

07/12/96 12:23 AKERMAN, SENTERFITT WPB 001  
**H96000058738**  
07/12/96 2:08pm  
**FLORIDA DIVISION OF CORPORATIONS  
PUBLIC ACCESS SYSTEM  
ELECTRONIC FILING COVER SHEET**

(((H96000009706)))

TO: DIVISION OF CORPORATIONS  
DEPARTMENT OF STATE  
STATE OF FLORIDA  
409 EAST GAINES STREET  
TALLAHASSEE, FL 32399  
FAX: (904) 922-4000

FROM: AKERMAN, SENTERFITT & BIDSON, P.A.  
777 SOUTH FLAGLER DRIVE, SUITE 900E  
WEST PALM BEACH, FL 33401  
SEAN F. SMYTH  
PHONE: (407) 659-5990  
FAX: (407) 659-6313

(((H96000009706)))

DOCUMENT TYPE: FLORIDA PROFIT CORPORATION OR P.A.  
NAME: PARK ACQUISITION CO.  
FAX AUDIT NUMBER: H96000009706  
CURRENT STATUS: REQUESTED  
DATE REQUESTED: 07/12/1996  
TIME REQUESTED: 12:08:49  
CERTIFIED COPIES: 0  
CERTIFICATE OF STATUS: 0  
NUMBER OF PAGES: 2  
METHOD OF DELIVERY: FAX  
ESTIMATED CHARGE: \$70.00  
ACCOUNT NUMBER: 104075003305

NOTE: PLEASE PRINT THIS PAGE AND USE IT AS A COVER SHEET WHEN  
SUBMITTING DOCUMENTS TO THE DIVISION OF CORPORATIONS. YOUR  
DOCUMENT CANNOT BE PROCESSED WITHOUT THE INFORMATION CONTAINED  
ON THIS PAGE. REMEMBER TO TYPE THE FAX AUDIT NUMBER ON THE TOP AND  
BOTTOM OF ALL PAGES OF THE DOCUMENT

(((H96000009706)))

WPA1.M/35303\_1.DOC

FILED  
56 JUL 12 PM 3 13

00:1 HR 12 PM 1:00  
JUL 12 1996

07/12/96

12124

PERMITS, SENIORITY, WPD

FILED  
000009706  
1100

**ARTICLES OF INCORPORATION  
OF  
PARK ACQUISITION CO.**

**FIRST:** The name of the Corporation is **PARK ACQUISITION CO.**

**SECOND:** This Corporation is organized for the purpose of transacting any and all lawful business for which corporations may be formed under the provisions of Chapter 607, Florida Statutes.

**THIRD:** This Corporation is authorized to issue 1000 shares of common stock, par value \$1.00 per share.

**FOURTH:** The street address of the Initial Registered Office is Phillips Point - East Tower, 777 South Flagler Drive, Suite 800, West Palm Beach, Florida 33401 and the name of the Initial Registered Agent of this Corporation at that address is Russell T. Kamradt, Esquire.

**FIFTH:** The street address of the principal office of this Corporation is 980 North Federal Highway, Boca Raton, Florida 33432.

**SIXTH:** The name and address of the Sole Incorporator of this Corporation is Russell T. Kamradt, Esquire, Phillips Point - East Tower, 777 South Flagler Drive, Suite 800, West Palm Beach, Florida 33401.

**SEVENTH:** The duration of this Corporation is perpetual.

**IN WITNESS WHEREOF,** the undersigned Incorporator has executed these Articles of Incorporation this 12th day of July, 1996.

  
Russell T. Kamradt, Esquire, Sole Incorporator

Russell T. Kamradt, Esquire  
Florida Bar Number 0262153  
Phillips Point East Tower  
777 South Flagler Drive  
West Palm Beach, Florida 33401  
Phone (407) 855-1000  
Telex (907) 1000000

H00 000009706

07/12/96

12125

OKERMAN, SENTERFITT WPD

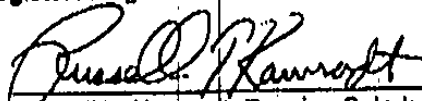
003

H00 000009706

**CERTIFICATE DESIGNATING  
REGISTERED AGENT AND REGISTERED OFFICE**

In compliance with Sections 48.091 and 607.0501, Florida Statutes, the following is submitted:

Park Acquisition Co., desiring to organize as a corporation under the laws of the State of Florida, has designated Phillips Point - East Tower, 777 South Flagler Drive, Suite 900, West Palm Beach, Florida 33401 as its Initial Registered Office and has named Russell T. Kamradt, Esquire, located at that address, as its Initial Registered Agent.



Russell T. Kamradt, Esquire, Sole Incorporator

Having been named Registered Agent for the above stated corporation, at the designated Registered Office, the undersigned hereby accepts said appointment and agrees to comply with the provisions of Section 48.091, Florida Statutes, relative to keeping open said Registered Office.



Russell T. Kamradt, Esquire, Registered Agent

WP\A\M\43211\_1.DOC

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

96 JUL 12 PM 3:16

FILED

H00 000009706

P9600058738

P.O. Box 10555

Address

Tallahassee FL 32302-2555 222-3471  
City/State/Zip Phone #

Call Loge at 5

400001988044--G  
-11/06/96--01091--025  
\*\*\*\*\*70.00 \*\*\*\*\*70.00  
Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (If known):

1. Park Bankshares, Inc.  
(Corporation Name) (Document #)
2. into  
(Corporation Name) (Document #)
3. Park Acquisition Co.  
(Corporation Name) (Document #)
4. \_\_\_\_\_  
(Corporation Name) (Document #)

☒ Walk in

☐ Pick up time \_\_\_\_\_

☐ Certified Copy

☐ Mail out

☐ Will wait

☐ Photocopy

☐ Certificate of Status

NEW FILINGS	
<input type="checkbox"/>	Profit
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input checked="" type="checkbox"/>	Merger

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

FILED  
96 NOV - 1 AM 10:45  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILING 70.00  
R. AGENT \_\_\_\_\_  
CERT. COPY \_\_\_\_\_  
CUS \_\_\_\_\_  
OVERPAYMENT \_\_\_\_\_  
TOTAL 70.00

P96000058738

ARTICLES OF MERGER  
Merger Sheet

MERGING: -----

PARK BANKSHARES, INC., a Florida corporation (Document #V26589)

INTO

**PARK ACQUISITION CO.,** a Florida corporation, P96000058738.

File date: November 1, 1996

Corporate Specialist: Louise Flemming-Jackson

**ARTICLES OF MERGER  
OF  
PARK BANKSHARES, INC.  
(a Florida corporation)  
INTO  
PARK ACQUISITION CO.  
(a Florida corporation)**

**FILED**

11-2

96 NOV -1 AM 10:45

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to Section 607.1101 of the Florida Business Corporation Act (the "Act"), Park Bankshares, Inc., a Florida corporation ("Bankshares"), and Park Acquisition Co., a Florida corporation ("Park Acquisition"), adopt the following Articles of Merger for the purpose of merging Bankshares into Park Acquisition, the latter of which is to survive the merger, effective the date of filing of these Articles of Merger with the Florida Department of State pursuant to Section 607.0123 of the Act:

**ARTICLE I**

That certain Agreement and Plan of Merger, dated as of July 29, 1996, as amended (the "Plan"), by and among First National Bank of Lake Park, Bankshares, Park Acquisition and 1st United Bancorp, a copy of which is attached to and made a part of this instrument, was duly adopted and approved by the Shareholders of Bankshares on October 24, 1996.

**ARTICLE II**


The Plan was duly adopted and approved by the Shareholders of Park Acquisition on October 22, 1996, pursuant to an Action by Written Consent of the Sole Shareholder of Park Acquisition in Lieu of a Meeting.

**ARTICLE III**

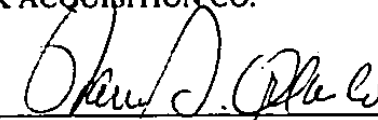
The Plan, as amended, shall be effective immediately upon filing of these Articles of Merger with the Florida Department of State, Corporation Bureau.

IN WITNESS WHEREOF, the parties hereto have caused these Articles of Merger to be duly executed by their respective authorized officers.

**PARK BANKSHARES, INC.**

By:   
Louis A. Gaeta, Jr., President

**PARK ACQUISITION CO.**

By:   
Warren S. Orlando, President

### **AMENDMENT NO. 1**

This Amendment No. 1 (the "Amendment"), dated October 8, 1996, is hereby made to the Agreement and Plan of Merger, dated July 29, 1996 (the "Agreement"), by and between Park Bankshares, Inc., a Florida corporation ("Bankshares"), First National Bank of Lake Park, a national banking association ("Lake Park") and 1st United Bancorp, a Florida bank holding company ("Bancorp"), (Bankshares, Lake Park and Bancorp are collectively referred to herein as the "Parties").

WHEREAS, the Agreement requires that Bankshares and Lake Park obtain a Non-Competition Agreement in substantially the form of Exhibit "C" to the Agreement, a Consulting Agreement in substantially the form of Exhibit "E" to the Agreement, and an agreement terminating the Employment Agreement between Mr. Louis A. Gaeta, Jr., Bankshares and Lake Park; and

WHEREAS, in the finalization of the termination of Mr. Gaeta's Employment Agreement, Bankshares and Lake Park have identified the need for certain revisions to the form of Mr. Gaeta's Non-Competition Agreement and Consulting Agreement which are acceptable to Bancorp; and

WHEREAS, the Parties wish to modify the Agreement as provided herein;

NOW, THEREFORE, in consideration for the premises and mutual promises contained herein, the Parties agree as follows:

1. The foregoing recitations are incorporated into and comprise a part of this Amendment.
2. Unless otherwise defined herein, any capitalized term used herein shall have the meaning ascribed to such term in the Agreement.
3. The form of Non-Competition Agreement between Mr. Gaeta, Bancorp and 1st United shall be in substantially the form attached hereto as Exhibit "A" rather than the form attached to the Agreement as Exhibit "C".
4. The form of Consulting Agreement between Mr. Gaeta and Bancorp shall be in substantially the form attached hereto as Exhibit "B" rather than the form attached to the Agreement as Exhibit "E".
5. The form of the agreement terminating the Employment Agreement referenced in §5.2(iii) of the Agreement shall be in substantially the form attached hereto as Exhibit "C".

6. Subsection (ii) of the definition of Bankshares Closing Equity is hereby amended to read as follows:

" . . . (ii) a maximum of \$100,000 in Transaction Expenses other than those in (i) and (iii); . . ."

7. Subsection (iii) of the definition of Bankshares Closing Equity is hereby amended to read as follows:

" . . . (iii) a maximum of \$150,000 of the aggregate costs incurred in terminating employment agreements between Bankshares or Bank and Louis A. Gaeta, Jr. existing on the Effective Date; . . ."

8. The last sentence in the definition of Bankshares Closing Equity is hereby amended to read as follows:

" . . . Payments due to Mr. Louis A. Gaeta, Jr. pursuant to the Consulting Agreement referenced in §5.3 of the Agreement and any amounts to be paid to Mr. Gaeta pursuant to the Non-Competition Agreement referenced in §5.2(i) in excess of One Hundred Two Thousand and no/100s Dollars (\$102,000.00) shall not be taken into account in calculating Bankshares Closing Equity."

9. Section 5.3(ii) of the Agreement is hereby amended as follows: (i) by deleting the following sentence: "The Non-Competition Agreement with Louis A. Gaeta, Jr. shall provide for no payment to Louis A. Gaeta, Jr. with the understanding that the payments to Louis A. Gaeta, Jr. under the Consulting Agreement referenced in (i) above are also consideration for this Non-Competition Agreement" and (ii) by addition of the following sentence: "The payments to Louis A. Gaeta, Jr. under the Non-Competition Agreement with Louis A. Gaeta, Jr. shall be as set forth on Exhibit A to Amendment No. 1."

10. Except as expressly provided herein, nothing in this Amendment shall be construed to modify or supersede any of the Parties' rights and obligations previously set forth in the Agreement. In the event the terms of the Agreement and this Amendment conflict, the terms of this Amendment shall control. The Agreement, in conjunction with this Amendment, shall represent the Parties complete understanding on the subject matters contained therein.

11. This Agreement may be executed in any number of counterparts, each of which,

when so executed, shall constitute an original copy hereof, but all of which together shall constitute but one and the same document.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first provided above.

1ST UNITED BANCORP

By: [Signature]  
Title: CEO  
Date: 10/8/96

PARK BANKSHARES, INC.

By: [Signature]  
Title: PRESIDENT  
Date: 12/5/96

FIRST NATIONAL BANK OF LAKE PARK

By: [Signature]  
Title: PRESIDENT  
Date: 12/5/96

## **EXHIBIT "A"**

### **NON-COMPETITION AGREEMENT**

**THIS NON-COMPETITION AGREEMENT** (the "Non-Competition Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 1996, by and among Louis A. Gaeta, Jr., an individual residing in the State of Florida ("Mr. Gaeta"), 1st United Bank, a Florida chartered bank ("Bank"), and 1st United Bancorp, a Florida corporation ("Bancorp" and collectively with Bank, "1st United").

#### **W I T N E S S E I H:**

**WHEREAS**, Bancorp is a registered bank holding company and the corporate parent of 1st United Bank;

**WHEREAS**, Bancorp, Park Acquisition Co., Park Bankshares, Inc. ("Park") and First National Bank of Lake Park ("Lake Park"), have entered into an Agreement and Plan of Merger (the "Agreement") and Bank and Lake Park have entered into a Plan of Merger and Merger Agreement (the "Bank Merger Agreement"), both dated as of July 29, 1996 (collectively, the "Agreements") pursuant to which Lake Park will be merged with and into Bank (the "Merger");

**WHEREAS**, Mr. Gaeta is the President and Chief Executive Officer and a member of the Boards of Directors of Lake Park and Park Bankshares, Inc., a Florida corporation ("Park");

**WHEREAS**, pursuant to the Agreement, Park and Lake Park are obligated to obtain a non-competition agreement from Mr. Gaeta in favor of Bank for the purpose of protecting the value of Lake Park's ongoing business operations and as a material inducement to Bank to enter into and consummate the Agreements.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Preambles.** The preambles to this Non-Competition Agreement shall be included herein as if fully set forth below.

2. **Consideration.** In consideration for Mr. Gaeta's performance of his obligations under this Agreement, 1st United agrees to pay Mr. Gaeta three (3)

payments of Seventy Thousand and no/100s Dollars (\$70,000.00), the first payable within ten (10) days after the Closing Date (as defined in the Agreement) and the remaining two (2) payments being payable on the first and second anniversary dates of the Closing Date. In the event of a change of control of Bancorp or 1st United during the term of this Agreement, Mr. Gaeta shall have the option to require payment of all unpaid consideration scheduled to be paid to him under this Agreement, such payments to be due within thirty (30) days after written notice from Mr. Gaeta to Bancorp. A change of control shall have occurred if Bancorp or 1st United is a party to a merger or consolidation transaction in which Bancorp or 1st United is not the surviving corporation or a transaction or series of transactions occurs in which more than fifty percent (50%) of the outstanding capital stock of Bancorp or 1st United is acquired by one person. Nothing in this Non-Competition Agreement is intended, nor shall be construed, to create an employer/employee relationship, a joint venture relationship or a lease or landlord/tenant relationship between Mr. Gaeta and Bancorp. The parties further acknowledge and agree that (a) Mr. Gaeta will not be treated as an employee of Bancorp for federal tax purposes, (b) Bancorp will not withhold on behalf of Mr. Gaeta any sums for income tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement of any governmental body or (c) make available to Mr. Gaeta any of the benefits afforded employees of Bancorp.

3. **Covenant Not to Compete.** Mr. Gaeta agrees that Mr. Gaeta shall not, for a period of three (3) years from the Closing Date, act as an officer or director of a financial institution with offices in or which conducts business in Palm Beach or Martin County, Florida nor shall Mr. Gaeta solicit banking business from former Lake Park customers, nor present Bank customers, directly or indirectly wherever located, nor enter into the banking business or any business in Palm Beach or Martin County, Florida which competes with the business of Bank, either directly or indirectly, as an officer, director, employee, consultant, joint venturer, lender, agent or licensor. The reference to "any business in Palm Beach or Martin County" shall be construed to mean any type business operation which Bank, as of the date of this Non-Competition Agreement, conducts at any of its facilities in the State of Florida, but shall specifically not include any title insurance, real estate brokerage, real estate development or real estate joint venture activities. Mr. Gaeta shall not be deemed to be in violation of this Agreement if, in the course of conducting his real estate brokerage business or his real estate development business, Mr. Gaeta, at the request of a client of his real estate brokerage business or his real estate development business, refers such client to another banking institution to obtain financing for a transaction in which Mr. Gaeta is acting as a broker on behalf of such client if Mr. Gaeta has first recommended Bank as the source of such financing and exerted good faith efforts to persuade the client to obtain such financing from Bank.

4. **Injunctive Relief.** Mr. Gaeta acknowledges that any breach of this Non-Competition Agreement by Mr. Gaeta will result in immediate harm to Bank which may not be strictly measurable or completely compensable in money damages. In the event of an actual or threatened breach by Mr. Gaeta, in addition to any other remedies provided herein, at law or in equity, Bank shall be entitled to a preliminary restraining order and an injunction restraining Mr. Gaeta from violating the provision(s) of this Non-Competition Agreement. Mr. Gaeta hereby waives any claim or defense therein that the aggrieved party has an adequate remedy at law. The parties further agree that the party initiating the action shall be entitled to a decree, without the necessity of posting a bond, cash or otherwise, against Mr. Gaeta and, if necessary or appropriate, may require specific performance. In the event of such action, the nonprevailing party shall be liable to pay all costs, including reasonable attorneys' fees and expenses, which the prevailing party may incur in such action including litigation of any appeal taken or defended by the prevailing party. Notwithstanding anything to the contrary hereinabove contained, Bank will have the burden of proof in establishing a breach of the Non-Competition Agreement by Mr. Gaeta, whether before or after commencement of litigation, in order to establish a right to recover attorney fees, costs and expenses from the Mr. Gaeta; and, in the event of any litigation, the prevailing party therein shall be entitled to recover from the losing party its, theirs or his reasonable attorney fees, costs and expenses.

5. **Applicable Law.** This Non-Competition Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

6. **Entire Agreement; Amendment.** This Non-Competition Agreement and the Consulting Agreement contain the entire agreement and supersedes any prior agreement, written or oral, between the parties regarding the subject matter hereof. This Non-Competition Agreement may be modified only by an agreement in writing signed by the parties hereto. This Non-Competition Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective heirs, administrators, successors and assigns. In view of the unique relationship which Mr. Gaeta and his family have developed with the customers of Lake Park and the exceptional reputation which they enjoy in the Town of Lake Park and surrounding communities, in the event Mr. Gaeta dies or becomes disabled during the term of this

Agreement, the payments required by this Agreement for the balance of the term of this Agreement shall be paid as scheduled to Mr. Gaeta's heirs or devisees.

**IN WITNESS WHEREOF**, the undersigned have executed or caused to be executed this Non-Competition Agreement, effective as of the day and year first above written.

**ATTEST:**

**1ST UNITED BANCORP, a Florida corporation**

\_\_\_\_\_

By: \_\_\_\_\_  
Warren S. Orlando, President and  
Chief Executive Officer

\_\_\_\_\_

**ATTEST:**

**1ST UNITED BANK, a Florida chartered bank**

\_\_\_\_\_

By: \_\_\_\_\_  
Warren S. Orlando, President and  
Chief Executive Officer

\_\_\_\_\_

**WITNESS:**

**MR. GAETA:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT "B"**

**CONSULTING AGREEMENT**

**THIS CONSULTING AGREEMENT** (the "Consulting Agreement") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1996 (the "Effective Date") by and between 1ST UNITED BANCORP, a Florida corporation ("Bancorp"), and LOUIS A. GAETA, JR., an individual residing in Palm Beach County, Florida ("Mr. Gaeta").

**WITNESSETH:**

**WHEREAS**, Bancorp is a registered bank holding company and the corporate parent of 1st United Bank ("1st United");

**WHEREAS**, Bancorp, Park Acquisition Co. ("Acquisition"), Park Bankshares, Inc. ("Bankshares") and First National Bank of Lake Park ("Lake Park") have entered into an Agreement and Plan of Merger dated as of July 29, 1996 (the "Agreement") pursuant to which Lake Park will be merged with and into 1st United (the "Merger");

**WHEREAS**, the Agreement provides that, among other things, Bancorp will enter into a consulting agreement with Mr. Gaeta for a term of three (3) years from the Closing Date, as defined in the Agreement for compensation as set forth hereafter; and

**WHEREAS**, Bancorp desires to engage Mr. Gaeta as a consultant and Mr. Gaeta desires to provide consulting services to Bancorp in accordance with the terms and conditions of this Consulting Agreement.

**NOW, THEREFORE**, intending to be legally bound hereby and for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

(1) **Independent Contractor.** In consideration of Mr. Gaeta's performance of his obligations under this Consulting Agreement and other good and valuable consideration, Bancorp shall and hereby does retain Mr. Gaeta as an independent contractor of Bancorp. Mr. Gaeta shall report to the President and Chief Executive Officer of Bancorp or such person's designee and, subject to this reporting relationship, shall provide consulting services to Bancorp. As and when Bancorp specifically requests, Mr. Gaeta shall assist Bancorp and its subsidiaries in the efficient conversion and smooth transition of the business of Lake Park and/or its subsidiaries to 1st United following the Merger, serve as liaison between 1st United and the business community located in Palm Beach and Martin County, Florida, facilitate the furtherance of the banking business of 1st United in and around Palm Beach and Martin County, Florida and perform such other duties and provide such other assistance relating to the banking business, all as may be requested by Bancorp from time to time (collectively, the "Services"). Mr. Gaeta shall not be an agent, officer, employee or representative of Bancorp or its subsidiaries, shall not represent or hold himself out as an agent, officer, employee or representative of Bancorp or its subsidiaries and shall provide Services only when specifically requested by the President and Chief Executive Officer of Bancorp or such person's designee. It is not the intention of the parties hereto that Mr. Gaeta devote full time to the tasks that may from time to time be assigned to him by Bancorp, and Mr. Gaeta may devote substantial portions of his time to other business or private pursuits, so long and on the condition that such

other interests not be violative of the Non-Competition Agreement referred to in Paragraph (4) below. Consequently, the amount of time Mr. Gaeta shall be obligated to devote to the discharge of his obligations under this Agreement shall be subject to the mutual agreement of Mr. Gaeta and Bancorp.

(2) Compensation. In consideration of the Services rendered by Mr. Gaeta hereunder, Bancorp shall pay to Mr. Gaeta a consulting fee of EIGHTEEN THOUSAND and no/100s DOLLARS (\$18,000.00) within ten (10) days after the Closing Date, FOURTEEN THOUSAND and no/100s DOLLARS (\$14,000.00) on the first anniversary of the Closing Date and TEN THOUSAND and no/100s DOLLARS (\$10,000.00) on the second anniversary of the Closing Date. In the event of a change of control of Bancorp or 1st United during the term of this Agreement, Mr. Gaeta shall have the option to require payment of all unpaid consideration scheduled to be paid to him under this Agreement, such payments to be due within thirty (30) days after written notice from Mr. Gaeta to Bancorp. A change of control shall have occurred if Bancorp or 1st United is a party to a merger or consolidation transaction in which Bancorp or 1st United is not the surviving corporation or a transaction or series of transactions occurs in which more than fifty percent (50%) of the outstanding capital stock of Bancorp or 1st United is acquired by one person. Bancorp agrees that it will reimburse Mr. Gaeta for business expenses incurred by Mr. Gaeta in the discharge of his obligations under this Agreement provided that such expenses have been approved by an executive officer of Bancorp prior to Mr. Gaeta incurring such expenses. In the event Mr. Gaeta is unable to discharge his obligations hereunder due to death or disability, the consulting fee for the balance of the term of this Consulting Agreement shall be paid as scheduled to Mr. Gaeta's heirs or devisees in the event of death or to Mr. Gaeta in the event of disability. The parties acknowledge and agree that Mr. Gaeta is an independent contractor of Bancorp and nothing in this Consulting Agreement is intended, nor shall be construed, to create an employer/employee relationship, a joint venture relationship or a lease or landlord/tenant relationship between Mr. Gaeta and Bancorp. The parties further acknowledge and agree that (a) Mr. Gaeta will not be treated as an employee of Bancorp for federal tax purposes, (b) Bancorp will not withhold on behalf of Mr. Gaeta any sums for income tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement of any governmental body or (c) make available to Mr. Gaeta any of the benefits afforded employees of Bancorp. In the event that the Internal Revenue Service or any other governmental agency should question or challenge the independent contractor status of Mr. Gaeta, the parties mutually agree that both Mr. Gaeta and Bancorp shall have the right to participate in any discussions or negotiations occurring with such agency or agencies.

(3) Term and Termination.

(a) This Consulting Agreement shall commence as of the Effective Date and, unless sooner terminated as provided herein, this Consulting Agreement shall have a term of three (3) years from the Effective Date; and

(b) Notwithstanding anything contained herein to the contrary, Bancorp may terminate this Consulting Agreement immediately with or without cause. For the purposes of this Consulting Agreement, the term "for cause" shall mean Bancorp's termination of this Consulting Agreement for any material breach by Mr. Gaeta of this Consulting Agreement which continues for more than thirty (30) days after written notice of such default from Bancorp

to Mr. Gaeta or the non-competition provisions set forth in that certain Non-Competition Agreement of even date herewith by and between Bancorp, 1st United and Mr. Gaeta, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference. If Bancorp terminates this Agreement for cause, no further payments shall be due to Mr. Gaeta hereunder. If Bancorp terminates this Agreement without cause, Bancorp shall be obligated to pay the consulting fee for the remainder of the term of this Agreement and Mr. Gaeta shall have the option of requiring Bancorp to pay the consulting fee for the balance of the term of this Agreement in a lump sum within thirty (30) days after such termination. In the event that Bancorp terminates this Consulting Agreement without cause and if Mr. Gaeta elects not to accelerate payment of the consulting fee for the balance of the term, as above provided, then, and in such event, the consulting fee for the balance of the term of this Consulting Agreement shall be paid in accordance with the provisions of Paragraph (2) above.

(4) **Cross Default.** As conditions precedent to the execution and delivery of this Consulting Agreement, Mr. Gaeta has separately entered into a Non-Competition Agreement of even date with this Consulting Agreement for a period of three (3) years in order to ensure that Mr. Gaeta does not compete with the business of Bancorp or 1st United. Any default by Mr. Gaeta under such Non-Competition Agreement shall constitute a default of this Consulting Agreement and, in this event, Mr. Gaeta shall not be entitled to payment of monies due hereunder from the date of such default forward. Bancorp and/or 1st United shall additionally have the right to any and all other remedies available at law or in equity. This paragraph and the right of Bancorp to terminate payment of moneys due under this Consulting Agreement shall be subject to the provisions of Paragraph (3)(b), above.

(5) **Bancorp Representations.** Bancorp hereby warrants and represents to Mr. Gaeta that:

- (a) Bancorp has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) This Agreement does not contravene any other agreement to which Bancorp is a party or any statute, regulation, rule or judgment by which Bancorp is bound.
- (c) This Agreement is the valid and binding obligation of Bancorp enforceable in accordance with its terms.

(6) **Gaeta Representations.** Mr. Gaeta hereby warrants and represents to Bancorp that:

- (a) Mr. Gaeta has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) This Agreement does not contravene any other agreement to which Mr. Gaeta is a party or any statute, regulation, rule or judgment by which Mr. Gaeta is bound.
- (c) This Agreement is the valid and binding obligation of Mr. Gaeta enforceable in accordance with its terms.

(7) **Governing Law.** This Consulting Agreement shall be governed, interpreted and construed under and pursuant to the laws of the State of Florida.

(8) **Assignment.** This Consulting Agreement may not be assigned without the prior written consent of the other party.

(9) **Successors.** This Consulting Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective heirs, administrators, successors and permitted assigns.

(10) **Attorneys' Fees.** In the event of a breach of this Agreement, the prevailing party in any litigation brought by reason of such breach or to enforce the terms of this Agreement shall be entitled to recover its attorneys' fees and costs, at all levels from pretrial through final appeal, from the nonprevailing party.

(11) **Amendment.** No change, alteration or modification of this Consulting Agreement may be made except pursuant to a written instrument executed by both parties hereto.

**IN WITNESS WHEREOF,** the parties have executed this Consulting Agreement for the purposes therein contained.

WITNESS:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
Louis A. Gaeta, Jr.

1ST UNITED BANCORP

By: \_\_\_\_\_  
Warren S. Orlando, President  
and Chief Executive Officer

EXHIBIT "C"

**TERMINATION AND SETTLEMENT AGREEMENT**

TERMINATION AND SETTLEMENT AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 1996 by and between Louis A. Gaeta, Jr., ("Gaeta"), and Park Bankshares, Inc. and its subsidiary First National Bank of Lake Park, a National Banking Association, (collectively, the "Bank").

**W I T N E S S E I H:**

WHEREAS, Gaeta entered into an employment agreement with the Bank dated April 4, 1996 (the "Employment Agreement"), and

WHEREAS, the Bank merged or will merge with and into wholly-owned subsidiaries of 1<sup>st</sup> United Bancorp, a Florida corporation (collectively, with its subsidiaries, "1<sup>st</sup> United"), effective as of the date hereof (the "Merger"), and

WHEREAS, the parties desire to set forth the terms and conditions regarding the cessation of Gaeta's relationship and employment with the Bank and to settle the amounts payable to Gaeta pursuant to the Employment Agreement as a result of the Merger;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Termination of Employment Agreement.** Gaeta and the Bank each hereby confirms and acknowledges that the Employment Agreement (the "Employment Agreement"), is deemed properly terminated as of the effective time of the Merger (the "Date of Termination"), except that the Bank shall pay to Gaeta, as full and final settlement of the amounts payable to him pursuant to Article II of the Employment Agreement as a result of the Merger, a lump sum equal to One Hundred Fifty Thousand Dollars (\$150,000) on January 2, 1997.

2. **Resignations.** Gaeta hereby confirms and acknowledges his resignation as President, Chief Executive Officer and Chairman of the Board of the Bank and as a trustee of the Bank's 401(k) plan, effective as of the Date of Termination, and he will execute such separate resignations for insertion into the minute books of the Bank as may be reasonably requested by the Bank. Gaeta will complete and execute such corporate documents as may require his signature and remain outstanding as of the date hereof, including, without limitation, the execution of minutes of meetings of directors of the Bank attended by Gaeta and held on or prior to the effective date of the Merger.

3. **Releases of Claims**

(a) Gaeta hereby absolutely and unconditionally releases the Bank and all of their respective subsidiaries, successors and assigns (collectively, the "Bank Group"), from and against any and all claims, causes of action, damages, losses,

contracts, demands and/or liabilities of any kind, including, but not limited to, those relating to or arising from the Employment Agreement (including claims for attorneys' fees and costs), from the beginning of the world to the date hereof; except that this release shall not apply to: (i) the Bank's and 1<sup>st</sup> United's obligations pursuant to this Agreement, the Agreement and Plan of Merger dated July 29, 1996 relating to the Merger, and the Consulting Agreement and Non-Competition Agreement entered into by Gaeta and 1<sup>st</sup> United pursuant to the Merger, nor shall it apply to Gaeta's interests in the Bank's 401(k) plan; and (ii) any fraud, criminal or other willful misconduct committed by any of the Bank Group. Nothing in this Agreement is to be construed as an admission by any of the Bank Group of any liability or unlawful conduct whatsoever.

(b) On behalf of themselves, and their respective subsidiaries, successors and assigns, the Bank hereby absolutely and unconditionally release Gaeta from and against any and all claims, causes of action, damages, losses, contracts, demands and/or liabilities of any kind, including, but not limited to, those relating to Gaeta's employment by the Bank, Gaeta acting as a director of the Bank, and/or arising from the circumstances surrounding the Merger (including claims for attorneys' fees and costs), from the beginning of the world to the date hereof; except that this release shall not apply to: (i) Gaeta's obligations, if any, pursuant to this Agreement, the Agreement and Plan of Merger dated July 29, 1996 relating to the Merger, and the Consulting Agreement and Non-Competition Agreement entered into by Gaeta and 1<sup>st</sup> United pursuant to the Merger; (ii) any criminal or other willful misconduct or a conscious disregard for the best interests of the Bank by Gaeta, as established by a judgment or other final adjudication, which would result in Gaeta not being entitled to indemnification under the standards set by Section 607.0850, Florida Statutes; and (iii) any loan, guarantee or other account agreements executed by Gaeta in favor of the Bank. Nothing in this Agreement is to be construed as an admission by Gaeta of any liability or unlawful conduct whatsoever.

(c) The foregoing releases shall not apply to any actions or omissions of the Bank, 1<sup>st</sup> United or Gaeta occurring after the date hereof, including any breach of this Agreement and/or the foregoing Agreement and Plan of Merger, Consulting Agreement and/or the Non-Competition Agreement, nor shall they alter, bar, diminish, impair or otherwise affect any party's right to enforce this Agreement.

4. Further Assurances. All parties hereto hereby agree from time to time to execute and deliver such further and other agreements, certificates or other documents or instruments and to do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

5. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors, assigns, legal representatives, heirs, distributees, executors and administrators. If Gaeta should die while any amounts would still be payable to him under this Agreement, all such amounts shall be paid in accordance with the terms of this Agreement to his devisee, legatee or other designee or, if there is no such designee, to his estate.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida.

7. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes any and all prior negotiations, correspondence or understandings between them respecting the subject matters referred to herein. It may not be modified except in writing signed by the party against whom enforcement of any waiver, change, modification or consent is sought. Section headings are for convenient reference only and shall not be used in any interpretation of this document.

8. Severability. If any provision of this Agreement or any other Agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

9. Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any case shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.

10. Specific Performance. Each of the parties acknowledges that the parties will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by any party of any provision of this Agreement, then the other parties shall be entitled, in addition to all other rights or remedies, to injunctions restraining such breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of the provisions of this Agreement.

11. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the District Court of the United States, Southern District of Florida; (b) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or

proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

12. Enforcement Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

13. Preparation of Agreement. This Agreement shall not be construed more strongly against any party regardless of who is responsible for its preparation. The parties acknowledge each contributed and is equally responsible for its preparation.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.



\_\_\_\_\_  
Louis A. Gaeta, Jr.

PARK BANKSHARES, INC. and FIRST  
NATIONAL BANK OF LAKE PARK

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

June White, Vice Chairman

JOINDER

1<sup>st</sup> United joins in this Agreement for the sole purpose of acknowledging that, from and after the effective time of the Merger, 1<sup>st</sup> United, as successor to the Bank, absolutely and unconditionally assumes and guarantees the payment and performance obligations of the Bank hereunder.

1ST UNITED BANCORP and  
1ST UNITED BANK

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

Warren Orlando, President

**AGREEMENT AND PLAN OF MERGER**

**between**

**1ST UNITED BANCORP, PARK ACQUISITION CO.,  
FIRST NATIONAL BANK OF LAKE PARK  
AND PARK BANKSHARES, INC.**

**Dated: July 29, 1996**

## TABLE OF CONTENTS

	Page
1. Definitions.....	2
2. Basic Transaction.....	8
The Merger.....	8
Effective Time .....	8
Effects of the Merger .....	9
Articles of Incorporation and By-laws.....	9
Directors and Officers .....	9
Conversion of Shares .....	9
The Closing.....	10
Actions at the Closing.....	10
Dissenting Shares.....	10
Exchange of Shares.....	11
The Bank Merger .....	13
3. Representations and Warranties of Bankshares and Bank.....	13
Organization, Qualification and Corporate Power.....	14
Capitalization .....	14
Authorization of Transaction .....	15
Noncontravention.....	15
Filings with the SEC .....	16
Filing with the FRB and the OCC .....	16
Financial Statements .....	17
Events Subsequent to Most Recent Fiscal Quarter.....	17
Tax Matters .....	17
Undisclosed Liabilities.....	18
Broker's Fees.....	19
Disclosure .....	19
Title to Properties.....	20
Employment Contracts.....	20
Compliance with Laws .....	20
Litigation and Administrative Proceedings .....	20
Employee Benefit Plans .....	21
Bankshares Subsidiaries.....	23
Real Property .....	23
Tangible Assets.....	26
Contracts .....	27
Related Party Transactions .....	28
4. Representations and Warranties of Bancorp.....	28
Organization, Qualifications and Corporate Power .....	28
Capitalization .....	29
Authorization of Transaction .....	30
Noncontravention.....	30

Filings with the SEC .....	31
Financial Statements .....	31
Brokers' Fees .....	32
Disclosure .....	32
Events Subsequent to Most Recent Fiscal Quarter .....	32
Title to Properties .....	32
Compliance with Laws .....	33
Litigation and Administrative Proceedings .....	33
Filings with the FRB and Comptroller .....	33
Undisclosed Liabilities .....	34
Tangible Assets .....	34
5. Covenants .....	34
General .....	35
Notices and Consents of Bankshares .....	35
Consulting and Noncompetition Agreements .....	35
Notices and Consents of Bancorp .....	36
Regulatory Matters and Approvals .....	36
Fairness Opinions .....	41
Operation of Business .....	41
Bank Operations .....	42
Full Access .....	44
Notice of Developments .....	45
Exclusivity .....	46
Indemnification .....	47
Officer and Director Indemnities .....	48
Environmental Matters .....	49
Affiliate Letters .....	49
Post Merger Financial Results .....	51
Employee Benefit Plans .....	51
Pooling of Interest .....	52
Certain Policies of Bank .....	52
6. Conditions to Obligation to Close .....	53
Conditions to Obligations of All Parties .....	53
Conditions to Obligation of Bancorp .....	54
Conditions to Obligation of Bankshares and Bank .....	55
7. Termination .....	57
Termination of Agreement .....	57
Effect of Termination .....	58
8. Miscellaneous .....	59
Survival .....	59
Press Releases and Announcements .....	59
Third Party Beneficiaries .....	59
Entire Agreement .....	59
Succession and Assignment .....	59
Counterparts .....	60

Headings .....	60
Notices .....	60
Governing Law .....	61
Amendments and Walvers .....	61
Severability .....	62
Expenses .....	62
Construction .....	63
9. Incorporation of Exhibits and Schedules .....	63

## **AGREEMENT AND PLAN OF MERGER**

Agreement entered into as of July 29, 1996 by and among 1st United Bancorp, a Florida corporation ("Bancorp"), Park Acquisition Co., a Florida corporation ("Acquisition"), First National Bank of Lake Park, a national banking association ("Bank") and Park Bankshares, Inc., a Florida corporation ("Bankshares"). Bancorp, Acquisition, Bank and Bankshares are referred to collectively herein as the "Parties."

### **WITNESSETH:**

WHEREAS, Bancorp is a Bank Holding Company registered under the Bank Holding Company Act of 1956, as amended (the "Bank Holding Company Act");

WHEREAS, Acquisition is a wholly owned subsidiary of Bancorp and 1st United Bank ("1st United") is a Florida chartered bank and a wholly owned subsidiary of Bancorp;

WHEREAS, Bankshares is a Bank Holding Company registered under the Bank Holding Company Act and Bank is a wholly owned subsidiary of Bankshares; and

WHEREAS, the Boards of Directors of Bancorp, Acquisition, Bank and Bankshares have agreed that the Merger of Bankshares with Acquisition on the terms herein set forth, and the merger of Bank with and into 1st United, are desirable and in the best interest of their respective shareholders and have approved this Agreement, and the Board of Directors of Bankshares has directed that this Agreement be submitted to its stockholders for approval.

Now, therefore, in consideration of the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

**1. DEFINITIONS.**

**"1st United"** has the meaning provided in the recitals hereof.

**"Acquisition"** has the meaning provided in the recitals hereof.

**"Affiliate"** has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

**"Agreement of Merger"** has the meaning set forth in §2.11 hereof.

**"Articles of Merger"** has the meaning set forth in §2.2 hereof.

**"Bancorp"** has the meaning provided in the recitals hereof.

**"Bancorp Public Report"** has the meaning set forth in §4.5 hereof.

**"Bancorp Purchase Stock"** has the meaning set forth in §2.6(ii) hereof.

**"Bancorp Shares"** means the common stock, \$.01 par value per share, of Bancorp.

**"Bankshares"** has the meaning provided in the recitals hereof.

**"Bankshares Affiliate"** has the meaning provided in §5.15 hereof.

**"Bankshares Closing Equity"** means the common shareholders' equity of Bankshares as of the last day of the calendar month ending prior to the Closing Date adjusted for earnings and expenses for the period from the last day of the calendar month ending prior to the Closing Date through the Closing Date (to the extent earnings and expenses are not then known, the Parties shall mutually agree on a reasonable estimate of such earnings and expenses) determined in accordance with GAAP; provided, however, that the common shareholders' equity of Bankshares shall not be reduced by the net after tax effect of: (i) a maximum of \$25,000.00 of the aggregate bonuses Bank agrees to pay to employees of Bank to induce them to continue in the employment of Bank through the Closing Date; and (ii) a maximum of \$50,000.00 in

Transaction Expenses other than those in (i) and (ii); and (iii) a maximum of \$200,000.00 of the aggregate costs incurred in terminating employment agreements between Bankshares or Bank and Louis A. Gaeta, Jr., existing on the Effective Date; and (iv) the net after tax effect of unrealized losses in excess of \$150,000.00 in securities owned by Bank and classified as available for sale. The common shareholder's equity shall be reduced by the net after tax effect of Transaction Expenses other than those set forth in (i), (ii) and (iii) above but including those in excess of the amounts set forth in (i), (ii) and (iii) above. The common shareholder's equity of Bankshares shall not be increased by any gains realized after the Effective Date which are not realized in the Ordinary Course of Business. Any gains realized from litigation to which Bank or Bankshares is a party and any gains from the disposition of real estate or other assets acquired by Bank through the exercise of remedies under loan documentation shall be gains realized in the Ordinary Course of Business and shall increase the common shareholder's equity of Bankshares. Any gains realized from the disposition of investment securities shall not be in the Ordinary Course of Business and shall not increase the common shareholder's equity of Bankshares. Any effects to the common shareholder's equity attributable solely to the actions of Bank taken pursuant to §5.19 shall not be taken into account in calculating Bankshares Closing Equity. Payments due to Mr. Louis A. Gaeta, Jr. pursuant to the Consulting Agreement referenced in §5.3 shall not be taken into account in calculating Bankshares Closing Equity.

**"Bankshares Fairness Opinion"** has the meaning set forth in §5.6 hereof.

**"Bankshares Initial Equity"** means the common shareholders equity of Bankshares which the Parties agree is Four Million One Hundred Seventy Thousand and no/100 Dollars (\$4,170,000.00).

**"Bankshares Stock"** means the \$.01 par value per share common stock of Bankshares.

**"Bankshares Stockholder"** means any person who or which holds of record any Bankshares Stock.

**"Bank"** has the meaning provided in the recitals hereof.

**"Bank Merger"** means the merger of Bank with and into 1st United.

**"Bank Share"** means any share of the Common Stock, \$5.00 par value per share, of Bank.

**"Bank Stock"** means 257,700 Bank Shares owned by Bankshares which comprises 100% of the issued and outstanding stock of Bank.

**"Certificates"** means the stock certificates which represent the Shares as of the Effective Time.

**"Closing"** has the meaning set forth in §2.7 hereof.

**"Closing Date"** has the meaning set forth in §2.7 hereof.

**"Comptroller"** means the Florida Department of Banking and Finance.

**"Confidential Information"** means any information concerning the businesses and affairs of Bancorp, 1st United, Acquisition, Bankshares or Bank; provided, however, that Confidential Information shall not include any information (i) which, at the time of disclosure, is available publicly or already known to the receiving Party, or, (ii) which, after disclosure, becomes available publicly through no fault of the receiving Party.

**"Definitive Bankshares Proxy Materials"** means the definitive proxy materials relating to the Special Bankshares Meeting.

**"Disclosure Statement"** has the meaning set forth in §3 hereof.

**"Dissenting Share"** shall have the meaning set forth in §2.9 hereof.

**"Effective Date"** means the date on which the last of the Parties signs this Agreement.

**"Effective Time"** means the time the Articles of Merger are filed with the Florida Secretary of State or such other time as stated in the Articles of Merger for effectiveness of the Merger.

**"Employee Benefit Plans"** means any employee welfare benefit plan or employee pension benefit plan, as defined in ERISA, which Bankshares or Bank maintains or to which Bankshares or Bank contribute or are required to contribute.

**"Environmental Laws"** means any local, state or federal law, statute, ordinance, rule, regulation or order relating to pollution or protection of the environment.

**"ERISA"** means the Employee Retirement Security Act of 1974 as amended.

**"Exchange Fund"** has the meaning set forth in §2.10(i) hereof.

**"FBCA"** means the Florida Business Corporation Act, Chapter 607, Florida Statutes.

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

**"Florida Acts"** means the FBCA, the Florida Banking Code, Chapter 658, and Chapter 655, Florida Statutes.

**"FRB"** means the Board of Governors of the Federal Reserve System.

**"GAAP"** means United States generally accepted accounting principles as in effect from time to time.

**"Hazardous Substances"** means any petroleum products or wastes and any pollutants, toxic or hazardous materials or wastes or regulated materials as defined in or regulated by any Environmental Laws.

**"IRS"** means the Internal Revenue Service.

**"Knowledge"** means (i) as of the Effective Date, the actual knowledge of any executive officers or directors of the Party in question, and (ii) as of any date after the Effective Date, the actual knowledge of any officer or director of the Party in question.

**"Market Value"** means the average of the closing price quotations for Bancorp Shares reported in the Wall Street Journal for the twenty (20) most recent Trade Days prior to the Valuation Date; provided, however, that for the purpose of calculating the number of Bancorp Shares comprising the Bancorp Purchase Stock the Market Value shall be \$8.50 per share if the

Market Value as calculated above is less than \$8.50 per share and shall be \$11.50 per share if the Market Value as calculated above is more than \$11.50 per share.

**"Merger"** has the meaning set forth in §2.1 hereof.

**"Merger Consideration"** has the meaning set forth in §2.6(ii) hereof.

**"Most Recent Fiscal Quarter"** means the fiscal quarter ended June 30, 1996.

**"Ordinary Course of Business"** means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency) and including, specifically, without limitation, accruals consistent with prior years for all expenses, including, without limitation, third party audits and real estate taxes.

**"Parties"** has the meaning set forth in the preface above.

**"Property"** means any real property owned or leased by Bankshares or Bank.

**"Prospectus"** means the final prospectus, if any, relating to the registration of the Bancorp Purchase Stock under the Securities Act.

**"Registration Statement"** has the meaning set forth in §5.5(ii)(e) hereof.

**"Related Contracts"** has the meaning set forth in §3.22 hereof.

**"Requisite Bankshares Stockholder Approval"** means the affirmative vote of the holders of a majority of the Bankshares Stock in favor of this Agreement and the Merger.

**"SEC"** means the Securities and Exchange Commission.

**"Securities Act"** means the Securities Act of 1933, as amended.

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

**"Security Interest"** means any mortgage, pledge, security interest, encumbrance, charge, or other lien, other than (a) mechanic's, materialmen's, and similar liens, (b) liens for taxes not yet due and payable or for taxes that the taxpayer is contesting in good faith through appropriate proceedings, (c) liens arising under worker's compensation, unemployment insurance, social security, retirement, and similar legislation, (d) liens arising in connection with

sales of foreign receivables, (e) liens on goods in transit incurred pursuant to documentary letters of credit, (f) purchase money liens and liens securing rental payments under capital lease arrangements, and (g) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

**"Share" or "Shares"** means shares of Bankshares Stock other than shares of Bankshares Stock owned by Bankshares.

**"Special Bankshares Meeting"** has the meaning set forth in §5.5(ii)(f) hereof.

**"Subsidiary"** means any corporation with respect to which another specified corporation has the power directly or indirectly to vote or direct the voting of sufficient securities to elect a majority of the directors.

**"Substantial Adverse Development"** means, as to Bankshares or Bank, an occurrence or development which substantially impairs Bankshares' or Bank's ability to consummate the Merger or which has or is reasonably likely to have a material adverse impact on the assets, liabilities, business or operations of Bankshares and Bank, taken as a whole, including, specifically without limitation, a decrease of more than 10% in the aggregate of Bank's demand, NOW, money market and savings accounts, other than deposits of public funds, from the average of those deposits for the month of June, 1996, or the assertion of claims or counterclaims in litigation, whether or not currently pending, to which Bankshares or Bank are parties which involves an amount in controversy greater than \$250,000.00 and, as to Bancorp or 1st United, means an occurrence or development which substantially impairs Bancorp's ability to consummate the Merger or substantially impairs 1st United's ability to consummate the Bank Merger or which has or is reasonably likely to have a material adverse impact on the assets, liabilities, business, financial condition, operations or results of operations of Bancorp.

**"Surviving Corporation"** has the meaning set forth in §2.1 hereof.

**"Transaction Expenses"** means any and all costs or expenses incurred or to be incurred by Bankshares or Bank before Closing, whether or not accrued or actually paid by

Bankshares or Bank, in connection with the Merger, Bank Merger, the Definitive Bankshares Proxy Materials or any of the other actions contemplated by or in connection with this Agreement, including, without limitation, bonuses to be paid to employees, costs incurred under any employment agreements (including costs of terminating the employment agreement with Louis A. Gaeta, Jr.), payments to be made under the Noncompetition Agreements referenced in §5.3, attorneys', accountants' and consultants' fees and expenses, and fees, commissions or expenses payable to Professional Bank Services, Incorporated and Financial Solutions of Central Florida, Inc. before or after Closing. In the event Bankshares and Bank have not paid or accrued for such expenses by the date on which Bankshares Closing Equity is determined, Bankshares or Bank shall accrue for such expenses through Closing and include such expenses in the computation of the Bankshares Closing Equity.

**"Transfer Agent"** means American Stock Transfer and Trust Company or such other agent as Bancorp may designate from time to time as Bancorp's agent for the transfer of Bancorp Shares.

**"Valuation Date"** means the last trading day ending five (5) days prior to the Closing Date.

## **2. BASIC TRANSACTION.**

**Section 2.1. The Merger.** Upon the terms and subject to the conditions hereof, and in accordance with the FBCA, Bankshares shall be merged with and into Acquisition (the "Merger") as soon as practicable following the satisfaction or waiver, if permissible, of the conditions set forth in Article 6 hereof. Following the Merger, Acquisition shall continue as the surviving corporation (the "Surviving Corporation") and the separate corporate existence of Bankshares shall cease. Only Acquisition and Bankshares shall be deemed to be parties to the Merger for purposes of Section 607.1106 of the FBCA.

**Section 2.2. Effective Time.** The Merger shall be consummated by the filing with the Florida Department of State of Articles of Merger (the "Articles of Merger") in the form

required by and executed in accordance with the relevant provisions of the FBCA. The date the Merger shall be consummated as of the date of such filing or such other time and date as may be specified in the Articles of Merger, which shall be the "Effective Time."

Section 2.3. *Effects of the Merger.* The Merger shall have the effects set forth in the FBCA.

Section 2.4. *Articles of Incorporation and By-Laws.* The Articles of Incorporation and the By-Laws of Acquisition, in each case as in effect at the Effective Time, shall be the Articles of Incorporation and By-Laws of the Surviving Corporation.

Section 2.5. *Directors and Officers.* The directors and officers of Acquisition 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 2.6. *Conversion of Shares.*

(i) At and as of the Effective Time, each Share, issued and outstanding immediately prior to the Effective Time other than the Dissenting Shares, shall, by virtue of the Merger and without any action on the part of the Bankshares Stockholders, be converted into and represent the right to receive a portion of the Merger Consideration calculated as provided in §2.6(ii) and deliverable to the holder of record thereof, without interest thereon, upon surrender of the Certificate representing such Share.

(ii) Subject to any adjustments made to the amount of the Merger Consideration pursuant to § 2.6(iv), each holder of Shares as of the Effective Time shall receive for each Share, so held a portion of the Merger Consideration equal to the quotient of the Merger Consideration divided by the number of Shares outstanding immediately prior to the Effective Time deliverable as provided hereinafter. The Merger Consideration (the "Merger Consideration") shall have an aggregate value equal to Eight Million Seven Hundred Fifty

Thousand and no/100 Dollars (\$8,750,000.00), subject to adjustment as to amount as provided in §2.6(iv) hereof, and shall be comprised of Bancorp Stock (the "Bancorp Purchase Stock"), except that Bancorp shall not issue any fractional Bancorp Shares and the value of any fractional Bancorp Share to which the holder of Shares would otherwise be entitled shall be paid to the Bankshares Stockholder in cash with the value of the fractional Shares to be based on the Market Value.

(iii) The number of Bancorp Shares comprising the Bancorp Purchase Stock shall be calculated by dividing the Merger Consideration by the Market Value.

(iv) The Merger Consideration described in Section 2.6(ii) shall be decreased by an amount equal to the product of multiplying the difference between Bankshares Initial Equity and Bankshares Closing Equity times two point ten (2.10) if Bankshares Initial Equity is greater than Bankshares Closing Equity.

Section 2.7. The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Akerman, Senterfitt & Eidson, P.A. in West Palm Beach, Florida, commencing at 9:00 a.m. local time or such other time as the parties mutually agree as soon as practicable following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby or such other date as the parties may mutually determine (the "Closing Date").

Section 2.8. Actions at the Closing. At the Closing, (i) Bankshares will deliver to Bancorp the various certificates, instruments, and documents required to consummate the Merger, (ii) Bancorp will deliver to Bankshares the various certificates, instruments, and documents required to consummate the Merger, and (iii) Bancorp and Bankshares will request that the Secretary of State of the State of Florida record the "Articles of Merger."

Section 2.9. Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Shares which are issued and outstanding immediately prior to the Effective Time and which are held by Bankshares Stockholders who have not voted such Shares in favor of the

Merger and who shall have delivered a written demand for payment of the fair value of such Shares within the time and in the manner provided in Section 607.1320 of the FBCA (the "Dissenting Shares") shall not be converted into or be exchangeable for the right to receive Merger Consideration, but shall be converted into the right to receive payment from the Surviving Corporation with respect thereto in accordance with the provisions of the FBCA. However, if such holder shall have failed to perfect or shall have effectively withdrawn or lost his right to appraisal and payment under the FBCA, such holder's Shares shall thereupon be deemed to have been converted into and to have become exchangeable for, at the Effective Time, the right to receive the Merger Consideration payable with respect to such Shares without any interest thereon.

Section 2.10. Exchange of Shares.

(i) Within three (3) business days after the Effective Time, Bancorp shall deposit cash and transmit instructions to the Transfer Agent to issue and deliver the Bancorp Purchase Stock and cash in amounts necessary to make delivery of the Merger Consideration pursuant to Section 2.6 hereof to holders of Shares that are issued and outstanding immediately prior to the Effective Time and to make the appropriate cash payments, if any, to holders of Dissenting Shares (such amounts being hereinafter referred to as the "Exchange Fund"). The Transfer Agent shall, pursuant to such instructions given by Bancorp, promptly make the payments and delivery provided for in the preceding sentence out of the Exchange Fund upon surrender of the Certificates in accordance with Section 2.10(ii). Payments to the holders of Dissenting Shares shall be made as required by the FBCA. Subject to holding sufficient cash to make prompt payments to holders of Shares, the Transfer Agent shall invest the Exchange Fund in a money market account with 1st United. Bancorp shall bear the risk of any investment losses by the Transfer Agent and shall contribute additional funds if necessary to pay all of the Merger Consideration and the payments due to the holders of Dissenting Shares. The Exchange Fund shall not be used for any other purpose, except as provided in this Agreement.

(ii) Within five (5) business days after the Effective Time the Transfer Agent shall mail to each record holder of an outstanding Certificate or Certificates, a form letter of transmittal approved by Bankshares and Bancorp (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 Transfer Agent) and instructions for use in effecting the surrender of the Certificates. Upon surrender to the Transfer Agent of a Certificate, together with such letter of transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor Bancorp Purchase Stock in the amount and proportions provided in Section 2.6(ii), and such Certificate shall forthwith be canceled. No interest will be paid or accrued on the cash payable upon surrender of the Certificate. If payment or delivery of Merger Consideration 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 Merger Consideration to a person other than the registered holder of the Certificate surrendered or establish 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 2.10, each Certificate (other than Certificates representing Dissenting Shares) shall represent for all purposes the right to receive the Merger Consideration without any interest thereon.

(iii) Bancorp shall not pay any dividend or make any distribution on Bancorp Purchase Stock to any Bankshares Stockholder until the Bankshares Stockholder surrenders for exchange its Certificates. Bancorp shall instead pay the dividend or make the distribution to the Transfer Agent in trust for the benefit of the Bankshares Stockholder to be distributed to the Bankshares Stockholder on surrender of the Certificates and such dividends or distributions shall become a part of the Exchange Fund. In no event shall a Bankshares Stockholder be entitled to interest or earnings on the dividends or distributions held by the Transfer Agent.

(iv) After the Effective Time, the stock transfer ledger of Bankshares shall be closed and there shall be no transfers on the stock transfer books of Bankshares of the Shares which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be promptly presented to the Transfer Agent and exchanged as provided above.

(v) Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains unclaimed by the shareholders of Bankshares for six months after the Effective Time shall be paid to Bancorp, and the holders of Shares not theretofore presented to the Transfer Agent shall look to Bancorp as a general creditor only, and not to the Transfer Agent, for the payment of any portion of the Exchange Fund in respect of such Shares.

Section 2.11. The Bank Merger. On the Effective Date, Bankshares and Bancorp shall cause Bank and 1st United respectively to enter into a Plan of Merger and Merger Agreement (the "Agreement of Merger") in substantially the form attached hereto as Exhibit "A" pursuant to which Bank will merge with and into 1st United. The obligations of Bank and 1st United to consummate the Bank Merger shall be conditioned on the Closing of the Merger as well as the other conditions provided in the Agreement of Merger.

**3. REPRESENTATIONS AND WARRANTIES OF BANKSHARES AND BANK.** Bankshares and Bank represent and warrant to Bancorp that the statements contained in this §3 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §3), except as set forth in the disclosure statement prepared by Bankshares and Bank and submitted to Bancorp as of the Effective Date (the "Disclosure Statement") as updated pursuant to §5.10(ii). Bankshares and Bank agree that as soon as reasonably practicable after the Effective Date, Bankshares and Bank will ascertain whether any of their officers have actual knowledge that any of the representations and warranties of Bankshares and Bank in this Agreement are materially incorrect or incomplete

and, if incorrect or incomplete, will immediately revise such warranties and representations in the fashion provided in §5.10(ii).

Section 3.1. Organization, Qualification, and Corporate Power. Bankshares is a Florida corporation duly organized, validly existing and in good standing under the laws of Florida. Bank is a national banking association, duly organized, validly existing, and in good standing under the laws of the United States of America. Bank is duly authorized to engage in the business of banking in Florida as an insured bank under the Federal Deposit Insurance Act, as amended. Each of Bankshares and Bank is duly authorized to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties requires such qualification except where the lack of such qualification would not have a material adverse effect on the consolidated financial condition of Bankshares and Bank, or on the ability of the Parties to consummate the transactions contemplated by this Agreement. Each of Bankshares and Bank has full corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. True and complete copies of the Articles of Incorporation and the Bylaws of Bankshares and of the Articles of Incorporation and the Bylaws of Bank are appended to the Disclosure Statement.

Section 3.2. Capitalization. The entire authorized capital stock of Bankshares consists of 2,000,000 shares of Bankshares Stock of which 232,250 shares are issued and outstanding. The entire authorized capital stock of Bank consists of 330,000 Bank Shares of which 257,700 shares are issued and outstanding. Bankshares is the owner of 100% of the Bank Shares free and clear of any liens, claims or encumbrances whatsoever. All of the issued and outstanding shares of Bankshares Stock and the Bank Shares have been duly authorized and are validly issued, fully paid, and nonassessable. There are no outstanding or authorized options, warrants, rights, contracts, calls, puts, rights to subscribe, conversion rights, or other agreements or commitments to which Bankshares or Bank is a party or which are binding upon Bankshares

or Bank providing for the issuance, disposition, or acquisition of any class of their capital stock, except for the options authorized for issuance under Bank's Employee Stock Option Plan, under which no options are currently issued or outstanding. There are no outstanding or authorized stock appreciation, phantom stock, or similar rights with respect to Bank or Bankshares.

Section 3.3. Authorization of Transaction. Bankshares and Bank each have full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder; provided, however, that Bankshares and Bank cannot consummate the Merger or the Bank Merger unless and until it receives the Requisite Bankshares Stockholder Approval, unless the Merger and the Bank Merger are approved by the Comptroller and the FRB, and unless it receives all of the consents contemplated by Article 5. Subject to the foregoing sentence, this Agreement constitutes the valid and legally binding obligation of Bankshares and Bank, enforceable in accordance with its terms and conditions. To the Knowledge of Bankshares and Bank, and other than in connection with the provisions of the Florida Acts, the Federal Deposit Insurance Act, the National Bank Act, the Securities Exchange Act, the Securities Act, the state securities laws, and the Bank Holding Company Act neither Bankshares nor Bank needs to give any notice to, make any filing with, or obtain any authorization, consent or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, to file, or to obtain any authorization, consent, or approval would not have a Substantial Adverse Effect on Bankshares and Bank taken as a whole or on the ability of the Parties to consummate the transactions contemplated by this Agreement.

Section 3.4. Noncontravention. Subject to obtaining the Requisite Bankshares Stockholder Approval, the approval of the Comptroller, the FDIC and the FRB and the consents listed on the Disclosure Statement attached hereto, to the Knowledge of Bankshares and Bank, neither the execution and the delivery of this Agreement by Bankshares or Bank, nor the consummation of the transactions contemplated hereby, will (i) violate any statute, regulations,

rule, judgment, order, decree, stipulation, injunction, charge, or other restriction of any government, governmental agency, or court to which either Bankshares or Bank is subject or any provision of the charter or bylaws of either Bankshares or Bank or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, lease, sublease, license, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest, or other obligation to which either Bankshares or Bank is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets) except where the violation, conflict, breach, defaults, acceleration, termination, modification, cancellation, failure to give notice, or Security Interest would not have a material adverse effect on the financial condition of Bankshares or Bank taken as a whole or on the ability of the Parties to consummate the transactions contemplated by this Agreement.

Section 3.5. Filings with the SEC. Bankshares and Bank are not subject to the registration provisions of the Securities Exchange Act nor the rules and regulations thereunder other than the anti-fraud provisions of the Securities Exchange Act. All issuances of securities by Bankshares or Bank have been registered under the Securities Act and all other applicable laws or were exempt from such registration.

Section 3.6. Filings with the FRB and the OCC. Bankshares and Bank have made all filings with the FRB and the OCC that each has been required to make under the Bank Holding Company Act and the Federal Deposit Insurance Act and the National Bank Act, as the case may be (collectively the "Bank Reports"). To the Knowledge of Bank and Bankshares, each of the Bank Reports has complied with the Florida Acts, the Bank Holding Company Acts, the National Bank Act and the Federal Deposit Insurance Act in all material respects. To the Knowledge of Bank and Bankshares, each of the Bank Reports is true, complete and correct in all material respects as of their respective dates and none of the Bank Reports, as of their

respective dates, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Bankshares has delivered to Bancorp a correct and complete copy of each F.R. Y-6 report, F.R. Y-9 and FFIEC Consolidated Report of Condition (Call Report) filed since December 31, 1994 (together with all exhibits and schedules thereto and as amended to date).

Section 3.7. Financial Statements. Bankshares and Bank have provided Bancorp with audited consolidated financial statements for the fiscal year ended December 31, 1995 and unaudited unconsolidated financial statements for each of Bankshares and Bank, prepared by Bankshares and Bank for the period from January 1, 1996 to June 30, 1996. If Closing has not occurred before December 31, 1996, Bankshares and Bank will, upon the request of Bancorp, make arrangements to commence a consolidated audit for the fiscal year ended December 31, 1996 by Grant Thornton LLP or another auditor mutually acceptable to Bancorp and Bankshares. All financial statements delivered to Bancorp (including the related notes and schedules) have been and shall be prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and present fairly the financial condition of Bankshares and Bank as of the indicated dates and the results of operations of Bankshares and Bank for the indicated periods, provided, however, that the interim statements are subject to normal year-end adjustments and need not include footnotes which would be included in year end statements pursuant to GAAP.

Section 3.8. Events Subsequent to Most Recent Fiscal Quarter. Since the end of the Most Recent Fiscal Quarter, there has not been any material adverse change in the assets, liabilities, business, financial condition, operations, results of operations, or future prospects of Bankshares and its Subsidiaries taken as a whole.

Section 3.9. Tax Matters. Bankshares and Bank have duly filed all tax returns required to be filed by them other than for the year 1996 for which a request for extension has

been filed (the "Filed Returns"). Bankshares and Bank have paid, or, to the Knowledge of Bank and Bankshares, 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, to the Knowledge of Bank and Bankshares, Bankshares and 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 the Disclosure Statement, to the Knowledge of Bank and Bankshares, Bankshares and 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 the Disclosure Statement, neither Bankshares nor Bank has entered into any tax sharing agreement or other agreement regarding the allocation of the tax liability of Bankshares or Bank. Neither Bankshares nor Bank have filed any Internal Revenue Service ("IRS") Forms 1139 (Application for Tentative Refund). Except as set forth on the Disclosure Statement, there are no pending questions raised in writing by the IRS or other taxing authority for taxes or assessments of Bankshares or Bank, nor are there any outstanding agreements or waivers extending the statutory period of limitation applicable to any tax return of Bankshares or Bank for any period. To the Knowledge of Bank and Bankshares, Bankshares and 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 3.10. Undisclosed Liabilities. Except as set forth on the Disclosure Statement attached hereto, neither Bankshares nor Bank has any liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due

or to become due), including any liability for taxes, except for (i) liabilities set forth on the face of Bankshares' consolidated balance sheet dated as of June 30, 1996 attached hereto as Exhibit "B" (rather than in any notes thereto) and (ii) liabilities which have arisen after the end of the Most Recent Fiscal Quarter in the Ordinary Course of Business or in connection with the transactions provided for in this Agreement (none of which relates to any breach of contract, breach of warranty, tort, infringement, or violation of law or arose out of any charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand and none of which, individually or in the aggregate, materially and adversely affect the business, assets, financial condition or prospects of Bankshares and Bank taken as a whole).

Section 3.11. Brokers' Fees. Other than pursuant to the agreements between Bankshares and Professional Bank Services, Incorporated and Financial Solutions of Central Florida, Inc., none of Bankshares or its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

Section 3.12. Disclosure. The Definitive Bankshares Proxy Materials will substantially comply with the disclosure requirements of Schedule 14A (Regulation 14a-101) under the Exchange Act, if Bancorp determines that compliance is necessary to obtain the No-Action Letter referenced in §5.5(ii)(a), and otherwise satisfy the requirements of applicable state and federal laws, rules and regulations. The Definitive Bankshares Proxy Materials will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they will be made, not misleading; provided, however, that Bankshares makes no representation or warranty with respect to any information that Bancorp will supply specifically for use in the Definitive Bankshares Proxy Materials. None of the information that Bankshares will supply specifically for use in the Registration Statement or the Prospectus will contain any untrue statement of a

material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they will be made, not misleading.

Section 3.13. Title to Properties. Except as set forth on the Disclosure Statement, to the Knowledge of Bankshares and Bank, Bankshares and Bank have good and marketable title to all of their real estate and assets (including those reflected in Bankshares' June 30, 1996 consolidated balance sheet except such as have been disposed of in the Ordinary Course of Business) free of any mortgage, encumbrance, lien or Security Interest except pledges of assets to secure public deposits and minor imperfections in title and encumbrances which do not or will not materially and adversely affect the operations of Bankshares and Bank taken as a whole.

Section 3.14. Employment Contracts. Except as set forth on the Disclosure Statement, neither Bankshares nor its Subsidiaries is a party or subject to any contract of employment not terminable at will or any profit sharing, incentive compensation, bonus, thrift, savings or other Employee Benefit Plan providing for employer contributions.

Section 3.15. Compliance with Laws. Except as set forth on the Disclosure Statement, to the Knowledge of Bank and Bankshares, Bankshares and Bank are in substantial compliance with all laws, rules, regulations and other legal requirements applicable to them.

Section 3.16. Litigation and Administrative Proceedings. Except as set forth on the Disclosure Statement attached hereto, to the Knowledge of Bankshares and Bank, there is no action, suit, arbitration or administrative proceeding or investigation to which Bankshares or Bank is or may be a party or subject which is pending, or threatened other than collection proceedings by the Bank as a creditor in the Ordinary Course of Business in which no counterclaim or offset has been asserted or threatened. Except as set forth on the Disclosure Statement, to the Knowledge of Bank and Bankshares, there are no potential unasserted claims against Bankshares or Bank that may have a material adverse effect on Bankshares or Bank condition, financial or otherwise, or its businesses or their assets. Bankshares and Bank have

furnished or made available to Bancorp, or will do so upon delivery of the Disclosure Statement, copies of all relevant court papers and other documents relating to any matters set forth in the Disclosure Statement. Except as set forth in the Disclosure Statement, neither Bankshares nor Bank is in default under, or currently subject to, any judgment, order, decree, injunction or cease-and-desist order of any foreign, federal, state or local court, department, agency or instrumentality.

Section 3.17. Employee Benefit Plans.

(i) Except as set forth on the Disclosure Statement, to the Knowledge of Bank and Bankshares, all of the Employee Benefit Plans and any related trust agreements or annuity contracts (or any other funding instruments) comply currently, and have complied in the past, both as to form and operation, with the provisions of ERISA, the Internal Revenue Code (the "Code") and with all other applicable laws, rules and regulations governing the establishment and operation of the Employee Benefit Plans; all necessary governmental approvals relating to the establishment of the Employee Benefit Plans have been obtained; and with respect to each Employee 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 Employee 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);

(ii) To the Knowledge of Bank and Bankshares, each Employee Benefit Plan 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 Employee Benefit Plan have been timely filed;

(iii) On and after January 1, 1975, to the Knowledge of Bank and Bankshares, neither Bankshares, Bank nor any plan fiduciary of any Employee 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);

(iv) The Disclosure Statement lists each Employee Benefit Plan and 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, all unfunded plans and any other employee benefit plan, agreement, arrangement or commitment not included in the term Employee Benefit Plan (other than normal policies concerning holidays, vacations and salary continuation during short absences for illness or other reasons) maintained by Bankshares or Bank;

(v) True and complete copies of each Employee Benefit Plan, related trust agreements or annuity contracts (or any other funding instruments), summary plan descriptions, each plan, agreement, arrangement, and commitment relating to such Employee Benefit Plan, the most recent determination letter issued by the Internal Revenue Service with respect to each Employee Benefit Plan, the most recent application for a determination letter from the Internal Revenue Service with respect to each Employee Benefit Plan and Annual Reports on form 5500 series filed with any governmental agency for each Employee Benefit Plan for the two most recent plan years, have been furnished to Bancorp;

(vi) All Employee Benefit Plans, related trust agreements or annuity contracts (or any other funding instruments), and all plans, agreements, arrangements and commitments relating to such Employee Benefit Plans are, to the Knowledge of Bank and Bankshares, 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 such plans, (whether expressed, implied, oral or written) except as required by Section 4980B of the Code and Sections 601-608 of ERISA;

(vii) There are no claims pending with respect to, or under, any Employee Benefit Plan or any plan, agreement, arrangement or commitment relating to any Employee Benefit Plan, other than routine claims for plan benefits, and there are no disputes or litigation pending or, to the Knowledge of Bank and Bankshares, threatened with respect to any such plans;

(viii) To the Knowledge of Bank and Bankshares, 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 Employee Benefit Plan or any plan, agreement, arrangement or commitment relating to such Employee Benefit Plans, other than for income taxes due with respect to benefits paid; and

(ix) Except as otherwise set forth in the Disclosure Statement, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment to be made by Bankshares or Bank (including, without limitation, severance, unemployment compensation, golden parachute (defined in Section 280G of the Code), or otherwise) becoming due to any employee, or (ii) increase any benefits otherwise payable under any Employee Benefit Plan, or any plan, agreements, arrangements, and commitments relating to such Employee Benefit Plan.

Section 3.18. Bankshares Subsidiaries. Bank is the only Subsidiary of Bankshares. Bank has no Subsidiaries

Section 3.19. Real Property.

(i) The Disclosure Statement lists and describes briefly all real property that either of Bankshares or Bank owns including real property obtained through foreclosure or conveyance in lieu of foreclosure. With respect to each such parcel of owned real property:

a) the identified owner has good and marketable title to the parcel of real property, free and clear of any Security Interest, easement, covenant, or other restriction, except for matters disclosed on the Disclosure Statement and installments of special assessments

not yet delinquent and recorded easements, covenants, and other restrictions which do not impair the current use, occupancy, or value, or the marketability of title, of the property subject thereto;

b) there are no pending or, to the Knowledge of any of Bankshares or Bank threatened condemnation proceedings, lawsuits, or administrative actions relating to the property or other matters affecting materially and adversely the current use, occupancy, or value thereof;

c) the legal description for the parcel contained in the deed thereof describes such parcel fully and adequately, to the Knowledge of Bank and Bankshares, the buildings and improvements (except as set forth in the Disclosure Statement) are located within the boundary lines of the described parcels of land, are not in violation of applicable setback requirements, zoning laws, and ordinances, and the land does not serve any adjoining property for the purpose inconsistent with the use of the land, and the property is not located within any flood plain or subject to any similar type restriction for which any permits or licenses necessary to the use thereof have not been obtained;

d) to the Knowledge of Bankshares and Bank, all facilities have received all approvals of governmental authorities (including licenses and permits) required in connection with the ownership or operation thereof and have been operated and maintained substantially in accordance with applicable laws, rules and regulations;

e) there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the parcel of real property except as set forth on the Disclosure Statement;

f) except as set forth on the Disclosure Statement, there are no outstanding contracts for sale, options or rights of first refusal to purchase any parcel of real property, or any portion thereof or interest therein;

g) there are no parties (other than Bankshares and Bank) in possession of the parcel of real property, other than tenants under any leases disclosed in the Disclosure Statement who are in possession of space to which they are entitled;

h) all facilities located on the parcel of real property are supplied with utilities and other services necessary for the operation of such facilities, including gas, electricity, water, telephone, sanitary sewer, and storm sewer, all of which services are, to the Knowledge of Bank and Bankshares, adequate in accordance with all applicable laws, ordinances, rules and regulations and are provided via public roads or via permanent, irrevocable, appurtenant easements benefiting the parcel of real property; and

i) except as set forth on the Disclosure Statement, each parcel of real property has direct vehicular access to a public road, or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the parcel of real property; and

j) to the Knowledge of Bank and Bankshares, each parcel is in compliance with all Environmental Laws, no Hazardous Substances are or have been manufactured, stored, used or disposed of on any such parcel except in strict compliance with all Environmental Laws, there has been no release or discharge of Hazardous Substances on or from any such parcel and no litigation or administrative proceeding is pending or has been threatened in connection with the manufacture, storage, use, disposal or discharge of Hazardous Substances on or from any such parcel or naming Bank or Bankshares as a defendant or potentially responsible party.

(ii) The Disclosure Statement lists and describes briefly all real property leased or subleased to Bankshares or Bank. Bankshares or Bank has delivered to Bancorp correct and complete copies of the leases and subleases listed in the Disclosure Statement (as amended to date). With respect to each lease and sublease listed in the Disclosure Statement:

a) to the Knowledge of Bankshares and Bank, the lease or sublease is legal, valid, binding, enforceable, and in full force and effect;

b) the lease or sublease will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

c) to the Knowledge of Bank and Bankshares, no party to the lease or sublease is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration thereunder;

d) to the Knowledge of Bank and Bankshares, no party to the lease or sublease has repudiated any provision thereof;

e) to the Knowledge of Bank and Bankshares, there are no disputes, oral agreements, or forbearance programs in effect as to the lease or sublease;

f) to the Knowledge of Bank and Bankshares, with respect to each sublease, the representations and warranties set forth in subsections (a) through (e) above are true and correct with respect to the underlying lease;

g) neither of Bankshares nor Bank has assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold; and

h) to the Knowledge of Bank and Bankshares, all facilities leased or subleased thereunder have received all approvals of governmental authorities (including licenses and permits) required in connection with the operation thereof and have been operated and maintained substantially in accordance with applicable laws, rules and regulations.

**Section 3.20. Tangible Assets.** Bankshares and Bank own or lease all buildings, machinery, equipment, and other tangible assets necessary for the conduct of their businesses as presently conducted. Each such tangible asset has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used.

Section 3.21. Contracts. The Disclosure Statement lists the following contracts and other agreements to which any of Bankshares or Bank is a party other than leases or subleases of real property:

(i) any agreement (or group of related agreements), other than those cancelable without penalty or continued obligation on 90 days notice or less, for the lease of personal property to or from any entity or person providing for lease payments in excess of \$15,000.00 per annum;

(ii) any agreement (or group of related agreements), other than those cancelable without penalty or continued obligation on 90 days notice or less, for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, or involve consideration in excess of \$15,000.00;

(iii) any agreement concerning a partnership or joint venture;

(iv) any agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$15,000.00 or under which it has imposed a Security Interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or noncompetition;

(vi) any collective bargaining agreement;

(vii) any agreement, other than those cancelable without penalty or continued obligation on 90 days notice or less, for the employment of any individual on a full-time, part-time, consulting, or other basis other than employees at will providing annual compensation in excess of \$25,000.00 or providing severance benefits;

(viii) any agreement under which it has advanced or loaned any amount to any of its directors or Executive Officers;

(ix) any agreement under which the consequences of a default or termination could have a material adverse effect on the business, financial condition, operations, results of operations, or future prospects of any of Bankshares or Bank; or

(x) any other agreements (or group of related agreements), other than those cancelable without penalty or continued obligation on 90 days notice or less, the performance of which involves consideration in excess of \$15,000.00.

Section 3.22. Related Party Transactions. The Disclosure Statement lists all agreements, extensions of credit, commitments, tax sharing or allocation agreements or other contractual agreements of any kind between Bankshares, Bank or any of their Affiliates and any past or present director of Bankshares or Bank or any of their Affiliates or, to the Knowledge of Bankshares and Bank, their spouses, children, parents or siblings or their Affiliates (the "Related Contracts").

**4. REPRESENTATIONS AND WARRANTIES OF BANCORP.** Bancorp and Acquisition represent and warrant to Bankshares and Bank that the statements contained in this §4 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §4), except as set forth in the Disclosure Statement attached hereto as updated pursuant to §5.10(ii). Bancorp and Acquisition agree that as soon as reasonably practicable after the Effective Date, Bancorp and Acquisition will ascertain whether any of their officers have actual knowledge that any of the representations and warranties of Bancorp and Acquisition in this Agreement are materially incorrect or incomplete and, if incorrect or incomplete, will immediately revise such warranties and representations in the fashion provided in §5.10(ii).

Section 4.1. Organization, Qualifications and Corporate Power. Bancorp and Acquisition are corporations duly organized, validly existing, and in good standing under the laws of Florida and Bancorp is duly registered under the Bank Holding Company Act. 1st

United is a Florida chartered bank duly organized, validly existing, and in good standing under the laws of Florida. 1st United is duly authorized to engage in the business of banking in Florida as an insured bank under the Federal Deposit Insurance Act, as amended. Each of Bancorp, Acquisition and 1st United is duly authorized to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its business or the ownership or leasing of its properties requires such qualification, except where the lack of such qualification would not have a material adverse effect on the financial condition of Bancorp, Acquisition or 1st United, taken as a whole or on the ability of the Parties to consummate the transactions contemplated by this Agreement. Each of Bancorp, Acquisition and 1st United has full corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. True and complete copies of the Articles of Incorporation and Bylaws of Bancorp, Acquisition and 1st United are attached hereto as Schedule 4.1(i), 4.1(ii) and 4.1(iii), respectively.

Section 4.2. Capitalization. The entire authorized capital stock of Bancorp consists of 20,000,000 Bancorp Shares and 5,000,000 shares of preferred stock, of which 7,449,704 Bancorp Shares are issued and outstanding and 12,550,296 Bancorp Shares are authorized but unissued. No shares of preferred stock have been issued. The entire authorized capital stock of Acquisition (the "Acquisition Stock") consists of 1,000 shares of common stock, of which 1,000 shares are issued and outstanding and 0 shares are authorized but unissued. The entire authorized capital stock of 1st United consists of 10,000,000 1st United Shares, of which 1,035,499 1st United Shares are issued and outstanding and 8,964,501 1st United Shares are authorized but unissued. All of the issued and outstanding 1st United Shares are owned, beneficially and of record, by Bancorp or TAB Acquisition Co. free and clear of any liens, claims or encumbrances whatsoever. All of the issued and outstanding Bancorp Shares, Acquisition Shares and 1st United Shares have been fully authorized and are validly issued, fully paid, and nonassessable. The Bancorp Purchase Shares to be issued to Bankshares pursuant to the Merger,

when so issued, will be duly authorized and validly issued, fully paid and nonassessable, and there will be no preemptive rights in respect thereof.

Section 4.3. Authorization of Transaction. Bancorp and Acquisition have full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder; provided, however, that Bancorp, Acquisition and 1st United cannot consummate the Merger or the Bank Merger unless and until they receive approval from the SEC, the FRB, the Comptroller, and all of the consents contemplated in Article 5 hereof. Subject to the foregoing sentence, this Agreement constitutes a valid and legally binding obligation of Bancorp and Acquisition enforceable in accordance with its terms and conditions. To the Knowledge of Bancorp and Acquisition, other than in connection with the provisions of the Florida Acts, the Securities Exchange Act, the Securities Act, the state securities laws, the Federal Deposit Insurance Act and the Bank Holding Company Act, Bancorp, Acquisition and 1st United do not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, to file, or to obtain any authorization, consent, or approval would not have a material adverse effect on Bancorp, Acquisition and 1st United taken as a whole or the ability of the Parties to consummate the transactions contemplated by this Agreement.

Section 4.4. Noncontravention. To the Knowledge of Bancorp and Acquisition, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge, or other restriction of any government, governmental agency, or court to which Bancorp, Acquisition or 1st United is subject or any provision of the charter or bylaws of Bancorp, Acquisition or 1st United or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, lease, sublease, license,

franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest, or other obligation to which Bancorp, Acquisition or 1st United is a party or by which either of them is bound or to which any of their assets is subject (or result in the imposition of any Security Interest upon any of its assets) except where the violation, conflicts, breach, defaults, acceleration, termination, modification, cancellation, or failure to give notice would not have a material adverse effect on the financial condition of Bancorp, Acquisition and 1st United taken as a whole or on the ability of the Parties to consummate the transactions contemplated by this Agreement.

Section 4.5. Filings with the SEC. Bancorp has made all material filings with the SEC, if any, that it has been required to make under the Securities Act and the Securities Exchange Act (collectively the "Bancorp Public Reports"). Each of the Bancorp Public Reports has complied with the Securities Act and the Securities Exchange Act in all material respects. Each of the Bancorp Public Reports is true, complete and correct as of its respective date and none of the Bancorp Public Reports, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Bancorp has delivered to Bankshares a correct and complete copy of each Bancorp Public Report filed since December 31, 1995 (together with all exhibits and schedules thereto and as amended to date).

Section 4.6. Financial Statements. Bancorp has filed Quarterly Reports on form 10Q as required by the SEC for the Most Recent Fiscal Quarter and an Annual Report on form 10KSB as required by the SEC for the fiscal year ended December 31, 1995. The financial statements included in or incorporated by reference into the Public Reports (including the related notes and schedules) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and present fairly the financial condition of Bancorp and its Subsidiaries as of the indicated dates and the results of operations of Bancorp and its

Subsidiaries for the indicated periods, provided, however, that the interim statements are subject to normal year-end adjustments and may not include footnotes which would be included in year end statements pursuant to GAAP.

Section 4.7. *Brokers' Fees.* Bancorp, Acquisition and 1st United do not have any liability or obligation to pay any fees or commission to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

Section 4.8. *Disclosure.* The Registration Statement and the Prospectus, will comply with the Securities Act and the Securities Exchange Act in all material respects. The Registration Statement and the Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they will be made, not misleading, provided, however, that Bancorp and Acquisition make no representation or warranty with respect to any information that Bankshares or Bank will supply specifically for use in the Registration Statement or the Prospectus. None of the information that Bancorp, Acquisition or 1st United will supply specifically for use in the Definitive Bankshares Proxy Materials will contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they will be made, not misleading.

Section 4.9. *Events Subsequent to Most Recent Fiscal Quarter.* Since the end of the Most Recent Fiscal Quarter, there has not been any material adverse change in the assets, liabilities, business, financial condition, operations, results of operations, or future prospects of Bancorp and its Subsidiaries taken as a whole.

Section 4.10. *Title to Properties.* To the Knowledge of Bancorp and Acquisition, Bancorp, Acquisition and 1st United have good and marketable title to all of their real estate and assets (including those reflected in Bancorp's December 31, 1995 consolidated balance sheet except such as have been disposed of in the Ordinary Course of Business) free of

any mortgage, encumbrance, lien or security interest except pledges of assets to secure public deposits and minor imperfections in title and encumbrances which do not materially detract from the value or impair the use of the properties affected thereby.

Section 4.11. Compliance with Laws. To the Knowledge of Bancorp and Acquisition, Bancorp, Acquisition and 1st United are in substantial compliance with all laws, rules, regulations and other legal requirements applicable to them and they know of no reason why the Merger and the Bank Merger will not be approved by the requisite governmental and regulatory authorities.

Section 4.12. Litigation and Administrative Proceedings. To the Knowledge of Bancorp and Acquisition, there is no action, suit, arbitration or administrative proceeding or investigation to which Bancorp, Acquisition or 1st United is or may be a party or subject which is pending, or threatened, in which there could be a judgment, order, decree, liability, fine, penalty, injunction or cease-and-desist order which could have a material adverse effect on its condition, financial or otherwise, or the conduct of its business. To the Knowledge of Bancorp and Acquisition, there are no potential unasserted claims against Bancorp or Acquisition that may have a material adverse effect on Bancorp, Acquisition or 1st United, financial or otherwise, or their businesses or their assets. Neither Bancorp, Acquisition nor 1st United is in default under, or currently subject to, any material judgment, order, decree, injunction or cease-and-desist order of any foreign, federal, state or local court, department, agency or instrumentality.

Section 4.13. Filings with the FRB and Comptroller. Bancorp, Acquisition and 1st United have made all filings with the FRB and the Comptroller that each has been required to make under the Florida Acts, the Bank Holding Company Act and the Federal Deposit Insurance Act, as the case may be (collectively the "Bancorp Reports"). Each of the Bancorp Reports has complied with the Florida Acts, the Bank Holding Company Act and the Federal Deposit Insurance Act in all material respects. Each of the Bancorp Reports is true, complete and correct as of their respective dates and none of the Bancorp Reports, as of their respective dates,

contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Bancorp or Acquisition have delivered to Bankshares a correct and complete copy of each Bancorp Report (together with all exhibits and schedules thereto and as amended to date).

Section 4.14. *Undisclosed Liabilities.* Neither of Bancorp, Acquisition nor 1st United has any liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), including any liability for taxes, except for (i) liabilities set forth on the face of the balance sheet dated as of the end of the Most Recent Fiscal Quarter (rather than in any notes thereto) and (ii) liabilities which have arisen after the Most Recent Fiscal Quarter in the Ordinary Course of Business or in connection with the transactions provided for in this Agreement (none of which relates to any breach of contract, breach of warranty, tort, infringement, or violation of law or arose out of any charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand and none of which, individually or in the aggregate, materially and adversely affect the business, assets, financial condition or prospects of Bancorp, Acquisition or 1st United).

Section 4.15. *Tangible Assets.* Bancorp and its Subsidiaries own or lease all buildings, machinery, equipment, and other tangible assets necessary for the conduct of their businesses as presently conducted. Each such tangible asset has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used.

As of the Effective Date, neither Bancorp, Acquisition nor 1st United has any actual notice of any existing breach of a warranty, representation or covenant given by Bankshares or Bank under this Agreement.

**5. COVENANTS.** The Parties agree as follows with respect to the period from and after the execution of this Agreement.

Section 5.1. General. Each of the Parties will use its reasonable best efforts to take all action and to do all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable (including satisfying the closing conditions set forth in Article 6 below).

Section 5.2. Notices and Consents of Bankshares. Bankshares and Bank will give any notices to third parties, and will use its reasonable best efforts to obtain any third party consents, that Bancorp or Acquisition reasonably may request in connection with the matters pertaining to Bankshares or Bank including, without limitation:

(i) within fifteen (15) days after the Effective Date, Noncompetition Agreements from each of the directors of Bankshares and Bank in substantially the form attached hereto as Exhibit "C", the term of which shall be two (2) years after the Effective Time as to all of the directors except Louis A. Gaeta, Jr., for whom the term shall be three (3) years;

(ii) within fifteen (15) days after the Effective Date, agreements from each of the directors of Bankshares and Bank in substantially the form of the Agreement and Proxy attached hereto as Exhibit "D"; and

(iii) within fifteen (15) days after the Effective Date, an agreement in form and substance mutually acceptable to Bancorp and Louis A. Gaeta, Jr. pursuant to which Louis A. Gaeta, Jr. agrees that the Employment Agreement between Mr. Gaeta, Bankshares and Bank dated as of April 4, 1996 will be terminated on or before the Closing Date.

The agreements referenced in (i), (ii) and (iii) above shall be held in escrow by Bankshares and delivered to Bancorp at Closing and shall become effective only from and after Closing.

Section 5.3. Consulting and Noncompetition Agreements.

(i) Bancorp agrees that it will enter into a Consulting Agreement with Louis A. Gaeta, Jr. at Closing in substantially the form attached hereto as Exhibit "E".

(ii) Bancorp agrees that the Noncompetition Agreements with June White, Bruce Smith, Burton Lewis and Clifford O'Donnell shall provide for two annual payments to each such director of \$5,000.00, with the first payment being due within ten (10) days after the Closing Date and the other on the first anniversary date of the Effective Time. The Noncompetition Agreement for Louis A. Gaeta, Jr. shall provide for no payment to Louis A. Gaeta, Jr. with the understanding that the payments to Louis A. Gaeta, Jr. under the Consulting Agreement referenced in (i) above are also consideration for his Noncompetition Agreement. Bankshares shall accrue the payments to be due under the Noncompetition Agreements prior to the Closing as an expense of Bankshares.

Section 5.4. Notices and Consents of Bancorp. Bancorp and Acquisition will give any notices to third parties, and will use its reasonable best efforts to obtain any third party consents, that Bankshares reasonably may request in connection with the matters pertaining to Bancorp, Acquisition and 1st United disclosed or required to be disclosed in the Disclosure Statement.

Section 5.5. Regulatory Matters and Approvals.

(i) Bank Regulatory Matters. Bancorp will cause to be prepared and filed with the Federal Reserve Bank of Atlanta and with the Comptroller, applications for their approval of the Merger and the Bank Merger within thirty (30) days after the Effective Date, and with any other regulatory agencies having jurisdiction any other applications for approvals or consents which may be necessary for the consummation of the Merger and the Bank Merger. Bancorp will take or cause to be taken all actions necessary for such applications to be approved and will provide Bankshares with the proposed form of applications to be filed at least five (5) days prior to filing and subsequently with copies of all correspondence and notices to or from such agencies concerning such applications.

(ii) Securities Act, Securities Exchange Act, State Securities Laws and Federal Deposit Insurance Act.

a) *No-Action Letter.* Bancorp shall have the option to seek to obtain assurances that the issuance of the Bancorp Purchase Stock will qualify for exemption from the registration requirements of the Securities Act and applicable state securities laws, pursuant to the exemption therefrom contained in Section 3(a)(10) of the Securities Act and similar exemptions contained in states securities laws, respectively. After the execution of this Agreement, Bancorp and its counsel may submit to the Division of Corporation Finance of the SEC a request for a "no-action letter" (the "No-Action Letter"). The No-Action Letter will seek a statement from the Division of Corporation Finance that it will take no enforcement or administrative action if the Bancorp Purchase Stock proposed to be issued in connection with the Merger are issued in reliance upon and in accordance with the exemption from registration contained in Section 3(a)(10) of the Securities Act. Bancorp shall make the request for the No Action Letter not later than ten (10) business days after the Effective Date, or Bancorp shall be deemed to have waived the right to seek the No Action Letter. Similar requests will be made to the State of Florida Department of Banking and Finance and to such other state securities authorities as Bancorp may determine is necessary or desirable.

b) *Rule 144.* The request for the No-Action Letter will also seek confirmation from the Division of Corporation Finance that, with respect to public resales of Bancorp Purchase Stock:

(i) The Bancorp Purchase Stock will not be deemed "restricted" pursuant to Rule 144(a)(3).

(ii) Non-affiliates of Bankshares who are non-affiliates of Bancorp may resell Bancorp Purchase Stock without regard to Rules 144 or 145(c) and (d).

(iii) Affiliates of Bankshares who are non-affiliates of Bancorp may sell Bancorp Purchase Stock in any manner permitted by Rule 145(d). Such persons may resell such shares in the manner permitted by Rule 145(d)(1) without regard to the holding period required by Rule 144(d). In computing the holding period of Bancorp Purchase Stock acquired

in the transaction for purposes of Rule 145(d)(2) or (3), however, such persons may not "tack" the holding period of their Bankshares Shares.

c) *Public Hearing.* To cause the exemption from the registration contained in Section 3(a)(10) of the Securities Act to be applicable to the issuance of the Bancorp Purchase Stock, Bancorp further agrees, promptly after receipt of the No-Action Letter, to submit appropriate requests to the Comptroller, pursuant to Chapter 655 of the Florida Statutes and Rule 3C-9.004 of the Administrative Rules of the Florida Department of Banking and Finance, for a public hearing upon the fairness of the valuation of the consideration to be received by Bankshares Stockholders in the transactions contemplated herein and the fairness of the terms and conditions of the issuance of the Bancorp Purchase Stock. Each Bankshares Stockholder shall have the right to appear at such hearing. Upon the scheduling of such public hearing, Bankshares agrees promptly to provide each Bankshares Stockholder with notice of such public hearing in accordance with the Florida Statutes and the Administrative Rules of the Florida Department of Banking and Finance, and otherwise in accordance with any other conditions or requirements imposed by the Comptroller with respect to such public hearing. In the event the public hearing results in the Bank Merger being disapproved by the Comptroller, Bancorp shall have no obligation to prepare or file the Registration Statement.

d) *Proxy Materials.* Bankshares shall, at Bankshares' sole cost and expense, prepare for delivery to the Bankshares Stockholders the Definitive Bankshares Proxy Materials regarding the terms of the transactions contemplated by this Agreement in form and substance sufficient to substantially comply with the disclosure requirements of Schedule 14A (Regulation 14a-101) under the Exchange Act, if Bancorp determines that compliance is necessary to obtain the No-Action Letter, and otherwise satisfy the requirements of applicable state and federal laws, rules and regulations. Bankshares shall submit the Definitive Bankshares Proxy Materials to Bancorp for Bancorp's review and written approval prior to delivery to the Bankshares Stockholders. The Definitive Bankshares Proxy Materials shall be mailed to the

Bankshares Stockholders not later than the earlier to occur of: (i) ten (10) days after receipt of the later of the approvals of the applications submitted to the Federal Reserve Bank of Atlanta and the Comptroller, or (ii) October 31, 1996. Bancorp will provide Bankshares with whatever information and assistance in connection with the preparation of the Definitive Bankshares Proxy Materials that is necessary to disclose all facts material to the condition, assets, properties, rights, businesses, operations or prospects of Bancorp and 1st United so as to satisfy the requirements of applicable state and federal laws, rules and regulations. Bankshares shall not be liable for any untrue statement of material fact or omission to state a material fact made in reliance upon, and in conformity with, information furnished to Bankshares by Bancorp or 1st United for use therein. Bancorp and 1st United shall have no responsibility or liability for any untrue statement of material fact in the Definitive Bankshares Proxy Materials or omission to state a material fact necessary in order to make statements made in the Definitive Bankshares Proxy Materials not misleading unless such statement is based on information supplied by Bancorp or 1st United.

e) *Registration.* In the event the No-Action Letter is not issued by the SEC as contemplated by Section 5.5(ii)(a) and (b) within 120 days after the Effective Date or within thirty (30) days after the date Bancorp decides not to request the No-Action Letter, Bancorp will prepare and file with the SEC a registration statement under the Securities Act relating to the offering and issuance of the Bancorp Purchase Stock (the "Registration Statement") and will file, as necessary, registrations or other documents with state securities agencies required under applicable state securities regulations all such filings to be made as soon as reasonably practical after the expiration of the time to receive the No Action Letter if not timely received. Bancorp will use its reasonable best efforts to respond to the comments of the SEC thereon and will make any further filings (including amendments and supplements) in connection therewith that may be necessary, proper, or advisable. Bancorp will provide Bankshares, and Bankshares will provide Bancorp, with whatever information and assistance in connection with the foregoing filings that the filing Party reasonably may request. Bancorp will not be liable for

any untrue statement of a material fact or omission to state a material fact in the Registration Statement made in reliance upon, and in conformity with, information furnished to Bancorp by Bankshares or Bank for use therein. Bankshares will not be liable for any untrue statement of a material fact or omission to state a material fact in the Definitive Bankshares Proxy Materials made in reliance upon, or in conformity with, information furnished to Bankshares by Bancorp, Acquisition or 1st United for use therein. Bancorp and Bankshares will provide the other Party with copies of all correspondence, comment letters or notices to or from the SEC concerning or relating to the Registration Statement or the Definitive Bankshares Proxy Materials and Bancorp will advise Bankshares promptly after it receives notice of the time when the Registration Statement has become effective or any supplement or amendment thereto has been filed, of the issuance of any stop order with respect to the effectiveness thereof, of the suspension of the qualification of the Bancorp Purchase Stock to be issued in connection with the Merger for offering or sale in any jurisdiction, of the initiation or threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Registration Statement or the filing or submission of additional information. Bancorp will take all actions that may be necessary, proper, or advisable under state securities laws in connection with the offering and issuance of the Bancorp Purchase Shares.

f) *Florida Acts.* Bancorp shall cause 1st United to take and Bank shall take action as soon as reasonably practicable to obtain approval of the Bank Merger in accordance with the Florida Acts. Bankshares will call a special meeting of the Bankshares Stockholders (the "Special Bankshares Meeting") as soon as reasonably practicable after the mailing of the Definitive Bankshares Proxy Materials in order that its stockholders may consider and vote upon the adoption of this Agreement and the approval of the Merger. The Definitive Bankshares Proxy Materials will contain the affirmative recommendations of the board of directors of Bankshares in favor of the adoption of this Agreement and the approval of the