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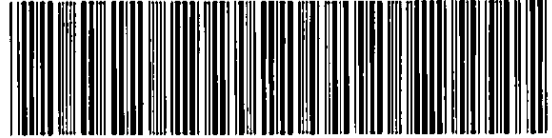
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ALLAHASSEE, FLORIDA



Commissioner Russell C. Weigel, III

September 28, 2021

VIA INTEROFFICE MAIL

Ms. Diane Cushing  
Administrator  
Amendment Section  
Florida Division of Corporations  
Post Office Box 6327  
Tallahassee, Florida 32314-6327

Dear Ms. Cushing:

Please file the enclosed Articles of Merger of Hillsboro Bank with and into The Bank of Tampa; **effective for 12:01am, October 1, 2021.** The distribution of the certified copies should be as follows:

One (1) Copy to: Office of Financial Regulation  
Division of Financial Institutions  
Attn: Jason Guevara  
200 East Gaines Street  
Tallahassee, Florida 32399-0370

One (1) Copy to: John P. "Jack" Greeley  
Smith Mackinnon, PA  
301 East Pine Street, Suite 750  
Orlando, FL 32801  
Office (407) 843-7300

Enclosed is check No. 24721, totaling \$87.50, payable to the Department of Corporations. The check represents payment for the filing fee and two certified copy for the attached Articles of Merger. If you have any questions, please do not hesitate to contact Terry Hughes at [Terry.Hughes@flor.gov](mailto:Terry.Hughes@flor.gov) at 850-410-9574.

Sincerely,

Jason M. Guevara  
Financial Administrator  
Division of Financial Institutions

**ARTICLES OF MERGER  
OF  
HILLSBORO BANK  
WITH AND INTO  
THE BANK OF TAMPA**

298-50368

Pursuant to the provisions of the Florida Business Corporation Act (the "Act"), Hillsboro Bank, a Florida banking corporation, and The Bank of Tampa, a Florida banking corporation, do hereby adopt the following Articles of Merger for the purpose of merging Hillsboro Bank with and into The Bank of Tampa:

FIRST: The names of the corporations which are parties to the merger (the "Merger") contemplated by these Articles of Merger are The Bank of Tampa and Hillsboro Bank. The surviving corporation in the Merger is The Bank of Tampa, which shall continue to conduct its business following effectiveness of the Merger under the name "The Bank of Tampa."

SECOND: The Plan of Merger is set forth in the Plan of Merger and Merger Agreement, dated as of March 17, 2021, by and between Tampa Bay Banking Company, The Bank of Tampa and Hillsboro Bank (the "Plan of Merger"). A copy of the Plan of Merger is attached hereto and made a part hereof by reference as if fully set forth herein.

THIRD: The Merger shall become effective at 12:01 a.m., Tampa, Florida time, on October 1, 2021.

FOURTH: The Merger Agreement was duly approved by the shareholders of Hillsboro Bank on August 31, 2021 in the manner required by the Act and its Articles of Incorporation. The Merger Agreement was duly approved by the sole shareholder of The Bank of Tampa on March 17, 2021 in the manner required by the Act and its Articles of Incorporation.

FIFTH: The Articles of Incorporation of The Bank of Tampa shall serve as the Articles of Incorporation of the surviving corporation, until amended thereafter in accordance with applicable law.

[Signature page follows]

FILED  
2021 SEP 23 AM 5:01  
CLERK OF THE COURT  
HILLSBORO COUNTY, FLORIDA

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of September 21, 2021.

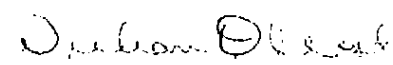
HILLSBORO BANK

By:

  
Mike Ward  
President and Chief Executive Officer

THE BANK OF TAMPA

By:

  
William O. West  
Chief Executive Officer

2021 SEP 20 AM 9:01

2021 SEP 20 AM 9:01

2021 SEP 20 AM 9:01

Execution Version

**PLAN OF MERGER AND MERGER AGREEMENT**

by and among

**TAMPA BAY BANKING COMPANY**  
(a Florida corporation)

**THE BANK OF TAMPA**  
(a Florida banking corporation)

and

**HILLSBORO BANK**  
(a Florida banking corporation)

Dated as of

March 17, 2021

2021 SEP 23 AM 9:01  
STANDARD TIME  
FALLS CHURCH, VA

## PLAN OF MERGER AND MERGER AGREEMENT

**THIS PLAN OF MERGER AND MERGER AGREEMENT** (this "Agreement") is made and entered into as of March 17, 2021, by and between **TAMPA BAY BANKING COMPANY** ("TBBC"), a corporation organized and existing under the Laws of the State of Florida, with its principal office in Tampa, Florida; **THE BANK OF TAMPA** ("BOT"), a Florida banking corporation, with its principal office in Tampa, Florida; and **HILLSBORO BANK** ("HB"), a Florida banking corporation, with its principal office in Plant City, Florida.

### Preamble

The respective Boards of Directors of TBBC, BOT and HB have determined that the transactions described herein are in the best interests of the Parties and their respective stockholders. This Agreement provides for the acquisition of HB by TBBC pursuant to the merger (the "Merger") of HB with and into BOT, which is a wholly owned Subsidiary of TBBC.

The transactions described in or otherwise contemplated by this Agreement are subject to, among other things: (i) the approval of the stockholders of HB; (ii) the approval of the Federal Reserve, the FDIC and the OFR; and (iii) the satisfaction of certain other conditions described in this Agreement. It is the intention of the Parties to this Agreement that, for federal income tax purposes, the Merger shall qualify as a "reorganization" within the meaning of Section 368(a) of the IRC and the Treasury regulations promulgated thereunder, and that this Agreement shall constitute, and is adopted as, a "plan of reorganization" within the meaning of Section 368(a) of the IRC for purposes of Sections 354, 356 and 361 of the IRC (and any comparable provision of state law) for federal and applicable state income tax purposes.

Certain capitalized terms used but not otherwise defined in this Agreement are defined in Section 11.1 of this Agreement.

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

### ARTICLE I TRANSACTION AND TERMS OF MERGER

**1.1 The Merger.** Subject to the terms and conditions of this Agreement, at the Effective Time, HB shall be merged with and into BOT in accordance with the provisions of applicable state and federal banking laws. At the Effective Time, the separate corporate existence of HB shall cease, and BOT shall be the surviving bank resulting from the Merger (the "Surviving Bank") and shall continue to be governed by the Laws of the State of Florida. The Merger will be consummated pursuant to the terms of this Agreement, which has been approved and adopted by a majority of the members of the respective Boards of Directors of TBBC, BOT and HB.

1.2 **Time and Place of Closing.** The place of the Closing shall be at the main office of BOT, or such other place as may be mutually agreed upon by the Parties. Subject to the terms and conditions of this Agreement, unless otherwise mutually agreed upon in writing by the chief executive officers of TBBC and HB, the Closing will take place at 9:00 a.m. Eastern Time on the last Business Day of the month in which the closing conditions set forth in Article 9 (other than those conditions that are to be satisfied at the Closing) have been satisfied (or waived pursuant to Section 11.4 of this Agreement). The date of such Closing is referred to herein as the "Closing Date."

1.3 **Effective Time.** Subject to the terms and conditions of this Agreement and the occurrence of the Closing, the Merger shall become effective on the date specified in the Articles of Merger to be filed with the Florida Secretary of State (the "Effective Time"). Unless the chief executive officers of TBBC and HB otherwise mutually agree in writing, the Parties shall use their commercially reasonable efforts to cause the Effective Time to occur on the Closing Date.

1.4 **Voting Agreements.** Concurrently with the execution and delivery of this Agreement and as a material condition hereto, each member of the HB Board and certain executive officers of HB have entered into Voting Agreements with TBBC whereby, among other things, such Persons have agreed, upon the terms and subject to the conditions set forth therein, to vote all of the shares of HB Common Stock owned by them in favor of this Agreement and the Merger and to support actions necessary to consummate the Merger.

## **ARTICLE 2**

### **EFFECT OF THE MERGER**

2.1 **Charter Documents.** The Articles of Incorporation of BOT in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Bank immediately after the Effective Time, unless and until amended in accordance with applicable Law. The Articles of Incorporation of the Surviving Bank are attached hereto as Exhibit 1. The Bylaws of BOT in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Bank immediately after the Effective Time, unless and until amended in accordance with applicable Law.

#### **2.2 Directors and Officers.**

(a) The directors and officers of TBBC immediately following the Effective Time shall consist of the directors and officers of TBBC immediately prior to the Effective Time. Such directors and officers shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

(b) The directors and officers of the Surviving Bank immediately following the Effective Time shall consist of the directors and officers of BOT immediately prior to the Effective Time. Such directors and officers shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal. The directors and executive officers of the Surviving Bank at the Effective Time shall consist of those persons set forth on Exhibit 2, subject to their earlier death, resignation or removal prior to the Effective Time.

**2.3 Effect of Merger.** At the Effective Time, all rights, franchises and interests of HB and BOT in and to every type of property (real, personal and mixed) and choses in action shall be transferred to and vested in the Surviving Bank by virtue of the Merger without any deed or other transfer. The Surviving Bank shall hold and enjoy all rights of property, franchises and interests, including appointments, designations and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee and receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by HB and BOT immediately prior to the Effective Time. All Liabilities and obligations of HB and BOT shall be assumed by the Surviving Bank, and the Surviving Bank shall be bound thereby in the same manner and to the same extent as each of HB and BOT was so bound at the Effective Time.

**2.4 Business of Surviving Bank.** At the Effective Time, the business of the Surviving Bank shall continue to be that of a Florida banking corporation and shall be conducted at its main office located at 601 Bayshore Blvd., Tampa, Florida 33601, at its legally established branches, and at the banking offices of HB that are acquired in the Merger (with such banking offices to continue to conduct operations after the Effective Time as branch offices of the Surviving Bank). The banking offices of the Surviving Bank at the Effective Time shall be those banking offices set forth on Exhibit 3 subject to the addition of any banking offices or closure of any banking offices at or prior to the Effective Time. Surviving Bank shall continue to be "The Bank of Tampa." The Surviving Bank shall continue to exercise trust powers as of the Effective Time.

**2.5 Capital of Surviving Bank.** The Surviving Bank shall have surplus and retained earnings equal to the consolidated capital accounts of BOT and HB immediately prior to the Effective Time. All such amounts of surplus and retained earnings shall be adjusted for normal earnings and expenses and any accounting adjustments related to the Merger. BOT and HB shall contribute to the Surviving Bank acceptable Assets having a book value, over and above Liability to its creditors, in such amounts as set forth on the books of BOT and HB at the Effective Time.

### **ARTICLE 3**

#### **CONVERSION OF CONSTITUENTS' CAPITAL STOCK AND OTHER EQUITY**

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

(a) *TBBC Capital Stock.* Each share of capital stock of TBBC issued and outstanding immediately prior to the Effective Time shall continue to be issued and outstanding from and after the Effective Time.

(b) *BOT Capital Stock.* Each share of capital stock of BOT issued and outstanding immediately prior to the Effective Time shall continue to be issued and outstanding shares of the



capital stock of the Surviving Bank, issued to TBBC and outstanding as of the Effective Time; and the Surviving Bank shall be a wholly owned Subsidiary of TBBC.

(c) *HB Common Stock Held by Parties.* Each share of HB Common Stock issued and outstanding immediately prior to the Effective Time that is held as treasury stock or that is owned, directly or indirectly, by any HB Company or any TBBC Company (other than shares of HB Common Stock held in trust accounts (including grantor or rabbi trust accounts), managed accounts and the like, or otherwise held in a fiduciary or agency capacity, that are beneficially owned by third parties and other than shares of HB Common Stock held, directly or indirectly, in respect of a debt previously contracted) shall be cancelled and shall cease to exist at the Effective Time without any conversion thereof, and no shares of TBBC Common Stock, cash or other consideration shall be delivered in exchange therefor.

(d) *Treatment of HB Common Stock.* Subject to Section 3.2 below, each share of HB Common Stock issued and outstanding immediately prior to the Effective Time (excluding (i) shares cancelled pursuant to Section 3.1(c) above, and (ii) shares held by stockholders who perfect their dissenters' rights of appraisal as provided in Section 3.3 below) shall cease to be outstanding and shall be converted into and exchanged for the right to receive, at the election of the holder thereof in accordance with and subject to the terms and conditions and procedures set forth in this Article 3 (including the proration procedures in Section 3.1(e)) the following consideration (the "**Per Share Merger Consideration**"), in each case without interest: (i) 0.3905 shares of TBBC Common Stock (the "**Per Share Stock Consideration**"), or (ii) \$43.00 (the "**Per Share Cash Consideration**"). A share for which a Holder has elected to receive the Per Share Stock Consideration shall be deemed to be a "**Stock Election Share**" and a share for which the Holder has elected to receive the Per Share Cash Consideration shall be considered a "**Cash Election Share**", in each case subject to the proration procedures in Section 3.1(e). The aggregate number of Stock Election Shares shall not exceed 597,150 (the "**Stock Share Maximum**") and shall not be less than 497,625 (the "**Stock Share Minimum**").

(e) *Election Proration Procedures.*

(i) The Exchange Agent shall mail an election form in such form as TBBC and HB shall mutually agree (the "**Election Form**") with or following the issuance of the Proxy Statement/Offering Circular, to each holder of record of HB Common Stock as of the record date for the HB Stockholders' Meeting. Each Election Form shall permit a holder (or the beneficial owner through appropriate and customary documentation and instructions) of HB Common Stock to elect to receive the number of shares of such holder's HB Common Stock with respect to which such holder elects to receive the Per Share Stock Consideration and the number of shares of HB Common Stock with respect to which such holder elects to receive the Per Share Cash Consideration.

(ii) Any shares of HB Common Stock with respect to which the holder shall not have submitted to the Exchange Agent an effective, properly completed Election Form prior to 5:00 p.m. Eastern Time on the day before the HB Stockholders' Meeting (or such other time and date as TBBC and HB may mutually agree) (the "**Election Deadline**") shall become Stock Election Shares subject to the proration procedure in subsection (iv) below. At the request of HB, the Exchange Agent shall provide HB with copies of all Election Forms that are submitted

by HB Stockholders and a list of any HB Stockholders who have not submitted or have revoked or amended an Election Form.

(iii) Any Election Form may be revoked or amended by the Person submitting such Election Form at or prior to the Election Deadline. In the event that an Election Form is revoked and a replacement Election Form therefor is not submitted prior to the Election Deadline, the shares of HB Common Stock represented by such Election Form shall become Stock Election Shares subject to the proration procedure in subsection (iv) below. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have reasonable discretion to determine whether any election, revocation or change has been properly or timely made and to disregard immaterial defects in the Election Forms, and any good faith decisions of the Exchange Agent regarding such matters shall be binding and conclusive. Neither TBBC nor the Exchange Agent shall be under any obligation to notify any person of any defect in an Election Form.

(iv) Within five (5) Business Days after the Election Deadline, unless the Effective Time has not yet occurred, in which case as soon thereafter as practicable, the allocation among the holders of HB Common Stock in accordance with the Election Forms shall be effected by the Exchange Agent as follows:

(A) Stock Election Shares More Than the Stock Share Maximum. If the aggregate Stock Election Shares is greater than the Stock Share Maximum, then:

(1) the Exchange Agent shall select first from among the Stock Election Shares that obtained such status because the holders thereof did not submit an effective, properly completed Election Form by the Election Deadline, by a pro rata selection process, and then, if necessary, from among the remaining Stock Election Shares, by a pro rata selection process, a sufficient number of Stock Election Shares to instead receive the Per Share Cash Consideration such that the aggregate Stock Election Shares equals as closely as practicable but is no greater than the Stock Share Maximum, and each Share of HB Common Stock that would have been a Stock Election Share but for the adjustment pursuant to this subsection (1) shall automatically be deemed to be a Cash Election Share. The pro rata selection process to be used by the Exchange Agent shall consist of such equitable proration processes as shall be mutually determined by TBBC and HB;

(2) assuming that the Merger is Consummated, each Stock Election Share remaining after adjustment pursuant to subsection (1) above shall be converted into the right to receive the Per Share Stock Consideration; and

(3) each share of HB Common Stock that would have been a Stock Election Share but for the adjustment pursuant to subsection (1) above shall automatically be deemed to be a Cash Election Share. Assuming that the Merger is consummated, each Cash Election Share shall be converted into the right to receive the Per Share Cash Consideration.

(B) Stock Election Shares Less Than the Stock Share Minimum. If the aggregate number of Stock Election Shares is less than the Stock Share Minimum, then:

(1) the Exchange Agent shall select from among the Cash Election Shares, by a pro rata selection process, a sufficient number of Cash Election Shares to

instead receive the Per Share Stock Consideration such that the aggregate Stock Election Shares equals as closely as practicable but is no less than the Stock Share Minimum, and each share of HB Common Stock that would have been a Cash Election Share but for the adjustment pursuant to this subsection (1) shall automatically be deemed to be a Stock Election Share. The pro rata selection process to be used by the Exchange Agent shall consist of such equitable proration processes as shall be mutually determined by TBBC and HB;

(2) assuming that the Merger is consummated, each Stock Election Share, including those so designated pursuant to subsection (1) above, shall be converted into the right to receive the Per Share Stock Consideration; and

(3) assuming that the Merger is consummated, each Cash Election Share remaining after the adjustment process pursuant to subsection (1) above shall be converted into the right to receive the Per Share Cash Consideration.

**3.2 Anti-Dilution Provisions.** If TBBC changes (or establishes a record date for changing) the number of, or provides for the exchange of, shares of TBBC Common Stock issued and outstanding prior to the Effective Time as a result of a stock split, reverse stock split, stock dividend, recapitalization, exchange or similar transaction with respect to the outstanding TBBC Common stock, or issues options, warrants or convertible securities with an exercise price of less than the price per share reflected in the most recent third party appraisal of the TBBC Common Stock obtained by TBBC prior to the issuance of such securities, and the record date therefor is prior to the Effective Time, then the Per Share Stock Consideration shall be proportionately adjusted as needed to preserve the relative economic benefit to the Parties provided for in Section 3.1(d).

**3.3 HB Dissenting Stockholders.** Notwithstanding Section 3.1 or anything in this Agreement to the contrary, shares of HB Common Stock that are issued and outstanding immediately prior to the Effective Time and that are held by a holder who has perfected dissenters' rights ("Dissenting Shares") in accordance with Section 658.44 of the FFIC ("Dissenter Provisions") shall not be converted into the right to receive the Per Share Merger Consideration, but instead the holder of such HB Dissenting Shares shall be entitled only to such rights of appraisal as are granted by the Dissenter Provisions, unless and until such holder fails to perfect or effectively withdraws or otherwise loses such holder's right to appraisal; provided, however, that no payment shall be made in respect of any HB Dissenting Shares unless and until the holder thereof has complied with the applicable provisions of the Dissenter Provisions and surrendered to the Surviving Bank the certificate or certificates representing the HB Dissenting Shares for which payment is to be made; provided, further, that nothing contained in this Section 3.3 shall in any way limit the right of TBBC to terminate this Agreement and abandon the Merger under Section 10.1(i). At the Effective Time, each such HB Dissenting Share shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist or be outstanding, and the holder thereof shall cease to have any right with respect thereto, except the right to appraisal in accordance with applicable Law. If any Dissenting Stockholder (as defined below) fails to perfect or effectively withdraws or loses such Dissenting Stockholder's right to appraisal, then the shares of HB Common Stock owned by such Dissenting Stockholder shall thereupon be deemed and treated as if they had, at the Effective Time, been converted into the right to receive the Per Share Cash Consideration in accordance with Section 3.1(d). HB

shall give TBBC prompt notice upon receipt by HB of any written objection to the Merger and such written demands for payment for shares of HB Common Stock under the Dissenter Provisions, and the withdrawals of such demands, and any other instruments provided to HB pursuant to the Dissenter Provisions (any stockholder duly making such demand being called a "Dissenting Stockholder"). Each Dissenting Stockholder that becomes entitled, pursuant to the Dissenter Provisions, to payment for any shares of HB Common Stock held by such Dissenting Stockholder shall receive payment therefor from TBBC or BOT (but only after the amount thereof shall have been agreed upon or at the times and in the amounts required by the Dissenter Provisions). HB shall not, except with the prior written consent of TBBC, voluntarily make any payment with respect to, or settle or offer to settle, any demand for payment by a Dissenting Stockholder.

**3.4 Fractional Shares.** Fractional shares of TBBC Common Stock shall not be issued upon the surrender of certificates representing HB Common Stock for exchange; no dividend or distribution with respect to TBBC Common Stock shall be payable on or with respect to any fractional share; and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of TBBC. In lieu of any such fractional share, TBBC shall pay to each former stockholder of HB who otherwise would be entitled to receive a fractional share of TBBC Common Stock an amount in cash (without interest) equal to the product of (i) \$43.00 multiplied by (ii) the fraction of a share of TBBC Common Stock to which such stockholder would otherwise be entitled.

#### **ARTICLE 4** **EXCHANGE OF SHARES**

**4.1 Exchange Procedures.** At or before the Effective Time, TBBC shall deposit, or shall cause to be deposited, with the Exchange Agent a sufficient amount of cash to cover the aggregate Per Share Cash Consideration payable under the terms hereof, and TBBC shall instruct the Exchange Agent to timely pay such consideration in accordance with this Agreement. Promptly (and within five (5) Business Days) after the Effective Time, TBBC shall cause the Exchange Agent to mail to the former holders of HB Common Stock appropriate transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the certificates theretofore representing shares of HB Common Stock shall pass, only upon proper delivery of such certificates to the Exchange Agent). Upon surrender of one or more certificates theretofore representing shares of HB Common Stock (each, a "HB Certificate") for exchange and cancellation to the Exchange Agent (such shares to be free and clear of all liens, claims and encumbrances), together with a properly executed letter of transmittal, the holder of such HB Certificate shall be entitled to receive promptly thereafter in exchange therefor: (a) that number of whole shares of TBBC Common Stock that such holder of HB Common Stock became entitled to receive pursuant to Article 3 hereof and (b) a check representing the aggregate cash consideration, if any, that such holder has the right to receive pursuant to the provisions of Article 3 hereof (rounded to the nearest cent), and the HB Certificate so surrendered shall forthwith be canceled. The shares of TBBC Common Stock to be issued pursuant to Article 3 and this Section 4.1 shall be in uncertificated book entry form, and upon compliance by a former holder of HB Common Stock with the provisions hereof and of the letter of transmittal, TBBC shall instruct its registrar and transfer agent to make appropriate book entries with respect to such shares of TBBC Common Stock. Such book entries of the issuance of uncertificated shares shall

constitute delivery thereof for all purposes pursuant to this Agreement. No interest will be paid or accrued on the Per Share Cash Consideration, any cash in lieu of fractional shares, or any unpaid dividends and distributions, if any, payable to former holders of HB Common Stock. None of TBBC, BOT or the Exchange Agent shall be obligated to deliver the consideration to which any former holder of HB Common Stock is entitled as a result of the Merger until such holder surrenders the HB Certificate for exchange as provided in this Section 4.1. The HB Certificate so surrendered shall be duly endorsed as the Exchange Agent may require.

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

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

**4.4 Lost or Stolen Certificates.** If any holder of HB Common Stock convertible into the right to receive shares of TBBC Common Stock or cash is unable to deliver such holder's HB Certificate, then TBBC shall instruct its registrar and transfer agent, in the absence of actual notice that any such shares have been acquired by a bona fide purchaser, to make appropriate book entries with respect to such holder for the shares of TBBC Common Stock to which the holder is entitled for such shares upon presentation of the following: (a) evidence to the reasonable satisfaction of TBBC that any such HB Certificate has been lost, wrongfully taken or destroyed; (b) such security or indemnity as may be reasonably requested by TBBC and/or the Exchange Agent to indemnify and hold TBBC and the Exchange Agent harmless; and (c) evidence reasonably satisfactory to TBBC that such Person is the owner of the shares theretofore represented by each HB Certificate claimed by the holder to be lost, wrongfully taken or destroyed and that the holder is the Person who would be entitled to present such HB Certificate for exchange pursuant to this Agreement.

**4.5 Laws of Escheat.** If any of the consideration due or other payments to be paid or delivered to the holders of HB Common Stock is not paid or delivered within the time period specified by any applicable Laws concerning abandoned property, escheat or similar Laws, and if such failure to pay or deliver such consideration occurs or arises out of the fact that such property is not claimed by the proper owner thereof, TBBC or the Exchange Agent shall be entitled (but not required) to dispose of any such consideration or other payments in accordance with applicable Laws concerning abandoned property, escheat or similar Laws. Any other provision of this Agreement notwithstanding, none of TBBC, BOT, HB, the Exchange Agent or any other Person acting on their behalf shall be liable to a holder of HB Common Stock for any amount paid or property delivered in good faith to a public official pursuant to and in accordance with any applicable abandoned property, escheat or similar Law.

**4.6 Withholding Rights.** Notwithstanding any provision contained herein to the contrary, each of the Exchange Agent, HB, TBBC, BOT and the Surviving Bank shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of Tax Law. If the Exchange Agent, HB, TBBC, BOT or the Surviving Bank, as the case may be, so withholds and timely remits such amounts to the appropriate Governmental Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person entitled to such payment under this Agreement in respect of which the Exchange Agent, HB, TBBC, BOT or the Surviving Corporation, as the case may be, made such deduction and withholding.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF HB**

HB hereby represents and warrants to TBBC as follows:

**5.1 Organization, Standing and Power.** HB is a banking corporation duly organized, validly existing and in good standing under the Laws of the State of Florida, and has the corporate power and authority to carry on its business as now conducted and to own, lease and operate its Assets and to incur its Liabilities. HB is duly qualified or licensed to transact business as a foreign corporation in good standing in the states of the United States and foreign

jurisdictions where the character of its Assets or the nature or conduct of its business requires it to be so qualified or licensed, except for such jurisdictions in which the failure to be so qualified or licensed is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on HB. HB has delivered to TBBC complete and correct copies of its Articles of Incorporation and Bylaws and the articles or certificate of incorporation, bylaws or similar governing instruments of each of its Subsidiaries, in each case as amended through the date hereof.

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

(a) HB has the corporate power and authority necessary to execute and deliver this Agreement and to perform its obligations hereunder, and to consummate the transactions provided for herein. The execution, delivery and performance of this Agreement and the consummation of the transactions provided for herein, including the Merger, have been duly and validly authorized by all necessary corporate action on the part of HB, subject to the approval of this Agreement and the Merger by the holders of a majority of the outstanding shares of HB Common Stock in accordance with the FFIC. Subject to such requisite stockholder approval and required regulatory Consents, this Agreement constitutes a legal, valid and binding obligation of HB, enforceable against HB in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar Laws of general applicability affecting creditors' rights or by general principles of equity.

(b) Except as set forth on Schedule 5.2(b), neither the execution and delivery of this Agreement by HB nor the consummation by HB of the transactions provided for in this Agreement, nor compliance by HB with any of the provisions hereof, does or will (i) conflict with or result in a breach of any provision of HB's Articles of Incorporation or Bylaws or the articles or certificates of incorporation or bylaws or similar governing documents of any HB Company or (ii) constitute or result in a Default under, or require any Consent pursuant to, or result in the creation of any Lien on any Asset of any HB Company under, any Contract or Permit of any HB Company, where such Default or failure to obtain such Consent is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on such HB Company, or, (iii) subject to receipt of the requisite Consents and approvals of Regulatory Authorities referred to in this Agreement, violate or conflict with any Law or Order applicable to any HB Company or any of their respective Assets.

(c) Except as set forth on Schedule 5.2(c), other than (i) in connection or compliance with the provisions of the Securities Laws and applicable state corporate and securities Laws, (ii) Consents required from Regulatory Authorities, (iii) the approval by the stockholders of HB of this Agreement and the Merger, (iv) notices to or filings with the Internal Revenue Service or the Pension Benefit Guaranty Corporation with respect to any employee benefit plans, and (v) Consents, filings or notifications that, if not obtained or made, are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on any relevant HB Company, no notice to, filing with or Consent of any Person or public body or authority is necessary for the consummation by HB of the Merger and the other transactions provided for in this Agreement. No Consents or approvals of or filings or registrations with any Regulatory Authorities are necessary in connection with the execution and delivery by HB of this Agreement (as distinct

from the consummation of the transactions contemplated by this Agreement), other than notices to be sent by HB to the FDIC and the OFR.

### **5.3 Capitalization.**

(a) The authorized capital stock of HB consists of 1,000,000 shares of HB Common Stock, of which 663,500 shares of HB Common Stock are issued and outstanding (none of which is held in the treasury of HB). All of the issued and outstanding shares of capital stock of HB are duly authorized and validly issued and outstanding and are fully paid and nonassessable. None of the shares of capital stock, options or other securities of HB has been issued in violation of the Securities Laws or any preemptive rights of the current or past stockholders of HB or is subject to a right of rescission in favor of the holder thereof. None of the holders of any issued or outstanding bonds, debentures, notes or other instruments evidencing Indebtedness issued by HB have any right to vote on any matters on which the holders of HB Common Stock may vote. HB does not have and is not bound by any outstanding subscriptions, options, warrants, calls, rights, contracts, commitments, agreements or arrangements of any kind calling for the purchase or issuance of, or the payment of any amount based on, any shares of HB Common Stock or any other equity securities of HB or any securities representing the right to purchase or otherwise receive any shares of HB Common Stock or other equity securities of HB. HB has no Liability for dividends declared or accrued, but unpaid, with respect to any shares of its capital stock.

(b) Immediately prior to the Effective Time, the total number of shares of HB Common Stock outstanding shall not exceed 663,500 in the aggregate, and all of such shares shall be outstanding by reason of constituting shares of HB Common Stock issued and outstanding as of the date of this Agreement.

(c) There are no contractual obligations of HB (i) to repurchase, redeem or otherwise acquire any shares of capital stock or other equity security of HB, or any securities representing the right to purchase or otherwise receive any shares of capital stock or other equity security of HB or (ii) pursuant to which HB is or could be required to register shares of HB capital stock or other securities under the 1933 Act.

### **5.4 HB Subsidiaries.** HB has no Subsidiaries, and there are no HB Subsidiaries.

**5.5 Financial Statements.** The HB Financial Statements for periods ended prior to the date hereof are listed on Schedule 5.5 and have been previously furnished to TBBC. The balance sheet as of December 31, 2020 included in the HB Financial Statements is referred as the HB Reference Balance Sheet. The HB Call Reports for periods ended prior to the date hereof have been filed with the FDIC and are available electronically at <https://cd.fffec.gov>. HB will promptly deliver to TBBC copies of all HB Financial Statements and HB Call Reports prepared subsequent to the date hereof. The HB Financial Statements (as of the dates thereof and for the periods covered thereby) (a) are or, if dated after the date of this Agreement, will be in accordance with the books and records of the HB Companies, which are or will be, as the case may be, complete and correct and which have been or will have been, as the case may be, maintained in accordance with good business practices and in accordance with applicable legal and accounting principles and reflect only actual transactions, (b) present or will present, as the case may be, fairly in all material respects the financial position of the HB Companies as of the



dates indicated and the results of operations, changes in stockholders' equity and cash flows of the HB Companies for the periods indicated, and (c) have been or will have been, as the case may be, prepared in all material respects in accordance with GAAP, which principles have been consistently applied during the period involved (subject to exceptions specified therein or as may be indicated in the notes thereto or, in the case of interim financial statements, to the absence of footnotes and normal recurring year-end audit adjustments that are not material). The HB Call Reports have been prepared in material compliance with (i) the rules and regulations of the respective federal or state banking regulator with which they were filed, and (ii) RAP, which principles have been consistently applied during the periods involved, except as otherwise required by any applicable regulations or as noted therein. Each HB Call Report fairly presents, in all material respects, the financial position of HB and the results of its operations at the date and for the period indicated in such HB Call Report in conformity with the Instructions for the Preparation of Call Reports as promulgated by applicable regulatory authorities. None of the HB Call Reports contains any material items of special or nonrecurring income or any other income not earned in the ordinary course of business, except as expressly specified therein.

#### **5.6 Absence of Undisclosed Liabilities and Indebtedness.**

(a) Except as disclosed on Schedule 5.6, no HB Company has any Liabilities, except Liabilities (a) accrued or reserved against in the HB Reference Balance Sheet, or reflected in the notes thereto, (b) incurred or paid in the ordinary course of business consistent with past business practice, (c) incurred or paid pursuant to and in accordance with the terms and conditions of this Agreement, or (d) that would not reasonably be expected to be, individually or in the aggregate, material to the HB Companies, taken as a whole.

(b) Except for liabilities (a) reflected or reserved against in the Reference Balance Sheet (or the notes thereto, as applicable); (b) incurred in the ordinary course of business since the Reference Balance Sheet Date; or (c) that would not reasonably be expected to be, individually or in the aggregate, material to the HB Companies, taken as a whole, none of the HB Companies has incurred any liabilities or obligations of any nature from and after the Reference Balance Sheet Date through the Effective Date, which, if known, would be required to be reflected on or reserved against or disclosed in the notes to an audited consolidated balance sheet of such Company prepared in accordance with GAAP, consistently applied.

(c) Schedule 5.6 describes all Indebtedness of the HB Companies as of the date of this Agreement in excess of \$100,000 and any Liens relating thereto and sets forth the principal amounts, interest rates and maturity dates for such Indebtedness.

**5.7 Absence of Certain Changes or Events.** Except as set forth on Schedule 5.7, since December 31, 2020: (a) there have been no events, changes or occurrences that have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on HB or its Subsidiaries, including, without limitation, any change in the administrative or supervisory standing or rating of HB with any Regulatory Authority, and (b) the HB Companies have not taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the covenants or agreements of HB provided in Article 7 of this Agreement.

5.8 Tax Matters.

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

(b) None of the HB Companies has executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax due (excluding such statutes that relate to years currently under examination by the Internal Revenue Service or other applicable taxing authorities) that is currently in effect.

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

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

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

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

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

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

(i) HB has delivered or made available to TBBC correct and complete copies of all Tax Returns filed by HB and each HB Subsidiary for each fiscal year ended on or after December 31, 2016.

(j) None of the HB Companies has (i) participated in any reportable transaction within the meaning of Treasury Regulation Section 1.6011-4(b) (or any similar provision of state, local or foreign tax law) or (ii) taken any reporting position on a Tax return, which reporting position (1) if not sustained would be reasonably likely, absent disclosure, to give rise to a penalty for substantial understatement of federal income tax under Section 6662 or 6676 of the IRC (or any similar provision of state, local or foreign tax law) and (2) has not adequately been disclosed on such Tax Return in accordance with Section 6662(d)(2)(B) of the IRC (or similar provision of state, local or foreign tax Law).

(k) None of the HB Companies has constituted a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the IRC) in a distribution of shares qualifying for tax-free treatment under Section 355 of the IRC (i) in the two years prior to the date hereof or (ii) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(c) of the IRC) in conjunction with the Merger.

(l) No HB Company has taken any action, and no HB Company has any Knowledge of any fact or circumstance, that is reasonably likely to prevent the transactions provided for herein, including the Merger, from qualifying as a reorganization within the meaning of Section 368(a) of the IRC.

#### 5.9 Loan Portfolio.

(a) (i) Except as set forth on Schedule 5.9(a)(i), none of the HB Companies is a creditor as to any written or oral loan agreement, note or borrowing arrangement, including, without limitation, leases, credit enhancements, commitments and interest-bearing Assets (excluding investment securities) ("Loans"), other than Loans the unpaid principal balance of which does not exceed \$25,000 per Loan or \$50,000 in the aggregate, under the terms of which the obligor is, as of the date of this Agreement, over 90 days delinquent in payment of principal or interest or in default of any other material provisions.

(ii) Except as set forth on Schedule 5.9(a)(ii), none of the HB Companies is a creditor as to any Loan, including, without limitation, any loan guaranty, to any director, executive officer or 5% stockholder thereof, or to the Knowledge of any HB Company, any Person controlling, controlled by or under common control with any of the foregoing.

(iii) All of the Loans held by any of the HB Companies are in all respects the binding obligations of the respective obligors named therein in accordance with their respective terms and are not subject to any defenses, setoffs or counterclaims, except for de minimus defenses, setoffs or counterclaims, or as may be provided by bankruptcy, insolvency or similar Laws or by general principles of equity. All Loans made by any of the HB Companies were solicited, originated and exist in compliance in all material respects with applicable Laws and HB loan policies, except for deviations from such policies that (a) have been approved by current

management of HB, in the case of Loans with an outstanding principal balance that exceeds \$25,000, or (b) in the judgment of HB, are not expected to adversely affect the ultimate collectability of such Loan.

(iv) Except as set forth on Schedule 5.9(a)(iv), as of the date of this Agreement, none of the HB Companies holds any Classified Loans in the original principal amount in excess of \$25,000 per Loan or \$50,000 in the aggregate.

(v) The allowance for possible loan or credit losses (the "HB Allowance") shown on the HB Reference Balance Sheet, was, and the HB Allowance shown on the balance sheets of HB included in the HB Financial Statements as of dates subsequent to the execution of this Agreement will be, as of the applicable dates thereof, in compliance with HB's existing methodology for determining the adequacy of its allowance for loan and lease losses as well as the standards established by applicable Governmental Authorities. HB has calculated the HB Allowance in accordance with RAP as applied to banking institutions and in accordance with all applicable rules and regulations.

(b) (i) The reserve for losses with respect to other real estate owned (the "HB OREO Reserve") shown on the most recent HB Financial Statements and HB Call Reports was, and the HB OREO Reserve shown on the HB Financial Statements and HB Call Reports as of any date subsequent to the execution of this Agreement will be, as of the applicable dates thereof, in compliance with HB's existing methodology for determining the adequacy of its allowance for loan and lease losses as well as the standards established by applicable Governmental Authorities.

(ii) The reserve for losses in respect of Litigation (the "HB Litigation Reserve") shown on the most recent HB Financial Statements and HB Call Reports was, and the HB Litigation Reserve shown on the HB Financial Statements and HB Call Reports as of any date subsequent to the execution of this Agreement will be as of the applicable dates thereof, adequate (within the meaning of GAAP and applicable regulatory requirements or guidelines) to provide for losses relating to or arising out of all pending or threatened Litigation applicable to HB and the HB Subsidiaries as of the dates thereof. Each such reserve described above has been established in accordance with applicable accounting principles and regulatory requirements and guidelines.

(c) The documentation relating to each outstanding Loan made by any HB Company and to all security interests, mortgages and other liens with respect to all collateral for outstanding Loans is adequate for the enforcement of the material terms of such Loan, security interest, mortgage or other lien, except for inadequacies in such documentation that will not, individually or in the aggregate, have a Material Adverse Effect on HB. Except as set forth on Schedule 5.9(c), no agreement pursuant to which any Loans or other Assets have been or shall be sold by any HB Company entitles the buyer of such Loans or other Assets to cause the HB Company to repurchase such Loan or other Asset or the buyer to pursue any other form of recourse against the HB Company, except in the event of a breach by the HB Company of representations or warranties therein. No HB Company has Knowledge of a breach of a representation or warranty by any of the HB Companies in any such agreement or of the occurrence of any other facts or circumstances that would entitle the buyer of any Loan or other

Asset to cause any HB Company to repurchase such Loan or other Asset or the buyer to pursue any other form of recourse against any HB Company.

(d) All Loans made by any HB Company have been made in compliance in all material respects with all applicable Laws at the time of such Loan or any renewal thereof, including, without limitation, Regulation Z, the Federal Consumer Credit Protection Act, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act, the Home Mortgage Disclosure Act, and all Laws governing the operation of Florida-chartered banks. Each HB Company has systems, policies and procedures in place such that any material violation of any of the foregoing would reasonably be expected to have been detected by such HB Company. Each Loan on the books of any HB Company was made in the ordinary course of its business.

(e) Without limiting the foregoing or anything else in this Agreement:

(i) Each HB Company has complied with, and all documentation in connection with the origination, processing, underwriting and credit approval of any mortgage or other Loan originated, purchased or serviced by any HB Company has satisfied, in all material respects: (A) all applicable Laws with respect to the origination, insuring, purchase, sale, pooling, servicing, subservicing, or filing of claims in connection with mortgage and other Loans, including all Laws relating to real estate settlement procedures, consumer credit protection, truth in lending, usury limitations, fair housing, transfers of servicing, collection practices, equal credit opportunity and adjustable rate mortgages; (B) the responsibilities and obligations set forth in any agreement between any HB Company and any Agency, Loan Investor or Insurer; (C) the applicable rules, regulations, guidelines, handbooks and other requirements of any Agency, Loan Investor or Insurer; and (D) the terms and provisions of any mortgage or other collateral documents and other Loan documents with respect to each such Loan. Each HB Company has systems, policies and procedures in place such that any material violation of any of the foregoing would reasonably be expected to have been detected by such HB Company; and

(ii) No Agency, Loan Investor or Insurer has (A) claimed in writing that any HB Company has violated or has not complied with the applicable underwriting standards with respect to Loans sold by any HB Company to a Loan Investor or Agency, or with respect to any sale of servicing rights to a Loan Investor, (B) imposed in writing restrictions on the activities (including commitment authority) of any HB Company or (C) indicated in writing to any HB Company that it has terminated or intends to terminate its relationship with such HB Company for poor performance, poor loan quality or concern with respect to such HB Company's compliance with Laws.

**5.10 Assets; Real Property; Insurance.** Except as set forth on Schedule 5.10, the HB Companies have marketable title to, valid leasehold interests in, or valid licenses to use all of their respective Assets, free and clear of all Liens (other than any Liens disclosed on Schedule 5.6). All tangible real and personal properties and Assets used in the businesses of the HB Companies are in operating condition, reasonable wear and tear excepted, and are usable in the ordinary course of business consistent with HB's past practices. All Assets that are material to HB's business, held under leases or subleases by any of the HB Companies, are held under valid Contracts enforceable in accordance with their respective terms (except as enforceability may be

limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceedings may be brought), and each such Contract is in full force and effect and there is not under any such Contract any Default or claim of Default by HB or, to the Knowledge of each HB Company, by any other party to the Contract. Schedule 5.10(a) identifies each parcel of real estate or interest therein owned by any of the HB Companies or in which any HB Company has any ownership interest. Schedule 5.10(b) identifies each parcel of real estate or interest therein leased or subleased by any of the HB Companies or in which any HB Company has any leasehold interest. If applicable, Schedule 5.10(b) also lists or otherwise describes each and every written or oral lease or sublease under which any HB Company is the lessee of any real property. One of the HB Companies has good and marketable fee simple title to the real property described in Schedule 5.10(a) and has an enforceable leasehold interest in the real property described in Schedule 5.10(b), free and clear of all Liens (except as otherwise disclosed on Schedule 5.6). None of the HB Companies has violated, or is currently in violation of, any Law, regulation or ordinance relating to the ownership or use of the real estate and real estate interests described or required to be described in Schedules 5.10(a) and 5.10(b), including, without limitation, any Law relating to zoning, building, occupancy, environmental or comparable matters, which individually or in the aggregate would have a Material Adverse Effect on HB. As to each parcel of real property owned or used by any HB Company, no HB Company has received notice of any pending or, to the Knowledge of each of the HB Companies, threatened condemnation proceedings, Litigation proceedings or mechanic's or materialmen's liens. The Assets of the HB Companies include all Assets required to operate the business of the HB Companies as now conducted. The policies of fire, theft, liability, D&O and other insurance maintained with respect to the Assets or businesses of the HB Companies provide adequate coverage under current industry practices against loss or Liability, and the fidelity and blanket bonds in effect as to which any of the HB Companies is a named insured are reasonably sufficient. Schedule 5.10(c) contains a list of all such policies and bonds maintained by any of the HB Companies, and HB has provided true and correct copies of each such policy to TBBC. Except as set forth on Schedule 5.10(c), no claims have been made under such policies or bonds, and HB has no Knowledge of any fact or condition presently existing that might form the basis of any such claim.

#### **5.11 Environmental Matters.**

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

(b) There is no Litigation pending or, to the Knowledge of any HB Company, threatened before any court, Governmental Authority or agency, board or other forum in which any HB Company or any of its Participation Facilities has been or, with respect to threatened Litigation, may be named as a defendant (i) for alleged noncompliance (including by any predecessor) with any Environmental Law or (ii) relating to the release into the environment of any Hazardous Material or oil, whether or not occurring at, on, under or involving a site owned, leased or operated by any HB Company or any of its Participation Facilities, except for such

Litigation pending or threatened that is not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on HB.

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

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

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

**5.12 Compliance with Laws.** Each HB Company has in effect all Permits necessary for it to own, lease or operate its Assets and to carry on its business as now conducted, except for those Permits the absence of which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on HB, and there has occurred no material Default by any HB Company under any such Permit. Except as set forth on Schedule 5.12, each of the HB Companies:

(a) is, and since December 31, 2018 has been, in compliance in all material respects with all Laws, Orders and Permits applicable to its business or employees, agents or representatives conducting its business; and

(b) since December 31, 2018, has received no notification or communication from any Governmental Authority or any Regulatory Authority or the staff thereof (i) asserting that any HB Company is not or may not be in compliance with any of the Laws or Orders that such Governmental Authority or Regulatory Authority enforces, (ii) threatening to revoke any material Permit, (iii) requiring any HB Company, or suggesting that any HB Company will or may be required, to enter into or consent to the issuance of a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or to adopt any board resolution or

similar undertaking, or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit in any manner the operations of any HB Company, including, without limitation, any restrictions on the payment of dividends, or that in any manner relates to such entity's capital adequacy, credit or reserve policies or management or business.

Without limiting the foregoing, since December 31, 2018, (i) each HB Company is and has been in compliance in all material respects with the United States Foreign Corrupt Practices Act; the International Money Laundering Abatement and Anti-Terrorist Financing Act, otherwise known as Title III of the USA PATRIOT Act; the Currency and Foreign Transactions Reporting Act of 1970, as amended, otherwise known as the Bank Secrecy Act, and all regulations issued thereunder; (ii) each HB Company has properly certified all foreign deposit accounts and has made all necessary tax withholdings on all of its deposit accounts, (iii) each HB Company has timely and properly filed and maintained all requisite Currency Transaction Reports and other related forms, including any requisite custom reports required by any agency of the United States Department of the Treasury, including the Internal Revenue Service, (iv) no HB Company or, to the Knowledge of any HB Company, any director, officer, agent, employee, Affiliate or Person acting on behalf of any HB Company is currently subject to any sanctions administered by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC"), (v) no HB Company or, to the Knowledge of HB, any of its Affiliates does business with the government of, or any Person located in, any country, or with any other Person, targeted by any of the economic sanctions of OFAC or any other Regulatory Authority, (vi) no HB Company is controlled (within the meaning of Laws administered by OFAC) by any such government or Person, (vii) each HB Company has timely filed all Suspicious Activity Reports with the Financial Crimes Enforcement Network (of the United States Department of the Treasury) required to be filed by it under applicable Law, or (viii) each HB Company has systems, policies and procedures in place such that any material violation of any of the foregoing would reasonably be expected to have been detected by such HB Company.

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

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

(b) Schedule 5.13(b) contains a true and complete list showing the names and current annual salaries of all current executive officers of each of the HB Companies and lists for each such person the amounts paid, payable or expected to be paid as salary, bonus payments and other compensation for 2020 and 2021. Schedule 5.13(b) also sets forth the name and offices held by each officer and director of each of the HB Companies.



#### 5.14 Employee Benefit Plans.

(a) Schedule 5.14(a) lists, and HB has delivered or made available to TBBC prior to the execution of this Agreement, correct and complete information with respect to and copies of all pension, retirement, profit-sharing, employee stock ownership, salary continuation, deferred compensation and split dollar policies, plans and agreements; all director deferral and director retirement policies, plans and agreements; all equity-based policies, plans and agreements relating to grants of stock options, warrants, restricted stock, restricted stock units or other equity awards; all policies, plans and agreements relating to severance pay, vacation and paid-time-off; all cash or equity-based bonus plans and any other incentive plans; all other written or unwritten employee programs, arrangements or agreements; all medical, vision, dental or other health plans, all life insurance plans, and all other employee benefit plans or fringe benefit plans, including, without limitation, "employee benefit plans," as defined in Section 3(3) of ERISA (whether or not subject to ERISA), adopted, maintained by, sponsored in whole or in part by, or contributed to by any HB Company or any ERISA Affiliate thereof within the last six (6) years for the benefit of employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries (collectively, the "**HB Benefit Plans**"). HB also has delivered or made available to TBBC prior to the execution of this Agreement correct and complete copies of (where applicable) the following with respect to each of the HB Benefit Plans: (i) all summary plan descriptions, summaries of material modifications, and amendments; (ii) the most recent determination or opinion letters, as applicable, received from the Internal Revenue Service; (iii) the three (3) most recent Form 5500 Annual Reports; (iv) the three (3) most recent audited financial statements and actuarial valuations; (v) all material related agreements, trust agreements, insurance contracts and other documents that implement or impact the HB Benefit Plan; and (vi) any notices to or from the Internal Revenue Service, any office or representative of the Department of Labor or any other Governmental Authority relating to any compliance issues, in respect of any HB Benefit Plan. Any HB Benefit Plan that is an "employee pension benefit plan," as defined in Section 3(2) of ERISA, is referred to herein as a "**HB ERISA Plan**." No HB Benefit Plan is or has been a "defined benefit plan" (as defined in Section 414(j) of the IRC) or a "multi-employer plan" (as defined in Section 3(37) of ERISA), a multiple employer plan (as defined in Section 3(40) of ERISA) or Section 413(c) of the IRC, or a multiple employer welfare arrangement (as defined in Section 3(40)(A) of ERISA), and no ERISA Affiliate of any HB Company maintains, sponsors or contributes to, or has ever maintained, sponsored or contributed to, any such employee benefit plan, and no basis for anticipating any such action, suit, arbitration, claim, investigation or audit exists.

(b) All HB Benefit Plans and the administration thereof are in, and have been in, compliance with the applicable terms of ERISA, the IRC and any other applicable Laws, except for instances of non-compliance that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on HB. Each HB ERISA Plan that is intended to be qualified under Section 401(a) of the IRC and each corresponding trust exempt under Section 501(a) of the IRC has received a favorable determination letter or may rely upon an opinion letter issued to the sponsor of a prototype or volume submitter arrangement, as applicable, from the Internal Revenue Service, and HB is not aware of any circumstances that could result in revocation of any such favorable determination letter/opinion letter. No transaction has been entered into with respect to any HB Benefit Plan that, assuming the taxable period of such transaction expired as of the date hereof, would subject any HB Company to a tax or penalty

imposed by either Section 4975 of the IRC or Section 502(i) of ERISA in amounts that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on HB. There are no actions, suits, arbitrations or claims, including any investigations or audits by the Internal Revenue Service or any other Governmental Authority pending (other than routine claims for benefits) or, to the Knowledge of the HB Companies, threatened against any HB Benefit Plan, any HB Company or any ERISA Affiliate with regard to any HB Benefit Plan, any trust that is a part of any HB Benefit Plan, or any trustee, fiduciary, custodian, administrator or other Person holding or controlling Assets of any HB Benefit Plan.

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

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

(e) Each contract, arrangement, plan, or HB Benefit Plan that is a "nonqualified deferred compensation plan" (as defined for purposes of Section 409A(d)(1) of the IRC) has been maintained and is, in form and operation, in compliance with Section 409A of the IRC and the applicable guidance issued thereunder. No amounts under any such contract, arrangement, plan, or HB Benefit Plan are or have been subject to the interest or additional tax set forth under Section 409A(a)(1)(B) of the IRC. Except as set forth on Schedule 5.14(c), no HB Company or, to the Knowledge of HB, any of their Affiliates has any obligation to gross-up or indemnify any Person with respect to any Taxes imposed under Section 409A of the IRC.

(f) (i) Each HB Benefit Plan that is a "group health plan" (within the meaning of Section 5000(b)(1) of the IRC) has been operated in compliance in all material respects with all Laws applicable to such plan (including the Patient Protection and Affordable Care Act of 2010), its terms, and with the group health plan continuation coverage requirements of Section 4980B of the IRC and Sections 601 through 608 of ERISA ("COBRA Coverage"), Section 4980D of the IRC and Sections 701 through 707 of ERISA, Title XXII of the Public Health Service Act and the provisions of the Social Security Act, to the extent that such requirements are applicable. No HB Benefit Plan or written or oral agreement exists that obligates the HB Companies or any ERISA Affiliate to provide health care coverage, medical, surgical, hospitalization, death or similar benefits (whether or not insured) to any employee, former employee or member of the

HB Board or any ERISA Affiliate following such employee's, former employee's or director's termination of employment or service to HB, including, but not limited to, retiree medical, health or life benefits, other than as required under COBRA Coverage or other similar applicable Law.

(ii) Except as set forth on Schedule 5.14(f)(ii), no HB Benefit Plan, excluding any short-term disability, non-qualified deferred compensation, vacation, bonus, fringe benefit or health flexible spending account plan or program, is self-insured or funded through the general Assets of a HB Company or an ERISA Affiliate. No HB Benefit Plan that is an employee welfare benefit plan under Section 3(1) of ERISA is funded by a trust or is subject to Section 419 or 419A of the IRC.

**5.15 Material Contracts.** Except as set forth on Schedule 5.15, none of the HB Companies is a party to, or is bound by, or receives benefits under, any of the following (whether written or oral, express or implied): (a) any employment, severance, termination, consulting or retirement Contract with any Person, other than oral "at-will" employment agreements with employees; (b) any Contract relating to the borrowing of money by any HB Company or the guarantee by any HB Company of any such obligation (other than Contracts evidencing deposit Liabilities, purchases of federal funds, fully secured repurchase agreements, trade payables and Contracts relating to borrowings or guarantees made and letters of credit); (c) any Contract relating to indemnification or defense of any director, officer or employee of any of the HB Companies or any other Person; (d) any Contract with any labor union; (e) any Contract relating to the disposition or acquisition of any interest in any business enterprise; (f) any Contract relating to the extension of credit to, provision of services for, sale, lease or license of Assets to, engagement of services from, or purchase, lease or license of Assets from, any director or officer of any of the HB Companies, or, to the Knowledge of the HB Companies, any 5% shareholder or any member of the immediate family of the foregoing or any related interest (as defined in Regulation O promulgated by the Federal Reserve) ("**Related Interest**") of any of the foregoing; (g) any Contract that limits the freedom of any of the HB Companies to compete in any line of business or with any Person or that limits the freedom of any other Person to compete in any line of business with any HB Company; (h) any Contract providing a power of attorney or similar authorization given by any of the HB Companies, except as issued in the ordinary course of business with respect to routine matters; or (i) any Contract (other than deposit agreements and certificates of deposit issued to customers entered into in the ordinary course of business and letters of credit) that involves the payment by any of the HB Companies of amounts aggregating \$50,000 or more in any twelve-month period (together with all Contracts referred to in Sections 5.10 and 5.14(a) of this Agreement, the "**HB Material Contracts**"). HB has delivered or made available to TBBC correct and complete copies of all HB Material Contracts. Each of the HB Material Contracts is in full force and effect, and none of the HB Companies is in Default under any HB Material Contract. All of the Indebtedness of any HB Company for money borrowed is prepayable at any time by such HB Company without penalty or premium. Schedule 5.15 lists the deadlines for extensions or terminations of all of the HB Material Contracts.

**5.16 Legal Proceedings.** Except as set forth on Schedule 5.16, there is no Litigation instituted or pending, or, to the Knowledge of any HB Company, threatened against any HB Company, or against any Asset, interest, or right of any of them, other than any immaterial, ordinary routine Litigation incidental to the business of HB and its Subsidiaries, nor are there any Orders of any Governmental Authorities, Regulatory Authorities or arbitrators outstanding,

pending or, to the Knowledge of any HB Company, threatened against any HB Company. No HB Company has any Knowledge of any fact or condition presently existing that might give rise to any Order, Litigation, investigation or proceedings that, if determined adversely to any HB Company, would have a Material Adverse Effect on HB or would materially restrict the right of any HB Company to carry on its businesses as presently conducted.

**5.17 Reports.** Since December 31, 2020, each HB Company has timely filed all reports, registration statements, statements and other documents, together with any amendments required to be made with respect thereto, that it was required to file with any Regulatory Authorities, and any applicable state securities or banking authorities and all other material reports and statements required to be filed by it, and has paid all fees and assessments due and payable in connection therewith. Except for normal examinations conducted by Regulatory Authorities in the ordinary course of the business of the HB Companies, to the Knowledge of any HB Company, no Regulatory Authority has initiated any proceeding or, to the Knowledge of any HB Company, investigation into the business or operations of any HB Company. There is no unresolved violation, criticism or exception by any Regulatory Authority with respect to any report or statement or lien or any examinations of any HB Company. As of their respective dates, each of such reports, registrations, statements and documents, including the financial statements, exhibits, and schedules thereto, complied in all material respects with all applicable Laws, including, without limitation, all Securities Laws. As of its respective date, each of such reports, registrations, statements and documents did not, in any material respect, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. The financial information and reports contained in each of such reports, registrations, statements and documents (including the related notes, where applicable), (i) have been prepared in all material respects in accordance with GAAP or RAP, as applicable, which principles have been consistently applied during the periods involved, except as otherwise noted therein, (ii) fairly present the financial position of the HB Companies as of the respective dates thereof, and (iii) fairly present the results of operations of the HB Companies for the respective periods set forth therein. No HB Company is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract or arrangement (including any contract or arrangement relating to any transaction or relationship between or among HB and any other HB Company, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any "off-balance sheet arrangement"), where the result, purpose or intended effect of such contract or arrangement is to avoid disclosure of any material transaction involving, or material Liabilities of, HB or any other HB Company in HB's or such other HB Company's financial statements.

**5.18 Statements True and Correct.** Neither this Agreement nor any certificate, instrument or other writing furnished or to be furnished by any HB Company to TBBC pursuant to this Agreement, including the Exhibits and Schedules hereto, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by any HB Company for inclusion in the documents to be prepared by TBBC in connection with the transactions provided for in this Agreement, including, without limitation: (a) the proxy statement-offering circular and

all amendments and supplements thereto, to be mailed to the holders of HB Common Stock in accordance with the provisions of this Agreement (as amended and supplemented from time to time, the "Proxy Statement-Offering Circular"); (b) filings pursuant to any state securities Laws; and (c) filings made in connection with the obtaining of Consents from Regulatory Authorities, in the case of the Proxy Statement-Offering Circular, at the time of the mailing thereof, and at the time of the meeting of the HB stockholders to which the Proxy Statement-Offering Circular relates, and in the case of any other documents, at the time at which such documents are filed with a Regulatory Authority and/or at the time at which they are distributed to stockholders of HB, contains or will contain any untrue statement of a material fact or fails to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. All documents that any HB Company is responsible for filing with any Regulatory Authority in connection with the transactions provided for herein will comply as to form in all material respects with the provisions of applicable Law.

**5.19 Regulatory Approvals.** No HB Company has taken any action and no HB Company has any Knowledge of any fact or circumstance that is reasonably likely to materially impede or delay receipt of any Consents of Regulatory Authorities referred to in Section 9.1(b) of this Agreement or result in the imposition of a condition or restriction of the type referred to in the last sentence of such Section 9.1(b).

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

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

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

Companies has taken reasonable precautions to safeguard its trade secrets from disclosure to third parties.

**5.23 Activities.** Since December 31, 2018, none of the HB Companies is engaged in any activity that is not permissible for a Florida banking corporation. Neither HB nor any of its Subsidiaries is authorized to act, or has acted or currently acts, in any fiduciary capacity.

**5.24 Financial Advisor.** HB has retained Hovde Group, LLC (the "HB Financial Advisor") to serve as its financial advisor and, as of the Effective Time, shall incur a Liability to the HB Financial Advisor in the amount set forth on Schedule 5.24 (the "HB Advisory Fee") in connection with the Merger. Other than the HB Financial Advisor and the HB Advisory Fee, neither HB nor any of its Subsidiaries nor any of their respective officers or directors has employed any broker or finder or incurred any Liability for any broker's fees, commissions or finder's fees in connection with any of the transactions provided for in this Agreement. Before the execution of this Agreement, HB has received a written opinion from the HB Financial Advisor to the effect that, as of the date thereof and based upon and subject to the matters set forth therein, the aggregate Per Share Merger Consideration is fair, from a financial point of view, to the stockholders of HB, and such opinion has not been withdrawn, amended, waived, modified or rescinded.

**5.25 Regulatory Capital.** HB is "well capitalized" (as defined in 12 C.F.R. Part 225.2(r)), "well managed" (as defined in 12 C.F.R. Part 225.2(s)) and is an "eligible depository institution" (as defined in 12 C.F.R. Part 303.2(r)).

**5.26 Tax Opinion.** No HB Company has Knowledge of any facts that would preclude issuance of the tax opinion referred to in Section 9.1(e).

**5.27 Repurchase Agreements; Derivatives; Securitizations.** With respect to all agreements currently outstanding pursuant to which any HB Company has purchased securities subject to an agreement to resell, such HB Company has a valid, perfected first lien or security interest in the securities or other collateral securing such agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby. With respect to all agreements currently outstanding pursuant to which any HB Company has sold securities subject to an agreement to repurchase, no HB Company pledged collateral in excess of the amount of the debt secured thereby. No HB Company pledged collateral in excess of the amount required under any interest rate swap or other similar agreement currently outstanding. All interest rate swaps, caps, floors and option agreements and other interest rate risk management arrangements, whether entered into for the account of any HB Company or for the account of a customer of any HB Company, were entered into in the ordinary course of business and in accordance with prudent banking practice and applicable rules, regulations and policies of any regulatory authority and with counterparties believed to be financially responsible at the time and are legal, valid and binding obligations of such HB Company, enforceable according to their terms. Each HB Company has duly performed in all material respects all of its obligations under such arrangements to the extent that such obligations to perform have accrued, and there are no material breaches, violations or defaults or allegations or assertions of such by any party thereunder. No HB Company is a party to any agreement securitizing any of its Assets.

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**5.28 Antitakeover Provisions.** Each HB Company has taken all actions required to exempt such HB Company, this Agreement and the Merger from any provisions of an anti-takeover nature contained in their organizational documents or the provisions of any federal or state "anti-takeover," "fair price," "moratorium," "control share acquisition" or similar Laws or regulations (collectively, "**Takeover Laws**"). Each HB Company has taken all action so that the entering into of this Agreement and the consummation of the Merger and the other transactions contemplated by this Agreement do not and will not result in the grant of any rights to any Person under the articles of incorporation, bylaws, or other governing instruments of any HB Company or restrict or impair the ability of TBBC or any of its Subsidiaries to vote, or otherwise to exercise the rights of a stockholder with respect to, shares of any HB Company that may be directly or indirectly acquired or controlled by it.

**5.29 Transactions with Management.** Except for (a) deposits that are on terms and conditions comparable in all material respects to those made available to other nonaffiliated similarly situated customers of HB at the time such deposits were entered into, (b) the loans listed on Schedule 5.9(a)(ii), (c) the agreements designated on Schedule 5.15, (d) obligations under employee benefit plans of the HB Companies set forth on Schedule 5.14(a), and (e) any items described on Schedule 5.29, there are no contracts with or commitments to any present or former stockholders who own or owned more than 5% of the HB Common Stock, directors or officers (or their Related Interests) involving the expenditure of more than \$10,000 as to any one individual (including any business directly or indirectly controlled by any such person) or more than \$50,000 for all such contracts for commitments in the aggregate for all such individuals.

**5.30 Absence of Certain Business Practices.** Since December 31, 2017, no HB Company or, to the Knowledge of any HB Company, any officer, employee or agent of any HB Company, or any other Person acting on their behalf, has, directly or indirectly, given or agreed to give any gift or similar benefit to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the business of any HB Company (or assist any HB Company in connection with any actual or proposed transaction) that (a) might subject HB to any damage or penalty in any civil, criminal or governmental Litigation or proceeding, (b) if not given in the past, might have resulted in a Material Adverse Effect on HB, or (c) if not continued in the future, might result in a Material Adverse Effect on HB or might subject HB to suit or penalty in any private or governmental Litigation or proceeding.

**5.31 Privacy of Customer Information.** The HB Companies collectively are the sole owner of all individually identifiable personal information relating to identifiable or identified natural Persons ("**Identifiable Personal Information**") with respect to customers, former customers and prospective customers. The HB Companies' collection, use, and transfer of such Identifiable Personal Information complies in all material respects with HB's privacy policy, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act and all other applicable privacy and other applicable Laws, and any agreement or industry standard relating to privacy.

**5.32 Deposits.** Except as set forth on Schedule 5.32, none of the deposits of HB are "brokered" deposits or are subject to any encumbrance, legal restraint or other legal process, other than garnishments, pledges, setoff rights, limitations applicable to public deposits, escrow limitations and similar actions taken in the ordinary course of business. The deposit accounts of HB are insured by the FDIC in accordance with the provisions of the Federal Deposit Insurance

Act, and HB has paid all regular premiums and special assessments and filed all reports required thereunder.

**5.33 Accounting Controls.** Each of the HB Companies maintains accurate books and records reflecting its Assets and Liabilities and maintains in all material respects proper and adequate internal accounting controls that provide assurance that (a) transactions are executed with management's general or specific authorizations; (b) transactions are recorded as necessary to permit preparation of the HB Financial Statements and HB Call Reports in accordance with GAAP and RAP, and to maintain Asset and Liability accountability; (c) access to each HB Company's Assets and incurrence of each HB Company's Liabilities are permitted only in accordance with management's specific or general authorizations; (d) the recorded accountability for Assets and Liabilities is compared with the existing Assets and Liabilities at reasonable intervals and appropriate action is taken with respect to any difference; and (e) extensions of credit and other receivables are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. None of HB's systems, controls, data or information are recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) that (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of the HB Companies or their accountants, except as would not reasonably be expected to have a Material Adverse Effect on HB. No HB Company has been advised of any material deficiencies in the design, or operation of internal controls over financial reporting that could reasonably be expected to adversely affect its ability to record, process, summarize and report financial data, or any fraud, whether or not material, that involves management. No material weakness in internal controls has been identified by HB's auditors, and, since December 31, 2020, there have been no significant changes in internal controls that could reasonably be expected to materially and adversely affect internal controls.

**5.34 Corporate Records.** The minute books of HB and each HB Subsidiary contain complete and accurate records in all material respects of all meetings and other corporate actions held or taken by HB and each HB Subsidiary's respective stockholders and Boards of Directors (including all committees thereof) since such entity's formation.

**5.35 No Broker-Dealer.** Except as set forth on Schedule 5.35, No HB Company is registered or required to be registered as an investment adviser or broker/dealer under the Securities Laws. To HB's Knowledge, all activities of the HB Companies with respect to the solicitation, offer, marketing and/or sale of securities under "networking" or similar arrangements: (i) are and have at all times been conducted in all material respects in accordance with all applicable Laws, including, without limitation, the Securities Laws, all state securities Laws and all state and federal banking Laws and regulations, and (ii) satisfy the definition of a "third party brokerage arrangement" under Section 201 of the Gramm-Leach-Bliley Act of 1999 and regulations promulgated thereunder. To HB's Knowledge, there has been no misrepresentation or omission of a material fact by any HB Company and/or any of their respective agents in connection with the solicitation, marketing or sale of any securities, and each customer has been provided with any and all disclosure materials as required by applicable Law.



**5.36 Registration Obligations.** No HB Company is under any obligation, contingent or otherwise, to register its securities under Section 5 of the 1933 Act, Section 12 of the 1934 Act or any state securities Laws.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES OF TBBC AND BOT**

TBBC and BOT hereby jointly and severally represent and warrant to HB as follows:

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

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

(a) TBBC and BOT each have the corporate power and authority necessary to execute, deliver and perform its obligations under this Agreement and to consummate the transactions provided for herein. The execution, delivery and performance of this Agreement and the consummation of the transactions provided for herein, including the Merger, have been, or prior to the Effective Time will be, duly and validly authorized by all necessary corporate action on the part of TBBC and BOT. Subject to required regulatory Consents, this Agreement constitutes a legal, valid and binding obligation of TBBC and BOT, enforceable against TBBC and BOT in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar Laws of general applicability affecting creditors' rights or by general principles of equity.

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

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

**6.3 Capital Stock.** The authorized capital stock of TBBC, as of the date of this Agreement, consists of (a) 10,000,000 shares of TBBC Common Stock and (b) 2,000,000 shares of TBBC Preferred Stock. As of the date hereof, 2,441,153 shares of TBBC Common Stock and no shares of TBBC Preferred Stock are issued and outstanding. All of the shares of TBBC Common Stock to be issued in exchange for shares of HB Common Stock upon consummation of the Merger, when issued in accordance with the terms of this Agreement, will be duly and validly issued and outstanding and fully paid and nonassessable under the FBCA. None of the shares of TBBC Common Stock to be issued in exchange for shares of HB Common Stock upon consummation of the Merger will be issued in violation of any preemptive rights of the stockholders of TBBC.

**6.4 Financial Statements.**

(a) The TBBC Financial Statements for periods ended prior to the date hereof are listed on Schedule 6.4 and have been previously furnished to HB. The BOT Call Reports for periods ended prior to the date hereof have been filed with the FDIC and are available electronically at <https://cdr.fdic.gov>. TBBC will promptly deliver to HB copies of all TBBC Financial Statements and BOT Call Reports prepared subsequent to the date hereof. The TBBC Financial Statements (as of the dates thereof and for the periods covered thereby) (a) are or, if dated after the date of this Agreement, will be in accordance with the books and records of the TBBC Companies, which are or will be, as the case may be, complete and correct and which have been or will have been, as the case may be, maintained in accordance with good business practices and in accordance with applicable legal and accounting principles and reflect only actual transactions, (b) present or will present, as the case may be, fairly in all material respects the financial position of the TBBC Companies as of the dates indicated and the results of operations, changes in stockholders' equity and cash flows of the TBBC Companies for the periods indicated, and (c) have been or will have been, as the case may be, prepared in all material respects in accordance with GAAP, which principles have been consistently applied during the period involved (subject to exceptions specified therein or as may be indicated in the notes thereto or, in the case of interim financial statements, to normal recurring year-end audit adjustments that are not material). The BOT Call Reports have been prepared in material compliance with (i) the rules and regulations of the respective federal or state banking regulator with which they were filed, and (ii) RAP, which principles have been consistently applied during the periods involved, except as otherwise noted therein. Each BOT Call Report fairly presents, in all material respects, the financial position of BOT and the results of its operations at the date and for the period indicated in such BOT Call Report in conformity with the Instructions for the

Preparation of Call Reports as promulgated by applicable regulatory authorities. None of the BOT Call Reports contains any material items of special or nonrecurring income or any other income not earned in the ordinary course of business, except as expressly specified therein.

(b) Each of the TBBC Companies maintains accurate books and records reflecting its Assets and Liabilities and maintains proper and adequate internal accounting controls that provide assurance that (a) transactions are executed with management's general or specific authorizations; (b) transactions are recorded as necessary to permit preparation of the TBBC Financial Statements and BOT Call Reports in accordance with GAAP and RAP, and to maintain Asset and Liability accountability; (c) access to each TBBC Company's Assets and incurrence of each TBBC Company's Liabilities are permitted only in accordance with management's specific or general authorizations; (d) the recorded accountability for Assets and Liabilities is compared with the existing Assets and Liabilities at reasonable intervals and appropriate action is taken with respect to any difference; and (e) extensions of credit and other receivables are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. None of TBBC's systems, controls, data or information are recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) that (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of the TBBC Companies or their accountants, except as would not reasonably be expected to have a Material Adverse Effect on TBBC. No TBBC Company has been advised of any material deficiencies in the design or operation of internal controls over financial reporting that could reasonably be expected to adversely affect its ability to record, process, summarize and report financial data, or any fraud, whether or not material, that involves management. No material weakness in internal controls has been identified by TBBC's auditors, and there have been no significant changes in internal controls that could reasonably be expected to materially and adversely affect internal controls.

(c) No TBBC Company is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract or arrangement (including any contract or arrangement relating to any transaction or relationship between or among TBBC and any other TBBC Company, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any "off-balance sheet arrangement"), where the result, purpose or intended effect of such contract or arrangement is to avoid disclosure of any material transaction involving, or material Liabilities of, TBBC or any TBBC Company in TBBC's or such other TBBC Company's financial statements.

**6.5 Absence of Undisclosed Liabilities.** No TBBC Company has any Liabilities that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBBC, except Liabilities (a) accrued or reserved against in the consolidated balance sheets of TBBC as of December 31, 2020, that are included in the TBBC Financial Statements or reflected in the notes thereto, (b) incurred or paid in the ordinary course of business consistent with past business practice, or (c) incurred or paid pursuant to and in accordance with the terms and conditions of this Agreement.

**6.6 Absence of Certain Changes or Events.** Since December 31, 2020: (a) there have been no events, changes or occurrences that have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBBC, including, without limitation, any change in the administrative or supervisory standing or rating of TBBC with any Regulatory Authority, and (b) the TBBC Companies have not taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the covenants and agreements of TBBC provided in Article 7 of this Agreement.

**6.7 Compliance with Laws.** TBBC is duly registered as a financial holding company under the federal Bank Holding Company Act of 1956, as amended. Each TBBC Company has in effect all Permits necessary for it to own, lease or operate its Assets and to carry on its business as now conducted, except for those Permits the absence of which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBBC, and there has occurred no Default under any such Permit. Each of the TBBC Companies:

(a) is and, since December 31, 2018, has been in compliance in all material respects with all Laws, Orders or Permits applicable to its business or employees conducting its business; and

(b) since December 31, 2018, has received no notification or communication from any Governmental Authority or any Regulatory Authority or the staff thereof (i) asserting that any TBBC Company is not in compliance with any of the Laws or Orders that such Governmental Authority or Regulatory Authority enforces, (ii) threatening to revoke any material Permit, (iii) requiring any TBBC Company to enter into or consent to the issuance of a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or to adopt any board resolution or similar undertaking, or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit in any manner the operations of any TBBC Company, including, without limitation, any restrictions on the payment of dividends, or that in any manner relates to such entity's capital adequacy, credit or reserve policies or management or business.

**6.8 Material Contracts.** No TBBC Company is in Default under any of its material Contracts.

**6.9 Legal Proceedings.** There is no Litigation instituted or pending, or, to the Knowledge of each TBBC Company, threatened against any TBBC Company, or against any Asset, interest, or right of any of them that is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBBC, nor are there any Orders of any Governmental Authorities, Regulatory Authorities or arbitrators outstanding, pending or, to the Knowledge of any TBBC Company, threatened against any TBBC Company, that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBBC.

**6.10 Reports.**

(a) Since December 31, 2020, each TBBC Company has timely filed all reports, registration statements, statements and other documents, together with any amendments required to be made with respect thereto, that it was required to file with any Regulatory Authorities, and

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any applicable state securities or banking authorities and all other material reports and statements required to be filed by it, and has paid all fees and assessments due and payable in connection therewith. Except for normal examinations conducted by Regulatory Authorities in the ordinary course of the business of the TBBC Companies, to the Knowledge of any TBBC Company, no Regulatory Authority has initiated any proceeding or, to the Knowledge of any TBBC Company, any investigation into the business or operations of any TBBC Company. There is no unresolved violation, criticism or exception by any Regulatory Authority with respect to any report, statement or any examinations of any TBBC Company. As of their respective dates, each of such reports, registrations, statements and documents, including the TBBC Financial Statements, exhibits, and schedules thereto, complied in all material respects with all applicable Laws, including, without limitation, all Securities Laws. As of its respective date, each of such reports, registrations, statements and documents did not, in any material respect, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(b) The financial information and reports contained in each of the reports, registrations, statements and other documents described in paragraph (a) of this Section 6.10 (including the related notes, where applicable), (i) have been prepared in all material respects in accordance with GAAP or RAP, as applicable, which principles have been consistently applied during the periods involved, except as otherwise noted therein, (ii) fairly present the financial position of the TBBC Companies as of the respective dates thereof, and (iii) fairly present the results of operations of the TBBC Companies for the respective periods set forth therein.

**6.11 Statements True and Correct.** Neither this Agreement nor any certificate, instrument or other writing furnished or to be furnished by any TBBC Company or any Affiliate thereof to HB pursuant to this Agreement, including the Exhibits or Schedules hereto, contains or will contain any untrue statement of material fact or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the information supplied or to be supplied by any TBBC Company or any Affiliate thereof for inclusion in (a) the Proxy Statement-Offering Circular to be mailed to the holders of HB Common Stock, and (b) any other documents to be filed by any TBBC Company or any Affiliate thereof with any Regulatory Authority in connection with the transactions provided for herein, will, at the respective time such documents are filed, and with respect to the Proxy Statement-Offering Circular, when first mailed to the stockholders of HB, be false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All documents that any TBBC Company or any Affiliate thereof is responsible for filing with any Regulatory Authority in connection with the transactions provided for herein will comply as to form in all material respects with the provisions of applicable Law.

**6.12 Tax Matters.** No TBBC Company has taken any action or has any Knowledge of any fact or circumstance that is reasonably likely to prevent the transactions contemplated hereby, including the Merger, from qualifying as a reorganization within the meaning of Section 368(a) of the IRC.

6.13 **Regulatory Approvals.** No TBBC Company has taken any action or has any Knowledge of any fact or circumstance that is reasonably likely to materially impede or delay receipt of any Consents of Regulatory Authorities referred to in Section 9.1(b) of this Agreement or result in the imposition of a condition or restriction of the type referred to in the last sentence of such Section.

6.14 **Regulatory Capital.** TBBC is "well capitalized" (as defined in 12 C.F.R. Part 225.2(r)) and "well managed" (as defined in 12 C.F.R. Part 225.2(s)). BOT is an "eligible bank" (as defined in 12 C.F.R. Part 5.3(g)).

6.15 **Tax Opinion.** TBBC has no Knowledge of any facts that would preclude issuance of the opinion referred to in Section 9.1(e).

6.16 **Financial Advisor.** TBBC has engaged Piper Sandler & Co. (the "TBBC Financial Advisor") to act as financial advisor to TBBC in connection with the Merger, pursuant to which the TBBC Financial Advisor agreed, upon request by TBBC, to render an opinion to the TBBC Board as to the fairness, from a financial point of view, to TBBC of the consideration to be offered in the transaction. The TBBC Board has received the opinion (which, if initially rendered verbally, has been or will be confirmed by a written opinion, dated the same date) of the TBBC Financial Advisor to the effect that, as of the date of such opinion, and based upon and subject to the factors, assumptions and limitations set forth therein, the aggregate Per Share Merger Consideration is fair, from a financial point of view, to TBBC.

## ARTICLE 7 **CONDUCT OF BUSINESS PENDING CONSUMMATION**

7.1 **Affirmative Covenants.** Unless the prior written consent of TBBC shall have been obtained (which consent not to be unreasonably withheld, conditioned or delayed), and except as otherwise expressly provided for herein, until the earlier of the Effective Time or the termination of this Agreement, HB shall and shall cause each of its Subsidiaries to (a) conduct its business in the usual, regular and ordinary course consistent with past practice and prudent banking principles (if applicable), and (b) use commercially reasonable efforts to preserve intact its business organization, goodwill, Assets and relationships with depositors, customers and employees and maintain its rights and franchises. Unless the prior written consent of the other Party shall have been obtained, and except as otherwise expressly provided for herein, until the earlier of the Effective Time or the termination of this Agreement, each Party shall and shall cause each of its Subsidiaries to take no action, except as required by applicable Law, that would (i) adversely affect the ability of any Party to obtain any Consents required for the transactions provided for herein without imposition of a condition or restriction of the type referred to in the last sentences of Sections 9.1(b) or 9.1(c) of this Agreement or (ii) adversely affect the ability of any Party to perform its covenants and agreements under this Agreement.

7.2 **Negative Covenants of HB.** From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, HB covenants and agrees that it will not do or agree or commit to do, or permit any of its Subsidiaries to do or agree or commit to do, any of the following without the prior written consent of the President and Chief Executive Officer or Chief Financial Officer of TBBC, which consent shall not be unreasonably withheld,

conditioned or delayed, except in connection with the actions referenced in subsections (b), (d) or (e), in which case such consent may be withheld for any reason or no reason:

(a) amend the articles of incorporation, bylaws or other governing instruments of any HB Company;

(b) incur any additional debt obligation or other obligation for borrowed money except in the ordinary course of the business of HB or its Subsidiaries consistent with past practices (which shall include, without limitation, the creation of deposit Liabilities, purchases of federal funds, sales of certificates of deposit, advances from the Federal Reserve or the Federal Home Loan Bank, entry into repurchase agreements fully secured by U.S. government or agency securities and issuances of letters of credit) or impose, or suffer the imposition, on any share of stock held by any HB Company of any Lien or permit any such Lien to exist;

(c) repurchase, redeem or otherwise acquire or exchange, directly or indirectly, any shares, or any securities convertible into any shares, of the capital stock of any HB Company, except in connection with the surrender of shares of HB Common Stock in payment of the exercise price of outstanding HB Options or the deemed acquisition of shares upon a "cashless exercise" of any HB Option (to the extent allowed by the terms and conditions governing such HB Option), or declare or pay any dividend or make any other distribution in respect of HB's capital stock;

(d) issue, sell, pledge, encumber, enter into any Contract to issue, sell, pledge, or encumber, authorize the issuance of, or otherwise permit to become outstanding, any additional shares of HB Common Stock or any other capital stock of any HB Company, or any stock appreciation rights, or any option, warrant, conversion or other right to acquire any such stock, or any security convertible into any shares of such stock;

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

(f) acquire any direct or indirect equity interest in any Person, other than in connection with foreclosures in the ordinary course of business;

(g) except for the payments and amounts set forth on Schedule 7.2(g), (i) grant any increase in compensation or benefits to the directors, officers or employees of any HB Company, except in accordance with past practices with respect to employees; (ii) pay any bonus except in accordance with past practices and pursuant to the provisions of an applicable program or plan adopted by the HB Board prior to the date of this Agreement; or (iii) except as may be required by applicable Law, the terms of any HB Benefit Plan as of the date hereof or the express terms of this Agreement, enter into or amend any severance agreement, change in control agreement, option agreement or similar agreement with any directors, officers or employees of any HB Company;

(h) enter into or amend any employment Contract between any HB Company and any Person (unless such amendment is required by Law) that the HB Company does not have the

unconditional right to terminate without Liability (other than Liability for services already rendered), at any time on or after the Effective Time;

(i) adopt any new employee benefit plan of any HB Company or make any material change in or to any existing employee benefit plans of any HB Company other than any such change that is required by Law or that, in the opinion of counsel, is necessary or advisable to maintain the tax qualified status of any such plan or that is required by the terms of the HB Benefit Plan as of the date hereof, except that HB shall have the right to continue to accrue incentive compensation amounts for its employees in an aggregate amount not to exceed the amounts set forth on Schedule 7.2(i), which such accrued amounts shall be paid to such employees at or prior to the Effective Time;

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

(k) commence any Litigation other than in accordance with past practice, or settle any Litigation involving any Liability of any HB Company for material money damages, or restrictions upon the operations of any HB Company;

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

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

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

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

(p) enter into any Contract for services with any of the 5% stockholders, directors, officers or employees of any HB Company or any member of the immediate family of the foregoing, or any Related Interest of any of the foregoing;

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

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



(s) except as may be required by applicable Law or to comply with any request or recommendation made by any Regulatory Authority, change its or any of its Subsidiaries' lending, investment, Liability management and other material banking policies in any material respect;

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

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

(v) make or renew any Loan to any Person (including, in the case of an individual, his or her immediate family) who or that (directly or indirectly as though a Related Interest or otherwise) owes, or would as a result of such Loan or renewal owe, any HB Company more than an aggregate of \$750,000 of secured indebtedness or more than \$500,000 of unsecured indebtedness;

(w) increase or decrease the rate of interest paid on time deposits or on certificates of deposit, except in the ordinary course of business and in a manner and pursuant to policies consistent with HB's past policies;

(x) purchase or otherwise acquire any investment securities for its own account having an average remaining life to maturity greater than five (5) years (except for municipal bonds of any maturity after consultation by a Designated Representative of HB, with a Designated Representative of TBBC), or any asset-backed security, other than those issued or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association or Home Loan Mortgage Corporation;

(y) except as set forth on Schedule 7.2(y) and except for residential real property, "other real estate owned" and mobile home property owned by and reflected on the books of HB as of the date hereof, sell, transfer, convey or otherwise dispose of any real property or interests therein having a book value in excess of or in exchange for consideration in excess of \$100,000;

(z) make or commit to make any capital expenditures individually in excess of \$50,000, or in the aggregate in excess of \$75,000;

(aa) take any action that is likely to materially impair or delay HB's ability to perform any of its obligations under this Agreement; or

(bb) agree or commit to do any of the foregoing.

**7.3 Adverse Changes in Condition.** Each of HB and TBBC agrees to give written notice promptly (and in any event within two (2) Business Days) to the other Party upon becoming aware of the occurrence or impending occurrence or existence of any event,

circumstance or fact relating to it or any of its Subsidiaries that (a) is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on such Party or (b) would reasonably be expected to cause, constitute, give rise to or result in a material breach at or prior to the Closing Date of any of its representations, warranties or covenants contained herein, and to use its commercially reasonable efforts to prevent or promptly to remedy the same; provided, however, that the delivery of any notice pursuant to this Section 7.3 shall not (i) limit or otherwise affect any remedies available to the Party receiving such notice or (ii) be deemed to amend or supplement the Schedules to this Agreement or prevent or cure any inaccuracy, misrepresentations, breach of warranty or breach of covenant.

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

**7.5 Acquisition Proposals.**

(a) HB shall not, nor shall it permit any of its Subsidiaries to, nor shall it or any of its Subsidiaries authorize or permit any of their respective officers, directors, employees, representatives or agents to, directly or indirectly, (i) solicit, initiate or knowingly encourage (including by way of furnishing non-public information) any inquiries regarding, or the making of any proposal which constitutes, any Acquisition Proposal, (ii) enter into any letter of intent or agreement related to any Acquisition Proposal other than a confidentiality agreement (each, an "Acquisition Agreement"), or (iii) participate in any discussions or negotiations regarding, or take any other action knowingly to facilitate any inquiries or the making of any proposal that constitutes, or that would reasonably be expected to lead to, any Acquisition Proposal; provided, however, that if, at any time prior to the HB Stockholders' Meeting, and without any breach of the terms of this Section 7.5(a), (A) HB receives an unsolicited bona fide written Acquisition Proposal from any Person that in the good faith judgment of the HB Board is, or is reasonably likely to lead to the delivery of, a Superior Proposal, and (B) the HB Board determines in good faith, after consultation with outside legal counsel, that failure to participate in discussions with such Person concerning such Acquisition Proposal would likely result in a violation of its fiduciary duties under applicable Law, then HB may (x) furnish information (including non-public information) with respect to HB to any such Person pursuant to a confidentiality agreement containing confidentiality provisions no more favorable to such Person than those in the Confidentiality Agreement between TBBC and HB dated December 7, 2020 (provided that HB must contemporaneously furnish to TBBC all such information furnished to such Person), and (y) participate in negotiations with such Person regarding such Acquisition Proposal.

(b) Except as set forth in Section 10.1(k), neither the HB Board nor any committee thereof shall (i) withdraw or modify, or propose to withdraw or modify, in a manner adverse to TBBC, the approval or recommendation by the HB Board, or such committee, of the Merger or this Agreement; (ii) approve or recommend, or propose to approve or recommend, any Acquisition Proposal; or (iii) authorize or permit HB or any of its Subsidiaries to enter into any Acquisition Agreement.

(c) HB agrees that it and its Subsidiaries shall, and HB shall direct its and its Subsidiaries' respective officers, directors, employees, representatives and agents to, immediately cease and cause to be terminated any activities, discussions or negotiations with any Persons with respect to any Acquisition Proposal. HB agrees that it will notify TBBC promptly (and in any event within 24 hours) if, to HB's Knowledge, any Acquisition Proposal is received by, any information is requested from, or any discussions or negotiations relating to an Acquisition Proposal are sought to be initiated or continued with, HB, its Subsidiaries, or their officers, directors, employees, representatives or agents. The notice shall indicate the name of the Person making such Acquisition Proposal or taking such action and the material terms and conditions of any proposals or offers, and thereafter HB shall keep TBBC informed, on a current basis, of the status and terms of any such proposals or offers and the status of any such discussions or negotiations. HB also agrees that it will promptly request each Person that has heretofore executed a confidentiality agreement in connection with any Acquisition Proposal to return or destroy all confidential information heretofore furnished to such Person by or on behalf of it or any of its Subsidiaries.

**7.6 Stockholder Litigation.** HB shall provide TBBC the opportunity to participate in the defense or settlement of any stockholder litigation against HB and/or its directors relating to the transactions contemplated by this Agreement throughout the course of any such litigation, and HB shall in good faith consider the recommendations by TBBC regarding such litigation. HB shall not settle any stockholder litigation without TBBC's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

**7.7 Covenants of TBBC.** Except as expressly permitted or contemplated by this Agreement, or as required by applicable Law, or with the prior written consent of HB, which consent shall not be unreasonably withheld, during the period from the date of this Agreement to the earlier of the Effective Time or the termination of this Agreement, TBBC shall not, and shall not permit any of its Subsidiaries to, (a) take any action that is likely to materially impair or delay TBBC's ability to consummate the Merger or the transactions provided for in this Agreement or to perform any of its obligations under this Agreement, or (b) amend TBBC's Certificate of Incorporation or Bylaws or similar governing documents of any of its Subsidiaries in a manner that would adversely affect the rights and privileges of the shares of TBBC Common Stock to be issued to the holders of HB Common Stock upon consummation of the Merger to cause such shares to have rights that are junior or subordinate to, or lesser than, other shares of TBBC Common Stock that are issued and outstanding at the Effective Time.

## **ARTICLE 8**

### **ADDITIONAL AGREEMENTS**

#### **8.1 Securities and Regulatory Matters.**

(a) The Parties intend that the TBBC Common Stock issuable in the Merger will qualify for exemption from the registration requirements of the 1933 Act and applicable state securities laws, pursuant to the exemption therefrom contained in Section 3(a)(10) of the 1933 Act and other exemptions contained in such state securities laws, respectively. To cause the exemption from registration contained in Section 3(a)(10) of the 1933 Act to be applicable to the issuance of the TBBC Common Stock in the Merger, the Parties further agree to submit

appropriate requests to the OFR in connection with the regulatory applications filed by the parties for approval of the Merger pursuant to Chapter 655 of the FFIC and the Administrative Rules of the OFR, for a public hearing upon the fairness of the terms and conditions of the issuance of the TBBC Common Stock for shares of HB Common Stock. Each HB shareholder shall have the right to appear at such hearing or hearings. Upon the scheduling of such public hearing, HB agrees to promptly provide each of its shareholders with notice of such public hearing in accordance with the FFIC and the Administrative Rules of the OFR, and otherwise in accordance with any other conditions or requirements imposed by the OFR with respect to such public hearings. The parties acknowledge that TBBC will issue the shares of TBBC Common Stock in the Merger in reliance on the exemption from registration set forth in Section 3(a)(10) of 1933 Act and, accordingly, the hearing contemplated by this Section 8.1 and the approval of the terms of the Merger by the OFR are conditions precedent to the consummation of the Merger by either Party.

(b) TBBC and HB shall as promptly as practicable jointly prepare a proxy statement/offering circular in accordance with applicable Law (the "**Proxy Statement/Offering Circular**"). TBBC shall provide an initial draft of the Proxy Statement/Offering Circular for the parties to mutually work on, review and finalize. Each Party shall have to opportunity to review and comment on the Proxy Statement/Offering Circular and HB shall not mail the Proxy Statement/Offering Circular without TBBC's prior written consent (such consent not to be unreasonably withheld or delayed).

(c) As soon as practicable following the receipt of approval of the Merger from the OFR, HB, acting through its Board of Directors, shall take all action necessary to duly call and give notice of a meeting of its shareholders (including any adjournment or postponement, the "**HB Stockholders' Meeting**"), to be held within thirty (30) calendar days after the Proxy Statement/Offering Circular is first sent or mailed to the HB shareholders for the purpose of approval and adoption of this Agreement and the transactions contemplated thereby and considering and voting upon any other matters required to be approved by the HB shareholders for consummation of the Merger. Subject to Section 10.1(i) of this Agreement, the HB Board shall recommend to its shareholders the approval of this Agreement and the transactions contemplated hereby, and HB shall use its reasonable best efforts to obtain its shareholders' approval and take any and all other action necessary or advisable to secure the vote or consent of its shareholders to adopt and approve this Agreement, the Merger and the transactions contemplated thereby.

(d) If at any time prior to the Effective Time, any event shall occur that should be set forth in an amendment of, or a supplement to, the Proxy Statement-Offering Circular, the Party being aware of the event will promptly inform the other Party, and the Parties will cooperate and assist each other in preparing such amendment or supplement and mailing the same to the holders of HB Common Stock.

(e) The Parties shall cooperate with each other and use their commercially reasonable efforts to promptly prepare and file all necessary documentation within 75 days after the date of this Agreement, to effect all applications, notices, petitions and filings and to obtain as promptly as practicable all Consents of all third parties and Regulatory Authorities that are necessary or advisable to consummate the transactions provided for in this Agreement. TBBC and HB shall

have the right to review in advance, and to the extent practicable each will consult with the other on, in each case subject to applicable Laws relating to the exchange of information, all of the nonconfidential information relating to TBBC or HB, as the case may be, and any of their respective Subsidiaries, that appears in any filing made with, or written materials submitted to, any third party or any Regulatory Authority in connection with the transactions provided for in this Agreement. In exercising the foregoing right, each of the Parties shall act reasonably and as promptly as practicable. The Parties agree that they will consult with each other with respect to the obtaining of all Permits and Consents, approvals and authorizations of all third parties and Regulatory Authorities necessary or advisable to consummate the transactions provided for in this Agreement, and each Party will keep the other apprised of the status of matters relating to completion of the transactions provided for in this Agreement.

(f) TBBC and HB shall, upon request, furnish to each other all information concerning themselves, their Subsidiaries, directors, officers and stockholders and such other matters that may be reasonably necessary or advisable in connection with the preparation, filing, notice or application made by or on behalf of TBBC, HB or any of their Subsidiaries to any Regulatory Authority in connection with the Merger or any other transactions provided for in this Agreement.

(g) TBBC and HB shall furnish to each other with copies of all non-confidential portions of applications, notices, petitions and filings with all Regulatory Authorities (including copies of all written supplements and responses of information provided in connection with such non-confidential portions of the applications, notices, petitions and filings), and written communications received by TBBC or HB, as the case may be, or any of their respective Subsidiaries, Affiliates or associates from, or delivered by any of the foregoing to, any Regulatory Authority, in respect of the transactions provided for herein.

## **8.2 Access to Information.**

(a) During the period from the date of this Agreement until the earlier of the Effective, Time or the termination of this Agreement, each of TBBC and HB shall: (i) cause its Designated Representative (and, if necessary, representatives of any of its Subsidiaries) to confer on a regular and frequent basis with the Designated Representative of the other Party hereto and to report on the general status of its and its Subsidiaries' ongoing operations; (ii) upon reasonable notice and subject to any restrictions under applicable Laws, afford to the officers, employees, accountants, counsel and other representatives of the other Party access to all of its and its Subsidiaries' respective properties, books, contracts, commitments and records; and (iii) make available to the other Party (A) a copy of each report, schedule, registration statement and other document filed or received by it or its Subsidiaries during such period pursuant to the requirements of the Securities Laws or federal or state banking Laws (other than reports or documents that such Party is not permitted to disclose under applicable Law, in which case such Party shall notify the other Party of the nondisclosure and, to the extent permitted by applicable Law, the nature of such information) and (B) such other information concerning its and its Subsidiaries' business, properties and personnel as the other Party may reasonably request; provided, however, that neither Party shall be required to provide any information or documents to the other Party that (i) disclose confidential discussions or information relating to this Agreement or the transactions contemplated hereby or any other matter that such Party's board of

directors has been advised by counsel that such distribution of which to the other Party may violate a confidentiality obligation or fiduciary duty, (ii) that violate the rights of such Party's customers under applicable Law or (iii) jeopardize the attorney-client privilege of the Party in possession or control of such information (after giving due consideration to the existence of any common interest, joint defense or similar agreement between the Parties).

(b) All information furnished by TBBC to HB or its representatives pursuant hereto shall be treated as the sole property of TBBC and, if the Merger shall not occur, HB and its representatives shall return to TBBC all of such written information and all documents, notes, summaries or other materials containing, reflecting or referring to, or derived from, such information. HB shall, and shall use its commercially reasonable efforts to cause its representatives to, keep confidential all such information, and shall not directly or indirectly use such information for any competitive or other commercial purpose. The obligation to keep such information confidential shall continue for three (3) years from the date on which the proposed Merger is abandoned and shall not apply to disclosures made as required by Law or any information that (i) was already in HB's possession prior to the disclosure thereof by TBBC; (ii) was then generally known to the public; or (iii) was disclosed to HB by a third party not bound by an obligation of confidentiality.

(c) All information furnished by HB or its Subsidiaries to TBBC or its representatives pursuant hereto shall be treated as the sole property of HB and, if the Merger shall not occur, TBBC and its representatives shall return to HB all of such written information and all documents, notes, summaries or other materials containing, reflecting or referring to, or derived from, such information. TBBC shall, and shall use its commercially reasonable efforts to cause its representatives to, keep confidential all such information, and shall not directly or indirectly use such information for any competitive or other commercial purpose. The obligation to keep such information confidential shall continue for three (3) years from the date on which the proposed Merger is abandoned and shall not apply to disclosures made as required by Law or any information that (i) was already in TBBC's possession prior to the disclosure thereof by HB or any of its Subsidiaries; (ii) was then generally known to the public; or (iii) was disclosed to TBBC by a third party not bound by an obligation of confidentiality.

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

**8.3 Efforts to Consummate.** Subject to the terms and conditions of this Agreement, each of HB and TBBC shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective, as soon as practicable after the date of this Agreement, the transactions provided for in this Agreement, including, without limitation, obtaining of all of the Consents and satisfying the conditions contained in Article 9 hereof. TBBC expressly agrees to consummate the transactions provided for herein upon the completion of all conditions to Closing and shall not take any action reasonably calculated to prevent the Closing and shall not unreasonably delay any action reasonably required to be taken by it to facilitate the Closing. HB expressly agrees to consummate the transactions provided for herein upon the completion of all conditions to Closing and shall not take any action reasonably calculated to prevent the Closing and shall not unreasonably delay any action reasonably

required to be taken by it to facilitate the Closing. Concurrently with the execution and delivery of this Agreement, HB shall deliver to TBBC all Voting Agreements, Non-Competition Agreements, Claims Letters, Employment Agreement Termination Letters, and Employment Agreements required to be executed and delivered pursuant to Sections 1.4, 8.15, 8.16 and 8.17 hereof.

**8.4 Subsequent Interim Financial Statements.** As soon as reasonably practicable and as soon as they are available, but in no event more than 20 days after the end of each calendar month ending after the date of this Agreement, each Party shall furnish to the other financial statements (including balance sheet and income statement) of it as of and for such month then ended and such financial statements shall be deemed to be included within the definition of "Financial Statement" for purposes of this Agreement.

**8.5 Certificate of Objections.** As soon as practicable (but in no event more than three (3) Business Days) after the HB Stockholders' Meeting, HB shall deliver to TBBC a certificate of the Secretary of HB containing the names of the stockholders of HB that (a) gave written notice at or prior to the taking of the vote on this Agreement at the HB Stockholders' Meeting that they dissent from the Merger, and (b) did not vote in favor of this Agreement (the "Certificate of Objections"). The Certificate of Objections shall include the number of shares of HB Common Stock held by each such stockholder and the mailing address of each such stockholder.

**8.6 Publicity.** Neither TBBC nor HB shall, or shall permit any of its respective Subsidiaries or representatives, to, issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public disclosure concerning, the transactions provided for in this Agreement without the consent of the other Party, which consent will not be unreasonably withheld. Prior to issuing or publishing any press release or other public announcement or disclosure regarding the transactions contemplated by this Agreement, the releasing party shall provide a copy of the release or announcement to the other Party prior to the issuance, and shall provide a reasonable opportunity for comment. Nothing in this Section 8.6, however, shall be deemed to prohibit any Party from making any disclosure that, based on advice of its counsel, is required by applicable Law (in which case the Party making such disclosure shall use commercially reasonable efforts to consult with the other Party prior to making such disclosure and shall consider in good faith any comments such other Party may have).

**8.7 Expenses.** Except as otherwise expressly provided in this Agreement, all costs and expenses incurred in connection with the transactions provided for in this Agreement, including, without limitation, registration fees, printing fees, mailing fees, attorneys' fees, accountants' fees, other professional fees and costs related to expenses of officers and directors of such Party, shall be paid by the Party incurring such costs and expenses. Each Party hereby agrees to satisfy, and shall indemnify the other Party against, any Liability arising from any such fee or payment incurred by such Party. Nothing contained herein shall limit either Party's rights under Article 10 to recover any damages arising out of a Party's willful breach of any provision of this Agreement.

**8.8 Tax Treatment.** Each of the Parties undertakes and agrees to use its commercially reasonable efforts to cause the Merger to qualify as a "reorganization" within the meaning of Section 368(a) of the IRC and the Treasury regulations promulgated thereunder for federal income tax purposes, and that this Agreement shall constitute a "plan of reorganization" within the meaning of Section 368(a) of the IRC for purposes of Sections 354, 356 and 361 of the IRC (and any comparable provision of state law) for federal and applicable state income tax purposes. TBBC and HB shall prepare and file with each of their respective Tax Returns all information required by Treasury Regulation Section 1.368-3 and related provisions of the Treasury Regulations in a manner consistent with treating the transactions contemplated by this Agreement as a reorganization described in Section 368(a) of the IRC and shall take no position (whether in audits, Tax Returns or otherwise) that is inconsistent with this treatment unless required to do so by applicable Law.

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

(a) At the election of TBBC, HB will procure and deliver, at TBBC's expense, with respect to each parcel of real property that any of the HB Companies owns, leases, subleases or is obligated to purchase, within thirty (30) days following the date of this Agreement, whatever environmental audits as TBBC may request, which audits shall be reasonably acceptable to and shall be conducted by a firm reasonably acceptable to TBBC.

(b) At the election of TBBC, HB will, at TBBC's expense, with respect to each parcel of real property that HB owns, leases, subleases or is obligated to purchase, procure and deliver to TBBC, within thirty (30) days following the date of this Agreement, a commitment to issue title insurance in such amounts and by such insurance company reasonably acceptable to TBBC, which policy shall be free of all material Liens and exceptions to TBBC's reasonable satisfaction.

(c) At the election of TBBC, with respect to each parcel of real property as to which a title insurance policy is to be procured pursuant to Section 8.9(b), HB, at TBBC's expense, will procure and deliver to TBBC within thirty (30) days following the date of this Agreement, a survey of such real property, which survey shall be reasonably acceptable to and shall be prepared by a licensed surveyor reasonably acceptable to TBBC, disclosing the locations of all improvements, easements, sidewalks, roadways, utility lines and other matters customarily shown on such surveys and showing access affirmatively to public streets and roads and providing the legal description of the property in a form suitable for recording and insuring the title thereof. Such surveys shall not disclose any survey defect or encroachment from or onto such real property that has not been cured or insured over prior to the Effective Time. In addition, HB shall deliver to TBBC a complete legal description for each parcel of real estate or interest owned, leased or subleased by any HB Company or in which any HB Company has any ownership or leasehold interest.

**8.10 [Intentionally Deleted]**

**8.11 Conforming Accounting and Reserve Policies.** At the request of TBBC, to the extent permitted by applicable Law, HB shall immediately prior to Closing establish and take such charge-offs, reserves and accruals as TBBC reasonably shall request to conform HB's loan, accrual, capital, reserve and other accounting policies to the policies of BOT (collectively, the



"Conforming Adjustments"). Such adjustments shall not be taken into account for purposes of determining the amount of the HB Net Stockholders Equity or the HB Allowance for purposes of the Section 9.2(d).

#### 8.12 Directors' and Officers' Indemnification.

(a) For a period of six (6) years after the Effective Time, TBBC shall indemnify each director and officer of HB (each, an "Indemnified Party") against, and shall advance expenses incurred by an Indemnified Party in connection with, all Liabilities arising out of actions or omissions occurring upon or prior to the Effective Time (including, without limitation, the transactions contemplated by this Agreement) to the extent permitted under the Articles of Incorporation and Bylaws of HB as in effect on the date of this Agreement, subject to (i) the limitations and requirements of such Articles of Incorporation and Bylaws, and (ii) applicable Law, including, without limitation, Section 607.0859 of the FBCA.

(b) Any Indemnified Party wishing to claim indemnification under Section 8.12(a), upon learning of any such Liability or Litigation, shall promptly notify TBBC thereof; provided that the failure to so notify shall not affect the obligation of TBBC under this Section 8.12 unless, and only to the extent that, TBBC is actually and materially prejudiced in the defense of such claim as a consequence. In the event of any claim or Litigation that may give rise to indemnity obligations on the part of TBBC (whether arising before or after the Effective Time), (i) TBBC shall have the right to assume the defense thereof, and TBBC shall not be liable to such Indemnified Party for any legal expenses of other counsel or any other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof, except that, if TBBC elects not to assume such defense or counsel for the Indemnified Party advises that there are substantive issues that raise conflicts of interest between TBBC and the Indemnified Party under the rules of professional ethics, the Indemnified Party may retain counsel satisfactory to him or her, and TBBC shall pay all reasonable fees and expenses of such counsel for the Indemnified Party; provided, however, that TBBC shall be obligated to pay for only one firm of counsel for all Indemnified Parties in any jurisdiction with respect to such Litigation; (ii) all Indemnified Parties will cooperate in the defense of any such Litigation; and (iii) TBBC shall not be liable for any settlement effected without its prior written consent and TBBC shall not settle any matter or Litigation without such Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed); and provided further, that TBBC shall not have any obligation hereunder to the extent such arrangements are prohibited by applicable Law.

(c) For a period of six (6) years following the Effective Time, TBBC will use its commercially reasonable efforts to provide director's and officer's liability insurance ("D&O Insurance") that serves to reimburse the present and former officers and directors of HB or its Subsidiaries (determined as of the Effective Time) with respect to claims against such directors and officers arising from facts or events occurring before the Effective Time (including the transactions contemplated hereby), which insurance will contain at least the same coverage and amounts, and contain terms and conditions no less advantageous to the Indemnified Party, as the coverage currently provided by HB as of the date of this Agreement; provided, however, that (i) if TBBC is unable to maintain or obtain the insurance called for by this Section 8.12(c), then TBBC will provide as much comparable insurance as is reasonably available, (ii) officers and directors of HB or its Subsidiaries may be required to make application and provide customary

representations and warranties to the carrier of the D&O Insurance for the purpose of obtaining such insurance, and (iii) in satisfaction of its obligations under this Section 8.12(c), TBBC may require HB to purchase, prior to but effective as of the Effective Time, tail insurance providing such coverage prior to Closing. Whether or not TBBC or HB shall procure such coverage, in no event shall HB expend, or shall TBBC be required to expend, for such tail insurance a premium amount in excess of \$20,000 (the "Maximum D&O Tail Premium"). If the cost of such tail insurance exceeds the Maximum D&O Tail Premium, then HB or TBBC, as applicable, shall obtain tail insurance coverage or a separate tail insurance policy with the greatest coverage available for a cost not exceeding the Maximum D&O Tail Premium.

(d) If TBBC or any of its successors and assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its property and Assets to any individual, corporation or other entity, then, in each such case, proper provision shall be made so that the successors and assigns of TBBC and its Subsidiaries shall assume the obligations set forth in this Section 8.12. The provisions of this Section 8.12 shall survive the Effective Time and are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party and his or her heirs and representatives.

**8.13 System Integration.** From and after the date hereof, subject to applicable Law and regulation, each Party shall, and shall cause its directors, officers and employees to, and shall make all commercially reasonable efforts (without undue disruption to either business) to cause its data processing consultants and software providers to, cooperate and assist HB and BOT in connection with an electronic and systematic conversion of all applicable data of HB to the BOT system following the Effective Time, including the training of HB employees during normal business hours without undue disruption to HB's business.

**8.14 Coordination; Integration.** Subject to applicable Law and regulation, during the period from the date hereof until the Effective Time, HB shall cause the Chief Executive Officer of HB or, if such Person is unavailable, another senior officer thereof, to assist and confer with the officers of BOT, on a weekly basis, relating to the development, coordination and implementation of the post-Merger operating and integration plans of BOT, as the Surviving Bank.

**8.15 Non-Competition Agreements.** HB shall cause each non-employee director of HB to execute and deliver to TBBC a Non-Competition Agreement in the form attached hereto as Exhibit 4, concurrently with the execution and delivery of this Agreement and effective upon the Effective Time.

**8.16 Claims Letters.** HB shall cause each director and executive officer of HB to execute and deliver a Claims Letter in the form attached hereto as Exhibit 5 concurrently with the execution and delivery of this Agreement and effective upon the Effective Time.

**8.17 Employment Agreements.**

(a) As of the date of this Agreement, HB has entered into agreements that terminate, effective immediately prior to (and subject to the occurrence of) the Effective Time, the

employment, consulting, severance, change in control, or similar agreements or arrangements with the individuals set forth on Schedule 8.17(a) (collectively, the "**Employment Agreement Termination Letters**"), copies of which are included with Schedule 8.17(a). The foregoing terminations shall be for payment amounts not to exceed those set forth on Schedule 8.17(a).

(b) As of the date of this Agreement, BOT (as successor to HB) has entered into employment and non-competition agreements that become effective as of (and subject to the occurrence of) the Effective Time with the individuals set forth on Schedule 8.17(b) (the "**Employment Agreements**").

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

**8.19 Employee Matters.**

(a) Following the Effective Time, TBBC shall maintain or cause to be maintained employee benefit plans and compensation opportunities for the benefit of employees (as a group) who are full-time active employees of HB and its Subsidiaries on the Closing Date ("**Covered Employees**") that provide employee benefits and compensation opportunities that, in the aggregate, are substantially comparable to the employee benefits and compensation opportunities that are made available on a uniform and non-discriminatory basis to similarly situated employees of TBBC or its Subsidiaries, as applicable; provided, however, that in no event shall any Covered Employee be eligible to participate in any closed or frozen plan of TBBC or its Subsidiaries. To the extent permitted by applicable Law or the terms of such TBBC benefit plans, TBBC shall give the Covered Employees full credit for their prior service with HB (i) for purposes of eligibility (including initial participation and eligibility for current benefits) and vesting under any qualified or non-qualified employee benefit plan maintained by TBBC and in which Covered Employees may be eligible to participate and (ii) for all purposes under any welfare benefit plans, severance plans, vacation plans and similar arrangements maintained by TBBC (which shall not include, for the sake of clarity, duplication of any severance obligations under Section 8.19(e)). Except as otherwise agreed by the Parties, each Covered Employee's accrued paid time off and unused sick time will be credited toward the corresponding welfare benefit plans of TBBC.

(b) With respect to any employee benefit plan of TBBC that is a health, dental, vision or other welfare plan in which any Covered Employee is eligible to participate, for the plan year in which such Covered Employee is first eligible to participate, TBBC shall use commercially reasonable efforts to (i) cause any pre-existing condition limitations or eligibility waiting periods under such TBBC plan to be waived with respect to such Covered Employee to the extent that such condition was or would have been covered under the HB Benefit Plan in which such Covered Employee participated immediately prior to the Effective Time, and (ii) recognize any health, dental, vision or other welfare expenses incurred by such Covered Employee in the year that includes the Closing Date (or, if later, the year in which such Covered Employee is first eligible to participate) for purposes of any applicable deductible and annual out-of-pocket expense requirements under any such health, dental, vision or other welfare plan.

(c) Prior to the Effective Time, HB shall take all actions requested by TBBC that may be necessary or appropriate to (i) cause one or more HB Benefits Plans to terminate as of the Effective Time and to cause the HB 401(k) plan to be terminated as of the date immediately preceding the date of the Effective Time and HB shall provide evidence of such termination, (ii) cause benefit accruals and entitlements under any HB Benefit Plan to cease as of the Effective Time, (iii) cause the continuation on and after the Effective Time of any contract, arrangement or insurance policy relating to any HB Benefit Plan for such period as may be requested by TBBC, or (iv) facilitate the merger of any HB Benefit Plan into any employee benefit plan maintained by TBBC or an TBBC Subsidiary. All resolutions, notices, or other documents issued, adopted or executed in connection with the implementation of this Section 8.19(c) shall be subject to TBBC's reasonable prior review and approval, which shall not be unreasonably withheld, conditioned or delayed.

(d) Nothing in this Section 8.19 shall be construed to limit the right of TBBC or any of its Subsidiaries to amend or terminate any HB Benefit Plan that is assumed by any TBBC Company at or subsequent to the Effective Time or other employee benefit plan, to the extent that such amendment or termination is permitted by the terms of the applicable plan and applicable Law, nor shall anything in this Section 8.19 be construed to require TBBC or any of its Subsidiaries to retain the employment of any particular Covered Employee for any fixed period of time following the Closing Date, and the continued retention (or termination) by TBBC or any of its Subsidiaries of any Covered Employee subsequent to the Effective Time shall be subject in all events to TBBC's or its applicable Subsidiary's normal and customary employment procedures and practices, including customary background screening and evaluation procedures, and satisfactory employment performance.

(e) If, within six (6) months after the Effective Time, any Covered Employee is terminated by any TBBC Company solely as a result of the Merger (i.e., elimination of duplicative jobs, etc.), and not as a result of inadequate performance or other good cause, TBBC will pay severance to such Covered Employee in an amount equal to two weeks' pay for each twelve (12) months of such Covered Employee's prior employment with HB; provided, however, that in no event will the total amount of severance for any full-time single employee with at least one year of service with HB exceed 26 weeks' pay or be less than six weeks' pay in the aggregate. Full-time employees with less than one year of service and employees who have been part-time for at least one year will be eligible for four weeks of severance. Any severance to which a Covered Employee may be entitled in connection with a termination occurring more than six (6) months after the Effective Time will be as set forth in the severance policies of TBBC and its Subsidiaries as then in effect. For the sake of clarity, this Section 8.19(e) does not apply to or benefit any Covered Employee who is a party to an Employment Agreement or any change in control or severance agreement; rather, the terms and conditions of such Employment Agreement, change in control agreement or severance agreement, as applicable, shall govern and control upon any termination of employment. TBBC Schedule 8.19(e) sets forth the severance payments to be made to certain HB employees as set forth therein.

(f) In connection with the closing of the Merger, TBBC and HB shall make the payments set forth on TBBC Schedule 8.19(f).

**8.20 HB Audited Financial Statements.** HB shall deliver to TBBC no later than April 1, 2021 the HB audited financial statements as of and for the year ended December 31, 2020 together with report thereon of Hacker Johnson & Smith PA, independent certified public accountants.

## **ARTICLE 9**

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

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

(a) **Stockholder Approval.** The stockholders of HB shall have approved this Agreement and the consummation of the transactions provided for herein by the requisite vote, as and to the extent required by Law and by the provisions of any governing instruments.

(b) **Regulatory Approvals.** All Consents of, filings and registrations with, and notifications to, all Regulatory Authorities required for consummation of the Merger shall have been obtained or made including the approval of the terms and conditions of the issuance of shares of TBBC Common Stock pursuant to the fairness hearing contemplated by Section 8.1 and shall be in full force and effect and all notice and waiting periods required by Law to have passed after receipt of such Consents shall have expired.

(c) **Consents and Approvals.** Each of the Parties shall have obtained any and all Consents required for consummation of the Merger (other than those referred to in Section 9.1(b) of this Agreement) or for the preventing of any Default under any Contract or Permit of such Party that, if not obtained or made, is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on such Party. No Consent so obtained that is necessary to consummate the transactions provided for herein shall be conditioned or restricted in a manner that in the reasonable judgment of the Board of Directors of either HB or TBBC would so materially adversely impact the economic or business benefits of the transactions contemplated by this Agreement as to render inadvisable the consummation of the Merger.

(d) **Legal Proceedings.** No court or Regulatory Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) or taken any other action that prohibits, restricts or makes illegal consummation of the Merger or any other transaction provided for in this Agreement. No action or proceeding shall have been instituted by any Person or Governmental Authority, that seeks to restrain the consummation of the Merger or any other transaction provided for in this Agreement that, in the reasonable opinion of the TBBC Board or the HB Board, renders it impossible or inadvisable to consummate the transactions provided for in this Agreement.

(e) **Tax Opinion.** HB and TBBC shall have received a written opinion from Crowe, LLP in form reasonably satisfactory to them (the "Tax Opinion"), to the effect that (i) the Merger will constitute a reorganization within the meaning of Section 368(a) of the IRC, (ii) the exchange in the Merger of HB Common Stock for TBBC Common Stock will not give rise to

gain or loss to the stockholders of HB with respect to such exchange (except to the extent of any cash received), and (iii) neither HB nor TBBC will recognize gain or loss as a consequence of the Merger (except for income and deferred gain recognized pursuant to Treasury regulations issued under Section 1502 of the IRC). In rendering such Tax Opinion, Crowe, LLP shall be entitled to rely upon representations of officers of HB and TBBC reasonably satisfactory in form and substance to such counsel.

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

(a) **Representations and Warranties.** The representations and warranties of HB set forth in this Agreement or in any certificate or document delivered pursuant to the provisions hereof that are qualified as to materiality or Material Adverse Effect shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties that are made as of a specified date shall speak only as of such date), and the representations and warranties of HB set forth in this Agreement or in any certificate or document delivered pursuant to the provisions hereof that are not so qualified shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties that are made as of a specified date shall speak only as of such date). Notwithstanding the foregoing, the representations and warranties of HB set forth in Section 5.3(a),(b) and (c) (Capitalization) and Section 5.4 (HB Subsidiaries) shall be true and correct in all respects, except for such failures to be true and correct as are *de minimis*, as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time, and the representations and warranties of HB set forth in Section 5.7 (Absence of Certain Changes or Events) and Section 5.18 (Statements True and Correct) shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time.

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

(c) **Certificates.** HB shall have delivered to TBBC (i) a certificate, dated as of the Effective Time and signed on its behalf by its Chief Executive Officer and its Chief Financial Officer, to the effect that the conditions to TBBC's and BOT's obligations set forth in Sections 9.2(a), 9.2(b), 9.2(d), 9.2(k) and 9.2(n) of this Agreement have been satisfied, and (ii) certified copies of resolutions duly adopted by, or minutes of the respective meetings of, the HB Board and the HB stockholders evidencing the taking of all corporate action necessary to authorize the Merger, the execution, delivery and performance of this Agreement and all other action required hereby, all in such reasonable detail as TBBC and its counsel shall request.

(d) Net Worth and HB Allowance Requirements.

(i) As of the close of business on the fifth Business Day prior to the Closing Date (the "**HB Measuring Date**"), the Adjusted HB Shareholders' Equity shall not be less than \$23 million determined in accordance with GAAP. For purposes of this Section 9.2(d), "**Adjusted HB Shareholders' Equity**" means the equity of HB as set forth on the balance sheet of HB on the HB Measuring Date (excluding any Conforming Adjustments), subject to the following adjustments:

(1) the equity will be reduced by the amount of any change in unrealized gains or increased by the amount of any change in unrealized losses (as the case may be) in HB's securities portfolio since December 31, 2020 due to mark-to-market adjustments as of the HB Measuring Date; and

(2) the equity will be increased by the sum (calculated after taking into account any reduction in income Taxes attributable to following items) of (i) all fees and expenses of all attorneys, accountants, the HB Financial Advisor and other advisors and agents for HB and its Subsidiaries for services rendered and to be rendered solely in connection with the transactions contemplated by this Agreement, up to maximum aggregate amount of \$675,000 (exclusive of reasonable costs paid to or advanced by such advisors), (ii) the premiums, if any, paid by HB for the D&O Insurance in accordance with Section 8.12(c), and (iii) any costs incurred in terminating any of the HB Employee Benefit Plans (other than any accrued amounts under such plans), up to a maximum aggregate of \$317,524

(ii) As of the close of business on the HB Measuring Date, the HB Allowance (as determined in accordance with GAAP and as consistently applied Date and excluding any Conforming Adjustments) as a percentage of the HB Loans shall be not less than 1.20%.

(e) Conforming Adjustments. The Conforming Adjustments shall have been made to the satisfaction of TBBC in its reasonable discretion.

(f) Indebtedness. HB shall have delivered to TBBC payoff letters, in form and substance acceptable to TBBC, from the appropriate Persons relating to all items of Indebtedness (the "**Payoff Letters**"), together with Lien release documents related to such Indebtedness reasonably requested by TBBC, in each case, in form and substance acceptable to TBBC, and all such Indebtedness shall have been paid, satisfied or discharged in full by HB as of the Closing Date.

(g) Matters Relating to 280G Taxes. TBBC shall be satisfied in its reasonable discretion, either through mutually agreeable pre-Closing amendments or otherwise, that HB shall have taken any and all reasonably necessary steps such that the Merger will not trigger any "excess parachute payment" (as defined in Section 280G of the IRC) under any employment agreements, change in control agreements, HB Benefit Plans, supplemental compensation, retirement or similar arrangements between a HB Company and any officers, directors or employees thereof.

(h) Regulatory Matters. No Governmental Authority or Regulatory Authority or the staff thereof shall have (i) asserted that any HB Company is not in material compliance with any of the Laws or Orders that such Governmental Authority or Regulatory Authority enforces, (ii) revoked any material Permits, or (iii) issued, or required any HB Company to consent to the issuance or adoption of, a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or any board resolution or similar undertaking, that, in the reasonable judgment of TBBC, restricts or impairs the conduct of such HB Company's business or future prospects. No Consent obtained from any Regulatory Authority that is necessary to consummate the transactions provided for herein shall be conditioned or restricted in a manner (including, without limitation, requirements relating to the raising of additional capital or the disposition of Assets) as would (i) unduly impair or restrict the operations of, or have a Material Adverse Effect on, TBBC or BOT, or (ii) render consummation of the Merger unduly burdensome, in each case as determined in the reasonable judgement of TBBC or BOT.

(i) Absence of Material Adverse Effect. Since the date of this Agreement, no fact, Litigation, claim, event or condition shall have occurred that has had would reasonably be expected to have or result in a Material Adverse Effect on HB.

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

(k) Material Condition. There shall not be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger by any Regulatory Authority that, in connection with the grant of any Consent by any Regulatory Authority, imposes any restriction or condition on TBBC or any TBBC Subsidiary, that, even if not reasonably likely to have a Material Adverse Effect on TBBC, in the reasonable judgment of TBBC is materially and unreasonably burdensome on TBBC's business following the Effective Time or that would reduce the economic benefits of the transactions contemplated by this Agreement to TBBC to such a degree that TBBC would not have entered into this Agreement had such condition or restriction been known to it at the date hereof.

(l) Certification of Claims. HB shall have delivered a certificate to TBBC that HB is not aware of any pending, threatened or potential claim against the directors or officers of any of the HB Companies or under the directors' and officers' insurance policy or the fidelity bond coverage of HB or any HB Company.

(m) Loan Portfolio. TBBC shall have received Schedule 5.9(a)(iv) updated as of the HB Measuring Date, and there shall not have been any material increase since the date of this Agreement in the Loans described or required to be described thereon; provided, however, that, regardless of any such increase, the condition in this Section 9.2(m) shall be deemed to be



satisfied if the quotient of the aggregate amount of the Classified Loans of HB as of the HB Measuring Date, divided by the sum of (i) HB's equity, plus (ii) the HB Allowance, both as set forth on HB's balance sheet on the HB Measuring Date, is less than 0.20.

(n) HB Benefit Plans. TBBC shall have received such evidence and documentation as it shall have reasonably requested to effectuate the provisions of Section 8.19(c) regarding the HB Benefit Plans.

(o) Related Agreements. None of the Voting Agreements, Non-Competition Agreements or Claims Letters delivered pursuant to this Agreement shall have been revoked or terminated by any party thereto (other than by a non-breaching party due to a material breach by BOT or TBBC).

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

(a) Representations and Warranties. The representations and warranties of TBBC set forth in this Agreement or in any certificate or document delivered pursuant to the provisions hereof that are qualified as to materiality or Material Adverse Effect shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties that are made as of a specified date shall speak only as of such date), and the representations and warranties of TBBC set forth in this Agreement or in any certificate or document delivered pursuant to the provisions hereof that are not so qualified shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time (provided that representations and warranties that are made as of a specified date shall speak only as of such date). Notwithstanding the foregoing, the representations and warranties of TBBC set forth in Section 6.3 (Capital Stock), Section 6.6 (Absence of Certain Changes or Events) and Section 6.10 (Statements True and Correct) shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time with the same effect as though all such representations and warranties had been made on and as of the Effective Time.

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

(c) Certificates. TBBC and BOT shall have delivered to HB (i) a certificate, dated as of the Effective Time and signed on its behalf by its President and Chief Executive Officer and its Chief Financial Officer, to the effect that the conditions to HB's obligations set forth in Sections 9.3(a) and 9.3(b) of this Agreement have been satisfied, (ii) certified copies of resolutions duly adopted by the TBBC Board evidencing the taking of all corporate action necessary to authorize the Merger and the execution, delivery and performance of this

Agreement by TBBC, and the consummation of the transactions provided for herein, and (iii) certified copies of resolutions duly adopted by the Board of Directors of BOT and by TBBC as the sole stockholder of BOT evidencing the taking of all corporate action necessary to authorize the Merger and the execution, delivery and performance of this Agreement by BOT, and the consummation of the transactions provided for herein, all in such reasonable detail as HB and its counsel shall request.

(d) Regulatory Matters. No Governmental Authority or Regulatory Authority or the staff thereof shall have (i) asserted that any TBBC Company is not in material compliance with any of the Laws or Order that such Governmental Authority or Regulatory Authority enforces, or (ii) issued, or required any TBBC Company to consent to the issuance or adoption of, a cease and desist order, formal agreement, directive, commitment or memorandum of understanding, or any board resolution or similar undertaking that, in the reasonable estimation of HB, restricts or impairs the conduct of such TBBC Company's business or future prospects.

(e) Absence of Material Adverse Effect. Since the date of this Agreement, no fact, litigation, claim, event or condition shall have occurred that has had or would reasonably be expected to have or result in a Material Adverse Effect on TBBC or BOT.

## **ARTICLE 10**

### **TERMINATION**

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

(a) by mutual written consent of TBBC and HB, if the board of directors of TBBC and HB Board each so determines by vote of a majority of the members of its entire board.

(b) by either TBBC or HB (provided that the terminating Party is not then in material breach of any representation, warranty, covenant, agreement or other obligation contained in this Agreement) in the event of an inaccuracy of any representation or warranty contained in this Agreement made by the other Party, which breach, by its nature, cannot be cured prior to the Closing or has not been cured within thirty (30) days after the giving of written notice to the breaching Party of such inaccuracy and which inaccuracy is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on the breaching Party; or

(c) by TBBC or HB (provided that the terminating Party is not then in material breach of any representation, warranty, covenant, agreement or other obligation contained in this Agreement) in the event of a material breach by the other Party of any covenant, agreement or other obligation contained in this Agreement, which breach, by its nature, cannot be cured prior to the Closing or has not been cured within thirty (30) days after the giving of written notice to the breaching Party of such breach; or

(d) by TBBC or HB if either of their respective boards of directors so determines by a vote of a majority of the members of its entire board (provided that the terminating Party is not then in material breach of any representation, warranty, covenant, agreement or other obligation contained in this Agreement) if (i) any Consent of any Regulatory Authority required for

consummation of the Merger or the other transactions provided for herein shall have been denied by final non-appealable action of such authority or if any action taken by such Regulatory Authority is not appealed within the time limit for appeal, or (ii) the stockholders of HB fail to vote their approval of this Agreement and the transactions provided for herein as required by applicable Law at the HB Stockholders' Meeting where the transactions are presented to such HB stockholders for approval and voted upon; or

(e) by the TBBC Board or the HB Board if the Merger shall not have been consummated on or before 270 days following the date of this Agreement, if the failure to consummate the transactions provided for herein on or before such date is not caused by any breach of this Agreement by the Party electing to terminate pursuant to this Section 10.1(e); provided, however, that if on such 270<sup>th</sup> day approval by a Regulatory Authority is pending and has not been finally resolved or any stockholder litigation referenced in Section 7.6 has not been resolved (by dismissal, settlement or otherwise), such number of days shall be automatically increased from 270 to 360; or

(f) by the TBBC Board or the HB Board if any of the conditions precedent to the obligations of such Party to consummate the Merger cannot under any circumstances be satisfied or fulfilled by the date specified in Section 10.1(e) of this Agreement and such failure was not the fault of the terminating Party; or

(g) by TBBC if the holders of in excess of five percent (5%) of the outstanding shares of HB Common Stock properly assert their dissenters' rights of appraisal pursuant to applicable Law; or

(h) by the TBBC Board if prior to the approval of the Merger by the stockholders of HB (i) the HB Board shall have withdrawn, or adversely modified, or failed upon TBBC's request to reconfirm its recommendation of the Merger or this Agreement, (ii) the HB Board shall have approved or recommended to the stockholders of HB that they approve an Acquisition Proposal other than that contemplated by this Agreement, (iii) HB fails to call the HB Stockholders' Meeting or otherwise breaches its obligations in Sections 8.1 or 8.4 hereof, and, in each case such breach shall not have been cured on or before the expiration of the fifth (5th) Business Day after the delivery of written notice of such breach by TBBC; or

(i) by the HB Board if it concludes in good faith prior to the HB Stockholders' Meetings that an Acquisition Proposal constitutes a Superior Proposal and (after consultation with outside legal counsel) that failure to terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal would likely result in a violation of its fiduciary duties under applicable Law; provided, however, that the HB Board may not terminate this Agreement pursuant to this Section 10.1(i) unless and until (i) HB shall have complied with the terms of this Section; (ii) the HB Board determines in good faith (after consultation with outside legal counsel) that such Superior Proposal has been made and has not been withdrawn and continues to be a Superior Proposal after taking into account all adjustments to the terms of this Agreement that may be offered by TBBC under this Section 10.1(i); (iii) the HB Board has given TBBC at least three (3) Business Days' prior written notice of its intention to terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal (which notice shall specify the material terms and conditions of any such Superior Proposal, including

the identity of the Person making such Superior Proposal) and has contemporaneously provided to TBBC an unredacted copy of the relevant proposed transaction agreements with the Person making such Superior Proposal; and (iv) HB has negotiated, and has caused its representatives to negotiate, in good faith with TBBC during such notice period (to the extent that TBBC wishes to negotiate) to enable TBBC to revise the terms of this Agreement such that it would cause such Superior Proposal to no longer constitute a Superior Proposal. In the event of any material change to the terms of such Superior Proposal, HB shall, in each case, be required to deliver to TBBC a new written notice, the notice period shall recommence, and HB shall be required to comply with its obligations under this Section 10.1(i) with respect to such new written notice. Any termination under this Section 10.1(i) shall be subject to TBBC's receipt of the Termination Fee as set forth in Section 10.2(b), and if such amount is not received by TBBC in accordance therewith, any purported termination pursuant to this Section 10.1(i) shall be null and void. HB agrees (x) that it will not enter into a definitive agreement with respect to any Superior Proposal until at least the fifth (5<sup>th</sup>) Business Day after it has provided the notice to TBBC required hereby, and (y) to notify TBBC promptly in writing if its intention to enter into a definitive agreement as referred to in its notification shall change at any time after giving such notification; or

(j) by TBBC if the amount of the total shareholders' equity set forth in the December 31, 2020 balance sheet in the HB audited financial statements as of and for the year ended December 31, 2020 is less than \$22,900,000.

## **10.2 Effect of Termination.**

(a) In the event of a termination of this Agreement by either TBBC or HB as provided in Section 10.1, this Agreement shall become void and there shall be no Liability or obligation on the part of TBBC or HB or their respective Subsidiaries or any of the officers or directors of any of them, except that this Section 10.2 and Article 11 and Sections 8.2(b) and 8.2(c) (Access to Information) and 8.7 (Expenses) of this Agreement shall survive any such termination; provided, however, that nothing herein shall relieve any breaching Party from Liability for an uncured willful breach of a representation, warranty, covenant, obligation of this Agreement.

(b) In the event that this Agreement is terminated (i) by TBBC pursuant to Section 10.1(h), or (ii) by HB pursuant to Section 10.1(i), or (iii) otherwise by the HB Board at a time when the TBBC Board or TBBC had the right to terminate this Agreement pursuant to Section 10.1(h), then HB shall, in the case of clause (i), two (2) Business Days after the date of such termination or, in the case of clause (ii) or (iii), on the date of such termination, pay to TBBC, by wire transfer of immediately available funds, the amount of \$1,425,000 (the "Termination Fee").

(c) In the event that (i) after the date of this Agreement an Acquisition Proposal shall have been publicly disclosed or any Person shall have publicly disclosed that, subject to the Merger being disapproved by HB stockholders or otherwise rejected, it will make an Acquisition Proposal with respect to HB, and thereafter this Agreement is terminated by the TBBC Board or the HB Board pursuant to Section 10.1(d)(ii), and (ii) concurrently with such termination or within twelve (12) months of such termination HB enters into a definitive agreement with respect

to an Acquisition Proposal or consummates an Acquisition Proposal, then HB shall, upon the earlier of entering into a definitive agreement with respect to an Acquisition Proposal or consummating an Acquisition Proposal, pay to TBBC, by wire transfer of immediately available funds, the Termination Fee.

(d) HB acknowledges that the agreements contained in Sections 10.2(b) and 10.2(c) are an integral part of the transactions provided for in this Agreement, and that, without these agreements, TBBC would not enter into this Agreement; accordingly, if HB fails to promptly pay the amount due pursuant to Section 10.2(b) or Section 10.2(c), as the case may be, and, in order to obtain such payment, TBBC commences a suit which results in a judgment for any of the Termination Fee, HB shall pay TBBC its costs and expenses (including attorneys' fees) in connection with such suit.

(e) Notwithstanding anything to the contrary in this Agreement, other than in the case of a willful breach of this Agreement, the payment of the Termination Fee pursuant to this Section 10.2 shall fully discharge HB from, and be the sole and exclusive remedy of TBBC and BOT with respect to, any and all losses that may be suffered by them based upon, resulting from, or rising out of the circumstances give rise to such termination of this Agreement. In no event shall HB be required to pay the Termination Fee on more than one occasion.

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

## **ARTICLE 11** **MISCELLANEOUS**

(a) Definitions. Except as otherwise provided herein, the capitalized terms used in this Agreement (in their singular and plural forms as applicable) shall have the following meanings:

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

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

"Acquisition Proposal," with respect to HB, means a tender or exchange offer, proposal for a merger, acquisition of all the stock or Assets of, consolidation or other business combination involving HB or any of its Subsidiaries or any proposal or offer to acquire in any manner more than 20% of the voting power in, or more than 20% of the business, Assets or deposits of, HB or any of its Subsidiaries, including a plan of liquidation of HB or any of its Subsidiaries, other than the transactions contemplated by this Agreement.

"Affiliate" of a Person means: (i) any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person; or (ii) any officer, director, partner or such Person, or (iii) any direct or indirect beneficial owner of any 10% or greater equity or voting interest of such Person.

**"Agency"** means the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, the Farmers Home Administration (now known as Rural Housing and Community Development Services), the Federal National Mortgage Association, the United States Department of Veterans' Affairs, the Rural Housing Service of the U.S. Department of Agriculture or any other Regulatory Authority with authority to (i) determine any investment, origination, lending or servicing requirements with regard to mortgage Loans originated, purchased or serviced by any Person or (ii) originate, purchase, or service mortgage Loans, or otherwise promote mortgage lending, including state and local housing finance authorities.

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

**"Assets"** of a Person means all of the assets, properties, businesses and rights of such Person of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, accrued or contingent, or otherwise relating to or utilized in such Person's business, directly or indirectly, in whole or in part, whether or not carried on the books and records of such Person, and whether or not owned in the name of such Person or any Affiliate of such Person and wherever located.

**"BOT Call Reports"** means (i) the Reports of Income and Condition of BOT for years ended December 31, 2020, 2019 and 2018, as filed with the FDIC; and (ii) the Reports of Income and Condition of BOT delivered by BOT to HB with respect to periods ended subsequent to December 31, 2020.

**"Business Day"** means any day other than a Saturday, a Sunday or a day on which banking institutions in Florida are authorized or obligated by Law or executive order to close.

**"Classified Loans"** means Loans that have been classified by any bank examiner, whether regulatory or internal, or, in the exercise of reasonable diligence by HB or by any Regulatory Authority, should have been classified, as "other loans Specifically Mentioned," "Special Mention," "Substandard," "Doubtful," "Loss," "Classified," "Watch List," "Criticized," "Credit Risk Assets," "concerned loans" or words of similar import.

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

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

**"Contract"** means any written or oral agreement, arrangement, authorization, commitment, contract, indenture, debenture, instrument, trust agreement, guarantee, lease, obligation, plan, practice, restriction, understanding or undertaking of any kind or character, or

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
THE BANK OF TAMPA

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
09 NOV 10 PM 3:17

The undersigned, as directors of The Bank of Tampa, a financial institution corporation formed in accordance with the Laws of the State of Florida, adopts the following amended and restated Articles of Incorporation.

ARTICLE I

The name of the corporation shall be The Bank of Tampa and its place of business shall be at 601 Bayshore Boulevard, in the City of Tampa, in the County of Hillsborough and State of Florida. These Articles shall be effective upon filing.

ARTICLE II

The general nature of the business to be transacted by this corporation shall be: That of a general commercial banking and trust business with all the rights, powers, and privileges granted and conferred by the Florida Financial Institutions Codes, regulating the organization, powers, and management of banking corporations with trust powers.

ARTICLE III

The total number of shares of common stock authorized to be issued by the corporation shall be Five Hundred Thousand (500,000). Such shares shall be of a single class and shall have a par value of Five Dollars (\$5.00) per share.

ARTICLE IV

The term for which said corporation shall exist shall be perpetual unless terminated pursuant to the Florida Financial Institutions Codes.

ARTICLE V

The number of directors shall be the number from time to time fixed in accordance with the provisions of the by-laws of the corporation, but at no time shall the number of directors be fewer than five. A majority of the full board of directors may, at any time during the year following the annual meeting of shareholders, increase the number of directors of this corporation by not more than two and appoint persons to fill the resulting vacancies.

ARTICLE VI

These restated Article of Incorporation may be amended in the manner from time to time prescribed by law.

ARTICLE VII

The power to adopt, alter, amend or repeal by-laws shall be vested in the board of directors.

CERTIFICATE

The foregoing amended and restated Articles of Incorporation were adopted by the holders of outstanding shares of common stock, being the sole voting group entitled to vote thereon, on October 13, 2009 and the number of votes cast for the amended and restated Articles of Incorporation by the shareholders was sufficient for approval by them.

In witness of the foregoing, the undersigned President and Chief Executive Officer of this corporation has executed these amended and restated Articles of Incorporation this 13<sup>th</sup> day of October, 2009.

By: William O. West  
William O. West  
President and Chief Executive Officer

Approved by the Office of Financial Regulation this 5<sup>th</sup> day of

November, 2009.

Tallahassee, Florida

Linda B. Charity  
Linda B. Charity  
Director  
Division of Financial Institutions



## EXHIBIT 2

### DIRECTORS AND EXECUTIVE OFFICERS OF THE BANK OF TAMPA FOLLOWING THE MERGER EFFECTIVE DATE

#### Directors:\*

James L. Ferman, Jr.	Chairman of the Board
William O. West	CEO of the Bank
G. Robert Blanchard, Jr.	
Gregory J. Celestan	
Cathy M. Collins	
Brett D. Divers	
Gary W. Harrod	
Oscar J. Horton	
Judy A. Mitchell	
Paul L. Whiting, Sr.	

#### Executive Officers:\*

William O. West	CEO
T. Corey Neil	President and Chief Operating Officer
Charles O. Murphy	Executive Vice President – Sarasota Market President
Scott C. Gault	Executive Vice President – Hillsborough Market Pres.
K. Owen LaFave	Executive Vice President – Pinellas Market President
Kathryn T. Dinsmore	Executive Vice President – Chief Credit Policy Officer
Beth A. Horner	Executive Vice President – Trust Director
Susan K. Miller	Executive Vice President – Chief Financial Officer & Corporate Secretary
Stacey S. Pittman	Executive Vice President – Wealth Management Director
Michael J. Krieg	Executive Vice President – Chief Information Officer
Ronald V. Hernandez	Senior Vice President – Chief Accounting Officer
Joel Smith	Senior Vice President – Chief Marketing Officer
Genna Dziloski	Senior Vice President – Chief Human Resources Officer
Thomas W. Oliver	Senior Vice President – Director of Operations

\*The address for each individual is 601 Bayshore Blvd, Tampa, Florida 33601

2021 SEP 28 PM 9:04  
SECRETARY OF THE  
FIDELITY INVESTMENT

**EXHIBIT 3****BANKING OFFICES OF THE BANK OF TAMPA  
FOLLOWING THE MERGER EFFECTIVE DATE**

Office Name	Branch Office Address	City/State	Zip Code
Main Office (Bayshore Office)	601 Bayshore Boulevard, Suite 100	Tampa, FL	33606
Brandon Office	1217 Oakfield Drive	Brandon, FL	33511
Downtown Tampa Office	Three Tampa City Center, Suite 40	Tampa, FL	33602
Armenia Office	4400 North Armenia Avenue	Tampa, FL	33603
Westshore Office	4600 West Cypress Street, Suite 100	Tampa, FL	33607
Carrollwood Office	13868 North Dale Mabry Hwy	Tampa, FL	33616
Sunset Park Office	4355 Henderson Boulevard	Tampa, FL	33629
Clearwater Office	900 South Fort Harrison Avenue	Clearwater, FL	33756
Mid-Pinellas Office	10980 Belcher Road South	Pinellas Park, FL	33781
Downtown St. Petersburg Office	200 Central Avenue	Saint Petersburg, FL	33701
Sarasota Office	1858 Ringling Boulevard	Sarasota, FL	34236
Plant City Office	509 West Alexander Street	Plant City, FL	33566
Valrico Office	1016 Bloomingdale Avenue	Valrico, FL	33595

FILED  
2021 SEP 28 AM 9:04  
SECRETARY OF THE  
TREASURY  
TAMPA, FL

**EXHIBIT 4**

**FORM OF NON-COMPETITION AGREEMENT**

FILED

2021 SEP 28 AM 9:04

SECRETARY OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

## NON-COMPETITION AGREEMENT

This Non-Competition Agreement (this "Agreement"), is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Tampa Bay Banking Company, a Florida corporation ("TBBC"), and \_\_\_\_\_ ("Director").

### RECITALS

**WHEREAS**, pursuant to that certain Plan of Merger and Merger Agreement dated as of \_\_\_\_\_, 2021 (the "Merger Agreement") by and among TBBC, The Bank of Tampa, a Florida banking corporation and wholly owned subsidiary of TBBC ("BOT"), and Hillsboro Bank, a Florida banking corporation ("HB"), HB will merge with and into BOT (the "Merger");

**WHEREAS**, Director is a shareholder of HB and, as a result of the Merger and pursuant to the transactions contemplated by the Merger Agreement, Director is expected to receive significant consideration in exchange for the shares of HB Common Stock (as defined in the Merger Agreement) held by Director;

**WHEREAS**, prior to the date hereof, Director has served as a member of the Board of Directors of HB, and, therefore, Director has knowledge of Confidential Information and Trade Secrets (each as hereinafter defined);

**WHEREAS**, as a result of the Merger, TBBC and BOT will succeed to all of the Confidential Information and Trade Secrets, for which TBBC, as of the Effective Time (as defined in the Merger Agreement), will have paid valuable consideration and desires reasonable protection; and

**WHEREAS**, it is a material prerequisite to the consummation of the Merger that certain directors of HB, including Director, enter into this Agreement.

**NOW, THEREFORE**, in consideration of these premises and the mutual covenants and undertakings herein contained, TBBC and Director, each intending to be legally bound, covenant and agree as follows:

#### 1. Restrictive Covenants.

(a) Director acknowledges that (i) TBBC has separately bargained for the restrictive covenants in this Agreement, (ii) the types and periods of restrictions imposed by the covenants in this Agreement are fair and reasonable to Director and (iii) such restrictions will not prevent Director from earning a livelihood.

(b) Having acknowledged the foregoing, solely in the event that the Merger is consummated, Director covenants and agrees with TBBC as follows:

(i) From and after the Effective Time, Director will not disclose or use any Confidential Information or Trade Secret for so long as such information remains Confidential Information or a Trade Secret, as applicable, for any purpose, except for any

disclosure that is required by applicable law or court order. In the event that Director is required by law or court order to disclose any Confidential Information, Director will: (A) if and to the extent permitted by such law or court order, provide TBBC with prompt notice of such requirement prior to the disclosure so that TBBC may waive the requirements of this Agreement or seek an appropriate protective order at TBBC's sole expense, and (B) use commercially reasonable efforts to obtain assurances that any Confidential Information disclosed will be accorded confidential treatment. If, in the absence of a waiver or protective order, Director is nonetheless, in the opinion of Director's counsel, required to disclose Confidential Information, disclosure may be made only as to that portion of the Confidential Information that counsel advises Director is required to be disclosed.

(ii) Except as expressly provided on Schedule I to this Agreement, for a period of two (2) years after the Effective Time, Director will not (except on behalf of, or with the prior written consent of, TBBC), on Director's own behalf or in the service or on behalf of others, solicit or attempt to solicit any customer of TBBC, BOT or HB (each, a "Protected Party"), including customers and actively sought prospective customers of the Protected Parties immediately prior to the Effective Time, for the purpose of providing products or services that are Competitive (as hereinafter defined) with those offered or provided by any Protected Party.

(iii) Except as expressly provided on Schedule I to this Agreement, for a period of two (2) years after the Effective Time, Director will not (except on behalf of, or with the prior written consent of, TBBC), either directly or indirectly, on Director's own behalf or in the service or on behalf of others, act as a director, manager, officer, employee, consultant or organizer of any business or business in formation that is the same as or essentially the same as the business conducted by any Protected Party at the Effective Time and that has an office located within the Restricted Territory.

(iv) For a period of two (2) years after the Effective Time, Director will not, on Director's own behalf or in the service or on behalf of others, solicit or recruit or attempt to solicit or recruit, directly or by assisting others, any employee of any Protected Party or any individual who was an employee within nine (9) months prior to such solicitation or recruitment, whether or not such employee is or was a full-time employee or a temporary employee of such Protected Party, whether or not such employment is or was pursuant to a written agreement and whether or not such employment is or was for a determined period or is at will, to cease working for such Protected Party.

(c) For purposes of this Section 1, the following terms shall be defined as set forth below:

(i) "Competitive," with respect to particular products or services, shall mean products or services that are the same as or similar to the products or services of any Protected Party.

(ii) "Confidential Information" shall mean data and information: (A) relating to the business of HB and/or its subsidiaries, regardless of whether the data or information constitutes a Trade Secret; (B) disclosed to Director or of which Director became aware as a consequence of Director's relationship with HB; (C) having value to HB and, as a result of the consummation of the transactions contemplated by the Merger Agreement, to TBBC and/or BOT; and (D) not generally known to competitors of HB and BOT.

Without limiting the foregoing, Confidential Information shall include Trade Secrets, methods of operation, names of customers, rate sheets, renewal terms, financial information and projections, personnel data and similar information; provided, however, that the terms "Confidential Information" and "Trade Secrets" shall not mean data or information that (x) has been disclosed to the public, except where such public disclosure has been made by Director without authorization from TBBC, (y) has been independently developed and disclosed by others, or (z) has otherwise entered the public domain through lawful means.

(iii) "Restricted Territory" shall mean Hillsborough County, Pasco County, Pinellas County, Polk County and Sarasota County and each county that is contiguous to any of the foregoing counties.

(iv) "Trade Secret" shall mean information, without regard to form, including technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans or a list of actual or potential customers or suppliers, that is not commonly known by or available to the public and which information: (A) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(d) Director acknowledges that irreparable loss and injury would result to TBBC and BOT upon the breach of any of the covenants contained in this Section I and that damages arising out of such breach would be difficult to ascertain. Director hereby agrees that, in addition to all other remedies provided at law or in equity, TBBC may petition and obtain from a court of law or equity, without the necessity of proving actual damages and without posting any bond or other security, both temporary and permanent injunctive relief to prevent a breach by Director of any covenant contained in this Section I, and shall be entitled to an equitable accounting of all earnings, profits and other benefits arising out of any such breach. In the event that the provisions of this Section I should ever be determined to exceed the time, geographic or other limitations permitted by applicable law, then such provisions shall be modified so as to be enforceable to the maximum extent permitted by law. If such provision(s) cannot be modified to be enforceable, then the provision(s) shall be severed from this Agreement to the extent unenforceable. The remaining provisions and any partially enforceable provisions shall remain in full force and effect.

2. Notices. Any notice, consent, demand, request or other communication given to a party hereto in connection with this Agreement shall be in writing and shall be deemed to have been given to such party (i) when delivered personally to such party or (ii) five (5) days after being sent by prepaid certified or registered mail or two (2) days after being sent by a nationally recognized overnight courier to the address (if any) specified below for such party (or to such other address as such party shall have specified by ten (10) days' advance notice given in accordance with this Section 2).

If to TBBC: Tampa Bay Banking Company  
601 Bayshore Blvd  
Tampa, Florida 33601  
Attention: William O. West

If to Director: The address of Director's principal residence as set forth  
on this signature page to this Agreement.

3. Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Florida, without giving effect to the conflicts of laws principles thereof.

4. Modification and Waiver. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by Director and TBBC. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of dissimilar provisions or conditions at the same or any prior subsequent time.

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

6. Counterparts. This Agreement may be executed (and delivered via facsimile, e-mail or other electronic transmission) in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

7. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, understandings and arrangements, oral or written, between the parties hereto with respect to the subject matter hereof.

8. Prevailing Party; Venue and Jurisdiction.

(a) If any civil action, arbitration or other legal 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 shall be entitled to recover reasonable attorneys' fees, court costs, sales and use taxes 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 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 (including any fees and costs associated with collecting such amounts).

(b) The parties acknowledge that a substantial portion of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Hillsborough County, Florida. Any civil action, counterclaim, proceeding, or litigation arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Hillsborough County or the United States District Court, Middle District of Florida (Tampa Division). Each party consents to the jurisdiction of such Florida court in any such civil action, counterclaim, proceeding, or litigation and waives any objection to the laying of venue of any such civil action, counterclaim, proceeding, or litigation in such Florida court. Service of any court paper may be effected on such party by mail, as provided in this letter, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

9. Construction; Interpretation. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

10. Term; Termination. This Agreement may be terminated at any time by the written consent of the parties hereto, and this Agreement shall be automatically terminated upon the earlier of (i) any termination of the Merger Agreement prior to the Effective Time, or (ii) the second anniversary of the Effective Time. For the avoidance of doubt, the provisions of Section 1 shall only become operative upon the consummation of the Merger and, in such event, shall survive the consummation of the Merger until the second anniversary of the Effective Time. Upon termination of this Agreement, no party shall have any further obligations or liabilities hereunder, except that termination of this Agreement will not relieve a breaching party from liability for any breach of any provision of this Agreement occurring prior to the termination of this Agreement.

[Signature page follows.]



IN WITNESS WHEREOF, Director has executed and delivered this Agreement, and TBBC has caused this Agreement to be executed and delivered, all as of the day and year first above set forth.

**TAMPA BAY BANKING COMPANY**

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

Its: \_\_\_\_\_

**DIRECTOR:**

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[typed or printed name]

Address: \_\_\_\_\_  
\_\_\_\_\_

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TAMPA BAY BANKING COMPANY

**Schedule I**

The parties acknowledge and agree that the restrictions set forth in Sections 1(b)(ii) and (iii) shall not apply to the activities of Director, standing alone, that are initialed below by both parties.

*[Please initial the item(s), if any, that correspond to activities in which Director is actively engaged.]*

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**EXHIBIT 5**

**FORM OF CLAIMS LETTER**

**FILED**

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SECRETARY OF THE  
NAVY

## CLAIMS LETTER

\_\_\_\_\_, 2021

Tampa Bay Banking Company  
601 Bayshore Blvd  
Tampa, Florida 33601  
Attention: William O. West

2021 SEP 28 AM 9:04  
SECRETARY OF THE  
TALLAHASSEE  
FBI

Gentlemen:

This letter ("Claims Letter") is delivered pursuant the Plan of Merger and Merger Agreement, dated as of \_\_\_\_\_, 2021 (the "Merger Agreement"), by and among Tampa Bay Banking Company, a Florida corporation ("TBBC"), The Bank of Tampa, a Florida banking corporation and wholly owned subsidiary of TBBC ("BOT"), and Hillsboro Bank, a Florida banking corporation ("HB"), pursuant to which HB will merge with and into BOT (the "Merger"). Concerning claims that the undersigned may have against HB and/or any of its subsidiaries in the undersigned's capacity as an officer, director or employee of HB or any of its subsidiaries, and in consideration of the premises, and the mutual covenants contained herein and in the Merger Agreement and the mutual benefits to be derived hereunder and thereunder, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned, intending to be legally bound, hereby agrees as follows:

1. **Definitions.** Unless otherwise defined in this letter, capitalized terms used in this letter have the meanings given to them in the Merger Agreement.

2. **Release of Certain Claims.**

(a) The undersigned hereby releases and forever discharges, effective upon the consummation of the Merger under the Merger Agreement, each HB Company, and its respective directors and officers (in their capacities as such), and their respective successors and assigns (including, without limitation, BOT and TBBC), and each of them (hereinafter, individually and collectively, the "Released Parties") of and from any and all liabilities, claims, demands, debts, accounts, covenants, agreements, obligations, costs, expenses, actions or causes of action of every nature, character or description (collectively, "Claims"), that the undersigned, solely in his capacity as an officer, director or employee of any HB Company, has or claims to have or may have, or previously had or claimed to have or may have had, in each case as of the Effective Time, against any of the Released Parties, whether in law, equity or otherwise, based in whole or in part on any facts, conduct, activities, transactions, events or occurrences known or unknown, matured or unmatured, contingent or otherwise (individually, a "Released Claim," and collectively, the "Released Claims"), except for (i) compensation for services in the ordinary course of business consistent with past practice that have accrued but not yet been paid as of the Effective Time, (ii) contract rights relating to severance and employment grants which have been disclosed in writing to TBBC in the Merger Agreement and have not been released, terminated or waived pursuant to an Employment Agreement Termination Letter or otherwise, (iii) the

specific items, if any, listed on Schedule I to this letter and (iv) the items listed in Section 2(b) below.

(b) For avoidance of doubt, the parties acknowledge and agree that the Released Claims do not include any of the following:

(i) any Claims that the undersigned may have in any capacity other than as an officer, director or employee of any HB Company, including, but not limited to, (A) Claims as a borrower under loan commitments and loan agreements between the undersigned and any HB Company, (B) Claims as a depositor under any deposit account with any HB Company, (C) Claims as the holder of any Certificate of Deposit issued by any HB Company, (D) Claims on account of any services rendered by the undersigned in a capacity other than as an officer, director or employee of any HB Company, (E) Claims in the undersigned's capacity of a shareholder of HB, and (F) Claims in the undersigned's capacity as a holder of any check issued by any other depositor of any HB Company;

(ii) the Claims excluded in clauses (i) and (ii) of Section 2(a) above; and

(iii) any Claims that the undersigned may have under the Merger Agreement including, without limitation, any rights to indemnification and advancement of expenses under Section 8.12 thereof.

3. **Forbearance.** The undersigned promises and agrees to forever refrain and forbear from commencing, instituting or prosecuting any lawsuit, action, claim or proceeding before or in any court, regulatory, governmental, arbitral or other authority to collect or enforce any Released Claims which are released and discharged hereby.

4. **Miscellaneous.**

(a) This Claims Letter shall be governed and construed in accordance with the laws of the State of Florida (other than the choice of law provisions thereof).

(b) This Claims Letter contains the entire agreement between the parties with respect to the Released Claims released hereby, and this Claims Letter supersedes all prior agreements, arrangements or understandings (written or otherwise) with respect to such Released Claims, and no representation or warranty, oral or written, express or implied, has been made by or relied upon by any party hereto, except as expressly contained herein or in the Merger Agreement.

(c) This Claims Letter shall be binding upon and inure to the benefit of the undersigned and the Released Parties and their respective heirs, legal representatives, successors and assigns.

(d) This Claims Letter may not be modified, amended or rescinded except by the written agreement of the undersigned and the Released Parties, it being the express understanding of the undersigned and the Released Parties that no term hereof may be waived by the action, inaction or course of delaying by or between the undersigned or the Released Parties,

except in strict accordance with this paragraph, and further that the waiver of any breach of this Claims Letter shall not constitute or be construed as the waiver of any other breach of the terms hereof.

(e) The undersigned represents, warrants and covenants that the undersigned is fully aware of the undersigned's rights to discuss any and all aspects of this matter with any attorney chosen by him or her, and that the undersigned has carefully read and fully understands all of the provisions of this Claims Letter, and that the undersigned is voluntarily entering into this Claims Letter.

(f) This Claims Letter shall become effective upon the consummation of the Merger, and its operation to extinguish all of the Released Claims released hereby is not dependent on or affected by the performance or non-performance of any future act by the undersigned or the Released Parties (other than the failure of TBBC to pay the Merger consideration under the Merger Agreement). If the Merger Agreement is terminated prior to the Effective Time for any reason, this Claims Letter shall be of no further force or effect.

(g) If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Claims Letter, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Claims Letter, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs, sales and use taxes 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 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 (including any fees and costs associated with collecting such amounts).

(h) IN ANY CIVIL ACTION, COUNTERCLAIM, PROCEEDING, OR LITIGATION, WHETHER AT LAW OR IN EQUITY, THAT ARISES OUT OF, CONCERNS, OR RELATES TO THIS CLAIMS LETTER, ANY AND ALL TRANSACTIONS CONTEMPLATED BY THIS CLAIMS LETTER, THE PERFORMANCE OF THIS CLAIMS LETTER, OR THE RELATIONSHIP CREATED BY THIS CLAIMS LETTER, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS CLAIMS LETTER WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THIS CLAIMS LETTER OR THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION. EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THE TRANSACTIONS GOVERNED BY THIS CLAIMS LETTER AND

SPECIFICALLY WITH RESPECT TO THE TERMS OF THIS SECTION.

(i) The parties acknowledge that a substantial portion of the negotiations, anticipated performance and execution of this Claims Letter occurred or shall occur in Hillsborough County, Florida. Any civil action, counterclaim, proceeding, or Litigation arising out of or relating to this Claims Letter shall be brought in the courts of record of the State of Florida in Hillsborough County or the United States District Court, Middle District of Florida (Tampa Division). Each party consents to the jurisdiction of such Florida court in any such civil action, counterclaim, proceeding, or Litigation and waives any objection to the laying of venue of any such civil action, counterclaim, proceeding, or Litigation in such Florida court. Service of any court paper may be effected on such party by mail, as provided in this letter, or in such other manner as may be provided under applicable Laws, rules of procedure or local rules.

[Signature page follows.]

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2021 SEP 28 AM 9:04

SECRETARY OF THE  
TALLAHASSEE

Sincerely,

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

On behalf of Tampa Bay Banking Company, I hereby acknowledge receipt of this Claims Letter as of the date first written above.

**TAMPA BAY BANKING COMPANY**

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

Its: \_\_\_\_\_

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2021 SEP 28 AM 9:04

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



Schedule I

None.

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2021 SEP 28 AM 9:04

SECRETARY OF STATE  
TALLAHASSEE, FL




Commissioner Russell C. Weigel, III

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Having been approved by the Office of Financial Regulation on July 29, 2021, to merge Hillsboro Bank, Plant City, Hillsborough County, Florida, with and into The Bank of Tampa, Tampa, Hillsborough County, Florida, and being satisfied that the conditions of approval have been met, I hereby approve for filing with the Department of State, the attached "Articles of Merger", so that at 12:01 a.m., eastern daylight time on October 1, 2021, they shall read as stated herein.

Signed on this 28<sup>th</sup> day of  
September 2021.

  
\_\_\_\_\_  
Jeremy W. Smith, Director,  
Division of Financial Institutions

# OFFICE OF FINANCIAL REGULATION

## CERTIFICATE OF MERGER

WHEREAS, Section 658.41, Florida Statutes, provides for the merger and consolidation of financial institutions; and

WHEREAS, the Office of Financial Regulation ("Office") is satisfied that the terms of the Agreement and Plan of Merger between the financial institutions described below comply with the Florida Statutes, and that the other regulatory conditions of the Office have been met,

NOW, THEREFORE, I, Jeremy W. Smith, Director of the Division of Financial Institutions, Office of Financial Regulation, do hereby issue this Certificate authorizing consummation of the merger and consolidation of the following constituent financial institutions:

The Bank of Tampa, Tampa, Hillsborough County, Florida

Charter #265

Hillsboro Bank, Plant City, Hillsborough County, Florida

Charter #1046

under the charter of: The Bank of Tampa  
under the title of: The Bank of Tampa  
under State Charter No: 265

And, the Office further authorizes The Bank of Tampa to continue the transaction of a general banking business with main office at 601 Bayshore Boulevard, Suite 100, Tampa, Hillsborough County, Florida, and with branch offices as authorized by law. On the effective date of merger, 12:01 a.m., eastern daylight time on October 1, 2021, the charter and franchise of Hillsboro Bank shall be deemed terminated and surrendered.



Signed and Sealed this 28th day  
of September 2021.

  
Jeremy W. Smith, Director  
Division of Financial Institutions