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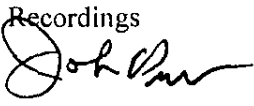


Tom Grady
Commissioner

INTEROFFICE COMMUNICATION

DATE: December 30, 2011

TO: Karon Beyer, Department of State
Division of Corporations - Bureau of Commercial Recordings

FROM: John A. Pullen, Division of Financial Institutions 

SUBJECT: Merger of East Coast Community Bank with and into BankFIRST, Winter Park, Florida

Please file the attached "Merger Documents" (an original and 3 copies) for the above-referenced institutions, using January 1, 2012, as the effective date for the merger.

Please make the following distribution of certified copies of the merger documents:

- (1) One copy to: Office of Financial Regulation
Division of Financial Institutions
200 East Gaines Street
Tallahassee, Florida 32399-0371
- (2) Two copies to: John P. Greeley, Esquire
Smith Mackinnon, PA
Suite 800, Citrus Center
255 South Orange Avenue
Orlando, Florida 32801

Also attached is a \$96.25 check that represents payment of the filing fees, charter tax and certified copies. If there is an over-payment of fees, please remit a refund to Smith Mackinnon, PA at the above address.

If there is an under-payment, or if you have any questions, please call John P. Greeley, Esquire at (407) 843-7300.

Attachments

OFFICE OF FINANCIAL REGULATION



Having been approved by the Commissioner of the Office of Financial Regulation on August 31, 2011, to merge East Coast Community Bank, Ormond Beach, Volusia County, Florida, and BankFIRST, Winter Park, Orange County, Florida, and being satisfied that the conditions of approval have been met, I approve for filing with the Florida Department of State, the attached "Articles of Merger," which contains the Articles of Incorporation of BankFIRST (the resulting bank), so that effective on January 1, 2012, they shall read as stated herein.

Signed on this 30th day
of December, 2011.


Linda B. Charity, Director
Division of Financial Institutions

ARTICLES OF MERGER
OF
EAST COAST COMMUNITY BANK
INTO
BANKFIRST

FILED

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

East Coast Community Bank and BankFIRST do hereby adopt the following Articles of Merger:

EFFECTIVE DATE 1/1/12

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

SECOND: The Plan of Merger is set forth in the Amended and Restated Plan of Merger and Merger Agreement dated June 6, 2011, as amended, by and among The BANKshares, Inc., The Commercial Bancorp, Inc., BankFIRST and East Coast Community Bank (the "Merger Agreement"). A copy of the Merger Agreement 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., Winter Park, Florida time, on January 1, 2012.

FOURTH: The Merger Agreement was adopted by the sole shareholder of East Coast Community Bank on June 16, 2011 and by the sole shareholder of BankFIRST on June 6, 2011.

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


[Signature page follows]

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of December 20, 2011.

EAST COAST COMMUNITY BANK


By: _____
Rafael A. Ramirez
President and Chief Executive
Officer

BANKFIRST

By:  _____
Donald J. McGowan
President and Chief Executive
Officer

IN WITNESS WHEREOF, the parties have caused these Articles of Merger to be executed effective as of December 20, 2011.

EAST COAST COMMUNITY BANK

By: 

Rafael A. Ramirez
President and Chief Executive
Officer

BANKFIRST

By: _____
Donald J. McGowan
President and Chief Executive
Officer

AMENDED AND RESTATED PLAN OF MERGER AND MERGER AGREEMENT

By and Among

THE COMMERCIAL BANCORP, INC.

EAST COAST COMMUNITY BANK,

THE BANKSHARES, INC.,

And

BANKFIRST

Dated June 6, 2011

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AMENDED AND RESTATED PLAN OF MERGER AND MERGER AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER (this "Agreement") is dated as of this 6 day of June, 2011, by and among The Commercial Bancorp, Inc., a Florida corporation ("CBI"), East Coast Community Bank, a Florida banking corporation ("East Coast Bank"), The BANKshares, Inc., a Delaware corporation ("TBI"), and BankFIRST, a Florida banking corporation ("BankFIRST").

RECITALS:

A. **CBI.** CBI is a corporation duly organized and existing in good standing under the laws of the State of Florida, with its principal executive offices located in Ormond Beach, Florida. As of the date hereof, CBI's authorized capital stock consists of 10,000,000 shares of common stock, par value \$.01 per share (the "CBI Common Stock"), of which 1,357,722 shares of CBI Common Stock are outstanding.

B. **TBI.** TBI is a corporation duly organized and existing in good standing under the laws of the State of Florida with its principal executive offices located in Winter Park, Florida. As of the date hereof, TBI's authorized capital stock consists of 30,000,000 shares of common stock, par value \$.01 per share ("TBI Common Stock"), of which 13,876,597 shares are outstanding as of the date of this Agreement.

C. **Merger.** Pursuant to this agreement, ECCB will merge with and into BankFIRST. For the purposes of this Agreement, the foregoing merger is referred to as the "Merger" or as the "Subsidiary Merger".

D. Section D is intentionally omitted.

E. **Subsidiary Merger.** Pursuant to this Agreement, East Coast Bank shall merge with and into BankFIRST. For purposes of this Agreement, the foregoing merger is referred to as the "Subsidiary Merger."

F. **Approvals.** The Boards of Directors of each of TBI, BankFIRST, CBI and East Coast Bank have determined that this Agreement and the transactions contemplated hereby are in the best interests of their respective shareholders, and have approved this Agreement at meetings of each of such Boards of Directors.

G. **CBI Shareholders Agreement.** As a condition and an inducement to the signing of this Agreement, certain shareholders of CBI (each a "Shareholder" and collectively, the "Shareholders") have executed Shareholders' Agreements (the "Shareholders' Agreements") pursuant to which each such Shareholder has agreed, among other things, to vote all shares of CBI Common Stock beneficially owned by such Shareholder in favor of the approval of this Agreement (as and to the extent required by law) in accordance with and subject to the terms set forth in the Shareholder Agreement.

H. **Non-Competition Agreements.** As a condition and an inducement to the signing of this Agreement, CBI has agreed to use its reasonable best efforts to cause each of the Non-Compete Persons

to enter into a Non-Competition Agreement with TBI, pursuant to which such Non-Compete Person shall agree, as of and following the Merger Effective Date, to refrain from engaging in certain activities in competition with TBI and the Continuing Bank (each, a "Non-Competition Agreement" and, collectively, the "Non-Competition Agreements").

NOW, THEREFORE, in consideration of their mutual promises and obligations, the parties hereto, intending to be legally bound, adopt and make this Agreement and prescribe the terms and conditions hereof and the manner and basis of carrying the Agreement into effect, as follows:

ARTICLE I. THE MERGER AND THE SUBSIDIARY MERGER

1.1 The Merger. Subject to the terms and conditions of this Agreement, on the Merger Effective Date, (i) ECCB shall be merged with and into BankFIRST, (ii) BankFIRST shall be the surviving entity and (iii) the separate corporate existence of ECCB shall thereupon cease.

1.2 Merger Effective Date; Closing. The Merger shall become effective at the date and time (the "Effective Time") set forth in the Articles of Merger relating to the Merger filed with the Secretary of State of Florida (the "Merger Effective Date") and the parties shall utilize their best efforts to cause such Articles of Merger to be issued within 30 days after satisfaction of all conditions set forth in Article VI, including, without limitation, the receipt of the regulatory approvals (and the expiration of all waiting periods) referred to in Section 6.2. All documents required by the terms of this Agreement to be delivered at or prior to consummation of the Merger shall be exchanged by the parties at the closing of the Merger (the "Closing"), which shall be held on the Merger Effective Date at such location and at such time as may be mutually agreed upon.

1.3 The Subsidiary Merger. In the event that all of the conditions set forth in Article VI hereof have been satisfied or waived:

(A) **The Subsidiary Merger.** On the Bank Merger Effective Date (as hereinafter defined) East Coast Bank will merge with and into BankFIRST. BankFIRST, following consummation of the Merger is sometimes referred to in this Agreement as the "Continuing Bank." The Subsidiary Merger shall become effective as of the date and time (the "Bank Merger Effective Date") set forth in the Articles of Merger relating to the Subsidiary Merger filed with the Secretary of State of Florida and in the certificate of merger issued by the Florida Office of Financial Regulation.

(B) **Rights, Etc.** On the Bank Merger Effective Date, the Continuing Bank shall thereupon and thereafter possess all of the rights, privileges, immunities and franchises, of a public as well as of a private nature, of BankFIRST and East Coast Bank, and all property, real, personal and mixed and all debts due on whatever account, and all other causes of action, all and every other interest of or belonging to or due to each of the Banks so merged shall be deemed to be vested in the Continuing Bank without further act or deed. The title to any real estate, or any interest therein, vested in any of such Banks, shall not revert or be in any way impaired by reason of the Subsidiary Merger, as provided by the laws of the State of Florida.

(C) **Liabilities.** On the Bank Merger Effective Date, the Continuing Bank shall thereupon and thereafter be responsible and liable for all the liabilities, obligations and penalties of each of the corporations so merged. All rights of creditors and obligors and all Liens on the property of each of BankFIRST and East Coast Bank shall be preserved unimpaired.

(D) **Articles of Incorporation; Bylaws; Directors; Officers; Offices.**

(i) The articles of incorporation and bylaws of the Continuing Bank following the Bank Merger Effective Date shall be those of BankFIRST as in effect immediately prior to the Bank Merger Effective Date and shall thereafter remain in effect until changed in accordance with applicable Law.

(ii) The directors of the Continuing Bank following the Bank Merger Effective Date, who shall hold office until such time as their successors are elected and qualified, shall consist of those individuals set forth on Exhibit 1. Mr. Kevin Bowler or another individual mutually acceptable to CBI and TBI will be appointed as a director of the Continuing Bank as of the Bank Merger Effective Date and for a period at least through the second anniversary of the Bank Merger Effective Date.

(iii) The executive officers of the Continuing Bank following the Bank Merger Effective Date, shall consist of those individuals set forth on Exhibit 2.

(iv) The banking offices of the Continuing Bank following the Bank Merger Effective Date shall include those banking offices of each of BankFIRST and East Coast Bank which were in operation immediately prior to the Bank Merger Effective Date. The name and location of the main office and any existing branch office of the Continuing Bank is set forth on Exhibit 3.

1.4 **Trust Powers.** At the Bank Merger Effective Date, no direct or indirect subsidiary bank of the Continuing Bank will exercise trust powers.

**ARTICLE II.
MERGER CONSIDERATION**

2.1 **Merger Consideration.** Subject to the provisions of this Agreement, automatically, as a result of the Merger, and without any action on the part of any party or Shareholder:

(A) **Outstanding Stock.**

(i) Subject to the provisions of this Agreement, as of the Effective Time and by virtue of the Merger and without any further action on the part of the holder of any shares of ECCB Common Stock (a "Holder") or TBI Common Stock:

(a) each share of TBI Common Stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding; and

(b) each share of CBI Common Stock (excluding shares owned by CBI and shares as to which statutory dissenters' rights have been perfected ("Dissenters' Rights") (if any)) issued and outstanding immediately prior to the Effective Time shall remain outstanding; and

(c) BankFIRST shall pay CBI the Total Merger Consideration, consisting of Cash Consideration and Contingent Value Right, as hereinafter defined and described, in return for one hundred percent (100%) of the common stock of ECCB and all other rights and interests of CBI in ECCB.

(d) "Total Merger Consideration" shall be defined as the product of 1.028 (102.8%) times the ECCB Shareholders Equity as defined in Section 2.1(A)(ii)(a) below. Total Merger Consideration shall be apportioned between the "Cash Consideration" and the "Contingent Value Right" in a ratio of 54% (.54) Cash Consideration and 46% (.46) Contingent Value Right. The Contingent Value Right so calculated will be referred to as the "Initial CVR Amount".

(ii) For purposes of this Agreement, the following terms shall have the meanings indicated:

(a) "ECCB Shareholders' Equity" shall mean the shareholders' equity of ECCB as of the Valuation Date, calculated in accordance with generally accepted accounting principles ("GAAP"), but shall exclude the payment or accrual of all expenses of ECCB directly associated with or related to the transactions contemplated by this Agreement, including, without limitation (x) legal fees, accounting fees, investment banking or brokerage fees, consulting fees, and all fees associated with the termination of any employment agreements and change in control agreements and the payments required to be made under such agreements as a result of the transactions contemplated by this Agreement (provided that the payments for termination of employment agreements and change in control agreements and payments required to be made under such agreements shall not exceed \$139,172.24 as to Rafael Ramirez and (y) one-half of the insurance premium payment required of ECCB pursuant to Section 5.8(C) of this Agreement. Routine expenses not directly arising from the transactions contemplated by this Agreement shall not be deemed expenses directly associated with or related to the transactions contemplated by this Agreement.

(b) The "Valuation Date" shall mean the close of business as of the end of the calendar month immediately prior to the Merger Effective Date (or such other date as may be mutually agreed upon by CBI and BankFIRST).

(iii) Subject to the provisions of this Agreement, as of the Effective Time and by virtue of the Subsidiary Merger without any further action on the part of the holder of any shares of East Coast Bank common stock or BankFIRST common stock,

(a) any share of BankFIRST common stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding; and

(b) each share of East Coast Bank common stock issued and outstanding immediately prior to the Effective Time shall be cancelled.

2.2 Section 2.2 is intentionally omitted .

2.3 Section 2.3 is intentionally omitted.

2.4 Exchange Procedures.

(A) BankFIRST shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to CBI such amounts, if any, as it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code or any provision of state, local or foreign tax Law. To the extent that any amounts are so withheld by

BankFIRST such withheld amounts shall be treated for all purposes of this Agreement as having been paid to CBI in respect of which such deduction and withholding was made by BankFIRST.

2.5 Section 2.5 is intentionally omitted.

2.6 Section 2.6 is intentionally omitted.

2.7 Section 2.7 is intentionally omitted.

2.8 **Contingent Value Right.** In addition to the cash consideration provided under Section 2.1(A)(i)(d) above, BankFIRST shall provide CBI with a Contingent Value Right ("CVR") as hereinafter further described and defined with an aggregate initial face value calculated in accordance with Section 2.1(A)(i)(d) hereof. CBI as owner of the CVR shall be entitled to receive the consideration provided for in this Section 2.8 (the "Contingent Consideration"). Not later than 30 days after the second anniversary of the Merger Effective Date (the "Ending Date"), BankFIRST shall pay in cash to CBI an amount equal to the Initial CVR Amount less the sum of (i) the amount (if any) by which the Loan Losses (as defined below) exceed the allowance for loan losses maintained by East Coast Bank as reflected on its financial statements as of the Merger Effective Date and (ii) Lawsuit Losses.

(i) For purposes of this Agreement "Loan Losses" shall mean (x) any loss that occurs between the Closing Date and the Ending Date when a loan is charged off or charged down at the direction or request of any regulatory examiner, at the direction or request of TBI's independent certified public accounting firm, at the direction or request of any external loan reviewer, or at the direction or request of the Board of Directors of BankFIRST, (y) "excess legal expenses" (defined as legal expenses in excess of \$15,000 per loan or loan relationship) incurred by BankFIRST in connection with efforts to maximize collections on the Loans, or (z) any loss incurred by TBI as a result of fraudulent activities; *provided, however*, that any transfer of any Loan by BankFIRST to a subsidiary of TBI at an amount net of the reserve for that Loan shall not constitute a "Loan Loss." Rather, loan losses will be deemed to have occurred only when they have been realized on a "consolidated basis" of accounting, and the provisions of this Section 2.8(i) shall continue to apply to Loan Losses attributable to any Loan transferred by BankFIRST to a subsidiary of TBI following the transfer of such Loan and until the Ending Date. For purposes of this Agreement, "Loans" shall include all East Coast Bank's loans as of the Closing Date. Exhibit 4 illustrates the accounting treatment to be utilized in recording such chargeoffs and recoveries including excess legal expenses.

(ii) Upon the closing of the Merger, BankFIRST will use commercially reasonable efforts to achieve the objective of maximizing collections on the Loans, in accordance with normal and prudent banking practices and procedures and in accordance with such specific limitations as may be imposed pursuant to this Section. BankFIRST may employ agents or independent contractors including, without limitation, any attorney, accountant, consultant or other professional, to perform, or may otherwise subcontract its duties and responsibilities hereunder. BankFIRST shall seek to collect all amounts due with respect to the Loans and will take such actions (including, without limitation, sales or leases, including a bulk sale, of Loans and enforcement of liabilities of borrowers) as are appropriate in order to attempt to maximize collections on the Loans. In performing its functions hereunder and deciding what actions to take hereunder, BankFIRST may consider the costs of collection (including, without limitation, administrative and legal expenses), potential liabilities, likelihood of recoveries, and other relevant factors. All decisions of BankFIRST with respect to servicing of the Loans shall be binding on the Holders.

(iii) On January 31 and July 31 of each year until the Ending Date, BankFIRST will provide CBI with a report (the "Loan Report") setting forth in reasonable detail the amount of the Loan Losses realized with respect to the Loans during the immediately preceding six month period ending December 31 or June 30, as the case may be. For purposes of determining the amount of Loan Losses with respect to the Loans, all cash payments received by BankFIRST and all proceeds from the sale or other disposition of collateral shall be applied first, to any excess legal expenses defined above; second, to the principal amount of the Note; and third, to the unpaid interest (to the extent that the borrower's obligation is still in the form of a loan and there is accrued and unpaid interest receivable as to such loan). If a borrower's obligation has been converted to Other Real Estate-Owned ("OREO") (as that term is defined in the instructions to the Consolidated Reports of Condition and Income for a Bank With Domestic Offices Only – FFIEC 041), the proceeds of the sale of any OREO property shall be applied first, to any excess legal expenses defined above; second, to the principal amount of the Note; and third, to gains and losses on the sale of OREO (net) as set forth in **Exhibit 4**.

(iv) BankFIRST may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any obligor or borrower on the Loans (and any affiliate of any obligor or borrower on the Loans) and accept fees and other consideration from any obligor or borrower on the Loans for services.

(v) Notwithstanding anything to the contrary contained herein, neither TBI nor BankFIRST, nor any agent of either, including without limitation, attorneys, accountants, consultants or independent contractors employed by them is a fiduciary with respect to CBI.

(vi) For purposes of this Agreement, "Lawsuit Losses" means all losses incurred as a result of the outstanding lawsuit against East Coast Bank and identified on **Confidential Exhibit 1**. The parties agree that the losses incurred as a result of such lawsuit will consist of (i) all expenses paid by East Coast Bank, CBI, BankFIRST and / or TBI after the Merger Effective Date related to such lawsuit (including settlement and legal expenses), and (ii) the amount of any judgment against East Coast Bank, CBI, BankFIRST and/or TBI as a result of such lawsuit.

(vii) The CVR shall not be sold, assigned, transferred, pledged encumbered or in any other manner transferred or disposed of, in whole or in part, other than transfers made pursuant to a court order or transfers made by operation of law (including a consolidation or merger) or in connection with the dissolution, liquidation or termination of any corporation, limited liability company or other entity.

2.9 Resolution of Certain Agreement Issues. In the event of a dispute arising with regard to the classification of any assets in accordance with Section 7.1(J) or the computation of a party's Shareholders' Equity for purposes of Section 2.1 of this Agreement, or the application of GAAP with respect to any computation or aspect of this Agreement, the parties agree that any party may notify the other party of a disputed matter describing the matter in sufficient detail to afford an opportunity to review and respond, and in the event the parties cannot agree as to the resolution of the matter within 10 days, that matter and all pertinent documentation will be presented to Averett, Warmus, Durkee, Osburn, and Henning for final determination, which determination shall be considered binding on the parties. (The expenses of Averett, Warmus, Durkee, Osburn, and Henning shall be borne equally by the parties.)

ARTICLE III. ACTIONS PENDING MERGER

3.1 **Conduct of Business Prior to the Merger Effective Date.** Except as expressly contemplated or permitted by this Agreement, or as required by applicable Law, during the period from the date of this Agreement to the Merger Effective Date, each of CBI and East Coast Bank, on the one hand, and TBI and BankFIRST, on the other hand, shall (i) conduct its business in the usual, regular and ordinary course consistent with past practice, (ii) use reasonable best efforts to maintain and preserve intact its business organization and advantageous customer and business relationships and retain the services of its key officers and employees, and (iii) take no action which would reasonably be expected to adversely affect or delay its ability to consummate the transactions contemplated hereby.

3.2 **Conduct of CBI prior Effective Time.** From the date hereof until the Effective Time, except as otherwise contemplated by this Agreement, or as consented to in writing by TBI, CBI shall not:

(A) **Capital Stock.** Issue, sell, transfer, dispose of, permit to become outstanding, authorize the creation of, pledge or encumber any shares of capital stock, voting securities or other equity interest, or any options, warrants, convertible securities or other Rights of any kind to acquire or receive any shares of CBI Capital Stock, voting securities or other Equity Rights (including stock appreciation rights, phantom stock or similar instruments) except for the issuance of capital stock if required by any Regulatory Authority (and then only to the extent required by such Regulatory Authority and only after expiration of any extension received from the Regulatory Authority as to the time frame within which such capital must be increased).

(B) **Dividends, Etc.** Make, declare, pay or set aside for payment any dividend payable in cash, stock or property on or in respect of, or declare or make any distribution on, any shares of CBI Capital Stock, or directly or indirectly adjust, split, combine, reclassify, redeem, purchase or otherwise acquire any shares of CBI Capital Stock.

(C) **Compensation; Employment Agreements, Etc.** Except as set forth on Schedule 3.2(C) of the CBI Disclosure Letter, enter into, adopt, establish, renew or allow to renew automatically, make any new grants of awards under, amend or otherwise modify or terminate any employment, consulting, transition, termination, severance, change in control, retention or similar agreements or arrangements, benefit, program, policy, trust, fund or other arrangement with any current or former director, officer, employee or independent contractor or grant any salary or wage increase or increase any other compensation or employee benefit (including incentive or bonus payments), except (provided that the other party is given five Business Days advance written notice thereof): (i) for normal individual increases in base salary or wage rates to current employees, directors and officers in the ordinary and usual course of business consistent with past practice, provided that no such increase shall result in an annual adjustment of more than 3.0% of the aggregate base salary and wages payable in 2010 (except as otherwise provided in an employment agreement); or (ii) for other changes that are required by applicable Law or any Contract disclosed prior to the date hereof.

(D) **Hiring and Promotion.** Hire any person as an employee or promote any employee, except (provided that the other party is given five Business Days advance written notice thereof) persons hired to fill any vacancies and whose employment is terminable at will and whose base salary or wage rate, including any guaranteed bonus or any similar bonus, does not exceed \$40,000 per annum.

(E) **Benefit Plans.** Enter into, terminate, establish, adopt or amend (except as may be required by applicable Law) any Benefit Plans of CBI, take any action to grant or approve the grant of, accelerate the vesting, accrual or exercisability of stock options (except as expressly provided by this Agreement), restricted stock or other compensation or benefits payable thereunder or increase the participant pool of any Benefit Plan (except that it may renew its health insurance policies and programs in effect as of the date of this Agreement upon terms and conditions acceptable to the other party). Without limiting the generality of the foregoing, neither party shall take any action which has the effect of increasing its obligations or liabilities pursuant to any stock option plans or any other Benefit Plan.

(F) **Dispositions.** Sell, transfer, lease, license, guarantee, mortgage, pledge, encumber or otherwise create any Lien on, dispose of or discontinue any of its assets, deposits, business or properties (other than sales of loans and loan participations made in the ordinary and usual course of business consistent with past practice and pursuant to Section 3.2(P)) except in the ordinary and usual course of business consistent with past practice and in a transaction that, together with all other such transactions, is not material to it.

(G) **Acquisitions.** Acquire (other than by way of foreclosures or acquisitions of control of property other than real estate in a bona fide fiduciary capacity or in satisfaction of indebtedness previously contracted in good faith, in each case in the ordinary and usual course of business consistent with past practice) all or any portion of the assets, deposits, business or properties of any other person except in the ordinary and usual course of business consistent with past practice and in a transaction that, together with all other such transactions, is not material to it, as the case may be (and, in the case of purchases of loans and loan participations, in accordance with Section 3.2(P)).

(H) **Capital Expenditures.** Make any capital expenditures other than (i) capital expenditures provided for in the capital budget furnished by it to the other party prior to the date of this Agreement, and (ii) other capital expenditures in the ordinary and usual course of business consistent with past practice in amounts not exceeding \$50,000 individually or \$200,000 in the aggregate.

(I) **Governing Documents.** Amend or otherwise change its articles of incorporation or bylaws, except as otherwise contemplated by this Agreement.

(J) **Accounting Methods.** Implement or adopt any change in its book or tax accounting principles, practices or methods, other than as may be required by GAAP or regulatory accounting principles, and as concurred in by its independent public accountants.

(K) **Contracts.** Except with respect to Contracts relating to loans or loan participations made in the ordinary and usual course of business consistent with past practice and in accordance with Section 3.2(P), enter into, renew or allow to renew automatically, modify, amend or terminate, make any payment not then required under or waive, release or assign any material right or claims under, any Contract that calls for aggregate annual payments of \$20,000 or more and which is not terminable at will or with 60 days or less notice without payment of any amount other than for products delivered or services performed through the date of termination.

(L) **Claims.** Except as disclosed in Schedule 3.2 (L) of the CBI Disclosure Letter, enter into any settlement, compromise or similar agreement with respect to, or take any other significant action with respect to the conduct of, or commence, any litigation, claim, action, suit, hearing, investigation or other proceeding to which it is or becomes a party, which settlement, compromise, agreement or action involves payment by it, of an amount that exceeds \$25,000 individually or \$50,000 in the aggregate and/or would impose any material restriction on the business of any CBI Entity, or any

of its Affiliates or create precedent for claims that are reasonably likely to be material to any CBI Entity, as the case may be.

(M) **Adverse Actions.** Take any action or omit to take any action that would result in any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect at any time at or prior to the Merger Effective Date, (ii) any of the conditions to the Merger set forth in Article VI not being satisfied on a timely basis; or (iii) a material violation of any provision of this Agreement, except as may be required by applicable Law.

(N) **Risk Management.** Except as required by applicable Law, (i) implement or adopt any material change in its interest rate and other risk management policies, procedures or practices, (ii) fail to follow any of its existing policies or practices with respect to managing its exposure to interest rate and other risks; or (iii) fail to use commercially reasonable efforts to avoid any material increase in its aggregate exposure to interest rate risk.

(O) **Indebtedness.** Incur or modify any indebtedness for borrowed money or other liability (other than deposits, federal funds borrowings and borrowings from the Federal Home Loan Bank) or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other Person (other than in connection with payments, processing and similar matters in the ordinary course of business consistent with past practices).

(P) **Loans.** (i) Enter into, renew, increase or commit to make any loan (including letters of credit) to, or invest or agree to invest in any Person or modify any of the material provisions or renew or otherwise extend the maturity date of any existing loan (collectively, "Lend to") in an amount in excess of \$500,000 or in any amount which, when aggregated with any and all loans of East Coast Bank to such Person, would be in excess of \$500,000; (ii) Lend to any Person in an amount in excess of \$500,000 or in any amount which, or when aggregated with any and all loans or commitments of such Bank to such Person, would be in excess of \$500,000; (iii) Lend to any Person other than in accordance with lending policies as in effect on the date hereof, provided that in the case of foregoing clauses (i) through (iii) East Coast Bank may make any such loan in the event (1) CBI or East Coast Bank has delivered to the President and the Chief Credit Policy Officer of BankFIRST a notice of its intention to make such loan or fund such commitment and, subject to applicable Law, such information as BankFIRST may reasonably require in respect thereof and (2) BankFIRST shall not have reasonably objected to such loan by giving written or facsimile notice of such objection within three Business Days following the delivery to BankFIRST of the notice of intention and information as aforesaid; or (d) Lend to any Person with a loan which is on a "watch list" or similar internal report of East Coast Bank; provided, that nothing in this subsection (P) shall prohibit East Coast Bank from honoring any contractual obligation in existence on the date of this Agreement.

(Q) **Investments.** (i) Other than in the ordinary and usual course of business consistent with past practice in amounts not to exceed \$150,000 individually and \$250,000 in the aggregate or sales of overnight federal funds (limited to 25% of its shareholders' equity) or in securities transactions as provided in (ii) below, make any investment either by contributions to capital, property transfers or purchases of any property or assets of any person and (ii) other than purchases of direct obligations of the United States of America or obligations of U.S. government agencies which are entitled to the full faith and credit of the United States of America, in any case with a remaining maturity at the time of purchase of one year or less, purchase or acquire securities of any type; provided, however, that in the case of investment securities, it may purchase investment securities if, within five Business Days after CBI requests in writing (which request shall describe in detail the investment

securities to be purchased and the price thereof) that TBI consent to making of any such purchase, TBI has approved such request in writing or has not responded in writing to such request.

(R) **Taxes.** Commence, compromise or settle any litigation or proceeding with respect to any liability for Taxes, make or change any Tax election, file any amended Tax Return, enter into any closing agreement, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to it, take any action which is reasonably likely to have an adverse effect on any Tax position of it or, after the Merger, the Continuing Entity or any of its Affiliates, change any of its methods of reporting income or deductions for Tax purposes or take any other action with respect to Taxes that is outside the ordinary and usual course of business or inconsistent with past practice.

(S) **Operations.** Introduce any material new products or services; begin any material marketing campaigns; enter into any material new line of business; change its lending, underwriting, credit-grading or other material banking or operating policies in any material respects; or make or file any applications with any Regulatory Authority for the opening, relocation or closing of any, or open, relocate or close any, branch, servicing center or other office or facility.

(T) **Commitments.** Agree or commit to do any of the foregoing.

(U) **Other Forbearances.** Except as expressly contemplated by this Agreement or required by applicable Law, and without the prior written consent of the other party, take, or omit to take, or agree or commit to take or omit to take, any action that would result in (i) any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect at any time at or prior to the Merger Effective Date, (ii) any of the conditions to the Merger set forth in Article VI not being satisfied, or (iii) a material violation of any provision of this Agreement.

3.3 **Conduct of TBI prior to Effective Time.** From the date hereof until the Effective Time, except as otherwise contemplated by this Agreement, or as consented to in writing by CBI, TBI shall not:

(A) **Benefit Plans.** Enter into, terminate, establish, adopt or amend (except as may be required by applicable Law) any Benefit Plans of TBI, take any action to grant or approve the grant of, accelerate the vesting, accrual or exercisability of stock options (except as expressly provided by this Agreement), restricted stock or other compensation or benefits payable thereunder or increase the participant pool of any Benefit Plan (except that it may renew its health insurance policies and programs in effect as of the date of this Agreement upon terms and conditions acceptable to the other party). Without limiting the generality of the foregoing, neither party shall take any action which has the effect of increasing its obligations or liabilities pursuant to any stock option plans or any other Benefit Plan.

(B) **Capital Expenditures.** Make any capital expenditures other than (i) capital expenditures provided for in the capital budget furnished by it to the other party prior to the date of this Agreement, and (ii) other capital expenditures in the ordinary and usual course of business consistent with past practice in amounts not exceeding \$500,000 individually or \$5,000,000 in the aggregate.

(C) **Governing Documents.** Amend or otherwise change its articles of incorporation or bylaws, except as otherwise contemplated by this Agreement.

(D) **Accounting Methods.** Implement or adopt any change in its book or tax accounting principles, practices or methods, other than as may be required by GAAP or regulatory accounting principles, and as concurred in by its independent public accountants.

(E) **Adverse Actions.** Take any action or omit to take any action that would result in any of its representations and warranties set forth in this Agreement being or becoming untrue in any material respect at any time at or prior to the Merger Effective Date, (ii) any of the conditions to the Merger set forth in Article VI not being satisfied on a timely basis; or (iii) a material violation of any provision of this Agreement, except as may be required by applicable Law.

(F) **Risk Management.** Except as required by applicable Law, (i) implement or adopt any material change in its interest rate and other risk management policies, procedures or practices, (ii) fail to follow any of its existing policies or practices with respect to managing its exposure to interest rate and other risks; or (iii) fail to use commercially reasonable efforts to avoid any material increase in its aggregate exposure to interest rate risk.

(G) **Commitments.** Agree or commit to do any of the foregoing.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

4.1 **Representations and Warranties of CBI.** CBI hereby represents and warrants to TBI as follows:

(A) **Organization, Standing and Power.** CBI 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. CBI 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. The minute book and other organizational documents for each of CBI Entity have been made available to TBI for its review and are true and complete in all material respects as in effect as of the date of this Agreement and accurately reflect in all material respects all amendments thereto and all proceedings of the Board of Directors (including any committees of the Board of Directors) and shareholders of such CBI Entity.

(B) **Capital Stock.**

(i) The authorized capital stock of CBI consists of 10,000,000 shares of CBI Common Stock, of which 1,357,722 shares are issued and outstanding as of the date of this Agreement and not more than 1,357,722 shares will be issued and outstanding at the Effective Time. All of the issued and outstanding shares of capital stock of CBI are duly and validly issued and outstanding and are fully paid and nonassessable. None of the outstanding shares of capital stock of CBI has been issued in violation of any preemptive rights of the current or past shareholders of CBI.

(ii) Except for the options outstanding on the date of this Agreement as set forth in Schedule 3.2(A) of the CBI Disclosure Letter, there are no shares of capital stock or other equity securities of CBI outstanding and no outstanding Equity Rights relating to the capital stock of CBI. Except as specifically contemplated by this Agreement, no Person has any Contract or any right or privilege (whether pre-emptive or contractual) capable of becoming a Contract or Equity Right for the purchase, subscription or issuance of any securities of CBI.

(C) **Subsidiaries.** The sole subsidiary of CBI is East Coast Bank, a Florida banking corporation. All of the issued and outstanding shares of East Coast Bank are owned by CBI. Schedule

4.1(C) of the CBI Disclosure Letter sets forth (x) the jurisdiction of incorporation of East Coast Bank, (y) each jurisdiction in which it is qualified and/or licensed to transact business, and (z) the number and class of shares of East Coast Bank owned by CBI. No capital stock (or other equity interest) of East Coast Bank is or may become required to be issued (other than to CBI) by reason of any Equity Rights, and there are no Contracts by which East Coast Bank is bound to issue (other than to CBI) any additional shares of its capital stock (or other equity interests) or Equity Rights or by which East Coast Bank is or may be bound to transfer any shares of its capital stock (or other equity interests). There are no Contracts relating to the rights of CBI to vote or to dispose of any shares of the capital stock (or other equity interests) of East Coast Bank. All of the shares of capital stock (or other equity interests) of East Coast Bank held by CBI are fully paid and (except pursuant to applicable Florida Law, if any, nonassessable under the corporation Law of the State of Florida and are owned by CBI free and clear of any Lien. East Coast Bank is a bank and is duly organized, validly existing, and in good standing under the Laws of the State of Florida, and has the corporate power and authority necessary for it to own, lease, and operate its assets and to carry on its business as now conducted. East Coast Bank is duly qualified or licensed to transact business as a foreign entity 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. East Coast Bank is an "insured institution" as defined in the Federal Deposit Insurance Act and applicable regulations thereunder, and the deposits in which are insured by the Deposit Insurance Fund. The minute book and other organizational documents for East Coast Bank have been made available to TBI for its review, and are true and complete in all material respects as in effect as of the date of this Agreement and accurately reflect in all material respects all amendments thereto and all proceedings of the Board of Directors and shareholders of East Coast Bank.

(D) Authority; No Conflict.

(i) Subject to the adoption and approval of this Agreement and the Merger by the Shareholders, the receipt of the regulatory approvals referred to in Section 6.1 and any other conditions or limitations described in Schedule 4.1(D) of the CBI Disclosure Letter, CBI has the corporate power and authority necessary to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein, including the Merger, have been duly and validly authorized by all necessary corporate action in respect thereof on the part of CBI, subject to the approval and adoption of this Agreement by the Shareholders as contemplated by Section 5.2, which is the only shareholder vote required for approval of this Agreement and consummation of the Merger by CBI. Subject to such requisite shareholder approval, this Agreement represents a legal, valid, and binding obligation of CBI, enforceable against CBI in accordance with its terms (except in all cases as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium, or similar 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 proceeding may be brought).

(ii) Neither the execution and delivery of this Agreement by CBI, nor the consummation by CBI of the transactions contemplated hereby, nor compliance by CBI with any of the provisions hereof, will (i) conflict with or result in a breach of any provision of CBI's Articles of Incorporation or Bylaws or the certificate or Articles of Incorporation or Bylaws of East Coast Bank or any resolution adopted by the board of directors or the shareholders of CBI or East Coast Bank, or (ii) except as disclosed in Schedule 4.1(D) of the CBI Disclosure Letter, 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 CBI or East

Coast Bank under, any Contract or Permit of CBI or East Coast Bank or, (iii) subject to receipt of the requisite Consents referred to in Section 6.1(B), constitute or result in a Default under, or require any Consent pursuant to, any Law or Order applicable to CBI or East Coast Bank or any of their respective material assets (including TBI, CBI or East Coast Bank becoming subject to or liable for the payment of any Tax or any of the assets owned by TBI, CBI or East Coast Bank being reassessed or revalued by any Regulatory Authority).

(iii) Except as set forth on Schedule 4.1(D) of the CBI Disclosure Letter, no notice to, filing with, or Consent of, any public body or authority is necessary for the consummation by CBI of the Merger and the other transactions contemplated in this Agreement.

(E) **Financial Statements.** Prior to the execution of this Agreement, CBI has delivered to TBI true and complete copies of the following financial statements (which are attached as Schedule 4.1(E) of the CBI Disclosure Letter: (x) the audited consolidated balance sheets of CBI as of December 31, 2009 and 2008 and the related audited consolidated statements of operations, shareholders' equity and cash flows for the fiscal year then ended (the "Audited Financial Statements"), together with a true and correct copy of the report on such audited information by CBI's independent accountants, and all letters from such accountants with respect to the results of such audit, and (y) unaudited consolidated balance sheet of CBI as of September 30, 2010 and the related unaudited consolidated statements of operations, shareholders' equity and cash flows for the period then ended (the "Unaudited Financial Statements") (the Audited Financial Statements and the Unaudited Financial Statements are sometimes hereinafter collectively referred to as the "CBI Financial Statements"). All such Financial Statements were prepared in accordance with GAAP consistently applied and fairly present in all material respects CBI's financial condition and results of operations as of the respective dates thereof and for the respective periods covered thereby.

(F) **No Undisclosed Liabilities.** CBI has no Liabilities that are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect, except Liabilities which are accrued or reserved against in the CBI Financial Statements. Neither CBI nor East Coast Bank has incurred or paid any Liability since December 31, 2009, except for such Liabilities incurred or paid (i) in the ordinary course of business consistent with past business practice and which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect or (ii) in connection with the transactions contemplated by this Agreement. Except as disclosed in Schedule 4.1(F) of the CBI Disclosure Letter, neither CBI nor East Coast Bank is directly or indirectly liable, by guarantee, indemnity, or otherwise, upon or with respect to, or obligated, by discount or repurchase agreement or in any other way, to provide funds in respect to, or obligated to guarantee or assume any Liability or any Person for any amount in excess of \$10,000.

(G) **Litigation; Regulatory Action.** There is no Litigation instituted or pending, or, to the Knowledge of CBI, threatened (or unasserted but considered probable of assertion and which if asserted would have at least a reasonable possibility of an unfavorable outcome) against either CBI or East Coast Bank, or against any director, officer or employee in their capacities as such or Benefit Plan of CBI or East Coast Bank, or against any asset, interest, or right of any of them, that is material to CBI, nor is there any Orders outstanding against CBI or East Coast Bank, that are material to CBI. Neither CBI nor East Coast Bank has been advised by any Regulatory Authority that such authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any Order. Schedule 4.1(G)(i) of the CBI Disclosure Letter contains a summary of all Litigation as of the date of this Agreement to which CBI or East Coast Bank is a party and which names CBI or East Coast Bank as a defendant or cross-defendant or for which CBI or East Coast Bank has any potential

Liability. Schedule 4.1(G)(ii) of the CBI Disclosure Letter contains a summary of all Orders to which CBI or East Coast Bank is subject.

(H) **Compliance with Laws.**

(i) CBI is duly registered as a bank holding company under the BHC Act. Each of CBI and East Coast Bank has in effect all Permits necessary for it to own, lease, or operate its material assets and to carry on its business as now conducted and there has occurred no Default under any such Permit. Except as disclosed in Schedule 4.1(H) of the CBI Disclosure Letter, neither CBI nor East Coast Bank:

(a) is in Default under any of the provisions of its Articles of Incorporation or Bylaws;

(b) is in Default under any Laws, Orders, or Permits applicable to its business or employees conducting its business, including, without limitation, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act, the Home Mortgage Disclosure Act, all other applicable fair lending laws relating to discriminatory business practices, the Currency and Foreign Transaction Reporting Act, as amended ("Bank Secrecy Act"), Title III of the USA Patriot Act and all other applicable secrecy Laws; or

(c) since December 31, 2007, has received any notification or communication from any agency or department of federal, state, or local government or any Regulatory Authority or the staff thereof (i) asserting that such CBI Entity is not, or may not be, in compliance with any Laws or Orders, (ii) threatening to revoke any Permits, or (iii) requiring such CBI Entity to enter into or consent to the issuance of a cease and desist order, injunction formal agreement, directive, commitment, or memorandum of understanding, or to adopt any board resolution or similar undertaking, which restricts materially the conduct of its business or in any manner relates to its employment decisions, its employment or safety policies or practices, its capital adequacy, its credit or reserve policies, its management, or the payment of dividends; or

(d) has effectuated a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of such CBI Entity; and such CBI Entity has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local Law. Except as set forth in Schedule 4.1(H) of the CBI Disclosure Letter, none of any CBI Entity's employees has suffered an "employment loss" (as defined in the WARN Act) since six months prior to the Merger Effective Date.

(ii) Schedule 4.1(H) of the CBI Disclosure Letter contains a list of all independent contractors of each CBI Entity (separately listed by CBI Entity) and each such Person meets the standards under all Laws (including Treasury Regulations under the Internal Revenue Code and federal and state labor and employment Laws) as independent contractors and no such Person is an employee of any CBI Entity under any applicable Law. Copies of all material reports, correspondence, notices and other documents relating to any inspection, audit, monitoring or other form of review or enforcement action by a Regulatory Authority have been made available to Buyer.

(iii) No CBI Entity is aware of, has been advised of, and, to CBI's Knowledge, has any reason to believe that any facts or circumstances exist that would cause it or any CBI Entity to be deemed to be (i) not operating in compliance, in all material respects, with the Bank Secrecy Act of 1970, as amended, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (also known as the USA PATRIOT Act), any

order or regulation issued by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or any other applicable anti-money laundering or anti-terrorist-financing statute, rule or regulation, or (ii) not operating in compliance in all material respects with the applicable privacy and customer information requirements contained in any federal and state privacy Laws and regulations, including, without limitation, in Title V of the Gramm-Leach-Bliley Act of 1999 and the regulations promulgated thereunder. CBI is not aware of any facts or circumstances that would cause it to believe that any non-public customer information has been disclosed to or accessed by an unauthorized third party in a manner that would cause it to undertake any material remedial action. CBI and East Coast Bank have adopted and implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that comply with the USA PATRIOT Act and such anti-money laundering program meets the requirements in all material respects of Section 352 of the USA PATRIOT Act and the regulations thereunder, and they have complied in all respects with any requirements to file reports and other necessary documents as required by the USA PATRIOT Act and the regulations thereunder.

(iv) **Certain Payments.** Neither CBI nor East Coast Bank, nor any directors, executive officers, nor to the Knowledge of CBI, employees or any of their Affiliates or any other person who to the Knowledge of CBI is associated with or acting on behalf of CBI or any of CBI Entities has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business for CBI or any of CBI Entities, (ii) to pay for favorable treatment for business secured by CBI or any of CBI Entities, (iii) to obtain special concessions or for special concessions already obtained, for or in respect of CBI or any of CBI Entities, or (iv) in violation of any Law, or (b) established or maintained any fund or asset with respect to CBI or any of CBI Entities that was required to have been and was not recorded in the books and records of CBI or any of CBI Entities.

(I) **Brokers; Advisors.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by CBI and its agents directly with the other parties hereto and their agents and no action has been taken by CBI that would give rise to any valid claim against any party hereto for a brokerage commission, finder's fee or other like payment.

(J) **No Regulatory Impediment.** CBI knows of no reason why the regulatory approvals referred to in Section 6.1 should not be obtained.

(K) **Takeover Laws; Dissenters' Rights.** Each CBI Entity has taken all necessary action to exempt the transactions contemplated by this Agreement from, or if necessary to challenge the validity or applicability of, the requirements of any "moratorium," "control share," "fair price," "affiliate transaction," "control transaction," "business combination" or other anti-takeover Laws (collectively, the "Takeover Laws") of the State of Florida.

(L) **Section 4.1(L) is intentionally omitted.**

(M) **Disclosure.**

(i) All material facts to each CBI Entity's business, financial condition or results of operations have been disclosed to TBI in connection with this Agreement. No representation or warranty of CBI contained in this Agreement, and no statement, certificate, list, instrument or other writing furnished or to be furnished by CBI pursuant to this Agreement (including any statement in the CBI Disclosure Letter) contains or will contain any untrue statement of a material fact or will omit to state

a material fact necessary in order to make the statements herein or therein, in the light of the circumstances under which they were made, not misleading.

(ii) All documents that any CBI Entity or any Affiliate thereof is responsible for filing with any Regulatory Authority in connection with the transactions contemplated hereby will comply as to form in all material respects with the provisions of applicable Law.

(N) **Absence of Changes.** Except for the execution and delivery of this Agreement and the transactions to take place pursuant hereto on the Merger Effective Date, since June 30, 2010 there has not been any change, development or event which, individually or together with other such changes, developments or events, could reasonably be expected to have a Material Adverse Effect on any CBI Entity's business, financial condition or results of operations. Without limiting the foregoing, except as disclosed in Schedule 4.1(N) of the CBI Disclosure Letter, there has not occurred between June 30, 2010 and the date hereof:

(i) any declaration, setting aside or payment of any dividend or other distribution in respect of its capital stock, or any direct or indirect redemption, purchase or other acquisition by it of any such capital stock of or any Option with respect to it;

(ii) any authorization, issuance, sale or other disposition by it of any shares of capital stock of or Option or any modification or amendment of any right of any holder of any outstanding shares of capital stock of or Option (except for the issuance of shares upon the exercise of Options);

(iii) (x) any increase in the salary, wages or other compensation of any officer, employee or consultant of it whose annual salary is, or after giving effect to such change would be, \$100,000 or more; (y) any establishment or modification of (A) any CBI Entity's, goals, pools or similar provisions in respect of any fiscal year under any benefit Agreement, employment contract or other employee compensation arrangement or (B) salary ranges, increase guidelines or similar provisions in respect of any benefit Agreement, employment contract or other employee compensation arrangement; or (z) any adoption, entering into, amendment, modification or termination (partial or complete) of any benefit Agreement except to the extent required by applicable Laws and, in the event compliance with legal requirements presented options, only to the extent the option which it reasonably believed to be the least costly was chosen;

(iv) any borrowing by it except in the ordinary course of business;

(v) with respect to any property securing any loan or other credit arrangement made by it, and to its knowledge, any physical damage, destruction or other casualty loss (whether or not covered by insurance) in an aggregate amount exceeding \$250,000;

(vi) any material change in (w) any pricing, investment, accounting, financial reporting, credit, allowance or tax practice or policy, (x) any method of calculating any bad debt, contingency or other reserve for accounting, financial reporting or tax purposes, (y) its fiscal year of it or (z) any credit policy or standard, including, without limitation, criteria relating to placement of a debtor on any credit watch or other similar list maintained by it;

(vii) with respect to any loan or other credit arrangement made by it, any write off or write down of or any determination to write off or write down any such loan or other credit arrangement in an aggregate amount exceeding \$50,000 over and above specific reserves allocated to such loan or credit arrangement;

(viii) except for the sale of foreclosed properties, or properties received in lieu of foreclosure in the ordinary course of business consistent with past practice, any acquisition or disposition of, or incurrence of a Lien or other encumbrance on, any of its assets and properties;

(ix) any (x) amendment of its articles of incorporation, articles of association, or bylaws (or other comparable corporate charter documents), (y) reorganization, liquidation or dissolution of it (z) merger, consolidation or business combination involving it and any other person;

(x) any capital expenditures or commitments for additions to property, agreement or equipment of it constituting capital assets in an aggregate amount exceeding \$100,000;

(xi) any commencement or termination by it of any line of business;

(xii) any transaction by it with any officer, director, affiliate or associate of it or any affiliate or associate of any such officer, director or affiliate (A) outside the ordinary course of business consistent with past practice or (B) other than on an arm's-length basis, other than pursuant to any Contract in effect on December 31, 2009 and disclosed in Schedule 4.1(N) of the CBI Disclosure Letter;

(xiii) any agreement to do or engage in any of the foregoing; or

(xiv) any other transaction involving, or development affecting it outside the ordinary course of business consistent with past practice.

(O) **Material Contracts.** Except as set forth in Schedule 4.1(O) of the CBI Disclosure Letter or otherwise reflected in the CBI Financial Statements, no CBI Entity, nor any of their respective assets, businesses, or operations, is a party to, or is bound or affected by, or receives benefits under, (i) any employment, severance, termination, consulting, or retirement Contract providing for aggregate payments to any Person in any calendar year in excess of \$50,000, (ii) any Contract relating to the borrowing of money by either CBI Entity or the guarantee by either CBI Entity of any such obligation (other than Contracts evidencing deposit liabilities, purchases of federal funds, fully-secured repurchase agreements, and Federal Home Loan Bank advances of depository institution subsidiaries, trade payables and Contracts relating to borrowings or guarantees made in the ordinary course of business), (iii) any Contract which prohibits or restricts either CBI Entity from engaging in any business activities in any geographic area, line of business or otherwise in competition with any other Person, (iv) any Contract between the CBI Entities, (v) any Contract involving Intellectual Property (other than Contracts entered into in the ordinary course with customers and "shrink-wrap" software licenses), (vi) any Contract relating to the provision of data processing, network communication, or other technical services to or by either CBI Entity, (vii) any Contract relating to the purchase or sale of any goods or services (other than Contracts entered into in the ordinary course of business and involving payments under any individual Contract not in excess of \$100,000), and (viii) any exchange-traded or over-the-counter swap, forward, future, option, cap, floor, or collar financial Contract, or any other interest rate or foreign currency protection Contract not included on its balance sheet which is a financial derivative Contract as of the date of this Agreement (the "CBI Contracts"). With respect to each CBI Contract and except as disclosed in Schedule 4.1(O) of the CBI Disclosure Letter: (i) the Contract is in full force and effect; (B) no CBI Entity is in Default thereunder; (C) no CBI Entity has repudiated or waived any material provision of any such Contract; and (D) no other party to any such Contract is, to the Knowledge of CBI, in Default in any respect or has repudiated or waived any material provision thereunder. All of the indebtedness of each CBI Entity for money borrowed is prepayable at any time by such CBI Entity without penalty or premium.

(P) **Real Property.** Except as set forth in Schedule 4.1(P) of the CBI Disclosure Letter, neither CBI nor East Coast Bank owns any real property. Schedule 4.1(P) of the CBI Disclosure Letter also contains a true and correct list of each parcel of real property leased by an CBI Entity (as lessor or lessee).

(i) Each CBI Entity has a valid and subsisting leasehold estate in and the right to quiet enjoyment of the real properties leased by it as lessee for the full term of the lease thereof. Each lease referred to in this paragraph (i) is a legal, valid and binding agreement, enforceable in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium, or similar 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 proceeding may be brought), and there is no, and it has received no notice of any, default, or any condition or event which, after notice or lapse of time or both, would constitute a default thereunder. It does not owe any brokerage commissions with respect to any such leased space.

(ii) Except as disclosed in Schedule 4.1(P) of the CBI Disclosure Letter, the improvements on the real property identified therein are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, are adequate and suitable for the purposes for which they are presently being used and, to its knowledge, there are no condemnation or appropriation proceedings pending or threatened against any of such real property or the improvements thereon.

(Q) **Tangible Personal Property.** Each CBI Entity is in possession of and has good title to, or have valid leasehold interests in or valid rights under contract to use, all tangible personal property used in the conduct of its business, including all tangible personal property reflected in the CBI Financial Statements and tangible personal property acquired subsequent to June 30, 2010, other than property disposed of since such date in the ordinary course of business consistent with past practice. All such tangible personal property is free and clear of all Liens, other than Liens disclosed in Schedule 4.1(Q) of the CBI Disclosure Letter, and is in good working order and condition, ordinary wear and tear excepted, and its use complies in all material respects with all applicable laws.

(R) **Intellectual Property Rights.** Each CBI Entity owns or has a license to use all of the Intellectual Property used by such CBI Entity in the course of its business, including sufficient rights in each copy possessed by each CBI Entity. Each CBI Entity is the owner of or has a license, with the right to sublicense, to any Intellectual Property sold or licensed to a third party by such CBI Entity in connection with such CBI Entity's business operations, and such CBI Entity has the right to convey by sale or license any Intellectual Property so conveyed. No CBI Entity is in Default under any of its Intellectual Property licenses. No proceedings have been instituted, or are pending or to the Knowledge of CBI threatened, which challenge the rights of any CBI Entity with respect to Intellectual Property used, sold or licensed by such CBI Entity in the course of its business, nor has any person claimed or alleged any rights to such Intellectual Property. The conduct of the business of the CBI Entities does not infringe any Intellectual Property of any other person. Except as disclosed in Schedule 4.1(R) of the CBI Disclosure Letter, no CBI Entity is obligated to pay any recurring royalties to any Person with respect to any such Intellectual Property. Except as disclosed in Schedule 4.1(R) of the CBI Disclosure Letter, every officer, director, or employee of any CBI Entity is a party to a Contract which requires such officer, director or employee to assign any interest in any Intellectual Property to a CBI Entity and to keep confidential any trade secrets, proprietary data, customer information, or other business information of a CBI Entity, and no such officer, director or employee is party to any Contract with any Person other than a CBI Entity which requires such officer, director or employee to assign any interest in any Intellectual Property to any Person other than a CBI Entity or to

keep confidential any trade secrets, proprietary data, customer information, or other business information of any Person other than a CBI Entity. Except as disclosed in Schedule 4.1(R) of the CBI Disclosure Letter, no officer, director or employee of any CBI Entity is party to any Contract which restricts or prohibits such officer, director or employee from engaging in activities competitive with any Person, including any CBI Entity.

(S) **Employee Benefit Plans.** Except as previously disclosed:

(i) Schedule 4.1(S) of the CBI Disclosure Letter contains a true and complete list of each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including, without limitation, "multiemployer plans" within the meaning of Section 4001(a)(3) of ERISA), and all stock purchase, stock option, severance, employment, change-in-control, fringe benefit, vacation, perquisite, collective bargaining, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefore now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, under which (i) any current or former employee, director or independent contractor of each CBI Entity (the "CBI Employees") has any present or future right to benefits and which are contributed to, sponsored by or maintained by it, or (ii) it has had or has any present or future liability. All such plans, agreements, programs, policies and arrangements shall be collectively referred to as "Benefit Plans."

(ii) With respect to each Benefit Plan, CBI has provided to TBI a current, accurate and complete copy (or, to the extent no such copy exists, an accurate description) thereof and, to the extent applicable: (i) any related adoption agreement, trust agreement or other funding instrument; (ii) the most recent determination letter, if applicable; (iii) any summary plan description and other written communications (or a description of any oral communications) by each CBI Entity to its Employees concerning the extent of the benefits provided under a Benefit Plan; (iv) a summary of any proposed amendments or changes anticipated to be made to the Benefit Plans at any time within the 12 months immediately following the date hereof; (v) for the three most recent years and as applicable, (A) the Form 5500 and attached schedules, (B) audited financial statements, and (C) actuarial valuation reports; and (vi) all filings made by it with any governmental authority including but not limited to any filings under the Voluntary Compliance Resolution or Closing Agreement Program or the Department of Labor Delinquent Filer Program.

(iii) (i) Each Benefit Plan has been established, operated and administered in all material respects in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations; (ii) each Benefit Plan which is intended to be qualified within the meaning of Sections 401(a) or 4975(e)(7) of the Code is so qualified and has received a favorable determination or opinion letter as to its qualification, and each trust established in connection with any Benefit Plan which is intended to be exempt from federal taxation under Section 501(a) of the Code is so exempt, and nothing has occurred, whether by action or failure to act, that could reasonably be expected to cause the loss of such qualification or exempt status; (iii) no event has occurred and no condition exists that would reasonably be expected to subject it, either directly or by reason of its affiliation with any member of its "Controlled Group" (defined as any organization which is a member of a controlled group of organizations within the meaning of Sections 414(b), (c), (m) or (o) of the Code), to any material tax, fine, Lien, penalty or other liability imposed by ERISA, the Code or other applicable Laws, rules and regulations; (iv) for each Benefit Plan with respect to which a Form 5500 has been filed, no material change has occurred with respect to the matters covered by the most

recent Form since the date thereof; (v) no "reportable event" (as such term is defined in Section 4043 of ERISA) that could reasonably be expected to result in material liability, no nonexempt "prohibited transaction" (as such term is defined in Section 406 of ERISA and Section 4975 of the Code) or "accumulated funding deficiency" (as such term is defined in Section 302 of ERISA and Section 412 of the Code (whether or not waived)) has occurred with respect to any Benefit Plan; (vi) all prior employer (including pre-tax employee) contributions and payments or benefits provided pursuant to such Benefit Plans and all other compensatory payments made to any current or former director, officer, employee or consultant of it have been deductible under the Code, including under Sections 162 and 404, as applicable; (vii) there is no present intention that any Benefit Plan be materially amended, suspended or terminated, or otherwise modified to change benefits (or the levels thereof) under any Benefit Plan at any time within the 12 months immediately following the date hereof; (viii) it has not incurred any current or projected liability in respect of post-employment or post-retirement health, medical or life insurance benefits for its current, former or retired employees or any of its subsidiaries, except as required to avoid an excise tax under Section 4980B of the Code or otherwise except as may be required pursuant to any other applicable Law, and neither CBI Entity has any liability under Part 6 of Subtitle B of Title I of ERISA with respect to unsatisfied continuation coverage obligations under a healthcare plan maintained or formerly maintained by any member of their "Controlled Group"; and (ix) neither CBI, East Coast Bank nor to CBI's knowledge, any other Person has any express or implied commitment, whether legally enforceable or not, to modify, change or terminate any Benefit Plan, other than with respect to a modification, change or termination required by ERISA, the Code or other applicable Law.

(iv) No Benefit Plan is: (i) a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA) and neither CBI, nor any member of its Controlled Group has at any time sponsored or contributed to, or has or had any liability or obligation in respect of, any multiemployer plan; (ii) a pension plan (within the meaning of Section 3(2) of ERISA) subject to Section 412 of the Code or Title IV of ERISA; (iii) a multiple employer plan for which it could incur liability under Sections 4063 or 4064 of ERISA; or (vi) a voluntary employee benefit association under 501(c)(9) of the Code.

(v) With respect to any Benefit Plan, (i) no actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending or, to CBI's knowledge, threatened; (ii) no facts or circumstances exist that could give rise to any such actions, suits or claims; (iii) no written or oral communication has been received from the Pension Benefit Guaranty Corporation (the "PBGC") in respect of any Benefit Plan subject to Title IV of ERISA concerning the funded status of any such plan or any transfer of assets and liabilities from any such plan in connection with the transactions contemplated herein; (iv) no administrative investigation, audit or other administrative proceeding by the Department of Labor, the PBGC, the Internal Revenue Service or other governmental agencies are pending, threatened or in progress (including, without limitation, any routine requests for information from the PBGC); and (v) all tax, annual reporting and other governmental filings required by ERISA, the Code or other applicable Law with respect to the Benefit Plans have been timely filed with the appropriate Regulatory Authority and all notices and disclosures have been timely provided to participants.

(vi) There has been no amendment to, announcement by either CBI Entity relating to, or change in employee participation or coverage under, any Benefit Plan which would increase the expense of maintaining such plan above the level of the expense incurred therefore for the most recent fiscal year.

(vii) Except as set forth on Schedule 4.1(S) of the CBI Disclosure Letter, neither the execution of this Agreement, shareholder approval of the Merger nor the consummation of the transactions (either alone or in combination with any subsequent event) contemplated hereby will (i) entitle any CBI Employees to severance pay or any increase in severance pay upon any termination of

employment after the date hereof, (ii) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other obligation pursuant to, any of the Benefit Plans, (iii) limit or restrict the right of CBI or, after the consummation of the transactions contemplated hereby, TBI or the Continuing Entity to merge, amend or terminate any of the Benefit Plans or result in any liability on account of such merger, amendment or termination (other than liability for ordinary administrative expenses typically incurred under such Benefit Plan), (iv) cause CBI or, after the consummation of the transactions contemplated hereby, TBI or the Continuing Entity to record additional compensation expense on its income statement with respect to any outstanding stock option or other equity-based award, or (v) result in payments under any of the Benefit Plans or otherwise which would not be deductible under section 280G of the Code.

(T) **Labor Matters.** Neither CBI Entity is a party to, or bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor is either CBI Entity the subject of a proceeding asserting that it has committed an unfair labor practice (within the meaning of the State Labor Relations Act) or seeking to compel such CBI Entity to bargain with any labor organization as to wages and conditions of employment, nor is there any strike or other labor dispute involving it, pending or, to the best of CBI's knowledge, threatened, nor is CBI aware of any activity involving any employees of CBI or East Coast Bank seeking to certify a collective bargaining unit or engaging in any other organization activity.

(U) **Insurance.** Schedule 4.1(U) of the CBI Disclosure Letter contains a true and complete list (including the names and addresses of the insurers, the expiration dates thereof, the annual premiums and payment thereof and a brief description of the interests insured thereby) of all liability, property, workers' compensation, directors' and officers' liability and other insurance policies currently in effect that insure the business, operations or employees of or affect or relate to the ownership, use or operation of any CBI Entity's assets and properties and that (i) have been issued to any CBI Entity or (ii) have been issued to any Person for their benefit. To the Knowledge of CBI, the insurance coverage provided by the policies described in clause (i) above will not terminate or lapse by reason of the transactions contemplated by this Agreement. Each policy listed in Schedule 4.1(U) of the CBI Disclosure Letter is valid and binding and in full force and effect, no premiums due thereunder have not been paid and neither it nor the person to whom such policy has been issued has received any notice of cancellation or termination in respect of any such policy or is in default thereunder. The insurance policies listed in Schedule 4.1(U) of the CBI Disclosure Letter, in light of its business, operations and assets and properties, are in amounts and have coverages that are reasonable and customary for persons engaged in such businesses and operations and having such assets and properties. No CBI Entity has received notice that any insurer under any insurance policy (x) is denying liability with respect to a claim thereunder or defending under a reservation of rights clause or (y) has filed for protection under applicable bankruptcy or insolvency laws or is otherwise in the process of liquidating or has been liquidate. Schedule 4.1(U) of the CBI Disclosure Letter sets forth a complete and accurate list of all claims in excess of \$25,000 made under the policies and binders described in clause (i) above since June 30, 2010. Neither CBI Entity has or maintains any self-insurance arrangement.

(V) **Affiliate Transactions.** Except as disclosed in Schedule 4.1(V) of the CBI Disclosure Letter or in the CBI Financial Statements, as of the date of this Agreement there are no intercompany liabilities between CBI and East Coast Bank and/or any of their respective directors or officers. No officer, director, Affiliate or associate of either CBI Entity, nor any associate of any such officer, director or Affiliate, provides or causes to be provided any assets, services or facilities to such CBI Entity; such CBI Entity does not provide or cause to be provided any assets, services or facilities to any such officer, director, affiliate or associate; and such CBI Entity does not beneficially own, directly or indirectly, any assets of any such officer, director, affiliate or associate. Except as disclosed in

Schedule 4.1(V) of the CBI Disclosure Letter or in the CBI Financial Statements, each of the liabilities and transactions referred to in the previous sentence was incurred or engaged in, as the case may be, on an arm's length basis. Except as disclosed in Schedule 4.1(V) of the CBI Disclosure Letter, since December 31, 2009, all such settlements between either CBI Entity and its respective officers, directors, affiliates and associates, have been made, and all allocations of intercompany expenses have been applied, in the ordinary course of business consistent with past practice.

(W) **Asset Classification.** Set forth on Schedule 4.1(W) of the CBI Disclosure Letter is a list, accurate and complete in all material respects, of all loans, extensions of credit or other assets that are classified as of September 30, 2010 by it (the "CBI Asset Classification"); and no amounts of loans, extensions of credit or other assets that are classified by it as of September 30, 2010 by any regulatory examiner as "Other Assets Especially Mentioned," "Substandard," "Doubtful," "Loss," or words of similar import are excluded from the amounts disclosed in the CBI Asset Classification, other than amounts of loans, extensions of credit or other assets that were charged off by it prior to September 30, 2010. The allowances for loan losses disclosed in the CBI Financial Statements were, and the allowances for loan losses for periods ending after the date of this Agreement will be, adequate as of the date thereof, under generally accepted accounting principles consistently applied to banks and bank holding companies and under all other regulatory requirements, for all losses reasonably anticipated in the ordinary course of business as of the date thereof based on information available as of such date, and the assets comprising other real estate owned and in-substance foreclosures included in any of their non-performing assets are carried net of reserves at the lower of cost or market value based on current independent appraisals or current management appraisals.

(X) **Environmental Matters.** Except as set forth in Schedule 4.1(X) of the CBI Disclosure Letter, to the best of CBI's knowledge:

(i) no CBI Entity, nor any properties owned or operated by such CBI Entity, has been or is in violation of or liable under any Environmental Law (as such term is defined in subsection (iii) below), except for such violations or liabilities that, either by themselves or in the aggregate with one or more other events, occurrences or circumstances, would not have a Material Adverse Effect on its assets, business, financial condition or results of operations taken as a whole. There are no (and there is no reasonable basis for any) actions, suits or proceedings, or demands, claims, notices or investigations including, without limitation, notices, demand letters or requests for information from any environmental agency or other person, instituted, pending or threatened relating to the liability of any property owned or operated by either CBI Entity under any Environmental Law.

(ii) no CBI Entity has received any notice, citation, summons or order, complaint or penalty assessment by any governmental or other entity or person with respect to a property in which such CBI Entity holds a security interest or other Lien for (i) any alleged violation of Environmental Law, (ii) any failure to have any environmental permit, certificate, license, approval, registration, and (iii) any use, possession, generation, treatment, storage, recycling, transportation or disposal of any Hazardous Material (as such term is defined in subsection (iii) below).

(iii) the following definitions apply for purposes of this Agreement: "Environmental Law" means (i) any federal, state or local law, statute, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, legal doctrine, order, judgment, decree, injunction, requirement or agreement with any governmental entity, relating to the protection, preservation or restoration of the environment, (including, without limitation, air, water vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, Agreement and animal life or any other natural resource), or to human health or safety, or the exposure to, or the use, storage, recycling,

treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Material, in each case as amended and as in effect on or prior to the date of this Agreement and includes, without limitation, the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the Federal Water Pollution Control Act of 1972, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the Federal Solid Waste Disposal and the Federal Toxic Substances Control Act, and the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Occupational Safety and Health Act of 1970, each as amended and as now in effect, and (ii) any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Material; "Hazardous Material" means any substance presently listed, defined, designated or classified as hazardous, toxic, radioactive or dangerous, or otherwise regulated, under any Environmental Law, whether by type or quantity, and includes, without limitation, any oil or other petroleum product, toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste or petroleum or any derivative or byproduct thereof, radon, radioactive material, asbestos, asbestos containing material, urea formaldehyde foam insulation, lead and polychlorinated biphenyl;

(Y) **Tax Matters.** Except as set forth in Schedule 4.1(Y) of the CBI Disclosure Letter, (i) all reports and returns with respect to Taxes (as defined below) that are required to be filed by or with respect to it (collectively, the "Tax Returns"), have been duly filed, or requests for extensions have been timely filed and have not expired except to the extent any such filing is not yet due or all such failures to file, taken together, are not reasonably likely to have either by themselves or in the aggregate with one or more other events, occurrences or circumstances, a Material Adverse Effect on either CBI Entity, and such Tax Returns were true, complete, accurate and correct in all material respects, (ii) all taxes (which shall mean federal, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, occupancy, license, excise, franchise, employment, withholding or similar taxes imposed on the income, properties, operations or activities of it, together with any interest, additions, or penalties with respect thereto and any interest in respect of such additions or penalties, collectively the "Taxes") shown to be due on the Tax Returns have been paid in full on or before the due date or are being contested in good faith and adequately reserved for on its consolidated balance sheet, (iii) the Tax Returns have never been examined by the Internal Revenue Service, (iv) no notice of deficiency, pending audit or assessment with respect to the Tax Returns has been received from the appropriate state, local or foreign taxing authority, or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired, (v) all Taxes due with respect to completed and settled examinations have been paid in full, (vi) no issues have been raised by the relevant taxing authority in connection with the examination of any of the Tax Returns which are reasonably likely to result in a determination that would have, either by themselves or in the aggregate with one or more other events, occurrences or circumstances, a Material Adverse Effect on it, except as reserved against in its Financial Statements, and (vii) no waivers of statutes of limitations have been given by or requested with respect to any Taxes of either CBI Entity.

(Z) **Material Statements and Omissions.** Neither any representation or warranty made by any CBI Entity contained in this Agreement or in any certificate, document or other instrument furnished or to be furnished by any CBI Entity pursuant to the terms hereof nor the CBI Disclosure Letter contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact required to make any statement contained herein or therein, in light of the circumstances in which they were made, not misleading.

4.2 **Representations and Warranties of TBI.** TBI hereby represents and warrants to CBI as follows:

(A) **Organization and Qualification.**

(i) TBI is a corporation duly organized, validly existing, in good standing under the laws of the State of Delaware. TBI is duly qualified to do business and is in good standing in the State of Florida and in any other states of the United States and foreign jurisdictions where its ownership, use or leasing of property or the conduct or nature of its business requires it to be so qualified, licensed or admitted and except where the failure to be so qualified, licensed or admitted and in good standing would not reasonably be likely to, individually or in the aggregate, have a Material Adverse Effect on TBI. TBI has the corporate power and authority to carry on its business as it is now being conducted and to own all its material properties and assets.

(B) **Capital Shares.**

(i) The authorized capital stock of TBI consists of 30,000,000 shares of TBI Common Stock, of which 13,876,597 shares are issued and outstanding as of the date of this Agreement. All of the issued and outstanding shares of TBI Common Stock ("TBI Capital Stock") are, and all of the shares of TBI Common Stock to be issued in exchange for shares of CBI 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. None of the outstanding shares of TBI capital stock has been, and none of the shares of TBI Common Stock to be issued in exchange for shares of CBI Common Stock upon consummation of the Merger will be, issued in violation of any preemptive rights of the current or past shareholders of TBI.

(ii) Except as set forth in Section 4.2(B)(i), or as disclosed in Schedule 4.2(B) of the TBI Disclosure Letter, there are no shares of capital stock or other equity securities of TBI outstanding and no outstanding Equity Rights relating to the TBI capital stock.

(C) **Subsidiaries.** The subsidiaries of TBI are set forth on Schedule 4.2(C) of the TBI Disclosure Letter (the "TBI Subsidiaries"). Each TBI Subsidiary has the corporate power and authority to carry on its business as it is now being conducted and to own all of its material properties and assets, and has in effect all federal, state and local authorizations, licenses and approvals necessary for it to own or lease its properties and assets and to carry on its business as it is now conducted, except where the failure to have such power, authority, licenses and approvals would not reasonably be likely to, individually or in the aggregate, have a Material Adverse Effect on TBI.

(D) **Authority.** TBI has the corporate power and authority necessary to execute, deliver and perform this Agreement, and to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein, including the Merger, have been duly and validly authorized by all necessary corporate action in respect thereof on the part of TBI. This Agreement represents a legal, valid, and binding obligation of TBI, enforceable against TBI in accordance with its terms (except in all cases as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium, or similar 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 proceeding may be brought).

(E) **No Conflict.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by TBI will not constitute (i) a breach or violation of, or a default under, any Law, Order, governmental permit or license (collectively "Licenses"), or Contract, of TBI or to which it or any of its properties is subject or by which any of its properties are bound, which breach, violation or default is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBI; (ii) a breach or violation of, or a default under, TBI's articles of incorporation, charter or bylaws (or other comparable corporate charter documents); or (iii) except as set forth in Schedule 4.1(E) of the TBI Disclosure Schedule, the consent or approval of any other party to any Orders, Licenses or Contracts other than the required approvals of applicable Regulatory Authorities referred to in Section 6.1(B).

(F) **Financial Statements.** Prior to the execution of this Agreement, TBI has delivered to CBI true and complete copies of the following financial statements (which are attached as Schedule 4.2(F) of the TBI Disclosure Letter: (x) the audited consolidated balance sheets of TBI as of December 31, 2009 and 2008 and the related audited consolidated statements of operations, shareholders' equity and cash flows for the fiscal year then ended (the "TBI Audited Financial Statements"), together with a true and correct copy of the report on such audited information by TBI's independent accountants, and all letters from such accountants with respect to the results of such audit, and (y) unaudited consolidated statement of condition of TBI as of September 30, 2010 and the related unaudited consolidated statements of operations, shareholders' equity and cash flows for the period then ended (the "TBI Unaudited Financial Statements") (the TBI Audited Financial Statements and the TBI Unaudited Financial Statements are sometimes hereinafter collectively referred to as the "TBI Financial Statements"). All such Financial Statements were prepared in accordance with GAAP consistently applied and fairly present in all material respects TBI's financial condition and results of operations as of the respective dates thereof and for the respective periods covered thereby.

(G) **No Undisclosed Liabilities.** Except as referred to or reserved against in the consolidated balance sheets of TBI as of December 31, 2009 and June 30, 2010, included in the TBI Financial Statements or reflected in the notes thereto, there are no Liabilities against, relating to or affecting TBI or any of its assets and properties, other than Liabilities incurred in the ordinary course of business consistent with past practice which in the aggregate are not material to its business, financial condition or results of operations.

(H) **Litigation; Regulatory Action.** Except as set forth in Schedule 4.2(H) of the TBI Disclosure Letter or as reflected in the TBI Financial Statements, no litigation, proceeding, or controversy before any court or governmental agency is pending which, individually or in the aggregate, is reasonably likely to have a Material Adverse Effect on TBI and, to the best of TBI's Knowledge, no such litigation, proceedings or controversy has been threatened in writing; and except as set forth in Schedule 4.2(H) of the TBI Disclosure Letter, TBI is not a party to, or subject to any Order, agreement, memorandum of understanding or similar arrangement with, or a commitment letter or similar submission to any applicable Regulatory Authority; and it has not been advised by any Regulatory Authority that such authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such Order, agreement, memorandum of understanding, commitment letter or similar submission.

(I) **Compliance with Laws.** TBI is in compliance, in all material respects, with all applicable Laws or Orders including, without limitation, the Equal Credit Opportunity Act, the Fair Housing Act, the Community Reinvestment Act, the Home Mortgage Disclosure Act, all other applicable fair lending Laws relating to discriminatory business practices, the Currency and Foreign Transaction Reporting Act, as amended ("Bank Secrecy Act"), Title III of the USA Patriot Act and all

other applicable secrecy Laws; and it has all Licenses and has made all filings, applications and registrations with, all Regulatory Authorities that are required in order to permit it to conduct its business substantially as presently conducted except for such Licenses, filings, applications and registrations the failure of which to have would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect of TBI. Except as would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on TBI, all such Licenses are in full force and effect and, to the best of its Knowledge, no suspension or cancellation of any of them is threatened; and it has not received notification or communication from any Regulatory Authority (i) asserting that it is not in material compliance with any of the Laws which such Regulatory Authority enforces, or (ii) threatening to revoke any material License.

(J) **Takeover Laws.** Except as otherwise described in Schedule 4.2(J) of the TBI Disclosure Letter with respect to actions that will be taken prior to the Merger Effective Date, it has taken all necessary action to exempt the transactions contemplated by this Agreement from, or the transactions contemplated by this Agreement are otherwise exempt from, the requirements of any "moratorium," "control share," "fair price," "affiliate transaction," "control transaction," "business combination" or other anti-takeover laws and regulations (collectively, the "Takeover Laws") of the State of Florida.

(K) **Absence of Changes.** Except as disclosed in Schedule 4.2(K) of the TBI Financial Statements or reflected in the TBI Financial Statements, there has not occurred between June 30, 2010 and the date hereof any change, development or event which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on TBI.

(L) **Material Contracts.** Except as disclosed in Schedule 4.2(L) of the TBI Disclosure Letter or otherwise reflected in the TBI Financial Statements, none of TBI or the TBI Subsidiaries, nor any of their respective assets, businesses, or operations, is a party to, or is bound or affected by, or receives benefits under, (i) any employment, severance, termination, consulting or retirement Contract providing for aggregate payments to any Person in any calendar year in excess of \$300,000, or (ii) any Contract relating to the borrowing of money by any of TBI or TBI Subsidiary or the guarantee by any of TBI or the TBI Subsidiaries of any such obligation (other than Contracts evidencing deposit liabilities, purchases of federal funds, fully-secured repurchase agreements, and Federal Home Loan Bank advances of depository institution Subsidiaries, trade payables and Contracts relating to borrowings or guarantees made in the ordinary course of business) (the "TBI Contracts"). With respect to each TBI Contract and except as disclosed in Schedule 4.2(L) of the TBI Disclosure Letter: (A) the Contract is in full force and effect; (B) TBI is not in Default thereunder, other than Defaults which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBI; (C) TBI has not repudiated or waived any material provision of any such Contract; and (D) no other party to any such Contract is, to the Knowledge of TBI, in Default in any respect, other than Defaults which are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on TBI, or has repudiated or waived any material provision thereunder.

(M) **Real Property.** Except as set forth in Schedule 4.2(M) of the TBI Disclosure Letter, neither TBI nor the TBI subsidiaries own any real property. Schedule 4.2(M) of the TBI Disclosure Letter also contains a true and correct list of each parcel of real property leased by TBI and the TBI Subsidiaries (and as lessor or lessee).

(i) TBI has a valid and subsisting leasehold estate in and the right to quiet enjoyment of the real properties leased by it as lessee for the full term of the lease thereof. Each lease referred to in this paragraph (i) is a legal, valid and binding agreement, enforceable in accordance with its

terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium, or similar 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 proceeding may be brought), and there is no, and it has received no notice of any, default, or any condition or event which, after notice or lapse of time or both, would constitute a default thereunder. It does not owe any brokerage commissions with respect to any such leased space.

(ii) Except as disclosed in Schedule 4.2(M) of the TBI Disclosure Letter, the improvements on the real property identified therein are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, are adequate and suitable for the purposes for which they are presently being used and, to its knowledge, there are no condemnation or appropriation proceedings pending or threatened against any of such real property or the improvements thereon.

(N) **Tangible Personal Property.** It is in possession of and has good title to, or have valid leasehold interests in or valid rights under contract to use, all tangible personal property used in the conduct of its business, including all tangible personal property reflected on the TBI Financial Statements and tangible personal property acquired subsequent to December 31, 2009, other than property disposed of since such date in the ordinary course of business consistent with past practice. All such tangible personal property is free and clear of all Liens, other than Liens disclosed in Schedule 4.2(N) of the TBI Disclosure Letter, and is in good working order and condition, ordinary wear and tear excepted, and its use complies in all material respects with all applicable laws.

(O) **Intellectual Property Rights.** Except as set forth in Schedule 4.2(O) of the TBI Disclosure Letter, it has such ownership and use (free and clear of all Liens) of, or rights by license, lease or other agreement to use (free and clear of all Liens), such Intellectual Property as is necessary to permit it to conduct its business and operations as currently conducted, except where the failure to have any such right would not have a material adverse effect on its business, financial condition or results of operations. Except as disclosed in Schedule 4.2(O) of the TBI Disclosure Letter, (i) all registrations with and applications to Regulatory Authorities in respect of such Intellectual Property are valid and in full force and effect and are not subject to the payment of any taxes or maintenance fees or the taking of any other actions to maintain their validity or effectiveness, (ii) there are no restrictions on the direct or indirect transfer of any license, or any interest therein in respect of such Intellectual Property, (iii) it has taken reasonable security measures to protect the secrecy, confidentiality and value of their trade secrets, (iv) it has not received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default) under any license to use such Intellectual Property, and (v) it has no knowledge that such Intellectual Property is being infringed by any other person. It has not received notice that it is infringing any Intellectual Property of any other person, no claim is pending or, to its knowledge (after having made due inquiry), has been made to such effect that has not been resolved and, to its knowledge (after having made due inquiry), it is not infringing any Intellectual Property rights of any other person. For purposes of this Agreement "Intellectual Property" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, processes, formulae, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, software license and sub-license agreements, end-user license agreements for software, software maintenance agreements, technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights.

(P) **Labor Matters.** It is not a party to, or bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor is it the subject of a proceeding asserting that it has committed an unfair labor practice (within the meaning of the State Labor Relations Act) or seeking to compel it to bargain with any labor organization as to wages and conditions of employment, nor is there any strike or other labor dispute involving it, pending or, to the best of its Knowledge, threatened, nor is it aware of any activity involving its employees seeking to certify a collective bargaining unit or engaging in any other organization activity.

(Q) **Tax Matters.** Except as set forth in Schedule 4.2(Q) of the TBI Disclosure Letter: (i) all reports and returns with respect to Taxes (as defined below) that are required to be filed by or with respect to TBI (collectively, the "Tax Returns"), have been duly filed, or requests for extensions have been timely filed and have not expired except to the extent any such filing is not yet due or all such failures to file, taken together, are not reasonably likely to have either by themselves or in the aggregate with one or more other events, occurrences or circumstances, a Material Adverse Effect on TBI, and such Tax Returns were true, complete, accurate and correct in all material respects, (ii) all taxes (which shall mean federal, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, occupancy, license, excise, franchise, employment, withholding or similar taxes imposed on the income, properties, operations or activities of it, together with any interest, additions, or penalties with respect thereto and any interest in respect of such additions or penalties, collectively the "Taxes") shown to be due on the Tax Returns have been paid in full on or before the due date or are being contested in good faith and adequately reserved for on its consolidated balance sheet contained in the TBI Financial Statements; (iii) the Tax Returns have never been examined by the Internal Revenue Service; (iv) no notice of deficiency, pending audit or assessment with respect to the Tax Returns has been received from the appropriate state, local or foreign taxing authority, or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired; (v) all Taxes due with respect to completed and settled examinations have been paid in full; (vi) no issues have been raised by the relevant taxing authority in connection with the examination of any of the Tax Returns which are reasonably likely to result in a determination that would have, either by themselves or in the aggregate with one or more other events, occurrences or circumstances, a Material Adverse Effect on TBI, except as reserved against in TBI Financial Statements, and (vii) no waivers of statutes of limitations have been given by or requested with respect to any Taxes of TBI.

ARTICLE V. COVENANTS

5.1 **Reasonable Best Efforts.** Subject to the terms and conditions of this Agreement, each party hereto agrees to cooperate with the other and use its reasonable best efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable on its part under this Agreement or under applicable Laws to consummate and make effective the Merger and the other transactions contemplated hereby as promptly as practicable, including the satisfaction of the conditions set forth in Article VI hereof.

5.2 Shareholder Approval.

(A) CBI, 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 "Shareholders Meeting"), to be held on a date reasonably acceptable to TBI but in any event within 60

calendar days, for the purpose of adopting this Agreement and considering and voting upon any other matters required to be approved by CBI's shareholders for consummation of the Merger. CBI shall solicit from its shareholders proxies in favor of the adoption and approval of this Agreement and the Merger and shall take all other action necessary or advisable to secure the vote or consent of its shareholders to adopt and approve this Agreement and the Merger. CBI also shall solicit from its shareholders proxies in favor of approving any other matters required for consummation of the Merger.

(B) Neither the Board of Directors of CBI nor any committee thereof shall (i) except as expressly permitted by this Section 5.2(B), withdraw, qualify or modify, or propose publicly to withdraw, qualify or modify, in a manner adverse to TBI, the approval or recommendation of such Board of Directors or such committee of the Merger or this Agreement, (ii) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal, or (iii) cause CBI to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement (each, an "Acquisition Agreement") related to any Acquisition Proposal. Notwithstanding the foregoing, in the event that, prior to the adoption of this Agreement by the CBI shareholders, the Board of Directors of CBI determines in good faith, after it has received a Superior Proposal and after receipt of advice from outside counsel, that the failure to do so would result in a reasonable possibility that the Board of Directors of CBI would breach its fiduciary duties to CBI shareholders under applicable Law, the Board of Directors of CBI may (subject to this and the following sentences) inform CBI shareholders that it no longer believes that the Merger is advisable and no longer recommends approval and may (subject to this and the following sentences) approve or recommend a Superior Proposal (and in connection therewith withdraw or modify its approval or recommendation of this Agreement and the Merger (a "Subsequent Determination")), but only at a time that is after the fifth business day following TBI's receipt of written notice advising TBI that the Board of Directors of CBI has received a Superior Proposal specifying the material terms and conditions of such Superior Proposal (and including a copy thereof with all accompanying documentation, if in writing), identifying the person making such Superior Proposal and stating that it intends to make a Subsequent Determination. After providing such notice, CBI shall provide a reasonable opportunity to TBI to make such adjustments in the terms and conditions of this Agreement as would enable CBI to proceed with its recommendation to its shareholders without a Subsequent Determination; provided, that any such adjustment shall be at the discretion of the parties at the time. Notwithstanding any other provision of this Agreement, CBI shall submit this Agreement to its shareholders at its Shareholders Meeting even if the Board of Directors of CBI determines at any time after the date hereof that it is no longer advisable or recommends that CBI shareholders reject it.

5.3 Proxy Statement.

(A) CBI shall as promptly as practicable and in conjunction with TBI prepare and mail to CBI's shareholders at CBI's own expense a notice of meeting, proxy statement and form of proxy in accordance with applicable Law for the approval by CBI shareholders of this Agreement and the Merger and for the approval by CBI shareholders of any other matters required to facilitate consummation of the Merger (the "Proxy Statement"). CBI shall provide an initial draft of the Proxy Statement for the parties to mutually work upon, review and finalize. TBI shall have the opportunity to review and comment on the Proxy. The Proxy Statement shall include the recommendation of CBI's Board of Directors in favor of adoption and approval of this Agreement and the transactions contemplated hereby.

(B) The Proxy Statement and any amendment or supplement thereto shall not, at the date of mailing to shareholders and at the time of the Shareholders Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If TBI shall become aware prior to the time of the Shareholders Meetings of any

information furnished by TBI that would cause any of the statements in the Proxy Statement to be false or misleading with respect to any material fact, or to omit to state any material fact necessary to make the statements therein not false or misleading, TBI shall promptly inform CBI thereof and to take the necessary steps to correct the Proxy Statement.

5.4 **Press Release.** Except as otherwise required by Law, the parties hereto shall consult with each other before issuing any press release with respect to the Merger or this Agreement and shall not issue any such press release or make any such public statements without the prior consent of the other parties, which consent shall not be unreasonably withheld or delayed. The parties hereto shall cooperate to develop all public announcement materials and make appropriate management available at presentations related to the transactions contemplated by this Agreement as reasonably requested by the other party.

5.5 **Access; Information.**

(A) Subject to applicable Law, each party shall afford the other party and its accountants, counsel and other representatives, reasonable access during normal business hours during the period prior to the Merger Effective Date or the date, if any, on which this Agreement is terminated pursuant to Section 7.1 to (i) all of such party's properties, personnel, books, contracts, commitments and records and (ii) all other information concerning the business, properties and personnel of such party as the other party may reasonably request.

(B) Without limiting the generality of Section 5.5(A), prior to the Merger Effective Date, upon reasonable prior notice and subject to applicable Laws relating to the exchange of information, each party's representatives shall have the right to conduct a review to determine the accuracy of the representations and warranties of the other party and the satisfaction of the conditions to closing as provided hereunder.

(C) Each party agrees that any information obtained pursuant to this Section 5.5 (as well as any other information obtained prior to the date hereof in connection with the entering into of this Agreement) shall be subject to and governed by the Confidentiality Agreement, dated June 25, 2010, between CBI and TBI (the "Confidentiality Agreement").

(D) No investigation by either party of the business and affairs of the other party shall affect or be deemed to modify or waive any representation, warranty, covenant or agreement in this Agreement, or the conditions to such party's obligation to consummate the transactions contemplated by this Agreement.

5.6 **No Solicitation.**

(A) CBI shall not, nor shall it authorize or permit any of its officers, directors, employees, agents, representatives and Affiliates (collectively, "Representatives") to, directly or indirectly (i) solicit, initiate, encourage or induce the making, submission or announcement of any Acquisition Proposal, (ii) participate in any discussions or negotiations regarding, or furnish to any Person or "Group" (as such term is defined in Section 13(d) under the Exchange Act) any confidential information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to, any Acquisition Proposal, (iii) subject to Section 5.6(C), approve, endorse or recommend any Acquisition Proposal, or (iv) enter into any Acquisition Agreement contemplating or otherwise relating to any Acquisition Transaction; provided however, that this Section 5.6(A) shall not prohibit CBI from furnishing nonpublic information regarding CBI or any of its Affiliates to, or entering into a confidentiality agreement or

discussions or negotiations with, any Person or Group in response to a bona fide unsolicited written Acquisition Proposal submitted by such Person or Group (and not withdrawn) if (1) neither CBI nor any of its Representatives shall have violated any of the restrictions set forth in this Section 5.6, (2) the Board of Directors of CBI determines in its good faith judgment (based on, among other things, the advice of [its financial advisor of nationally recognized reputation] and its outside counsel) that such Acquisition Proposal constitutes a Superior Proposal, (3) the Board of Directors of CBI concludes in good faith, after consultation with its outside legal counsel, that the failure to take such action would be inconsistent with its fiduciary duties, as such duties would exist in the absence of this Section 5.6, to the shareholders of CBI under applicable Law, (4) (i) at least two business days prior to furnishing any such nonpublic information to, or entering into discussions or negotiations with, such Person or Group, CBI gives TBI written notice of the identity of such Person or Group and of CBI's intention to furnish nonpublic information to, or enter into discussions or negotiations with, such Person or Group, and (ii) CBI receives from such Person or Group an executed confidentiality agreement containing terms no less favorable to CBI than the terms of the Confidentiality Agreement and (5) contemporaneously with furnishing any such nonpublic information to such Person or Group, CBI furnishes such nonpublic information to TBI (to the extent such nonpublic information has not been previously furnished by CBI to TBI). In addition to the foregoing, CBI shall provide TBI with at least two business days prior written notice of a meeting of the Board of Directors of CBI at which meeting the Board of Directors of CBI is reasonably expected to resolve to recommend a Superior Proposal to its shareholders and together with such notice a copy of the most recently proposed documentation relating to such Superior Proposal; provided further that CBI hereby agrees promptly to provide to TBI any revised documentation and any Acquisition Agreement.

(B) In addition to the obligations of CBI set forth in Section 5.6(A), as promptly as practicable, and in any event within one business day after any of the executive officers of CBI become aware thereof, CBI shall advise TBI of any request received by CBI for nonpublic information which CBI reasonably believes could lead to an Acquisition Proposal or of any Acquisition Proposal, the material terms and conditions of such request or Acquisition Proposal, and the identity of the Person or Group making any such request or Acquisition Proposal. CBI shall keep TBI informed promptly of material amendments or modifications to any such request or Acquisition Proposal.

(C) CBI and its Representatives shall immediately cease any and all existing activities, discussions or negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal and will use their respective reasonable best efforts to enforce any confidentiality or similar agreement relating to any Acquisition Proposal. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in this Section 5.6, by any Affiliate or Representative of CBI shall be deemed to be a breach of this Section 5.6 by CBI.

5.7 Regulatory Applications.

(A) TBI shall use its reasonable best efforts to prepare and deliver for filing, all documentation to effect all necessary notices, reports and other filings and to obtain all permits, consents, approvals and authorizations necessary or advisable to be obtained from any third parties and/or Regulatory Authorities in order to consummate the Merger and the other transactions contemplated hereby; and all initial filings forwarded to the Regulatory Authorities shall be made by TBI within 60 days after the execution hereof, and CBI shall cooperate in such preparation and filing. Subject to applicable laws relating to the exchange of information, each of TBI and CBI shall have the right to review in advance, and to the extent practicable each shall consult with the other on, all material written information submitted to any third party and/or any Regulatory Authority in connection with the Merger and the other transactions contemplated by this Agreement. In exercising the foregoing right,

each of such parties agrees to act reasonably and as promptly as practicable. Each party hereto agrees that it shall consult with the other parties hereto with respect to the obtaining of all material permits, consents, approvals and authorizations of all third parties and/or Regulatory Authorities necessary or advisable to consummate the transactions contemplated by this Agreement and each party shall keep the other parties apprised of the status of material matters relating to completion of the transactions contemplated hereby (Including promptly furnishing the other with copies of applications filed with, and notices or other communications received by TBI or CBI, as the case may be, from any third party and/or Regulatory Authority with respect to the Merger and the other transactions contemplated by this Agreement).

(B) Each party agrees, upon request, to furnish the other party with all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with any filing, notice or application made by or on behalf of such other party to any third party and/or Regulatory Authority.

5.8 Indemnification; Director's and Officers' Insurance.

(A) From and after the Merger Effective Date, BankFIRST agrees that it will indemnify and hold harmless each present and former director and officer of ECCB (each, an "Indemnified Party" and, collectively, the "Indemnified Parties") against all costs or expenses (Including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of actions or omissions occurring at or prior to the Merger Effective Date (Including the transactions contemplated by this Agreement), whether asserted or claimed prior to, at or after the Merger Effective Date, to the extent that ECCB would have been required under the Organizational Documents of ECCB as in effect on the date hereof to indemnify such Person. BankFIRST obligations under this Section 5.8(A) shall continue in full force and effect for a period of three years from the Merger Effective Date; provided, however, that all rights to indemnification in respect of any claim asserted or made within such period shall continue until the final disposition of such claim.

(B) Any Indemnified Party wishing to claim indemnification under paragraph (A) of this Section 5.8, upon learning of any such claim, action, suit, proceeding or investigation, shall promptly notify BankFIRST thereof, but the failure to so notify shall not relieve BankFIRST of any liability it may have to such Indemnified Party if such failure does not materially prejudice BankFIRST. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Merger Effective Date), (i) BankFIRST shall have the right to assume, or cause TBI to assume, the defense thereof and BankFIRST shall not be liable to such Indemnified Party for any legal expenses or other counsel or any other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof, (ii) the Indemnified Party will cooperate in the defense of any such matter, and (iii) BankFIRST shall not be liable for any settlement effected without its prior written consent; provided that BankFIRST shall not have any obligation hereunder to any Indemnified Party if and when a court of competent jurisdiction shall ultimately determine, and such determination shall have become final, that the indemnification of such Indemnified Party in the manner contemplated hereby is prohibited by applicable Law.

(C) BankFIRST shall, or shall cause TBI to, use its reasonable efforts (and ECCB shall cooperate prior to the Merger Effective Date in these efforts) to maintain in effect for a period of three years after the Merger Effective Date ECCB's existing directors' and officers' liability insurance policy (provided that BankFIRST or TBI may substitute therefor (i) policies of at least the same

coverage and amounts containing terms and conditions which are substantially no less advantageous or (ii) with the consent of ECCB given prior to the Merger Effective Date, any other policy) with respect to claims arising from facts or events which occurred prior to the Merger Effective Date and covering persons who are currently covered by such insurance; provided, that prior to the Merger Effective Date ECCB shall pay an amount equal to the premium payments for such three-year period and provided that no annual premium payment for such three-year period shall exceed 150% of the annual premium payments on ECCB's current policy in effect as of the date of this Agreement (the "Maximum Amount"). If the amount of the premiums necessary to maintain or procure such insurance coverage exceeds the Maximum Amount, ECCB and BankFIRST shall agree upon the most advantageous policies of directors' and officers' liability insurance obtainable for a premium equal to the Maximum Amount. ECCB shall pay one-half of the cost of the insurance contemplated by this Section 5.8 immediately prior to the Effective Time, and BankFIRST shall pay the remaining one-half of such insurance cost.

(D) If BankFIRST or any of its successors or assigns shall (i) consolidate with or merge into any other person and shall not be the continuing or surviving person of such consolidation or merger or (ii) transfer all or substantially all of its properties and assets to any other person, then, and in each case, proper provision shall be made so that the successors and assigns of BankFIRST shall assume the obligations set forth in this Section 5.8

(E) Notwithstanding any provisions to the contrary, the indemnification obligations of this Section 5.8 are limited by federal banking law and those obligations that violate federal banking law will be invalid and unenforceable.

5.9 Benefit Plans. For the 12 month period immediately following the Merger Effective Date, BankFIRST agrees to provide to the then current employees of East Coast Bank who continue employment with BankFIRST during such period employee benefits (other than equity-based benefits or awards, including any shares granted or issued to any tax qualified retirement plan, and any special bonus arrangements) that are comparable in the aggregate to employee benefits (other than equity-based benefits or awards, including any shares granted or issued to any tax qualified retirement plan, and any special bonus arrangements) provided by BankFIRST to its employees. TBI will cause the employee benefit plans that such employees are or become eligible to participate in to take into account for purposes of eligibility and vesting thereunder service by such employees with ECCB as if such service were with TBI or any of its Subsidiaries, as the case may be, to the same extent that such service was credited under any analogous Benefit Plan of East Coast Bank immediately prior to the Merger Effective Date. Following the Merger Effective Date, employees of ECCB will retain credit for unused vacation and sick days which were accrued with ECCB as of the Merger Effective Date. In addition, if the Merger Effective Date falls within an annual period of coverage under any group health plan of TBI, each employee of ECCB shall be given credit for covered expenses paid by that employee under comparable employee benefit plans of East Coast Bank during the applicable coverage period through the Merger Effective Date toward satisfaction of any annual deductible limitation and out-of-pocket maximum that may apply under that group health plan of TBI and its Subsidiaries. Nothing herein shall limit the ability of TBI to amend or terminate any of the Benefit Plans in accordance with their terms at any time. If, within nine months of the Merger Effective Date, any employee of ECCB is terminated by BankFIRST 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, BankFIRST shall pay severance to each such employee in an amount equal to two weeks' pay for each year of such employee's prior employment; provided, that in no event will the total amount of severance for any single employee be less than two weeks or greater than 12 weeks.

- (A) BankFIRST and ECCB agree to cooperate in good faith to mitigate the effects of Section 280G of the Code on ECCB and its employees.
- (B) Prior to the Closing, (i) the employment agreements between East Coast Bank or CBI and the individuals set forth on Exhibit 5 shall be terminated and (ii) BankFIRST shall enter into new employment or consulting agreements with the individuals set forth on Exhibit 6 upon such terms and conditions as BankFIRST may deem acceptable.
- (C) The provisions of this Section 5.9 are for the sole benefit of the parties to this Agreement and nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person (including for the avoidance of doubt any current or former employees, directors, officers, consultants or independent contractors of any of ECCB or their beneficiaries, other than the parties hereto and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 5.9) under or by reason of any provision of this Agreement.

5.10 Notification of Certain Matters. Each of CBI and TBI shall give prompt notice to the other (i) of the occurrence, or non-occurrence, of any event that, individually or in the aggregate, would make the timely satisfaction of any of the conditions set forth in Article VI impossible or unlikely or otherwise prevent, materially delay or materially impair the ability of CBI or TBI, as the case may be, to consummate the transactions contemplated by this Agreement, or (ii) of any fact, event or circumstance known to it that would cause or constitute a material breach of any of its representations, warranties, covenants or agreements contained herein.

5.11 Human Resources Issues. CBI and TBI will consult in good faith regarding the nature and content of any formal presentation of the transactions contemplated by this Agreement to employees of East Coast Bank and BankFIRST and will include a representative of each of CBI and TBI in any such formal presentation or any formal group meeting at which the transaction is explained or discussed, under an arrangement that is mutually satisfactory to both parties. The parties agree to work with each other in good faith to facilitate the timely and accurate dissemination of information to employees regarding matters related to the transactions contemplated by this Agreement in such a manner as to cause minimal disruption of the business of East Coast Bank and BankFIRST and their relationships with their respective employees and to facilitate the transition of such relationships to the Continuing Bank.

5.12 Third-Party Agreements, Etc.

(A) CBI shall use its commercially reasonable best efforts to obtain (i) within 60 calendar days after the date hereof, all consents or waivers required to be obtained from any third parties in connection with the Merger and the other transactions contemplated hereby on such form and content as is approved in writing by TBI and (ii) the cooperation of such third parties to effect the integration of the operations of East Coast Bank and BankFIRST as expeditiously as possible after the Merger Effective Date. CBI shall cooperate with TBI in minimizing the extent to which any Contracts will continue in effect following the Merger Effective Date, in addition to complying with the prohibitions in Section 3.2(K).

(B) TBI agrees that all actions taken pursuant to this Section 5.12 shall be taken in a manner intended to minimize disruption to the customary business activities of CBI.

5.13 Shareholders Agreements. CBI shall use its reasonable best efforts to cause each Shareholder who is a party to a Shareholders Agreement to comply with such Shareholders Agreement. CBI agrees to be bound by and comply with the provisions of the Shareholders Agreements with respect to transfers of record ownership of shares of CBI Common Stock, and agrees to notify the transfer agent for the CBI Common Stock of the Shareholder Agreements and provide such documentation and do such other things as may be necessary to effectuate the provisions of such Shareholders Agreements.

5.14 Non-Competition and Non-Solicitation Agreements. CBI shall use its reasonable best efforts to cause each of the Non-Compete Persons to execute a Non-Competition Agreement prior to the Merger Effective Date and to cause each of the Non-Solicitation Persons to execute a Non-Solicitation Agreement prior to the Merger Effective Date.

5.15 Non-Competition Agreement Payments. Subject to the execution of a Non-Competition Agreement by Rafael Ramirez, BankFIRST shall pay immediately after the Merger Effective Date, in consideration thereof, \$139,172.24 to Mr. Ramirez in satisfaction of all change in control or other payments due to him as a result of his employment and other agreements with CBI and East Coast Bank.

5.16 Subsequent Interim and Financial Statements; Reports. As soon as reasonably practicable and as soon as they are available, but in no event more than 15 days, after the end of each calendar month ending after the date of this Agreement, each of CBI and TBI shall furnish to the other (i) financial statements (including balance sheet, income statement and statement of changes in shareholders' equity) as of and for such month then ended and (ii) copies of any internal management reports relating to the foregoing. All information furnished pursuant to this Section 5.16 shall be held in confidence by the receiving party to the extent required by, and in accordance with, the provisions of the Confidentiality Agreement. 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 shall deliver to the other party copies of all such reports promptly after the same are filed.

5.17 Agreement as to Efforts to Consummate. Subject to the terms and conditions of this Agreement, each party agrees to use, and to cause its Subsidiaries to use, its 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 reasonably practicable after the date of this Agreement, the transactions contemplated by this Agreement, including using its reasonable efforts to lift or rescind any Order adversely affecting its ability to consummate the transactions contemplated herein and to cause to be satisfied the conditions referred to in Article VI; provided, that nothing herein shall preclude either party from exercising its rights under this Agreement.

ARTICLE VI. CONDITIONS TO CONSUMMATION OF THE MERGER

6.1 Conditions to Obligations of Each Party.

The respective obligations of each party to perform this Agreement and consummate the Merger and the other transactions contemplated hereby are subject to the satisfaction of the following conditions, unless waived by both parties prior to the Merger Effective Date:

(A) Shareholder Vote. Approval of the Merger and the other transactions contemplated hereby by the required vote of the shareholders of CBI shall have been obtained.

(B) Regulatory Approvals. All regulatory approvals from all Regulatory Authorities required to consummate the Merger and the transactions contemplated hereby shall have

been obtained and shall remain in full force and effect and all statutory waiting periods applicable to the Merger shall have expired or been terminated; provided, that no such approval or consent shall have imposed any condition or requirement which would so materially and adversely impact the economic or business benefits to TBI, of the transactions contemplated by this Agreement that, had such condition or required been known, TBI board of directors would not, in its reasonable judgment, have entered into this Agreement.

(C) **Third Party Consents.** All consents or approvals of all persons (other than Regulatory Authorities) required for the consummation of the Merger and the transactions contemplated hereby shall have been obtained and shall be in full force and effect, unless the failure to obtain any such consent or approval would not materially and adversely impact business benefits to TBI of the transactions contemplated by this Agreement.

(D) **Legal Proceedings.** No court or governmental 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 which prohibits, restricts or makes illegal consummation of the Merger or the other transactions contemplated by this Agreement.

6.2 Conditions to Obligations of TBI.

The obligations of TBI to perform this Agreement and consummate the Merger and the other transactions contemplated hereby are subject to the satisfaction of the following conditions, unless waived in writing by TBI prior to the Merger Effective Date:

(A) **Representations and Warranties.** For purposes of this Section 6.2(A), the accuracy of the representations and warranties of CBI set forth in this Agreement shall be assessed 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 which are confined to a specified date shall speak only as of such date). The representations and warranties set forth in Section 4.1(B) shall be true and correct (except for inaccuracies which are de minimus in amount). The representations and warranties set forth in Sections 4.1(B) and 4.1(N) shall be true and correct in all material respects. There shall not exist inaccuracies in the representations and warranties of CBI set forth in this Agreement (including the representations and warranties set forth in 4.1(B) and 4.1(N)) such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a Material Adverse Effect; provided that, for purposes of this sentence only, those representations and warranties which are qualified by references to "material" or "Material Adverse Effect" or to the "Knowledge" of any Person shall be deemed not to include such qualifications.

(B) **Performance of Agreements and Covenants.** Each and all of the agreements and covenants of CBI to be performed and complied with pursuant to this Agreement and the other agreements contemplated hereby prior to the Merger Effective Date shall have been duly performed and complied with in all material respects.

(C) **Certificates.** CBI shall have delivered to TBI (i) a certificate, dated as of the Merger Effective Date and signed on its behalf by its chief executive officer and its chief financial officer, to the effect that the conditions set forth in Section 6.1 as relates to CBI and in Sections 6.2(A) have been satisfied, and (ii) certified copies of resolutions duly adopted by CBI's Board of Directors and shareholders evidencing the taking of all corporate action necessary to authorize the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, all in such reasonable detail as TBI and its counsel shall request.

(D) **Shareholders' Equity.** The shareholders' equity of ECCB on the last day of the calendar month immediately preceding the Merger Effective Date, as determined in accordance with GAAP and after taking into account the transaction cost adjustments as are required in accordance with Section 2.1(A)(ii)(a) shall not be less than the amount specified in Section 7.1(H).

(E) **Allowance for Loan Losses.** The allowance for loan losses of ECCB on the last day of the calendar month immediately preceding the Merger Effective Date, as determined in accordance with GAAP, expressed as a percentage of its total loans as of such date, shall not be less than 2.7% in the case of ECCB.

(F) **FIRPTA Certificate.** CBI shall have delivered to TBI (a) a certification from CBI, dated no more than 30 days prior to the Merger Effective Date and signed by a responsible corporate officer of CBI, that CBI is not, and has not been at any time during the five years preceding the date of such certification, a United States real property holding company, as defined in Internal Revenue Code Section 897(c)(2), and (b) proof reasonably satisfactory to TBI that CBI has provided notice of such certification to the IRS in accordance with the provisions of Treasury regulations Section 1.897-2(h)(2).

(G) **Non-Competition Agreements.** Each of the Non-Compete Persons shall have executed and delivered to TBI a Non-Competition Agreement with TBI and such Non-Competition Agreement shall be in full force and effect.

(H) **Non-Solicitation Agreements.** Each of the Non-Solicitation Persons shall have executed and delivered to TBI a Non-Solicitation Agreement with TBI and such Non-Solicitation Agreement shall be in full force and effect.

6.3 Conditions to Obligations of CBI.

The obligations of CBI to perform this Agreement and consummate the Merger and the other transactions contemplated hereby are subject to the satisfaction of the following conditions, unless waived in writing by CBI prior to the Merger Effective Date:

(A) **Representations and Warranties.** For purposes of this Section 6.3(A), the accuracy of the representations and warranties of TBI set forth in this Agreement shall be assessed 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 which are confined to a specified date shall speak only as of such date). There shall not exist inaccuracies in the representations and warranties of TBI set forth in this Agreement such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a material adverse effect; provided that, for purposes of this sentence only, those representations and warranties which are qualified by references to "material" or "Material Adverse Effect" or to the "Knowledge" of any Person shall be deemed not to include such qualifications.

(B) **Performance of Agreements and Covenants.** Each and all of the agreements and covenants of TBI to be performed and complied with pursuant to this Agreement and the other agreements contemplated hereby prior to the Merger Effective Date shall have been duly performed and complied with in all material respects.

(C) **Certificates.** TBI shall have delivered to CBI (i) a certificate, dated as of the Merger Effective Date and signed on its behalf by its chief executive officer and its chief financial officer, to the effect that the conditions set forth in Section 6.1 as relates to TBI and in Sections 6.3(A)

have been satisfied, and (ii) certified copies of resolutions duly adopted by TBI's Board of Directors and shareholders evidencing the taking of all corporate action necessary to authorize the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, all in such reasonable detail as CBI and its counsel shall request.

ARTICLE VII. TERMINATION

7.1 **Termination.** This Agreement may be terminated and the Merger may be abandoned at any time prior to the Merger Effective Date, notwithstanding adoption thereof by the shareholders of CBI:

(A) by the mutual written consent of CBI and TBI;

(B) by TBI or CBI if the Merger is not consummated by July 31, 2011 (unless extended by mutual agreement of the parties), except to the extent that the failure of the Merger then to be consummated arises out of or results from a breach of this Agreement by the party seeking to terminate pursuant to this Section 7.1(B);

(C) by TBI or CBI if (i) the approval of any Regulatory Authority required for consummation of the Merger and the other transactions contemplated by this Agreement shall have been denied by final and nonappealable action of such Regulatory Authority or an application therefore shall have been permanently withdrawn at the invitation, request or suggestion of a Regulatory Authority, (ii) any Law or Order permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger shall have become final and nonappealable, or (iii) the shareholders of CBI fail to vote their approval of the matters relating to this Agreement and the transactions contemplated hereby at the Shareholders Meeting where such matters were presented to the CBI shareholders for approval and voted upon;

(D) by TBI in the event that (i) the Board of Directors of CBI shall have failed to reaffirm its approval upon TBI's request for such reaffirmation of the Merger and the transactions contemplated by this Agreement (to the exclusion of any other Acquisition Proposal), or shall have resolved not to reaffirm the Merger, or (ii) the Board of Directors of CBI shall have failed to include in the Proxy Statement its recommendation, without modification or qualification, that CBI shareholders approve and adopt this Agreement or shall have withdrawn, qualified or modified, or proposed publicly to withdraw, qualify or modify, in a manner adverse to TBI, the recommendation of such Board of Directors to CBI shareholders that they approve and adopt this Agreement, or (iii) the Board of Directors of CBI shall have affirmed, recommended or authorized entering into any Acquisition Transaction other than the Merger or, within ten business days after commencement of any tender or exchange offer for any shares of CBI capital stock, the Board of Directors of CBI shall have failed to recommend against acceptance of such tender or exchange offer by its shareholders or takes no position with respect to the acceptance of such tender or exchange offer by its shareholders, or (iv) the Board of Directors of CBI negotiates or authorizes the conduct of negotiations (and five business days have elapsed without such negotiations being discontinued) with a third party (it being understood and agreed that "negotiate" shall not be deemed to include the provision of information to, or the request and receipt of information from, any Person that submits an Acquisition Proposal or discussions regarding such information for the sole purpose of ascertaining the terms of such Acquisition Proposal and determining whether the board of directors will in fact engage in, or authorize, negotiations) regarding an Acquisition Proposal other than the Merger;

(E) by CBI, (provided that CBI is not then in material breach of any representation, warranty, covenant, or other agreement contained in this Agreement), if prior to the adoption of this

Agreement by the affirmative vote of the holders of the requisite number of the outstanding shares of CBI capital stock entitled to vote thereon at the Shareholders Meeting, the Board of Directors of CBI has (x) withdrawn or modified or changed its recommendation or approval of this Agreement in a manner adverse to TBI in order to approve and permit CBI to accept a Superior Proposal and (y) determined, based on the advice of outside legal counsel to CBI, that the failure to take such action as set forth in the preceding clause (x) would result in breach of the Board of Directors' fiduciary duties under applicable Law; provided, that (i) at least five Business Days prior to any such termination, CBI shall, and shall cause its advisors to, negotiate with TBI to make such adjustments in the terms and conditions of this Agreement as would enable CBI to proceed with the transactions contemplated hereby on such adjusted terms, and (ii) CBI shall have tendered to TBI payment in full of the amount specified in Section 8.2(C) concurrently with delivery of notice of termination pursuant to this Section 7.1(E);

(F) by CBI if there shall have been a breach of any representation, warranty, covenant or agreement on the part of TBI contained in this Agreement such that the conditions set forth in Section 6.3 would not be satisfied and, in either such case, such breach is not capable of being cured or, if capable of being cured, is not cured within 30 days after written notice thereof is given by CBI to TBI;

(G) by TBI if there shall have been a breach of any representation, warranty, covenant or agreement on the part of CBI contained in this Agreement such that the conditions set forth in Section 6.2 would not be satisfied and, in either such case, such breach is not capable of being cured or, if capable of being cured, is not cured within 30 days after written notice thereof is given by TBI to CBI;

(H) by TBI if as of the calendar month-end prior to the Merger Effective Date, the shareholders' equity of ECCB, as computed in accordance with GAAP and after taking into account the transaction cost adjustments as are required in accordance with Section 2.1(A)(ii)(a), shall not be less than \$6,000,000;

(I) by either party (provided that the terminating party is not then in material breach of any representation, warranty, covenant, or other agreement contained in this Agreement) in the event that any of the conditions precedent to the obligations of such party to consummate the Merger cannot be satisfied or fulfilled by the date specified in Section 7.1(B); and .

(J) by TBI if as of the calendar month-end prior to the Merger Effective Date, the Regulatory Classified Assets Ratio of ECCB (defined as total classified assets (including Real Estate Owned) divided by the sum of Tier 1 Capital plus the Allowance for Loan Losses) as computed in accordance with GAAP and regulatory examination report standards shall not be greater than 150%.

7.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become null and void and have no effect, without any liability on the part of CBI, East Coast Bank, TBI, or BankFIRST, except that (i) the provisions of this Section 7.2 and Sections 5.5(C), 8.1, 8.2, and 8.3, shall survive any such termination and abandonment, and (ii) no such termination shall relieve the breaching party from Liability resulting from any breach by that party of this Agreement.

7.3 Amendment. This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time prior to the Merger Effective Date, whether before or after adoption of this Agreement by the shareholders of CBI; provided, however, that, after adoption of this Agreement by the shareholders of CBI, no amendment may be made which by Law

requires the further approval of the shareholders of CBI without such further approval. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

ARTICLE VIII. MISCELLANEOUS

8.1 **Survival.** All of the representations and warranties of the parties in this Agreement, and in any certificates, documents or other agreements delivered in connection with this Agreement shall be deemed to have been relied upon by the parties, notwithstanding any investigation heretofore or hereafter made by any party. The respective representations, warranties, covenants and agreements of CBI and TBI set forth in this Agreement or any other document, schedule, exhibit or certificate delivered pursuant hereto (except covenants and agreements which are expressly required to be performed and are performed in full on or prior to the Closing) shall not survive the Closing and the consummation of the transactions contemplated by this Agreement.

8.2 **Expenses.**

(A) Whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement, the Merger and other transactions contemplated by this Agreement shall be paid by the party incurring such expense.

(B) Notwithstanding Section 8.2(A) hereof, in the event of any action, suit or proceeding arising out of or resulting from this Agreement, the prevailing party shall be entitled to recover its costs and expenses (including reasonable attorneys fees and expenses) incurred in connection therewith.

(C) Notwithstanding the foregoing, if:

(i) Either CBI or TBI terminates this Agreement pursuant to Section 7.1(C)(iii), 7.1(B), or 7.1(I) and (x) there has been publicly announced and not withdrawn another Acquisition Proposal or (y) CBI has failed to perform and comply in all material respects with any of its obligations, agreements or covenants required by this Agreement or TBI terminates this Agreement pursuant to Section 7.1(G), and within 12 months of such termination CBI shall either (A) consummate an Acquisition Transaction or (B) enter into an Acquisition Agreement with respect to an Acquisition Transaction, whether or not such Acquisition Transaction is subsequently consummated (but changing, in the case of (A) and (B), the references to the 5% and 95% amounts in the definition of Acquisition Transaction to 50%); or

(ii) TBI shall terminate this Agreement pursuant to 7.1(D); or

(iii) CBI shall terminate this Agreement pursuant to Section 7.1(E), then CBI shall pay to TBI an amount equal to \$340,000 (the "Termination Fee"). CBI hereby waives any right to set-off or counterclaim against such amount. If the Termination Fee shall be payable pursuant to subsection (C)(i) of this Section 8.2, the Termination Fee shall be paid in same-day funds at or prior to the earlier of the date of consummation of such Acquisition Transaction or the date of execution of an Acquisition Agreement with respect to such Acquisition Transaction. If the Termination Fee shall be payable pursuant to subsection (C)(ii) of this Section 8.2, the Termination Fee shall be paid in same-day funds upon the earlier of (i) the execution of an agreement with respect to such Acquisition Transaction or (ii) two business days from the date of termination of this Agreement. If the Termination Fee shall be

payable pursuant to subsection (C)(iii) of this Section 8.2, the Termination Fee shall be paid in same-day funds at or prior to the termination of this Agreement.

(D) The parties acknowledge that the agreements contained in paragraph (C) of this Section 8.2 are an integral part of the transactions contemplated by this Agreement, and that without these agreements, they would not enter into this Agreement; accordingly, if CBI fails to pay promptly any fee payable by it pursuant to this Section 8.2, then CBI shall pay to TBI, its costs and expenses (including attorneys' fees) in connection with collecting such fee, together with interest on the amount of the fee at the prime rate of Bank of America from the date such payment was due under this Agreement until the date of payment.

(E) If before, or within 12 months after, the date of the termination of this Agreement, CBI receives an Acquisition Proposal or desires to enter into an agreement for an Acquisition Transaction, then CBI shall promptly deliver written notice (the "Initial Notice") to TBI of the terms of such proposed transaction, all documents and agreements evidencing such transaction, and certifying as to CBI's desire to accept such Acquisition Proposal or enter into an agreement with respect to an Acquisition Transaction. In such event, TBI shall have the first right of refusal for a period of 30 days after receipt of the Initial Notice to enter into one or more agreements with CBI (or to amend this Agreement) with terms consistent with those set forth in the Acquisition Proposal or the agreement for the Acquisition Transaction and, if not exercised by TBI through the delivery of written notice to CBI within 30 days after CBI's delivery of the Initial Notice to TBI, then CBI shall have the right to accept such Acquisition Proposals or enter into the agreement for the Acquisition Transaction, provided that the terms are consistent with those presented to TBI by CBI in the Initial Notice. Notwithstanding any other provision in this Agreement to the contrary, in no event will the Termination Fee be payable by CBI to TBI if TBI accepts the Acquisition Proposal or the agreement to enter into the Acquisition Transaction in accordance with the terms of this Section.

(F) If CBI or East Coast Community Bank receives a written order or directive from any Regulatory Authority following the date of this Agreement and requiring that either raise additional capital which would result in the receipt by CBI or East Coast Community Bank, as the case may be, of capital in an amount in excess of the shareholders' equity of the issuing entity as of the date of the receipt of such order or directive, then CBI shall deliver written notice to TBI which shall have the first right of refusal for a period of 30 days after receipt of such written notice to elect to provide the necessary capital to comply with the regulatory order or directive on the same terms and conditions as CBI desires to offer to any other third party (and with CBI and TBI to agree upon the time period within which such additional capital must be contributed by TBI). Notwithstanding any other provision in this Agreement to the contrary, in no event will the Termination Fee be payable by CBI to TBI if TBI either accepts or rejects the election to provide the necessary capital in accordance with the terms of this Section.

(G) Nothing contained in this Section 8.2 shall constitute or shall be deemed to constitute liquidated damages for the willful breach by a party of the terms of this Agreement or otherwise limit the rights of a party.

8.3 Certain Definitions. For purposes of this Agreement, the term:

(A) "Acquisition Proposal" means any proposal (whether communicated to CBI or publicly announced to CBI's shareholders) by any Person (other than TBI or any of its Affiliates) for an Acquisition Transaction involving CBI or any of its present or future consolidated Subsidiaries, or any combination of such Subsidiaries, the assets of which constitute ten percent or more of the consolidated

assets of CBI as reflected on CBI's consolidated statement of condition prepared in accordance with GAAP.

(B) "Acquisition Transaction" means any transaction or series of related transactions (other than the transactions contemplated by this Agreement) involving: (i) any acquisition or purchase from CBI by any Person or "Group" (other than TBI or any of its Affiliates) of 5% or more in interest of the total outstanding voting securities of CBI or any of its Subsidiaries, or any tender offer or exchange offer that if consummated would result in any Person or "Group" (other than TBI or any of its Affiliates) beneficially owning 5% or more in interest of the total outstanding voting securities of CBI or any of its Subsidiaries, or any merger, consolidation, business combination or similar transaction involving CBI pursuant to which the shareholders of CBI immediately preceding such transaction hold less than 95% of the equity interests in the surviving or resulting entity (which includes the parent corporation of any constituent corporation to any such transaction) of such transaction; (ii) any sale or lease (other than in the ordinary course of business), or exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of 5% or more of the assets of CBI; or (iii) any liquidation or dissolution of CBI.

(C) "Affiliate" means, as to any person, any other person which, directly or indirectly, is in control of, is controlled by or is under common control with such person. For purposes of this definition, "control" of a person shall mean the power, directly or indirectly, either to (i) vote 10% or more of the securities having ordinary voting power for the election of directors or other management of such person or (ii) direct or cause the direction of the management and policies of such person, whether by contract or otherwise.

(D) "Business Day" means Monday through Friday of each week, except a legal holiday recognized as such by the United States federal government or any day on which banking institutions in the State of Florida are authorized or obligated by Law to close.

(E) "CBI Disclosure Letter" means a schedule delivered, on or prior to the date hereof, by CBI to TBI setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Section 4.1 with respect to the CBI Entities, or to one or more covenants contained in Section 3.1. "CBI Disclosure Letter" means a schedule delivered, on or prior to the date hereof, by CBI to TBI setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Section 4.1 with respect to the CBI Entities, or to one or more covenants contained in Section 3.1. "Code" means the Internal Revenue Code of 1986, as amended.

(F) "CBI Entities" means CBI and East Coast Bank.

(G) "Code" Means the Internal Revenue Code of 1986, as amended.

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

(I) "Contract" means any written or oral agreement, arrangement, authorization, commitment, contract, indenture, instrument, lease, license, obligation, plan, practice, restriction, understanding, or undertaking of any kind or character, or other document to which any Person is a party or that is binding on any Person or its capital stock, assets or business.

(J) "Default" means (i) any breach or violation of, default under, contravention of, or conflict with, any Contract, Law, Order, or License, (ii) any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of, default under, contravention of, or conflict with, any Contract, Law, Order, or License, or (iii) any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right of any Person to exercise any remedy or obtain any relief under, terminate or revoke, suspend, cancel, or modify or change the current terms of, or renegotiate, or to accelerate the maturity or performance of, or to increase or impose any liability under, any Contract, Law, Order, or License.

(K) "Employment Agreement" means such form of employment agreement as is mutually agreed to by TBI and CBI.

(L) "Equity Rights" means all arrangements, calls, commitments, Contracts, options, rights to subscribe to, scrip, understandings, warrants, or other binding obligations of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, shares of the capital stock of a Person or by which a Person is or may be bound to issue additional shares of its capital stock or other Equity Rights.

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

(N) "Financial Statements" means, collectively, the CBI Financial Statements and the TBI Financial Statements.

(O) "GAAP" means generally accepted accounting principles in the United States.

(P) "Intellectual Property" means copyrights, patents, trademarks, service marks, service names, trade names, domain names, together with all goodwill associated therewith, registrations and applications therefor, technology rights and licenses, computer software (including any source or object codes therefor or documentation relating thereto), trade secrets, franchises, know-how, inventions, and other intellectual property rights.

(Q) "Knowledge" as used with respect to a Person (including references to such Person being aware of a particular matter), means those facts that are known or should reasonably have been known after due inquiry by the chairman, president, chief financial officer, chief accounting officer, chief operating officer, chief credit officer, general counsel, any assistant or deputy general counsel, or any senior, executive or other vice president of such Person and the knowledge of any such Persons obtained or which would have been obtained from a reasonable investigation.

(R) "Law" means any code, law (including common law), ordinance, regulation, reporting or licensing requirement, rule, or statute applicable to a Person or its assets, liabilities, or business, including those promulgated, interpreted or enforced by any Regulatory Authority.

(S) "Liability" means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense), claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills, checks, and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.

(T) "Litigation" means any action, arbitration, cause of action, lawsuit, claim, complaint, criminal prosecution, governmental or other examination or investigation, audit (other than

regular audits of financial statements by outside auditors), compliance review, inspection, hearing, administrative or other proceeding relating to or affecting a party, its business, its records, its policies, its practices, its compliance with Law, its actions, its assets (including Contracts related to it), or the transactions contemplated by this Agreement, but shall not include regular, periodic examinations of depository institutions and their Affiliates by Regulatory Authorities.

(U) "Lien" means any conditional sale agreement, default of title, easement, encroachment, encumbrance, hypothecation, infringement, lien, mortgage, pledge, reservation, restriction, security interest, title retention or other security arrangement, or any adverse right or interest, charge, or claim of any nature whatsoever of, on, or with respect to any property or property interest, other than (i) Liens for current property Taxes not yet due and payable, (ii) for depository institution Subsidiaries of a party, pledges to secure deposits and other Liens incurred in the ordinary course of the banking business, and (iii) Liens which do not materially impair the use of or title to the assets subject to such Lien.

(V) "Material Adverse Effect" shall mean any near-term or long-term material adverse change in or material adverse effect (whether or not such change or effect arises from any fact, circumstance, result, change, event, violation or occurrence that was foreseeable or known as of the date of this Agreement) on the business, results of operations, financial condition or assets, taking the assets as a whole, of CBI or TBI, as the case may be; however, the term Material Adverse Effect shall not be deemed to include the impact of (a) changes in banking and similar laws of general applicability or interpretations thereof by courts or governmental authorities; (b) changes in generally accepted accounting principles or regulatory accounting requirements applicable to banks and bank holding companies generally; and (c) changes as a result of the Conforming Adjustments, if any.

(W) "Non-Compete Persons and Non-Solicitation Persons" means each of the individuals designated as such as set forth on Schedule 8.3(W) hereto.

(X) "Order" means any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling, or writ of any federal, state, local or foreign or other court, arbitrator, mediator, tribunal, administrative agency, or Regulatory Authority.

(Y) "Organizational Documents" means, with respect to any person, such person's charter, by-laws, articles or certificate of incorporation, limited liability Bank agreement, partnership agreement or other similar organizational or constituent documents.

(Z) "Permit" means any federal, state, local, and foreign governmental approval, authorization, certificate, easement, filing, franchise, license, notice, permit, or right to which any Person is a party or that is or may be binding upon or inure to the benefit of any Person or its securities, assets, or business.

(AA) "Person" means an individual, corporation, partnership, limited liability Bank, association, trust, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Exchange Act).

(BB) "Regulatory Authorities" means, collectively, the SEC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the State of Florida Office of Financial Regulation, and any other federal, state, county, local or other governmental or regulatory agencies, authorities (including taxing and self-regulatory authorities), instrumentalities, commissions, boards or bodies having jurisdiction over the parties and their respective subsidiaries.

(CC) "SEC" means the United States Securities and Exchange Commission.

(DD) "SEC Documents" means all forms, proxy statements, registration statements, reports, schedules, and other documents filed, or required to be filed, by a Party or any of its Subsidiaries with any Regulatory Authority pursuant to the Securities Laws.

(EE) "Securities Act" means the Securities Act of 1933, as amended.

(FF) "Securities Laws" means the Securities Act, the Exchange Act, the Investment Company Act of 1940, as amended, the Investment Advisors Act of 1940, as amended, the Trust Indenture Act of 1939, as amended, and the rules and regulations of any Regulatory Authority promulgated thereunder

(GG) "Superior Proposal" means any Acquisition Proposal (on its most recently amended or modified terms, if amended or modified) (i) involving the acquisition of the entire equity interest in, or all or substantially all of the assets and liabilities of, CBI or any of its Subsidiaries and (ii) with respect to which the Board of Directors of CBI (A) determines in good faith that such Acquisition Proposal, if accepted, is reasonably likely to be consummated on a timely basis, taking into account all legal, financial, regulatory and other aspects of the Acquisition Proposal and the Person or Group making the Acquisition Proposal, and (B) determines in its good faith judgment (based on, among other things, the advice of a financial advisor of nationally recognized reputation) to be more favorable to CBI's shareholders than the Merger taking into account all relevant factors (including whether, in the good faith judgment of the Board of Directors of CBI, after obtaining the advice of a financial advisor of nationally recognized reputation, the Person or Group making such Acquisition Proposal is reasonably able to finance the transaction, and any proposed changes to this Agreement that may be proposed by TBI in response to such Acquisition Proposal).

(HH) "TBI Disclosure Schedule" means a schedule delivered, on or prior to the date hereof, by TBI to CBI setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Section 4.2 with respect to TBI.

(II) "TBI Financial Statements" means (i) the consolidated statements of condition (including related notes and schedules, if any) of TBI as of December 31, 2010, and the related statements of operations, changes in shareholders' equity, and cash flows (including related notes and schedules, if any) for the nine months ended September 30, 2010, and (ii) the consolidated statements of condition of TBI (including related notes and schedules, if any) and related statements of operations, changes in shareholders' equity, and cash flows (including related notes and schedules, if any) included in SEC Documents filed with respect to periods ended subsequent to September 30, 2010.

8.4 **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to CBI:

The Commercial Bancorp, Inc.
1240 West Granada Boulevard
Ormond Beach, Florida 32174

Attention: Rafael A. Ramirez
President and Chief Executive Officer
Facsimile: 386-672-2094

With a copy to (such copy not to constitute notice):

Herbert D. Haughton, Esquire
Igler & Dougherty, P.A.
2457 Care Drive
Tallahassee, FL 32308
Facsimile: 850-878-1230

If to TBI:

The BANKshares, Inc.
1031 West Morse Boulevard, Suite 323
Winter Park, FL 32789
Attention: Donald J. McGowan
President and Chief Executive Officer
Facsimile: 407-622-3183

With a copy to (such copy not to constitute notice):

John P. Greeley, Esquire
Smith Mackinnon, PA
255 South Orange Avenue, Suite 800
Orlando, Florida 32801
Facsimile: 407-843-2448

8.5 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same instrument. Signatures delivered by electronic methods, including PDF, shall have the same effect as signatures delivered in person.

8.6 Governing Law; Venue; Waiver of Jury Trial.

(A) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of Florida, without regard to the conflict of law principles thereof.

(B) Each of the parties hereto (a) consents to submit itself to the personal jurisdiction of any Federal court located in the State of Florida or any Florida state court in the event that any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a Federal court sitting in the State of Florida or a Florida state court.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND

DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.06.

8.7 Entire Understanding; No Third Party Beneficiaries. This Agreement (including the disclosure schedules, exhibits, and the documents, instruments and other agreements specifically referred to herein, attached hereto, and incorporated herein) and the Confidentiality Agreement constitute the entire agreement of the parties hereto and thereto with reference to the transactions contemplated hereby and thereby and supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties or their officers, directors, agents, employees or representatives, with respect to the subject matter hereof. Except for Sections 2.8 and 5.8, nothing in this Agreement, expressed or implied, is intended to confer upon any Person, other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

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

8.10 Interpretation. When reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. 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 words "hereof," "herein," "hereby" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "or" shall not be exclusive. The terms defined in this Agreement include the plural as well as the singular. All references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated articles, sections and other subdivisions of the body of this Agreement. Pronouns of either gender or neuter shall include, as appropriate, the other

pronoun forms. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.

8.11 Waivers. Prior to or at the Merger Effective Date, either party shall have the right to waive any default in the performance of any provision of this Agreement by the other, to waive or extend the time for compliance or fulfillment by the other of any and all of its obligations under this Agreement, and to waive any or all of the conditions precedent to the obligations of such party under this Agreement, except any condition which, if not satisfied, would result in a violation of law. No such waiver shall be effective unless it is in writing signed by the party granting such waiver. The failure of a party to exercise any of its rights hereunder or to insist upon strict adherence to any term or condition hereof on any one occasion shall not be construed as a waiver or deprive that party of the right thereafter to insist upon strict adherence to the terms and conditions of this Agreement at a later date. Further, no waiver of any of the terms and conditions of this Agreement shall be deemed to or shall constitute a waiver of any other term of condition hereof (whether or not similar).

8.12 Prevailing Party. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover from the other party the reasonable attorneys' fees, court costs and expenses, incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.

8.13 Assignment. This Agreement shall not be assignable by operation of law or otherwise without the prior written consent of each of the other parties.

8.14 Effect. No provision of this Agreement shall be construed to require CBI or TBI or any Affiliates or directors of any of them to take any action or omit to take any action which action or omission would violate applicable Law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

THE COMMERCIAL BANCORP, INC.

THE BANKSHARES, INC.

By: _____
Rafael A. Ramirez, Jr.
President and Chief Executive Officer

By: _____
Donald J. McGowan
President and Chief Executive Officer

EAST COAST COMMUNITY BANK

BANKFIRST

By: _____
Rafael A. Ramirez, Jr.
President and Chief Executive Officer

By: _____
Donald J. McGowan
President and Chief Executive Officer

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8.13 Assignment. This Agreement shall not be assignable by operation of law or otherwise without the prior written consent of each of the other parties.

8.14 Effect. No provision of this Agreement shall be construed to require CBI or TBI or any Affiliates or directors of any of them to take any action or omit to take any action which action or omission would violate applicable Law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

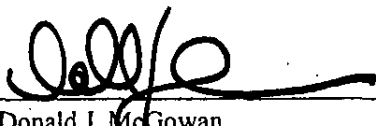
THE COMMERCIAL BANCORP, INC.

By: _____
Rafael A. Ramirez, Jr.
President and Chief Executive Officer

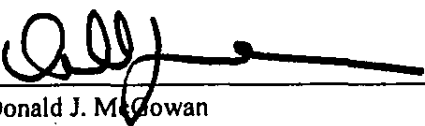
EAST COAST COMMUNITY BANK

By: _____
Rafael A. Ramirez, Jr.
President and Chief Executive Officer

THE BANKSHARES, INC.

By:  _____
Donald J. McGowan
President and Chief Executive Officer

BANKFIRST

By:  _____
Donald J. McGowan
President and Chief Executive Officer

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8.11 **Waivers.** Prior to or at the Merger Effective Date, either party shall have the right to waive any default in the performance of any provision of this Agreement by the other, to waive or extend the time for compliance or fulfillment by the other of any and all of its obligations under this Agreement, and to waive any or all of the conditions precedent to the obligations of such party under this Agreement, except any condition which, if not satisfied, would result in a violation of law. No such waiver shall be effective unless it is in writing signed by the party granting such waiver. The failure of a party to exercise any of its rights hereunder or to insist upon strict adherence to any term or condition hereof on any one occasion shall not be construed as a waiver or deprive that party of the right thereafter to insist upon strict adherence to the terms and conditions of this Agreement at a later date. Further, no waiver of any of the terms and conditions of this Agreement shall be deemed to or shall constitute a waiver of any other term of condition hereof (whether or not similar).


8.12 **Prevailing Party.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover from the other party the reasonable attorneys' fees, court costs and expenses, incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.

8.13 **Assignment.** This Agreement shall not be assignable by operation of law or otherwise without the prior written consent of each of the other parties.

8.14 **Effect.** No provision of this Agreement shall be construed to require CBI or TBI or any Affiliates or directors of any of them to take any action or omit to take any action which action or omission would violate applicable Law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.


THE COMMERCIAL BANCORP, INC.

By: 
Rafael A. Ramirez, Jr.
President and Chief Executive Officer

THE BANKSHARES, INC.

By: _____
Donald J. McGowan
President and Chief Executive Officer

EAST COAST COMMUNITY BANK

By: 
Rafael A. Ramirez, Jr.
President and Chief Executive Officer

BANKFIRST

By: _____
Donald J. McGowan
President and Chief Executive Officer

**AMENDMENT TO AMENDED AND RESTATED
PLAN OF MERGER AND MERGER AGREEMENT**

This Amendment (the "Amendment") to Amended and Restated Plan of Merger and Merger Agreement is made effective as of November 1, 2011 by and between The Commercial Bancorp, Inc., East Coast Community Bank, The BANKshares, Inc. and BankFIRST (collectively the "Parties").

BACKGROUND

WHEREAS, the Parties entered into an Amended and Restated Plan of Merger and Merger Agreement as of June 6, 2011, as amended (the "Agreement"), and desire to amend the Agreement as set forth herein.

NOW, THEREFORE, the Agreement is hereby amended to substitute the date of January 16, 2012, for the date of August 31, 2011 in Section 7.1(B) of the Agreement.

All terms used in this Amendment which are defined in the Agreement shall have the meanings specified in the Agreement.

Except as expressly modified by this Amendment, the terms, covenants and conditions of the Agreement shall remain in full force and effect.

The undersigned have signed this Amendment effective as of the date set forth above.

**THE BANKSHARES, INC.
and
BANKFIRST**

By: _____

Donald J. McGowan
President and Chief Executive Officer

**THE COMMERCIAL BANCORP, INC.
and
EAST COAST COMMUNITY BANK**

By: _____

Rafael A. Ramirez
President and Chief Executive Officer

RESTATED
ARTICLES OF INCORPORATION
OF
BANKFIRST

BankFIRST, whose original Articles of Incorporation were filed by the Florida Department of State on October 27, 1988 and amended on June 16, 1989, November 6, 1997 and August 26, 1999, does hereby amend and restate its Articles of Incorporation by filing the following Restated Articles of Incorporation, pursuant to Section 607.1007, of the Florida Business Corporation Act (the "Act").

ARTICLE I

Name

The name of the Corporation is BankFIRST.

ARTICLE II

Duration

The Corporation shall exist perpetually, commencing October 27, 1988.

ARTICLE III

Purpose

The general nature of the business to be transacted by this Corporation shall be that of a general commercial banking 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.

ARTICLE IV

Capital Stock

A. **Number and Class of Shares Authorized; Par Value**

The Corporation shall have the authority to issue only one class of stock which shall consist of 3,000,000 shares of common stock having a par value of \$1.00 per share and shall be designated as "Common Stock."

B. No Preemptive Rights

No holder of shares of any class of the capital stock of the Corporation shall have as a matter of right any preemptive or preferential right to subscribe for, purchase, receive, or otherwise acquire any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or any bonds, debentures, notes, or other securities of the Corporation, whether or not convertible into shares of stock of the Corporation.

C. Common Stock Voting Rights.

Each record holder of Common Stock shall be entitled to one vote for each share held. Holders of Common Stock shall have no cumulative voting rights in any election of directors of the Corporation.

ARTICLE V

Registered Office and Agent; Principal Place of Business

The street address of the registered office of the Corporation shall be 1031 West Morse Boulevard, Winter Park, Florida 32789, and the registered agent of the Corporation at such address shall be Thomas P. Abelman. The principal place of business and the mailing address of the Corporation shall be 1031 West Morse Boulevard, Winter Park, Florida 32789. The Corporation may change its registered agent, the location of its registered office, its principal place of business, or its mailing address, or any of the foregoing, from time to time without amendment of these Restated Articles of Incorporation.

ARTICLE VI

Directors

The number of Directors of this Corporation shall be the number from time to time fixed by the shareholders or by the Directors, in accordance with the provisions of the bylaws of the Corporation, but at no time shall the number of Directors be less 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 VII

Bylaws

The power to adopt, alter, amend or repeal bylaws shall be vested in the Board of Directors.

ARTICLE VIII

Amendment of Restated Articles of Incorporation

These Restated Articles of Incorporation may be amended in the manner from time to time provided by law and any right conferred upon the shareholders by any provision of these Restated Articles of Incorporation is hereby made subject to this reservation.

CERTIFICATE

The foregoing Restated Articles of Incorporation were duly adopted by the Board of Directors of the Corporation in accordance with the Act on April 21, 2008 and by the holders of the shares of Common Stock, being the sole shares entitled to vote thereon, in accordance with the Act, on April 21, 2008, and the number of votes cast for the foregoing Restated Articles of Incorporation was sufficient for approval by such holders of Common Stock.

IN WITNESS WHEREOF, the undersigned President and Chief Executive Officer of this Corporation has executed these Restated Articles of Incorporation on the 21st day of April, 2008.

BANKFIRST

By: _____

Donald J. McGowan

President and Chief Executive Officer

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 21st day of April, 2008, by Donald J. McGowan, President and Chief Executive Officer, of BankFIRST, a Florida corporation, on behalf of the corporation.

Sherril Nichols

Printed Name:

Notary Public, State of Florida

Personally Known ☒ or Produced Identification ☐

Type of Identification Produced _____

