Merger except to the extent that such recommendation would cause any director or officer of any Party to violate any fiduciary duty or other requirement imposed by law in connection therewith.

g) *Other Governmental Matters.* Each of the Parties will take any additional action that may be necessary, proper, or advisable in connection with any other notices to, filings with, and authorizations, consents, and approvals of governments and governmental agencies that it may be required to give, make or obtain.

Section 5.6. *Fairness Opinions.* On or before the Effective Date Bankshares shall obtain a verbal opinion from an investment banker or other consultant of Bankshares' choosing as to the fairness of the Merger to Bankshares Stockholders from a financial point of view (the "Bankshares Fairness Opinion"). Prior to the date the Definitive Bankshares Proxy Materials are mailed to the Bankshares Stockholders and the date of the public hearing contemplated by §5.5(ii)(c), Bankshares will obtain the Bankshares Fairness Opinion in written form.

Section 5.7. *Operation of Business.* Without the prior written consent of Bancorp and Acquisition, which may be given or withheld in the sole discretion of Bancorp or Acquisition unless otherwise provided in this §5.7, Bank and Bankshares will not engage in any practice, take any action, embark on any course of inaction, or enter into any transaction outside the Ordinary Course of Business except as otherwise specifically provided in the Disclosure Statement or this Agreement. Without limiting the generality of the foregoing, neither Bankshares nor Bank will:

(i) authorize or effect any change in its charter or bylaws;

(ii) grant any options, warrants, or other rights to purchase or obtain any of its capital stock or issue, sell, or otherwise dispose of any of its capital stock;

(iii) declare, set aside, or pay any dividend or distribution with respect to its capital stock, or redeem, repurchase, or otherwise acquire any of its capital stock; provided, however, if the Closing Date has not occurred by February 1, 1997, Bankshares may declare and

pay an annual dividend in February, 1997, consistent with dividend declared and paid by Bankshares in 1996;

(iv) create, incur, assume, or guarantee any indebtedness (including any capitalized leased obligation) outside the Ordinary Course of Business;

(v) impose, grant or suffer any Security Interest upon any of its assets outside the Ordinary Course of Business;

(vi) make any capital investment in, make any loan to, or acquire the securities or assets of any other person outside the Ordinary Course of Business unless Bancorp has consented to such action or, as to Bank, to such loan or increase is fully secured by a certificate of deposit of Bank or is permitted under §5.8;

(vii) except as set forth in the Disclosure Statement, make any change in employment terms for any of its directors, officers, and employees outside the Ordinary Course of Business with the understanding that entering into any new employment contracts or renewing any existing employment contracts shall be deemed outside the Ordinary Course of Business;

(viii) enter into any agreement which would be required to be disclosed pursuant to Section 3.21 of this Agreement;

(ix) discontinue or omit the independent loan review and internal audit services contemplated by Bankshares' and Bank's 1996 business plan as of the Effective Date;

(x) knowingly permit the occurrence of any change or event which would render any of its representations and warranties contained herein materially untrue at and as of the Closing Date; or

(xi) commit to do any of the foregoing.

Bancorp and Acquisition agree that their consent to the matters covered by subsections (iv), (v) and (viii) above will not be unreasonably withheld.

Section 5.8. *Bank Operations*. Without the prior written consent of Bancorp which shall not be unreasonably withheld, Bank shall not:

(i) make or commit to make any new or renewal loan or series of related loans to one borrower or its Affiliates or which would be aggregated for the purpose of ascertaining Bank's compliance with the provisions of 12 U.S.C. §84, with an aggregate principal balance greater than $250,000;

(ii) agree to any increase in an existing loan so that the outstanding principal balance of that loan exceeds $250,000;

(iii) make or commit to make any loan financing the purchase of real estate owned by Bank that exceeds $250,000.00 in principal balance or the principal balance of which exceeds eighty percent (80%) of the fair market value of the collateral securing the loan;

(iv) make or commit to make any loan to pay interest or taxes on any existing Bank loan;

(v) make or commit to make any unsecured loan with a principal balance in excess of $25,000.00;

(vi) make or commit to make a new loan or modify an existing loan to any officer, director or former director of Bankshares or Bank.

(vii) other than in the Ordinary Course of Business and consistent with past practices of Bank, accept term deposits or change the interest rates or service charges on its deposit accounts.

(viii) make any change to its reserves for loan losses except for charge offs, recoveries of loans previously written off or written down to the extent of the write offs or write downs and increases in provisions for loan losses which have been reflected on Bank's income statements.

(ix) either sell any of the investment securities in its investment portfolio (unless sale is required to accomplish necessary liquidity for Bank) or purchase any new investment securities which have an aggregate value in excess of $500,000.00 per transaction.

(x) reclassify investment securities from "held for sale" to "held to maturity" or from "held to maturity" to "held for sale", as those terms are used in FASB 115.

(xi) sell any assets (other than investment securities as provided in subsection (x) above), including, without limitation, real estate (except real estate or other assets acquired by Bank through the exercise of remedies under loan documentation and obsolete or damaged equipment and furniture provided that such equipment and furniture is replaced with items of equal utility and value), loans (other than Small Business Administration loans or newly originated residential mortgage loans sold in the Ordinary Course of Business) or loan servicing rights.

(xii) sell or agree to sell any real estate owned by Bank or any of Bank's Subsidiaries to any director, former director, officer or former officer of Bankshares or Bank or any Bankshares Stockholder (the "Insiders") or to any Subsidiary, Affiliate, relative or fiduciary for the benefit of any of the Insiders or any entity which is controlled by or in which any of the Insiders has an ownership interest.

The restrictions set out in subsection (i) through (v) above shall not apply if the loan is fully secured by a certificate of deposit of Bank. Bancorp agrees that its consent will not be unreasonably withheld and that if it has not responded to a request for its consent within two (2) business days after receipt of a written request Bancorp's consent shall be deemed to have been given.

Section 5.9. *Full Access*. Bankshares and Bank will permit representatives of Bancorp and Acquisition to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of Bankshares and Bank, to all premises, properties, books, records, contracts, tax records, and documents of or pertaining to each of Bankshares and Bank. Bancorp shall permit representatives of Bankshares to have full access at all reasonable times to such financial information and other information regarding or affecting results of operations or financial condition of Bancorp and 1st United as are material to the future

prospects of Bancorp except such information as Bancorp determines cannot be disclosed under laws, rules or regulations applicable to Bancorp. Each Party will treat and hold as such any Confidential Information it receives from the other Parties in the course of the reviews contemplated by this Agreement, will not use any of the Confidential Information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, agrees to return to the delivering Party all tangible embodiments (and all copies) thereof which are in its possession.

Section 5.10. *Notice of Developments*.

(i) Each Party will give prompt written notice to the others of any Substantial Adverse Development affecting such Party and its Subsidiaries taken as a whole. Each Party will give prompt written notice to the other of any such Substantial Adverse Development affecting the ability of the Parties to consummate the transactions contemplated by this Agreement. Any such notices shall be accompanied by copies of any and all pertinent documents, correspondence and similar papers relevant to a complete understanding of such Substantial Adverse Development. In the event such Substantial Adverse Development consists of litigation threatened or filed against one or more Parties, the Parties hereby agree to exert their reasonable good faith efforts to quantify the risk to the Party or Parties against whom the litigation has been threatened or filed, to ascertain the likelihood of an adverse result in such litigation and to arrive at a mutually satisfactory resolution of such risks so as to allow the consummation of the transactions contemplated in this Agreement and the realization of the Parties and their shareholders of the expected benefits of such transactions. The running of the time for exercising termination rights by reason of such litigation or threatened litigation shall be suspended during the period the Parties are mutually attempting to access and resolve such litigation or claim. Bancorp or Acquisition will have 15 business days after Bankshares gives any written notice pursuant to this §5.10 within which to exercise any right it may have to terminate this Agreement pursuant to §7.11(iii) below by reason of the Substantial Adverse Development, and Bankshares

likewise will have 15 business days after Bancorp or Acquisition gives any written notice pursuant to this §5.10 within which to exercise any right Bankshares may have to terminate this Agreement pursuant to §7.1(iii) below by reason of the Substantial Adverse Development. Unless one of the Parties terminates this Agreement within the aforementioned period, the written notice of a material development will be deemed to have amended the Disclosure Statement, to have qualified the representations and warranties contained herein, and to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the Substantial Adverse Development.

(ii) Any Party may update its representations and warranties contained in this Agreement by delivery of a revised Disclosure Statement or Disclosure Schedules to the other Parties. If the matters disclosed in such revised Disclosure Statement or Disclosure Schedules do not comprise Substantial Adverse Developments or breaches of this Agreement, the representations and warranties of the disclosing Party shall be deemed revised as shown in the revised Disclosure Statement or Disclosure Schedules for the purpose of compliance with the provisions of this Agreement, including, without limitation, Article 6.

Section 5.11. *Exclusivity*. Neither Bankshares nor Bank will continue or resume any negotiations or communications in which Bankshares or Bank was engaged prior to the Effective Date or solicit, initiate, or encourage the submission of any proposal or offer from any person (other than a Party) relating to any (i) liquidation, dissolution, or recapitalization, (ii) merger or consolidation, (iii) acquisition or purchase of securities or assets other than in the Ordinary Course of Business, or (iv) similar transaction or business combination involving any of the Parties or its Subsidiaries, or their respective assets, provided, however, that Bankshares, Bank, and their directors and officers will remain free to participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any person to do or seek any of the foregoing in the event a majority of the full board of directors of Bankshares or Bank have

determined on written advice of counsel that the board of directors has a fiduciary duty to consider and respond to such effort or attempt. Bankshares and Bank may respond to inquiries from Persons with whom Bankshares or Bank engaged in discussions regarding mergers, consolidations or similar transactions or business combinations prior to the Effective Date by advising such Persons that Bankshares and Bank have entered into this Agreement and have agreed not to engage in such discussions during the term of this Agreement. Each Party shall notify the others immediately if any person (other than a Party) makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

Section 5.12. *Indemnification*.

(i) Bankshares and Bank hereby indemnify and hold harmless Bancorp, Acquisition and 1st United and their Subsidiaries and their Affiliates, successor and assigns from and against any and all claims, costs, expenses, actions, demands, losses or liabilities, penalties and damages (including legal and accounting fees and other expenses of any nature whatsoever incurred in investigating or in attempting to avoid the same or to defend the imposition thereof), resulting to Bancorp, 1st United or Acquisition, or their respective Affiliates, successors or assigns, from or arising out of any misrepresentation, breach or nonfulfillment of any warranty, representation, agreement or covenant on the part of Bankshares or Bank or any of their Subsidiaries and Affiliates, under this Agreement, or from any misrepresentation in or omission from any Exhibit, Schedule or other instrument furnished or to be furnished to Bancorp, Acquisition or 1st United hereunder or thereunder.

(ii) Bancorp and Acquisition hereby indemnify and hold harmless Bankshares and Bank and their Affiliates, successors and assigns, at all times from and against any and all claims, costs, expenses, actions, demands, losses or liabilities, penalties and damages (including legal and accounting fees and other expenses of any nature whatsoever incurred in investigation or in attempting to avoid the same or to defend the imposition thereof), resulting to Bankshares, Bank or their Affiliates, successors or assigns from or arising out of any misrepresentation,

breach or nonfulfillment of any warranty, representation, agreement or covenant on the part of Bancorp, Acquisition or their Affiliates under this Agreement, or from any misrepresentation in or omission from any Exhibit, Schedule or other instrument furnished or to be furnished to Bankshares or Bank hereunder.

Section 5.13. *Officer and Director Indemnities*. Subject to the conditions set forth below for a period of six (6) years from and after the Closing Date, Bancorp agrees that it will indemnify and hold harmless the officers, directors and employees of Bankshares and Bank in office on the Effective Time against all claims arising out of actions or omissions occurring prior to the Effective Time for which such parties would be entitled to indemnification under and in the same fashion and on the same terms as are provided in the FBCA, the Florida Acts on the Effective Time and the articles of incorporation and bylaws of Bankshares and Bank in effect on the Effective Date. Any indemnified party wishing to claim indemnification under this paragraph shall promptly notify Bancorp thereof. Bancorp shall have the right to assume the defense thereof and Bancorp shall not be liable to such indemnified parties for any legal expenses of other counsel or any other expenses subsequently incurred by such indemnified parties in connection with the defense thereof, except that if Bancorp elects not to assume such defense or counsel for the indemnified parties advises that there are substantive issues which raise conflicts of interest between Bancorp and the indemnified parties, the indemnified parties may retain counsel satisfactory to them, and Bancorp shall pay all reasonable fees and expenses of such counsel for the indemnified parties promptly as statements therefor are received; provided, however, that Bancorp shall be obligated pursuant to this paragraph to pay for only one firm of counsel for all indemnified parties in any jurisdiction, the indemnified parties will cooperate in the defense of any such litigation, and Bancorp shall not be liable for any settlement effected without its prior written consent which consent shall not be unreasonably withheld; and provided further that Bancorp shall not have any obligation hereunder to any indemnified party when and if a court of competent jurisdiction shall determine, and such determination shall have become

final, that the indemnification of such indemnified party in the manner contemplated hereby is prohibited by applicable law.

Section 5.14. *Environmental Matters*. Bankshares and Bank agree that all engineers and consultants who prepared or furnished reports on the environmental condition of the Property may discuss such reports and information with Bancorp or Acquisition and shall be entitled to certify the same in favor of Bancorp or Acquisition and their consultants, agents and representatives and make all other data available to Bancorp or Acquisition and their consultants, agents and representatives. In the event Bank proposes to take title to any real estate which is collateral for loans made by Bank, Bank will first obtain a Phase I environmental audit of such property, comply with the suggestions of such audit, provide a copy of such audit and any subsequent audits or studies and, if requested by Bancorp, will take title to such property in the name of a newly formed Subsidiary.

Section 5.15. *Affiliate Letters*.

a) The Disclosure Statement sets forth a list of names and addresses of those persons who are "affiliates" of Bankshares within the meaning of Rule 145 under the Securities Act ("Rule 145"), including, without limitation, any Bankshares Stockholder who or which holds of record more than ten percent (10%) of the outstanding Shares and all other officers and directors of Bankshares (each "Bankshares Affiliate"). Bankshares shall provide Bancorp such information and documents as Bancorp shall reasonably request for purposes of reviewing the accuracy and completeness of such list. There shall be added to such list the names and addresses of any other Person who becomes a Bankshares Affiliate at any time after the date hereof up to and including the time of the Special Bankshares Meeting or who Bancorp reasonably identifies (by written notice to Bankshares) as being a Person who may be deemed to be a Bankshares Affiliate. Not less than forty-five (45) days prior to the Closing Date, Bankshares shall deliver or cause to be delivered to Bancorp, from each of the Bankshares Affiliates identified on the Disclosure Statement (as the same may be supplemented as

aforesaid), a letter substantially in the form of Exhibit "F" hereto (the "Affiliate Letter"), which shall contain (i) a covenant that such Affiliate shall not sell or otherwise dispose of any shares of Bancorp Purchase Stock issued to it in the Merger until such time as final results of operations of Bancorp covering at least thirty (30) days of combined operations of Bancorp, Bankshares and Bank have been published, and (ii) a covenant that such Bankshares Affiliate will not sell or otherwise dispose of any shares of Bancorp Purchase Stock issued to it in the Merger, except pursuant to an effective registration statement under the Securities Act or in accordance with the provisions of paragraph (d) of Rule 145 or another exemption from registration under the Securities Act. The Affiliate Letter with Louis A. Gaeta, Jr. shall provide that Mr. Gaeta acknowledges that he will be subject to and must comply with the provisions of Rule 144(e) under the Securities Act in connection with sales of Bancorp Purchase Stock except for sales occurring more than two (2) years after the Effective Time.

b) Bancorp shall be entitled to place appropriate legends on the certificates evidencing the Bancorp Purchase Stock to be received by such Bankshares Affiliates pursuant to the terms of this Agreement, and to issue appropriate stock transfer instructions to the Transfer Agent, to the effect that the shares of Bancorp Purchase Stock received or to be received by such Bankshares Affiliates pursuant to the terms of this Agreement may only be sold, transferred or otherwise conveyed, and the holder thereof may only reduce his interest in or risks relating to such shares of Bancorp Purchase Stock, pursuant to an effective registration statement under the Securities Act or in accordance with the provisions of paragraph (d) of Rule 145 or another exemption from registration under the Securities Act and, in any event, only after financial results covering at least 30 days of combined operations of Bancorp, Bankshares and Bank after the Effective Date shall have been published. The foregoing restrictions on the transferability of Bancorp Purchase Stock shall apply to all purported sales, transfers and other conveyances of the shares of Bancorp Purchase Stock received or to be received by such Bankshares Affiliates pursuant to this Agreement and to all purported reductions in the interest in

or risks relating to such shares of the Bancorp Purchase Stock whether or not such Bankshares Affiliate has exchanged the Certificates previously evidencing such Bankshares Affiliate's Shares for certificates evidencing the shares of Bancorp Purchase Stock into which such Shares were converted. The Proxy Statement and the Registration Statement shall disclose the foregoing in a reasonably prominent manner.

Section 5.16. *Post Merger Financial Results*. If the Effective Time shall not have occurred by November 30, 1996, Bancorp agrees to publish its post-merger financial results (as the term "publish" is used in the interpretations to Accounting Principles Board Opinion No. 16) within fifteen (15) days after the end of the first full calendar month after the Effective Time, with such results to be as of the end of such month and which shall cover a period of at least thirty (30) days subsequent to the Effective Time.

Section 5.17. *Employee Benefit Plans*. Bancorp agrees to use its best efforts to provide to all eligible employees of Bankshares or Bank who remain employees of 1st United following the Effective Time ("Continuing Employees") employee welfare and pension benefits substantially equivalent (in the aggregate) to those uniformly provided to employees of 1st United from time to time, provided, however, that Bancorp shall not be required to give credit to any such Continuing Employees in respect of past service with Bankshares or Bank prior to the Effective Time for any purposes under any employee benefit plan or arrangement of 1st United, except for purposes of eligibility and participation (but not for purposes of vesting or benefit accrual) in 1st United's 401(k) Plan and for purposes of determining vacation benefits under 1st United's vacation plan. Notwithstanding the foregoing, no Continuing Employee shall have the right to participate in 1st United's 401(k) Plan until such Continuing Employee shall have been in the continuous employment of 1st United for at least ninety (90) days after the Effective Time. Bancorp agrees that 1st United will establish a special entry date into the 401(k) Plan for eligible Continuing Employees as soon as practicable after ninety (90) days after the Effective Time. Bancorp shall use its best efforts to ensure that any Continuing Employees and their eligible

dependents who have coverage under the Bank's existing medical plan will not be subject to any waiting period or preexisting condition requirement under 1st United's medical insurance plan, except to the extent that such Continuing Employees and eligible dependents are currently subject to any such preexisting condition. Bancorp agrees that it will pay the termination fee charged by the Trustee of Bank's 401(k) Plan and the exit fees charged to the beneficiaries of Bank's 401(k) Plan under the agreement with the Trustee as of the Effective Date.

Section 5.18. *Pooling of Interest*. The Parties acknowledge that it is their intention that the Merger and the Bank Merger be qualified for pooling of interest accounting treatment and therefore agree to take such actions as are necessary to assure pooling of interest treatment and to refrain from taking any actions which would result in disqualification for pooling of interest treatment, both as determined by Bancorp.

Section 5.19. *Certain Policies of Bank*. At the request of Bancorp, Bank shall modify and change its operating, loan, litigation and real estate valuation policies and practices (including loan classifications and levels of reserves) prior to the Effective Time so as to be consistent on a mutually satisfactory basis with those of Bancorp. Bank shall not be required to modify or change any such policies or practices, however, until (i) such time as Bank and Bancorp shall reasonably agree that the Effective Time will occur prior to the public disclosure of such modification or changes in regular periodic earnings releases or periodic reports filed with the OCC, or (ii) such time as Bancorp acknowledges in writing that all conditions to Bancorp's obligations to consummate the Merger (and Bancorp's rights to terminate this Agreement) have been waived or satisfied; provided, however, that in all circumstances Bank shall make such modifications and changes not later than immediately prior to the Effective Time. Bank's representations, warranties and covenants contained in this Agreement shall not be deemed to be untrue or breached in any respect as a consequence of any modifications or exchanges undertaken solely on account of this Section.

6. CONDITIONS TO OBLIGATION TO CLOSE.

Section 6.1. *Conditions to Obligations of All Parties.*

(i) this Agreement and the Merger shall have received the Requisite Bankshares Stockholder Approval;

(ii) Bankshares and Bancorp shall have procured all of the consents specified in §5.1 hereof.

(iii) no action, suit, or proceeding (other than those arising out of the applications submitted to the FRB and the Comptroller as contemplated herein) shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction wherein an unfavorable judgment, order, decree, stipulation, injunction, or charge could (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (C) materially and adversely affect the right of Bancorp and 1st United to own, operate, or control substantially all of the assets and operations of Bankshares and Bank (and no such judgment, order, decree, stipulation, injunction, or charge shall be in effect);

(iv) the Registration Statement shall have become effective under the Securities Act or Bancorp shall have obtained the No Action Letter and the No Action Letter shall not have been revoked; the Bancorp Purchase Stock shall have been registered or exempt from registration under applicable state securities laws; and, subject to the requirements of Rule 145 of the Securities Act and the Affiliates Letters, the Bancorp Purchase Stock shall be freely transferable in the hands of Bankshares Stockholders who receive same; and;

(v) the Merger and the Bank Merger shall have been approved by the FRB; the Bank Merger shall have been approved by the Comptroller under the Florida Acts; and any other regulatory approvals necessary to the consummation of the Merger and the Bank Merger

shall have been obtained and such approvals shall not impose any term, condition or restriction upon any of Bancorp, 1st United or Acquisition that Bancorp, in good faith, reasonably determines would so materially adversely affect the economic or business benefits of the transactions contemplated by this Agreement to Bancorp as to render inadvisable in the reasonable good faith judgment of Bancorp the consummation of the Merger.

Section 6.2. *Conditions to Obligation of Bancorp*. The obligations of Bancorp and Acquisition to consummate the transactions to be performed by Bancorp and Acquisition in connection with the Closing are subject to satisfaction of the following conditions:

(i) Bankshares and Bank shall have procured all of the third party consents and agreements to be obtained by Bankshares or Bank specified in Article 5 above or otherwise complied with the requirements of Article 5 above which are material to the consummation of the Merger or the Bank Merger;

(ii) no material breach or breaches of the representations and warranties of Bankshares or Bank under this Agreement has occurred and is continuing at and as of the Closing Date;

(iii) all covenants of Bankshares and Bank under this Agreement which are to be performed prior to or at Closing shall have been duly performed and complied with in all material respects.

(iv) Bankshares and Bank shall have delivered to Bancorp and Acquisition certificates (without qualification as to knowledge or materiality or otherwise) to the effect that each of the conditions specified above in § 6.2(i)-(iv) is satisfied in all respects;

(v) the Parties shall have received all other authorizations, consents, and approvals of governments and governmental agencies set forth in the Disclosure Statement;

(vi) Bancorp and Acquisition shall have received from counsel to Bankshares an opinion with respect to the matters set forth on Exhibit "G" attached hereto, addressed to Bancorp and dated as of the Closing Date;

(vii) Bancorp and Acquisition shall have received the resignations, effective as of the Closing, of each trustee or officer of any Employee Benefit Plan designated by Bancorp or Acquisition in writing at least five (5) business days prior to the Closing;

(viii) all actions to be taken by Bankshares and Bank in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Bancorp and Acquisition;

(ix) no Substantial Adverse Development shall have occurred with respect to Bankshares or Bank which has not been waived by Bancorp and Acquisition or deemed waived pursuant to Section 5.10; and

(x) no event shall have occurred or failed to occur which, in the reasonable judgment of Bancorp, could result in the Merger or the Bank Merger being disqualified from pooling of interest accounting treatment and Bancorp shall have received an opinion letter from Ernst & Young in form and substance acceptable to Bancorp confirming that the Merger and the Bank Merger qualify for financial accounting treatment as a pooling of interest.

Bancorp may waive any condition specified in this §6.2 if it executes a writing so stating at or prior to the Closing.

Section 6.3. *Conditions to Obligation of Bankshares and Bank*. The obligation of Bankshares and Bank to consummate the transactions to be performed by each of them in connection with the Closing is subject to satisfaction of the following conditions:

(i) no material breach or breaches of the representations and warranties of Bancorp or Acquisition under this Agreement or agreements to be obtained by Bancorp or Acquisition as has occurred and is continuing at and as of the Closing Date;

(ii) Bancorp and Acquisition shall have procured all of the third party consents specified in Article 5 above;

(iii) all covenants of Bancorp and Acquisition under this Agreement which are to be performed prior to or at Closing shall have been duly performed and complied with in all material respects.

(iv) Bancorp and Acquisition shall have delivered to Bankshares a certificate (without qualification as to knowledge or materiality or otherwise) to the effect that each of the conditions specified in §6.3(i)-(iii) is satisfied in all respects;

(v) Bankshares shall have received from counsel to Bancorp and Acquisition an opinion with respect to the matters set forth in Exhibit "H" attached hereto, addressed to Bankshares and dated as of the Closing Date; and

(vi) all actions to be taken by Bancorp and Acquisition in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Bankshares and Bank.

(vii) no Substantial Adverse Development shall have occurred with respect to Bancorp or its Subsidiaries which has not been waived by Bankshares and Bank or deemed waived pursuant to Section 5.10.

(viii) Bankshares shall have received from its legal counsel an opinion, dated the Effective Time, to the effect that, on the basis of facts, representations and assumptions set forth in such opinion, the merger will for federal income tax purposes constitute a reorganization within the meaning of Section 368, or any successor thereto, of the Code and that (except with respect to holders of Bankshares Stock who exercise dissenters' rights and except for cash payments in lieu of a fractional share interest), (i) no gain or loss will be recognized by a holder of Bankshares Stock upon conversion in the Merger of Bankshares Stock into Bancorp Purchase Stock, (ii) the basis of Bancorp Purchase Stock to be received in the Merger by a holder of Bankshares Stock will be the same as such holder's basis in the Bankshares Stock exchanged therefor, and (iii) the holding period of Bancorp Purchase Stock to be received in the Merger by a

holder of Bankshares Stock will include the period during which such holder held the Bankshares Stock exchanged therefor, provided that such Bankshares Stock was held as a capital asset immediately prior to the consummation of the Merger; in rendering such opinion, such tax advisor may rely upon certificates of officers of Bankshares and Bancorp as to factual matters.

Bankshares and Bank may waive any condition specified in this §6.3 if it executes a writing so stating at or prior to the Closing.

7. TERMINATION.

Section 7.1. *Termination of Agreement*. Any of the Parties may terminate this Agreement with the prior authorization of its board of directors (whether before or after stockholder approval) as provided below:

(i) the Parties may terminate this Agreement by mutual written consent at any time prior to the Closing Date;

(ii) Bancorp or Acquisition may terminate this Agreement by giving written notice to Bankshares and Bank at any time prior to the Closing Date in the event Bankshares or Bank is in breach of any representation, warranty, or covenant contained in this Agreement in any material respect and Bankshares and Bank may terminate this Agreement by giving written notice to Bancorp and Acquisition at any time prior to the Closing Date in the event Bancorp or Acquisition is in breach of any representation, warranty, or covenant contained in this Agreement in any material respect. Each Party shall have the right to cure any such breach within fifteen (15) days of receipt of written notice of such breach or within any such longer period mutually agreed to in writing by the Parties hereto ("Cure Period") and the termination rights provided above may not be exercised until after written notice of breach is given and the applicable Cure Period has expired;

(iii) if a Substantial Adverse Development shall have occurred with regard to Bancorp or Acquisition, Bankshares may terminate this agreement by giving written notice to Bancorp and Acquisition and if a Substantial Adverse Development shall have occurred with

regard to Bankshares, Bancorp or Acquisition may terminate this agreement by giving written notice to Bankshares and Bank;

(iv) Bancorp, Acquisition, Bank or Bankshares may terminate this Agreement by giving written notice to the other Parties at any time prior to the Closing Date in the event the Bankshares Fairness Opinion is withdrawn;

(v) either Party may terminate this Agreement by giving written notice to the other Party within five (5) days after the Special Bankshares Meeting, in the event this Agreement or the Merger fail to receive the Requisite Bankshares Stockholder Approval;

(vi) Bancorp or Acquisition may terminate this Agreement by giving written notice to Bankshares and Bank at any time prior to the Closing Date if the Closing shall not have occurred on or before March 31, 1997 by reason of the failure of any condition precedent under §6.1 or 6.2 hereof (unless the failure results primarily from Bancorp or Acquisition itself breaching any representation, warranty, or covenant contained in this Agreement), provided, however, that Bancorp and Acquisition shall not have the right to terminate this Agreement pursuant to this paragraph during the pendency of any Cure Period; or

(vii) Bankshares or Bank may terminate this Agreement by giving written notice to Bancorp and Acquisition at any time prior to the Closing Date if the Closing shall not have occurred on or before March 31, 1997 by reason of the failure of any condition precedent under §6.1 or 6.3 hereof (unless the failure results primarily from Bankshares or Bank itself breaching any representation, warranty, or covenant contained in this Agreement), provided, however, that Bankshares and Bank shall not have the right to terminate this Agreement pursuant to this paragraph during the pendency of any Cure Period.

Section 7.2. *Effect of Termination*. If any Party terminates this Agreement pursuant to §7.1 above, all obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any liability of any Party then in breach);

provided, however, that the provisions of §§ 3.11, 4.7, 5.9 (as to the confidentiality provisions only), 5.12, and Article 8 shall survive any such termination.

8. MISCELLANEOUS.

Section 8.1. *Survival*. None of the representations, warranties, covenants and agreements of the Parties contained in this Agreement or in any instrument delivered pursuant to this Agreement shall survive Closing, except the provisions of Articles 1 and 2 and §§3.11, 4.7, 5.13, 5.15, 5.16, 5.17, 5.18, and Article 8.

Section 8.2. *Press Releases and Announcements*. No Party shall issue any press release or announcement relating to the subject matter of this Agreement without the prior written approval of the other Parties; provided, however, that any Party may make any public disclosure it believes in good faith is required by law or regulation (in which case the disclosing Party will advise the other Parties prior to making the disclosure).

Section 8.3. *Third Party Beneficiaries*. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assign. except with respect to those third parties as specifically contemplated in Sections 5.13 and 5.17 and, with respect to all Bankshares stockholders, Section 5.16.

Section 8.4. *Entire Agreement*. This Agreement (including the documents referred to herein) constitutes the entire Agreement among the Parties and supersedes any prior understandings, Agreements, or representations by or among the Parties, written or oral, that may have related in any way to the subject matter hereof, including, without limitation, the confidentiality agreement and the letter of intent between Bankshares, Bank, Bancorp and 1st United.

Section 8.5. *Succession and Assignment*. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties.

Section 8.6. *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

Section 8.7. *Headings*. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.8. *Notices*. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Bankshares:

Mr. Louis A. Gaeta, Jr.
Park Bankshares, Inc.
1015 - 10th Street
Lake Park, Florida 33403-2196

If to Bank:

Mr. Louis A. Gaeta, Jr.
First National Bank of Lake Park
1015 - 10th Street
Lake Park, Florida 33403-2196

With Copy To:

Michael V. Mitrione, Esq.
Gunster, Yoakley, Valdes-Fauli & Stewart, P.A.
Phillips Point - East Tower
777 S. Flagler Drive
Suite 500
West Palm Beach, Florida 33401

If to Bancorp:

980 North Federal Highway
Boca Raton, Florida 33432
Attn: Warren S. Orlando

If to Acquisition:

980 North Federal Highway
Boca Raton, Florida 33432
Attn: Warren S. Orlando

With Copy to:

Akerman, Senterfitt & Eidson, P.A.
777 S. Flagler Drive
Suite 900 East
West Palm Beach, Florida 33401
Attn: Russell T. Kamradt, Esq.

Each such notice shall be deemed delivered on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Any Party may give any notice, request, demand, claim, or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, TELECOPY, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the individual for whom it is intended or written proof of delivery or refusal of delivery is provided by an independent third party delivering same. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving other Parties notice in the manner herein set forth.

Section 8.9. *Governing Law*. This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Florida.

Section 8.10. *Amendments and Waivers*. The Parties may mutually amend any provision of this Agreement at any time prior to the Closing Date with the prior authorization of

their respective boards of directors; provided, however, that any amendment effected subsequent to stockholder approval will be subject to the restrictions contained in the Florida Acts. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Section 8.11. *Severability*. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

Section 8.12. *Expenses*. Except as otherwise provided in this §8.12, all costs and expenses including, without limitation, filing, registration and application fees and fees and expenses of its own financial and other consultants, investment bankers, accountants and counsel incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses. Notwithstanding the foregoing, in the event of breach of this Agreement by a Party, the nonprevailing Party shall pay all such costs and

expenses of all Parties, including, without limitation, those incurred in litigation brought to enforce this Agreement or brought by reason of a breach of this Agreement. When used herein the term legal fees and expenses shall mean legal fees and expenses at all levels through final appeal. Nothing contained in this §8.12 shall constitute an agreement for liquidated damages or otherwise limit the rights or remedies of the nonbreaching Parties. The Parties agree that irreparable damage would be suffered by reason of a breach of this Agreement and that the Parties shall be entitled to injunctive relief to prevent or cure such breach and specifically enforce the terms of this Agreement all without the necessity of posting a bond and in addition to any other remedies provided at law or in equity.

8.13. *Construction*. The language used in this Agreement will be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires.

9. INCORPORATION OF EXHIBITS AND SCHEDULES. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first below written.

1ST UNITED BANCORP

By: _____
Title: President
Date: 7/29/96

PARK ACQUISITION CO.

By: _____
Title: President
Date: 7/29/96

FIRST NATIONAL BANK OF LAKE PARK

By: _____
Title: PRESIDENT
Date: 7-29-96

PARK BANKSHARES, INC.

By: _____
Title: PRESIDENT
Date: 7-29-96