted by this Agreement, the Company will not and will use its best efforts not to permit the Bank, or any other Subsidiary of the Company, to, from the date of this Agreement to the Closing:

(a) make any amendment to its articles of incorporation or bylaws;

(b) make any change in the methods used in allocating and charging costs, except as may be required by applicable law, regulation or GAAP and after notice to Compass;

(c) make any change in the number of shares of the capital stock issued and outstanding, or issue, reserve for issuance, grant, sell or authorize the issuance of any shares of its capital stock or subscriptions, options, warrants, calls, rights or commitments of any kind relating to the issuance or sale of or conversion into shares of its capital stock;

(d) contract to create any obligation or liability (absolute, accrued, contingent or otherwise) except in the ordinary course of business and consistent with prudent banking practices;

(e) contract to create any mortgage, pledge, lien, security interest or encumbrances, restrictions, or charge of any kind (other than statutory liens for which the obligations secured thereby shall not become delinquent), except in the ordinary course of business and consistent with prudent banking practices;

(f) cancel any debts, waive any claims or rights of value or sell, transfer, or otherwise dispose of any of its material properties or assets, except in the ordinary course of business and consistent with prudent banking practices;

(g) sell any real estate owned as of the date of this Agreement or acquired thereafter, which real estate qualifies as "other real estate owned" under accounting principles applicable to it, except in the ordinary course of business and consistent with prudent banking practices and applicable banking laws and regulations;

(h) dispose of or disclose to any person other than its employee, any material trade secret not theretofore a matter of public knowledge;

(i) except as set forth on Schedule 3.10 and except for regular salary increases granted in the ordinary course of business within the Company or the Bank's 1995 budget and consistent with prior practices, grant any increase in compensation or directors' fees, or pay or agree to pay or accrue any bonus or like benefit to or for the credit of any director, officer, employee or other person or enter into any employment, consulting or severance agreement or other agreement with any director, officer or employee, or adopt, amend or terminate any Employee Benefit Plan or change or modify the period of vesting or retirement age for any participant of such a plan;

(j) declare, pay or set aside for payment any dividend or other distribution or payment in respect of shares of its capital stock;

(k) except through settlement of indebtedness, foreclosure, the exercise of creditors' remedies or in a fiduciary capacity, acquire the capital stock or other equity securities or interest of any person;

(l) make any capital expenditure in excess of \$50,000;

(m) make any income tax or franchise tax election or settle or compromise any federal, state, local or foreign income tax or franchise tax liability, except in the ordinary course of business consistent with prudent banking practices;

(n) except for negotiations and discussions between the parties hereto relating to the transactions contemplated by this Agreement or as otherwise permitted hereunder, enter into any transaction, or enter into, modify or amend any contract or commitment other than in the ordinary course of business and consistent with prudent banking practices;

(o) except as contemplated by this Agreement, adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization, or other reorganization or business combination of the Company or the Bank;

(p) issue any certificates of deposit except in the ordinary course of business and in accordance with prudent banking practices;

(q) make any investments except in the ordinary course of business and in accordance with prudent banking practices;

(r) modify, amend, waive or extend either the Company Loan Documents or any rights under such agreements, except for Federal Home Loan Bank advances and repurchase sales or servicing agreements, consistent with the Bank's prior practice;

(s) modify any outstanding loan, make any new loan, or acquire any loan participation, unless such modification, new loan, or participation is made in the ordinary course of business and in accordance with prudent banking practices;

(t) sell or contract to sell any part of the Bank premises;

(u) change any fiscal year or the length thereof;

(v) prepay in whole or in part the Company Indebtedness, except for Federal Home Loan Bank advances and repurchase sales or servicing agreements, consistent with the Bank's current practices and prudent banking practices; or

(w) enter into any agreement, understanding or commitment, written or oral, with any other person which is in any manner inconsistent with the obligations of the Company and its directors and the Bank under this Agreement or any related written agreement. Nothing contained in this Section 5.2 or in Section 5.1 is intended to influence the general management or overall operations of the Company or the Bank in a manner not permitted by applicable law and the provisions thereof shall automatically be reduced in compliance therewith.

## ARTICLE VI.

### ADDITIONAL AGREEMENTS

#### SECTION 6.1 Access To, and Information Concerning, Properties and Records.

During the pendency of the transactions contemplated hereby, the Company shall, to the extent permitted by law, give Compass, its legal counsel, accountants and other representatives full access after reasonable notice, during normal business hours, throughout the period prior to the Closing, to all of the Company's and the Bank's properties, collateral, books, contracts, commitments and records, permit Compass to make such inspections (including without limitation, physical inspection of the surface and subsurface of any property thereof and any structure thereon) as they may require and furnish to Compass during such period all such information concerning the Company and the Bank and their affairs as Compass may reasonably request. All information disclosed by the Company to Compass which is confidential and is so identified to Compass as confidential shall be held confidential by Compass and its representatives, except to the extent counsel to Compass has advised it such information is required to or should be disclosed in filings with regulatory agencies or governmental authorities or in proxy materials delivered to shareholders of the Company. In the event this Agreement is terminated pursuant to the provisions of Article VIII, upon the written request of the

Company, Compass agrees to return to the Company all copies of such confidential information.

**SECTION 6.2**      Filing of Regulatory Approvals. As soon as reasonably practicable, Compass shall file all notices and applications to the FRB, the Department and the FDIC which Compass deems necessary or appropriate to complete the transactions contemplated herein, including the merger of the Bank and Compass Bank. Compass will deliver to the Company copies of any such applications, except that Compass shall not be required to provide the Company with portions of such applications which are designated by Compass as confidential and which relate solely to Compass' business or which do not relate to the Company other than that the information is being provided as part of such applications.

**SECTION 6.3**      Miscellaneous Agreements and Consents. Subject to the terms and conditions of this Agreement, Compass and the Company agree to use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under applicable laws and regulations to consummate and make effective, as soon as practicable after the date hereof, the transactions contemplated by this Agreement. Compass and the Company shall use their respective best efforts to obtain or cause to be obtained consents of all third parties and governmental and regulatory authorities necessary or desirable for the consummation of the transactions contemplated herein.

**SECTION 6.4**      Company Indebtedness. Prior to the Effective Time, the Company shall pay all regularly scheduled payments on all Company Indebtedness and shall cooperate with Compass in taking such actions as are reasonably appropriate or necessary in connection with the redemption, prepayment, modification, satisfaction or elimination of any Company Indebtedness.

**SECTION 6.5**      Best Good Faith Efforts. All parties hereto agree that the parties will use their best good faith efforts to secure all regulatory approvals necessary to consummate the Merger and other transactions provided herein and to satisfy the other conditions to Closing contained herein.

**SECTION 6.6**      Acquisition Proposals. The Company and the Bank will not, and will use their best efforts to cause their respective directors, officers, financial advisors, legal counsel, accountants and other agents and representatives (for purposes of this Section 6.6 only, being referred to as "affiliates") not to, initiate, solicit or encourage, directly or indirectly, or take any other action to facilitate any inquiries or the making of any proposal with respect to, engage or participate in negotiations concerning, provide any nonpublic information or data to, or have any discussions with any person other than a party hereto or their affiliates relating to any acquisition, tender offer (including a self-tender offer), exchange offer, merger, consolidation, acquisition of beneficial ownership of or the right to vote securities of such entity or any of its subsidiaries, dissolution, business combination, purchase of all or any significant portion of the assets or any division of, or any equity interest in, such entity or any Subsidiary, or similar transaction other than the Merger (such proposals, announcements, or transactions being referred to as "Acquisition Proposals"). Notwithstanding the preceding sentence, to the

extent its Board of Directors determines it is required to do so in the exercise of its fiduciary duties to the Company's shareholders under applicable law as so advised in writing by independent counsel, the Company and the Bank, and their affiliates, may engage and participate in negotiations concerning, provide nonpublic information or data to and have discussions with any person or their affiliates relating to an Acquisition Proposal. The Company and the Bank will promptly notify Compass orally and in writing if any such Acquisition Proposal (including the terms thereof and identity of the persons making such proposal) is received and furnish to Compass a copy of any written proposal.

**SECTION 6.7      Public Announcement.** Subject to written advice of counsel with respect to legal requirements relating to public disclosure of matters related to the subject matter of this Agreement, the timing and content of any announcements, press releases or other public statements concerning the proposal contained herein will occur upon, and be determined by, the mutual consent of the Company and Compass.

**SECTION 6.8      Employee Benefit Plans.** Compass presently intends that, after the Merger, Compass, the Company and the Bank will not make additional contributions to the employee benefit plans sponsored by the Company or the Bank immediately prior to the Merger.

..... Compass agrees that the employees of the Company and the Bank will be entitled to participate as newly hired employees in the employee benefit plans and programs maintained for employees of Compass and its affiliates, in accordance with the respective terms of such plans and programs, and Compass shall take all actions necessary or appropriate to facilitate coverage of the Company's and the Bank's employees in such plans and programs from and after the Effective Time, subject to the following:

(i) **Employee Welfare Benefit Plans and Programs:** Each employee of the Company and the Bank will be entitled to credit for prior service with the Company and the Bank for all purposes under the employee welfare benefit plans and other employee benefit plans and programs (other than those described in subparagraph (ii) below and any stock option plans) sponsored by Compass to the extent the Company or the Bank sponsored a similar type of plan which the Company or Bank employee participated in immediately prior to the Effective Time. Any preexisting condition exclusion applicable to such plans and programs shall be waived with respect to any Bank or Company employee. For purposes of determining each Company or Bank employee's benefit for the year in which the Merger occurs under the Compass vacation program, any vacation taken by a Company or Bank employee immediately preceding the Effective Time for the year in which the Merger occurs will be deducted from the total Compass vacation benefit available to such Company or Bank employee for such year. Compass agrees that for purposes of determining the number of vacation days available with respect to each Company or Bank employee for the year in which the Merger occurs, that the number of vacation days for such year shall be determined under the Company or Bank vacation policy in effect as of January 1, 1995. Compass further agrees to credit each Company or Bank employee for the year during which such coverage under the Compass welfare benefit plan begins, with any deductibles already incurred during such year under the Company's group health plan.

(ii) **Employee Pension Benefit Plans:** Each Company and Bank employee shall be entitled to credit for past service with the Company and Bank for the purpose of satisfying any eligibility or vesting periods applicable to the Compass employee pension benefit plans which are subject to Sections 401(a) and 501(a) of the Code (including, without limitation, the Compass 401(k)/ESOP Plan). Notwithstanding the foregoing, Compass shall not grant any prior years of service credit to employees of the Company and the Bank with respect to any defined benefit pension plans sponsored (or contributed to) by Compass; instead, Company and Bank employees shall be treated as newly hired employees of Compass as of the date following the Effective Time for purposes of determining eligibility, vesting and benefit accruals thereunder.

On or before the Effective Time, the Company and the Bank may take such actions as may be necessary to cause each individual employed by the Company and the Bank immediately prior to the Effective Time to have a fully vested and nonforfeitable interest in such employee's account balance under the Employee Stock Ownership Plan sponsored by the Company, and such account balances as of the Effective Time shall remain non-forfeitable upon the combination of such plan with the Compass 401(k)/ESOP Plan after the Merger.

**SECTION 6.9**      **Employment and Severance Agreement Payments.** Compass hereby agrees that, at the Effective Time, Compass shall assume, or shall cause the successors of the Company and the Bank to assume, the obligations and responsibilities of the Company and the Bank under the two employment agreements and the seven severance agreements described in Schedule 3.14(i), in accordance with their respective terms.

**SECTION 6.10**      **Proxies.** The Company acknowledges that the persons listed in Schedule 6.10 have agreed that they will vote the Shares owned by them in favor of this Agreement and the transactions contemplated hereby, subject to required regulatory approvals, and that they will retain the right to vote such Shares during the term of this Agreement and have given Compass a proxy to vote such Shares in favor of the Merger if they should fail to do so, pursuant to a Shareholders' Voting Agreement and Irrevocable Proxy in substantially the form attached hereto as Exhibit C.

**SECTION 6.11**      **Exchange Agreement.** Immediately prior to the Effective Time, the Company and Compass agree to enter into, and Compass agrees to cause Compass Florida to enter into, the Exchange Agreement with the Exchange Agent, or if the Exchange Agent refuses to serve as exchange agent, such other exchange agent as shall mutually agreed to by the Company and Compass.

**SECTION 6.12**      **Shareholder Agent.** The Shareholder Agent (as provided in the Escrow Agreement) shall have the duties, responsibilities and authority set forth in this Agreement and the Escrow Agreement. The initial Shareholder Agent shall be Iglar & Dougherty, P.A. The Shareholder Agent may be replaced and a successor selected by holders of a majority in value of the holders of Shares' interest in the Escrow Account (as provided in the Escrow Agreement). All parties hereto shall be entitled to rely on all actions and



communications of the Shareholder Agent as being genuine and binding on all of the former holders of Shares.

## **ARTICLE VII.**

### **CONDITIONS TO CONSUMMATION OF THE MERGER**

**SECTION 7.1**      Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger are subject to the satisfaction or waiver of the following conditions prior to the Effective Time:

(a) the receipt of regulatory approvals required for the Merger and the merger of the Bank into Compass Bank, which approvals shall not have imposed any condition or requirement which in the judgment of Compass would adversely impact the economic or business benefits of the transactions contemplated by this Agreement or otherwise would in the judgment of Compass be so burdensome as to render inadvisable the consummation of the Merger, and the expiration of any applicable waiting period with respect thereto;

(b) the Closing will not violate any injunction, order or decree of any court or governmental body having competent jurisdiction;

(c) the approval of the Merger by the Company's shareholders entitled to vote at the Shareholders' Meeting; and

(d) a registration statement covering the Compass Common Stock to be issued in the Merger shall be effective under the Securities Act and any applicable state securities or "blue sky" acts and no stop order suspending the effectiveness of such registration statement shall be in effect and no proceedings for such purpose, or any proceedings under the SEC or applicable state securities authorities rules with respect to the transactions contemplated hereby, shall be pending before or threatened by the SEC or any applicable state securities or blue sky authorities.

**SECTION 7.2**      Conditions to the Obligations of Compass and Compass Florida to Effect the Merger.

The obligations of Compass and Compass Florida to effect the Merger are subject to the satisfaction or waiver of the following conditions prior to the Effective Time:

(a) all representations and warranties of the Company shall be true and correct in all material respects as of the date hereof and at and as of the Closing, with the same force and effect as though made on and as of the Closing;

(b) the Company shall have performed in all material respects all obligations and agreements and in all material respects complied with all covenants and conditions, contained in this Agreement to be performed or complied with by it prior to the Effective Time;

(c) there shall not have occurred a Material Adverse Effect with respect to the Company or the Bank;

(d) the directors of the Company and the Bank shall have delivered to Compass an instrument dated the Effective Time releasing the Company and the Bank from any and all claims of such directors (except as to their deposits and accounts, and as to rights of indemnification pursuant the Bylaws of the Company or the Bank) and shall have delivered to Compass their resignations as directors of the Bank;

(e) the officers of the Company and the Bank listed on Schedule 7.2(e) shall have delivered to Compass an instrument dated the Effective Time releasing the Company and the Bank from any and all claims of such officers (except as to deposits and accounts, accrued compensation permitted by their respective agreements and rights of indemnification pursuant to the Bylaws of the Company or the Bank);

(f) Compass shall have received the opinion of counsel to the Company acceptable to it as to the matters set forth on Exhibit D attached hereto;

(g) Compass shall have received the 5% Shareholder statements required by Section 3.29(b);

(h) Compass shall have received an opinion of counsel satisfactory to it that L.e Merger will qualify as a reorganization under Section 368(a) of the Code;

(i) The Company shall have delivered to Compass a schedule of all transactions in the capital stock (or instruments exercisable for or convertible into capital stock) of the Company of which the Company has knowledge from and including the date of this Agreement through the Effective Time;

(j) Compass shall have reasonably determined that the liabilities and obligations set forth on Schedule 5.1(k) do not have a Material Adverse Effect;

(k) All warrants, options, rights or other securities entitling the holder thereof to acquire Shares shall have been cancelled in the manner provided in Section 1.6 or shall have expired, lapsed or terminated, prior to the Effective Time;

(l) Compass shall have received certificates dated as of the Closing executed by the Chairman of the Board of the Company and by the Chairman of the Board of the Bank, and the Secretary or Cashier of the Company and the Bank, respectively, certifying in such reasonable

detail as Compass may reasonably request, to the effect described in Sections 7.2(a), (b), (c), (g) and (i);

(m) the Bank shall have taken such write-downs of assets on its books as are consistent with Compass' accounting methods for reserving for loan losses, as mutually agreed to by the parties;

(n) the full amount of any special assessment for premiums on Savings Association Insurance Fund deposits held by the Bank required to be paid by Federal law shall have been (i) paid in full by the Bank, (ii) accrued on the books of the Bank, or (iii) transferred to a general contingency reserve account established by the Bank; and

(o) Jack C. Demetree, the Chairman of the Board of Directors of the Company and the Bank as of the date hereof, shall have entered into a Noncompetition Agreement with Compass, or one or more of its affiliates, in the form of Exhibit E hereto.

**SECTION 7.3 Conditions to the Obligations of the Company to Effect the Merger.**  
The obligations of the Company to effect the Merger are subject to the satisfaction or waiver of the following conditions prior to the Effective Time:

(a) all representations and warranties of Compass shall be true and correct in all material respects as of the date hereof and at and as of the Closing, with the same force and effect as though made on and as of the Closing;

(b) Compass and Compass Florida shall have performed in all material respects all obligations and agreements and in all material respects complied with all covenants and conditions contained in this Agreement to be performed or complied with by either of them prior to the Effective Time;

(c) the Company shall have received the opinion of counsel to Compass and Compass Florida acceptable to it as to the matters set forth on Exhibit F attached hereto;

(d) the Bank and the Company shall have delivered to the directors of the Company and the Bank an instrument dated the Effective Time releasing such directors from any and all claims of the Company and the Bank (except as to indebtedness or other contractual liabilities); provided, however, that such releases shall not release an action against such directors by Compass or Compass in connection with the transactions contemplated by this Agreement; and

(e) the Company shall have received certificates dated the Closing, executed by an appropriate officer of Compass and by an appropriate officer of Compass Florida, respectively, certifying, in such detail as the Company may reasonably request, to the effect described in Sections 7.3(a) and (b).

## **ARTICLE VIII.**

### **TERMINATION; AMENDMENT; WAIVER**

**SECTION 8.1 Termination.** Prior to the Effective Time, this Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time notwithstanding approval thereof by the shareholders of the Company, by:

(a) mutual written consent duly authorized by the Boards of Directors of Compass and the Company;

(b) Compass (i) if Compass learns or becomes aware of a state of facts or breach or inaccuracy of any representation or warranty of the Company contained in Article III which constitutes a Material Adverse Effect, and which breach or inaccuracy is not cured after 30 days' written notice by Compass, or (ii) if there shall have been a breach of Section 6.6, or (iii) if any of the conditions to Closing contained in Section 7.1 or 7.2 are not satisfied or waived in writing by Compass;

(c) the Company if any of the conditions to Closing contained in Section 7.1 or 7.3 are not satisfied or waived in writing by the Company;

(d) Compass or the Company if the Effective Time shall not have occurred on or before the expiration of nine months from the date of this Agreement or such later date as is agreed to in writing by Compass and the Company;

(e) Compass or the Company if any court of competent jurisdiction in the United States or other United States (federal or state) governmental body shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the Merger and such order, decree, ruling or other action shall have been final and nonappealable;

(f) automatically pursuant to Section 1.6(b)(iv), if applicable;

(g) Compass at any time within 90 days after the date of this Agreement if the results of Compass' environmental assessments and investigation with respect to the William Bates Property reveal conditions, the potential remediation costs or other environmental risks of which are not acceptable to Compass in its sole discretion;

(h) Compass if the Board of Directors of the Company shall have withdrawn or modified in any manner its approval or recommendation of this Agreement or the Merger, or shall have resolved to do the same; provided, however, that Compass may not terminate this Agreement pursuant to this clause if, as a result of the Company's receipt of an Acquisition Proposal from a third party, the Company withdraws or modifies its approval or recommendation of this Agreement or the Merger but thereafter (and prior to termination of this Agreement by Compass) the Company publicly reconfirms its recommendation of the

transactions contemplated hereby and notifies Compass of such reconfirmation prior to termination of this Agreement by Compass pursuant to this clause; or

(i) the Company if it shall receive any Acquisition Proposal after the date hereof from a third party or parties and the Board of Directors of the Company shall have received a written opinion from independent legal counsel to the effect that, and the Board of Directors shall have determined in good faith in the exercise of its fiduciary duties that the Company is required to pursue such Acquisition Proposal; provided, however, that the Company may only terminate this Agreement pursuant to this clause if it simultaneously with such termination delivers to Compass the termination fee provided for in Section 8.5 hereof.

**SECTION 8.2** Effect of Termination. In the event of the termination and abandonment of this Agreement pursuant to Section 8.1 hereof, this Agreement shall forthwith become void and have no effect, without any liability on the part of any party or its directors, officers or shareholders, other than the provisions of this Section 8.2 and Section 9.1. Nothing contained in this Section 8.2 shall relieve any party from liability for any breach of this Agreement.

**SECTION 8.3** Amendment. To the extent permitted by applicable law, this Agreement may be amended by action taken by or on behalf of the Board of Directors of the Company, Compass and, if required, Compass Florida at any time before or after adoption of this Agreement by the shareholders of the Company but, after any submission of this Agreement to such shareholders for approval, no amendment shall be made which reduces the Merger Consideration or which materially and adversely affects the rights of the Company's shareholders hereunder without any required approval of such shareholders. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties.

**SECTION 8.4** Extension; Waiver. At any time prior to the Effective Time, the parties may (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document, certificate or writing delivered pursuant hereto, or (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of any party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

**SECTION 8.5** Termination Fee. If the Company or the Bank either (a) violates its obligations set forth in Section 6.6 hereof and this Agreement is thereafter terminated pursuant to Section 8.1(b)(ii), or (b) prior to termination of this Agreement receives any Acquisition Proposal and this Agreement is thereafter terminated pursuant to Sections 8.1(h) or 8.1(i) as a result of receipt of such Acquisition Proposal, then the Company and the Bank shall pay to Compass an aggregate fee of \$2,500,000 in cash at the time of such termination.

## **ARTICLE IX.**

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

The parties hereto agree that their respective representations and warranties contained in this Agreement shall not survive after the Effective Time.

## **ARTICLE X.**

### **MISCELLANEOUS**

**SECTION 10.1 Expenses.** All costs and expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation, attorneys' fees, accountants' fees, other professional fees and costs related to expenses of officers and directors of the Company and the Bank, shall be paid by the party incurring such costs and expenses; provided, however, without the consent of Compass, which consent shall not be unreasonably withheld, all such costs and expenses paid or accrued as of the Effective Time by the Company and the Bank shall not exceed \$200,000 excluding costs and expenses related to any litigation regarding this Agreement. Each party hereto hereby agrees to and shall indemnify the other party hereto against any liability arising from any such fee or payment incurred by such party.

**SECTION 10.2 Brokers and Finders.** Except as set forth in Schedule 10.2, all negotiations on behalf of Compass and the Company relating to this Agreement and the transactions contemplated by this Agreement have been carried on by the parties hereto and their respective agents directly without the intervention of any other person in such manner as to give rise to any claim against Compass, Compass Florida, the Company or the Bank for financial advisory fees, brokerage or commission fees, finder's fees or other like payment in connection with the consummation of the transactions contemplated hereby.

**SECTION 10.3 Entire Agreement; Assignment.** This Agreement (a) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them with respect to the subject matter hereof, and (b) shall not be assigned by operation of law or otherwise, provided that Compass may assign its rights and obligations or those of Compass Florida to any direct or indirect, wholly-owned, subsidiary of Compass, but no such assignment shall relieve Compass of its obligations hereunder if such assignee does not perform such obligations, including its obligation to pay the Merger Consideration as provided herein.

**SECTION 10.4 Further Assurances.** From time to time as and when requested by Compass or its successors or assigns, the Company, the officers and directors of the Company, or the Bank, shall execute and deliver such further agreements, documents, deeds, certificates and other instruments and shall take or cause to be taken such other actions, including those as shall be necessary to vest or perfect in or to confirm of record or otherwise the Company's title to and possession of, all of its property, interests, assets, rights, privileges, immunities, powers,

franchises and authority, as shall be reasonably necessary or advisable to carry out the purposes of and effect the transactions contemplated by this Agreement.

**SECTION 10.5      Enforcement of the Agreement.** The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled or may elect at law or in equity.

**SECTION 10.6      Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

**SECTION 10.7      Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered if delivered in person, by cable, telegram or telex or by telecopy; five business days after mailing if delivered by registered or certified mail (postage prepaid, return receipt requested); and two business days after sending if delivered by overnight courier; to the respective parties as follows:

if to Compass, Compass Florida or Compass Bank:

D. Paul Jones, Jr.  
Chairman and Chief Executive Officer  
Compass Bancshares, Inc.  
15 South 20th Street  
Birmingham, Alabama 35233  
Telecopy No.: (205) 933-3043

with a copy to:

Daniel B. Graves  
Associate General Counsel  
Compass Bancshares, Inc.  
15 South 20th Street  
Birmingham, Alabama 35233  
Telecopy No.: (205) 933-3043

If to the Company or the Bank:

A. Richardson Tish  
CFB Bancorp, Inc.  
3740 Beach Boulevard  
Jacksonville, Florida 32207  
Telecopy No.: (904) 396-7524

with a copy to:

A. George Igler or Ed Dougherty  
Igler & Dougherty, P.A.  
1501 East Park Avenue  
Tallahassee, Florida 32301  
Telecopy No.: (904) 561-3774

or to such other address as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above (provided that notice of any change of address shall be effective only upon receipt thereof).

**SECTION 10.8 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

**SECTION 10.9 Descriptive Headings.** The descriptive headings are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**SECTION 10.10 Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

**SECTION 10.11 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

**SECTION 10.12 Incorporation by References.** Any and all schedules, exhibits, annexes, statements, reports, certificates or other documents or instruments referred to herein or attached hereto are incorporated herein by reference hereto as though fully set forth at the point referred to in the Agreement.



**SECTION 10.13     Certain Definitions.**

(a) "Subsidiary" shall mean, when used with reference to an entity, any corporation, a majority of the outstanding voting securities of which are owned directly or indirectly by such entity or any partnership, joint venture or other enterprise in which any entity has, directly or indirectly, any equity interest.

(b) "Material Adverse Effect" shall mean any material adverse change in the financial condition, assets, liabilities (absolute, accrued, contingent or otherwise), reserves, business or results of operations of the Company and the Bank taken as a whole (or when the reference is to Compass; to Compass and its Subsidiaries, taken as a whole); provided, however, that with respect to the Company and the Bank, a Material Adverse Effect shall not be deemed to have occurred until, but shall be deemed to have occurred when, such changes, either individually or in the aggregate, reduce shareholders' equity of the Company by more than \$1,500,000.

(c) "Environmental Laws" shall mean all federal, state and local laws, ordinances, rules, regulations, guidance documents, directives, and decisions, interpretations and orders of courts or administrative agencies or authorities, relating to the release, threatened release, recycling, processing, use, handling, transportation treatment, storage, disposal, remediation, removal, inspection or monitoring of Polluting Substances or protection of human health or safety or the environment (including, without limitation, wildlife, air, surface water, ground water, land surface, and subsurface strata), including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, as amended ("SARA"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), Hazardous and Solid Waste Amendments of 1984, as amended ("HSWA"), the Hazardous Materials Transportation Act, as amended ("HMTA"), the Toxic Substances Control Act ("TSCA"), Occupational Safety and Health Act ("OSHA"), Federal Water Pollution Control Act, Clean Air Act, and any and all regulations promulgated pursuant to any of the foregoing.

(d) "Polluting Substances" shall mean those substances included within the statutory or regulatory definitions, listings or descriptions of "pollutant," "contaminant," "toxic waste," "hazardous substance," "hazardous waste," "solid waste," or "regulated substance" pursuant to CERCLA, SARA, RCRA, HSWA, HMTA, TSCA, OSHA, and/or any other Environmental Laws, as amended, and shall include, without limitation, any material, waste or substance which is or contains explosives, radioactive materials, oil or any fraction thereof, asbestos, or formaldehyde. To the extent that the laws or regulations of the State of Florida establish a meaning for "hazardous substance," "hazardous waste," "hazardous materials," "solid waste," or "toxic waste," which is broader than that specified in any of CERCLA, SARA, RCRA, HSWA, HMTA, TSCA, OSHA or other Environmental Laws such broader meaning shall apply.

(e) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning.