

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

**BY AND AMONG**

**THE HOMETOWN SAVINGS BANK,**

**AND**

**FIRST SAVINGS BANK**

**DATED AS OF JULY 7, 2023**

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# AMENDED AND RESTATED

## AGREEMENT AND PLAN OF MERGER

THIS AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is dated to be effective as of the July 7, 2023, by and among THE HOMETOWN SAVINGS BANK, an Indiana-chartered stock savings bank (“**THSB**”) and FIRST SAVINGS BANK, an Illinois-chartered mutual savings bank (“**FSB**”).

### WITNESSETH:

WHEREAS, Terre Haute Savings MHC, Inc. (“**Parent Company**”) is an Indiana corporation registered as a financial holding company with the Board of Governors of the Federal Reserve System (“**FRB**”) under the Bank Holding Company Act of 1956, as amended (the “**BHC Act**”), with its principal office located in Terre Haute, Indiana;

WHEREAS, THSB is a wholly owned subsidiary of Parent Company, primarily regulated by the Indiana Department of Financial Institutions (“**IDFI**”) and the Federal Deposit Insurance Corporation (“**FDIC**”) with its principal office located in Terre Haute, Indiana;

WHEREAS, FSB is an Illinois-chartered mutual savings bank, primarily regulated by the Illinois Department of Financial and Professional Regulation (“**IDFPR**”) and the FDIC, with its principal office located in Danville, Illinois;

WHEREAS, THSB and FSB understand that the continuing changing banking environment and increased competition and regulatory burden can adversely impact THSB and FSB’s profitability, resources, and ability to operate in a safe and sound manner and provide quality services;

WHEREAS, THSB and FSB understand that by merging, THSB and FSB can improve their profitability and resources through improved efficiencies and economies of scale and by diversifying their market area;

WHEREAS, THSB and FSB seek to affiliate through a corporate reorganization whereby FSB will merge with and into THSB, with THSB as the surviving corporation, (the “**Merger**”);

WHEREAS, THSB and FSB originally entered into the Agreement and Plan of Merger on April 4, 2022;

WHEREAS, the parties hereto wish to provide for the amendment and restatement of the Agreement and Plan of Merger to (1) update information of the parties, and (2) reflect the limited duration liquidation account to be established by THSB and to become effective as of the Closing Date of the Merger;

WHEREAS, the parties have mutually agreed to the amendment and restatement of the Agreement and Plan of Merger; and

WHEREAS, the Boards of Directors of each of the parties hereto have determined that it is in the best interests of their respective corporations and their respective shareholders or members, to consummate the merger provided for herein and have approved this Agreement, authorized its execution and designated this Agreement a plan of merger.

NOW, THEREFORE, in consideration of the foregoing promises, the representations, warranties, covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby make this Agreement and prescribe the terms and conditions of the merger of FSB with and into THSB, and the mode of carrying such merger into effect as follows:

## ARTICLE I.

### THE MERGER

**1.01 The Merger.** Upon the terms and subject to the conditions of this Agreement, in accordance with the Indiana Financial Institutions Act (“**IFIA**”), the Illinois Savings Bank Act (“**ISBA**”), and the Federal Deposit Insurance Act (“**FDIA**”), at the Effective Time (as defined in Article VIII), FSB shall merge with and into THSB (the “**Merger**”).

**1.02 General Description.** THSB shall survive the Merger (sometimes hereinafter referred to as the “**Surviving Corporation**”) and shall continue its corporate existence under the laws of the State of Indiana. At the Effective Time, the separate corporate existence of FSB shall terminate.

(a) **Name, Officers and Directors.** The name of the Surviving Corporation shall be “The Hometown Savings Bank” and its principal office shall be located at 533 Ohio Street, Terre Haute, Indiana 47807. The officers of THSB serving at the Effective Time shall serve as the officers of the Surviving Corporation, until such time as their successors shall have been duly elected and have qualified or until their earlier resignation, death or removal from office. The individuals serving as directors of THSB at the Effective Time shall serve as the directors of the Surviving Corporation, until such time as their successors have been duly elected and have qualified or until their earlier resignation, death, or removal as a director.

(b) **Certificate of Incorporation and Bylaws.** The Certificate of Incorporation and Bylaws of THSB in existence at the Effective Time shall remain the Certificate of Incorporation and Bylaws of the Surviving Corporation following the Effective Time, until such Certificate of Incorporation and Bylaws shall be further amended as provided by applicable Law (as defined in Section 2.05(a)).

(c) **Effect of the Merger.** At and after the Effective Time, the Merger shall have the effects set forth in the applicable provisions of the IFIA.

(d) **Integration.** At the Effective Time and subject to the terms and conditions of this Agreement, the parties hereto currently intend to effectuate, or cause to be effectuated, the Merger, pursuant to the terms of this Agreement and the IFIA. If required, the parties agree to enter into a separate short-form plan of merger evidencing the terms required by applicable Law. The parties

agree to cooperate and to take all reasonable actions prior to or following the Effective Time, including executing all requisite documentation as may be reasonably necessary to effect the Merger in accordance with the terms and conditions hereof.

**1.03 Absence of Control.** Subject to any specific provisions of this Agreement, it is the intent of the parties to this Agreement that neither THSB, on the one hand, nor FSB, on the other hand, by reason of this Agreement shall be deemed (until consummation of the transactions contemplated herein) to control, directly or indirectly, the other party and shall not exercise or be deemed to exercise, directly or indirectly, a controlling influence over the management or policies of such other party.

**1.04 Reservation of Right to Revise Structure.** At THSB's election, the Merger may alternatively be structured so that (a) FSB is merged with and into THSB, (b) FSB is merged with and into any direct or indirect wholly-owned subsidiary of THSB or Parent Company, or (c) any direct or indirect wholly-owned subsidiary of THSB or Parent Company is merged with and into FSB; *provided, however*, that no such change shall materially impede or delay consummation of the transactions contemplated by this Agreement. In the event of such an election, the parties agree to execute an appropriate amendment to this Agreement (to the extent such amendment only changes the method of effecting the business combination and does not substantively affect this Agreement or the rights and obligations of the parties or their respective shareholders or members) in order to reflect such election.

**1.05 Merger Consideration.** FSB understands that the continually changing banking environment, increased competition, and regulatory burden can adversely impact FSB's profitability, resources, and ability to operate in a safe and sound manner and provide quality services. FSB understands that, by merging with and into THSB, FSB can improve its profitability and resources through improved efficiencies and economies of scale and by diversifying its market area. As consideration for the merger, THSB will (i) assume the liabilities of FSB; (ii) provide FSB access to THSB resources, ensuring FSB's safe and sound operation and ability to provide quality services to its customers; (iii) pursuant to the Articles of Reorganization of THSB into Parent Company filed August 31, 2000, the members of FSB ("FSB Members") shall have membership rights in Parent Company upon the Effective Time ("Merger Consideration"); and (iv) establish the limited duration liquidation account and take other actions pursuant to the covenants set forth in this Agreement.

## **ARTICLE II.**

### **REPRESENTATIONS AND WARRANTIES OF FSB**

On or prior to the date hereof, FSB has delivered to THSB a schedule (the "**FSB Disclosure Schedule**") 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 this Article II or to one or more of its covenants contained in Article IV.

As used in this Agreement, the term "**Material Adverse Effect**" means, with respect to THSB or FSB, as the case may be, any effect, change, event, circumstance, condition, occurrence or development that, either individually or in the aggregate, has had or would reasonably be

expected to have a material adverse effect on (i) the business, properties, assets, liabilities, results of operations, value, or condition (financial or otherwise) of such party (*provided, however*, that a Material Adverse Effect shall not be deemed to include the impact of (A) changes, after the date hereof, in U.S. generally accepted accounting principles (“GAAP”) or applicable regulatory accounting requirements, (B) changes, after the date hereof, in laws, rules, or regulations (including the Pandemic Measures) of general applicability to companies in the industries in which such party operates, or interpretations thereof by courts or other Governmental Authorities (as defined in Section 4.14), (C) changes, after the date hereof, in global, national, or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market conditions affecting the financial services industry and depository institutions generally and not specifically relating to such party or its Subsidiaries, including changes in prevailing interest and deposit rates, (D) public disclosure of the transactions contemplated hereby or actions expressly required by this Agreement or actions or omissions that are taken with the prior written consent of the other party in contemplation of the transactions contemplated hereby, or (E) changes proximately caused by the impact of the execution or announcement of the Agreement and the consummation of the transactions contemplated hereby on relationships with customers or employees (including the loss of personnel subsequent to the date of this Agreement); except, with respect to subclauses (A), (B), or (C), to the extent that the effects of such change are materially disproportionately adverse to the business, properties, assets, liabilities, results of operations, value, or condition (financial or otherwise) of such party as compared to other companies in the industry in which such party and its Subsidiaries operate) or (ii) the ability of such party to timely consummate the transactions contemplated hereby. As used in this Agreement, “**Pandemic**” means any outbreaks, epidemics or pandemics relating to SARS-CoV-2 or Covid-19, or any variants, evolutions or mutations thereof, or any other viruses (including influenza), and the governmental and other responses thereto; “**Pandemic Measures**” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shutdown, closure, sequester or other laws, directives, policies, guidelines or recommendations promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention, and, in connection with or in response to the Pandemic; “**Subsidiary**” when used with respect to any person, means any corporation, partnership, limited liability company, bank, or other organization, whether incorporated or unincorporated, or person of which (i) such first person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors, trustees or others performing similar functions or (ii) such first person is or directly or indirectly has the power to appoint a general partner, manager, or managing member or others performing similar functions. As used in this Agreement, and in relation to FSB or its Subsidiaries, “**knowledge**” means those facts that are actually known by Mark Garrett, President and Chief Executive Officer; Jason Whaling, Vice President Senior Mortgage Loan Officer; or Fred Danner, the Chairman of the FSB Board. As used in this Agreement, and in relation to FSB, “**ordinary course of business**” and “**ordinary course of business consistent with past practice**” shall each take into account the commercially reasonable actions taken by the party in response to the Pandemic and the Pandemic Measures.

Accordingly, FSB hereby represents and warrants to THSB as follows, except as set forth in the FSB Disclosure Schedule:

**2.01 Organization and Authority.** FSB is an Illinois-chartered mutual savings bank duly organized and validly existing under the laws of the State of Illinois under the Savings Bank



Act. FSB has full power and authority (corporate and otherwise) to own and lease its properties as presently owned and leased and to conduct its business in the manner and by the means utilized as of the date hereof. FSB does not have any parent companies, subsidiaries, or other affiliated entities that would have an interest in FSB or this Agreement. Except as provided in the Disclosure Schedule, FSB does not directly own any voting stock or equity securities of any corporation, partnership, association, or other entity.

## **2.02 Authorization.**

(a) FSB has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder, subject to the fulfillment of the conditions precedent set forth in Sections 6.02(d) and (e) hereof. This Agreement has been duly delivered to the Board of Directors of FSB ("**FSB Board**") and the FSB Board has duly and validly approved this Agreement. In the event that the Secretary of the IDFP ("IDFP **Secretary**") requires this Agreement be submitted to the FSB Members pursuant to 205 ILCS 8005, or as required by any other Regulatory Agency, the FSB Board shall recommend approval of this Agreement to the FSB Members and simultaneously submit this Agreement to the FSB Members for approval. This Agreement, assuming due execution and delivery by THSB, constitutes a valid and binding obligation of FSB, subject to the terms and conditions hereof, and is enforceable in accordance with its terms, except to the extent limited by general principles of equity and public policy and by bankruptcy, insolvency, fraudulent transfer, reorganization, liquidation, moratorium, readjustment of debt, or other laws of general application relating to or affecting the enforcement of creditors' rights.

(b) Neither the execution of this Agreement nor consummation of the Merger contemplated hereby: (i) conflicts with or violates the Certificate of Incorporation or Bylaws of FSB; (ii) conflicts with or violates any local, state, federal, or foreign law, statute, ordinance, rule, or regulation (provided that the approvals of or filings with applicable government regulatory agencies or authorities required for consummation of the Merger are obtained) or any court or administrative judgment, order, injunction, writ, or decree; (iii) conflicts with, results in a breach of, or constitutes a default under any note, bond, indenture, mortgage, deed of trust, license, lease, contract, agreement, arrangement, commitment, or other instrument to which FSB is a party or by which FSB is subject or bound; (iv) results in the creation of or gives any Person the right to create any lien, charge, claim, encumbrance, or security interest, or results in the creation of any other rights or claims of any other party (other than THSB) or any other adverse interest, upon any right, property, or asset of FSB; or (v) terminates, requires the consent of (or notice to) any Person, or gives any Person the right to terminate, accelerate, amend, modify, or refuse to perform under any note, bond, indenture, mortgage, agreement, contract, lease, license, arrangement, deed of trust, commitment, or other instrument to which FSB is bound or with respect to which FSB is to perform any duties or obligations or receive any rights or benefits.

(c) Other than in connection or in compliance with the provisions of the applicable federal and state banking, securities, antitrust, and corporation statutes, all as amended, and the rules and regulations promulgated thereunder, no notice to, filing with, exemption by or consent, authorization, or approval of any Governmental Authority is necessary for consummation of the Merger by FSB.

**2.03 Capitalization.** FSB is not authorized to issue and has no shares of common stock, preferred stock or any other equity security outstanding and neither has, nor is bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements or other agreements of any character which call for FSB to issue, deliver or sell, or cause to be issued, delivered or sold any shares of common stock, preferred stock or any other equity security of FSB or any securities convertible into, exchangeable for or representing the right to subscribe to, purchase or otherwise receive any shares of common stock, preferred stock or any other equity security of FSB obligating FSB to grant, extend or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements or other agreements at any time now or in the future.

**2.04 Organizational Documents.** The Certificate of Incorporation and Bylaws of FSB representing true, accurate, and complete copies of such corporate documents in effect as of the date of this Agreement are attached to and included in the FSB Disclosure Schedule.

**2.05 Compliance with Law.**

(a) FSB is not currently in material violation of, and during the preceding three (3) years, has not been in material violation of, any local, state, federal, or foreign law, statute, regulation, rule, ordinance, order, restriction, or requirement, and none is in violation of any order, injunction, judgment, writ, or decree of any court or government agency or body (collectively, the “**Law**”), except where such violation would not have a Material Adverse Effect on FSB. FSB possesses and holds all licenses, franchises, permits, certificates, and other authorizations necessary for the continued conduct of their business without interference or interruption, and such licenses, franchises, permits, certificates, and authorizations are transferable (to the extent required) to THSB at the Effective Time without any restrictions or limitations thereon or the need to obtain any consents of Governmental Authorities or other third parties other than as set forth in this Agreement.

(b) The FSB Disclosure Schedule sets forth, as of the date hereof, a schedule of all officers (Vice Presidents and higher) and directors of FSB who have outstanding loans from FSB, and describes any default on, or forgiveness or waiver of, in whole or in part, any such loan during the two (2) years immediately preceding the date hereof.

(c) All of the existing offices and branches of FSB have been legally authorized and established in accordance with all applicable federal, state, and local laws, statutes, regulations, rules, ordinances, orders, restrictions and requirements.

(d) FSB’s main office is located at 6 West Williams Street, Danville, Illinois. Except for the main office, FSB does not have any offices or branches, any approved but unopened offices or branches, or any unapproved offices or branches.

(e) In the last five (5) years, no allegations of sexual harassment, wrongful termination, or discrimination have been made to FSB, and no settlement discussions or settlements have occurred or been made, against, or with respect to any individual in his or her capacity as a director or employee of FSB at a level of Vice President or above.

(f) FSB does not have any loans outstanding to, or any commitment to lend to, any Marijuana Related Business, or any loans secured by real or personal property owned by, leased to, or occupied or utilized by a Marijuana Related Business. A “**Marijuana Related Business**” means any business that grows, produces, buys, or sells or otherwise distributes marijuana (a “**Marijuana Business**”), a business that leases real property or otherwise provides space to a Marijuana Business, a business that leases or otherwise provides equipment to another entity which uses such equipment to grow or produce marijuana, or a business the conduct of which would reasonably be anticipated to result in FSB’s collateral being subject to proceedings under the Civil Asset Forfeiture Act.

(g) Neither FSB nor, to the knowledge of FSB, has any director, officer, employee, agent or other person acting on behalf of FSB, directly or indirectly, (a) used any funds of FSB for unlawful contributions, unlawful gifts, unlawful entertainment or other expenses relating to political activity, (b) made any unlawful payment to foreign or domestic governmental officials or employees or to foreign or domestic political parties or campaigns from funds of FSB, (c) violated any provision that would result in the violation of the Foreign Corrupt Practices Act of 1977, as amended, or any similar law, (d) established or maintained any unlawful fund of monies or other assets of FSB, (e) made any fraudulent entry on the books or records of FSB, or (f) made any unlawful bribe, unlawful rebate, unlawful payoff, unlawful influence payment, unlawful kickback or other unlawful payment to any person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business to obtain special concessions for FSB, to pay for favorable treatment for business secured or to pay for special concessions already obtained for FSB, or is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the United States Treasury Department.

(h) FSB maintains a written information privacy and security program that maintains reasonable measures to protect the privacy, confidentiality and security of all data or information that constitutes personal data or personal information under applicable law (“**Personal Data**”) against any (i) loss or misuse of Personal Data, (ii) unauthorized or unlawful operations performed upon Personal Data or (iii) other act or omission that compromises the security or confidentiality of Personal Data (clauses (i) through (iii), a “**Security Breach**”). FSB has not experienced any Security Breach that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on FSB. There are no data security or other technological vulnerabilities with respect to FSB’s information technology systems or networks that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on FSB.

(i) Except as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on FSB, FSB has complied with all requirements of and is not in default or violation under any provision of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the “**CARES Act**”) and the Paycheck Protection Program, including applicable guidance, in connection with its participation in the Paycheck Protection Program.

## 2.06 Litigation and Pending Proceedings.

(a) Except for lawsuits described in the FSB Disclosure Schedule and lawsuits involving collection of delinquent accounts, there are no claims, actions, suits, proceedings, mediations, arbitrations, or investigations pending or threatened against FSB and there is no basis for any claim, action, suit, proceeding, litigation, arbitration, or investigation against FSB.

(b) FSB is not: (i) subject to any outstanding judgment, order, writ, injunction, or decree of any Governmental Authority; (ii) presently charged with or under governmental investigation with respect to, any actual or alleged violations of any law, statute, rule, regulation, or ordinance; or (iii) the subject of any pending or threatened proceeding by any government Regulatory Agency or authority having jurisdiction over their respective business, assets, capital, properties, or operations.

## 2.07 Financial Statements and Reports.

(a) Schedule 2.07 of the FSB Disclosure Schedule includes copies of the following financial statements and reports of FSB, including the notes thereto (collectively, the “**FSB Financial Statements**”):

(i) balance sheets and the related statements of earnings, statements of cash flows, and statements of changes in bank equity capital of FSB, on a stand-alone basis, as of and for the fiscal years ended December 31, 2018, 2019, 2020, 2021 and 2022;

(ii) Call Reports (“**Call Reports**”) for FSB for the periods ending on December 31, 2018, 2019, 2020, 2021 and 2022 and March 31, 2023.

(b) The FSB Financial Statements present fairly in all material respects the consolidated financial position of FSB as of and at the dates shown and the results of operations, (if presented) cash flows, and (if presented) changes in bank equity capital for the periods covered thereby and are complete, correct, represent bona fide transactions, and have been prepared from the books and records of FSB. The FSB Financial Statements described in clause (i) above are audited financial statements and have been prepared in conformance with GAAP, except as may otherwise be indicated in any accountants’ notes or reports with respect to such financial statements.

(c) Since December 31, 2020, on a consolidated basis, FSB has not incurred any material liability other than in the ordinary course of business consistent with past practice.

(d) Since January 1, 2019, FSB and any affiliates have filed all reports, registrations, notices and statements, together with any amendments required to be made with respect thereto, that were and are required to be filed with (a) the IDFPR, (b) the FDIC and (c) any other applicable federal and state banking authorities (all such reports, registrations, notices and statements, together with amendments, are collectively referred to herein as the “**FSB Reports**”). As of their respective dates, the FSB Reports complied in all material respects with all of the statutes, rules and regulations enforced or promulgated by the regulatory authority with which they were and are filed and did not contain any untrue statement of a material fact or omit to state a material fact

required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

## **2.08 Material Contracts.**

(a) As of the date of this Agreement, and except for this Agreement and as disclosed by the FSB Disclosure Schedule, FSB, nor any of its respective assets, businesses, or operations, are a party to, or bound or affected by, or receive benefits under the following material contracts (collectively, the “**Material Contracts**”):

(i) any contract relating to the borrowing of money by FSB or the guarantee by FSB of any such obligation (other than contracts pertaining to fully secured repurchase agreements, and trade payables, and contracts relating to borrowings or guarantees made in the ordinary course of business),

(ii) any contract containing covenants that limit the ability of FSB to compete in any line of business or with any Person, or to hire or engage the services of any Person, or that involve any restriction of the geographic area in which, or method by which, FSB may carry on its business (other than as may be required by Law or any Governmental Authority), or any contract that requires it to deal exclusively or on a “sole source” basis with another party to such contract with respect to the subject matter of such contract,

(iii) any contract for, with respect to, or that contemplates, a possible merger, consolidation, reorganization, recapitalization, joint venture, or other business combination, or asset sale or sale of equity securities not in the ordinary course of business consistent with past practice, with respect to FSB,

(iv) any contract deemed material by FSB for the continued operations of FSB by THSB after the Effective Time,

(v) any lease of real or personal property, other than financing leases entered into in the ordinary course of business in which FSB is the lessor,

(vi) any contract with an aggregate amount payable by FSB that is above the dollar limitations for such types of contracts set forth in Section 4.04, other than an extension of credit extended by FSB that is made in the ordinary course of business to unrelated third parties, or

(vii) each licensing agreement or other contract with respect to patents, trademarks, copyrights, or other intellectual property, including software agreements, but excluding any agreements for Off-The-Shelf Software (as defined in Section 2.25(a)), and including agreements with current or former employees, consultants or contractors regarding the appropriation or the nondisclosure of any of its intellectual property.

(b) With respect to each of FSB’s Material Contracts: (i) each such Material Contract is in full force and effect; (ii) FSB is not in default thereunder, as such term or concept is defined in each such Material Contract; (iii) FSB has not repudiated or waived any material provision of any such Material Contract; (iv) no other party to any such Material Contract is in default; and (v)

each such Material Contract is listed in the FSB Disclosure Schedule and a true and complete copy of each has been previously delivered to THSB.

(c) FSB has not entered into any interest rate swaps, caps, floors, option agreements, futures, and forward contracts, or other similar risk management arrangements, whether entered into for FSB's own account or their respective customers.

**2.09 Absence of Undisclosed Liabilities.** Except: (a) as provided in the FSB Financial Statements; (b) for unfunded loan commitments and obligations on letters of credit to any FSB Members made in the ordinary course of business; (c) for trade payables incurred in the ordinary course of FSB's business; (d) for transactions taken with the consent of THSB (which consent shall not be unreasonably withheld, conditioned, or delayed); and (e) for the transactions contemplated by this Agreement and obligations for services rendered pursuant thereto; FSB has not, nor will have at the Effective Time, any obligation, agreement, contract, commitment, liability, lease, or license made outside of the ordinary course of business, nor does there exist any circumstances resulting from transactions effected or events occurring on or prior to the date of this Agreement or from any action omitted to be taken during such period which could reasonably be expected to result in any such obligation, agreement, contract, commitment, liability, lease, or license. FSB is not delinquent in the payment of any amount due pursuant to any trade payable, and each has properly accrued for such payables in accordance with GAAP.

## **2.10 Title to Properties.**

(a) The FSB Disclosure Schedule includes a list of all real property owned (including other real estate owned ("OREO")) and leased by FSB. FSB has: (i) good and marketable title in fee simple to all owned real property (including, without limitation, all real property used as bank premises and all OREO) (the "**Owned Real Property**"); (ii) valid title to all personal property reflected in the FSB Financial Statements as of September 30, 2021, other than personal property disposed of in the ordinary course of business since September 30, 2021; (iii) the right to use by valid and enforceable written lease or contract all other real property which FSB uses in its respective business (the "**Leased Real Property**", and together with the Owned Real Property, the "**Real Property**"); (iv) marketable title to, or right to use by terms of a valid and enforceable written lease or contract, all other tangible and intangible property used in its respective business to the extent material thereto; and (v) marketable title to all material property and assets acquired (and not disposed of) or leased since September 30, 2021. All of the Owned Real Property is owned by FSB free and clear of all land or conditional sales contracts, mortgages, liens, pledges, restrictions, options, security, interests, charges, claims, rights of third parties, or encumbrances of any nature except: (A) as listed in the FSB Disclosure Schedule; (B) as specifically noted in reasonable detail in the FSB Financial Statements; (C) statutory liens for taxes not yet delinquent or being contested in good faith by appropriate proceedings; (D) mechanics', carriers', workers', repairers', and similar statutory liens arising or incurred in the ordinary course of business for amounts which are not delinquent; (E) pledges or liens required to be granted in connection with the acceptance of government deposits, granted in connection with repurchase or reverse repurchase agreements, or otherwise incurred in the ordinary course of business; (F) zoning, entitlement, building, and other land use regulations imposed by any Governmental Authority having jurisdiction over the Owner Real Property, which are not violated by the current use and operation of such real property; and (G) easements, encumbrances, and liens and other matters of

record, imperfections of title, and other limitations which are not material in amount and which do not detract from the value or materially interfere with the present or contemplated use of any of the properties subject thereto or otherwise materially impair the use thereof for the purposes for which they are held or used. All Real Property is in compliance, in all material respects, with all applicable zoning and land use laws, and there are no encroachments or other violations of law with respect to any such property. All Real Property also complies in all material respects with all applicable private agreements, zoning requirements and other governmental laws and regulations relating thereto, and there are no condemnation proceedings pending or threatened with respect to such Real Property. All Real Property, machinery, equipment, furniture and fixtures owned or leased by FSB that is material to their respective businesses has been and is being maintained and repaired in the ordinary course of business and is in good operating condition for its intended purpose (ordinary wear and tear excepted).

(b) THSB shall be entitled to obtain new commitments for, and policies of title insurance or surveys in respect of, any Owned Real Property. Within forty-five (45) days after the later of THSB's receipt of such surveys and title commitments, THSB shall notify FSB of any objections to any exceptions, conditions, or other matters contained in or set forth in any survey or title commitment other than Standard Permitted Exceptions (the "**Unpermitted Exceptions**"). The term "**Standard Permitted Exceptions**" shall include (i) liens for real estate taxes and assessments not yet delinquent; and (ii) utility, access, and other easements, rights of way, restrictions, and exceptions existing on the Owned Real Property as shown in the title commitments or surveys, none of which impair such Owned Real Property for the use and business being conducted thereon in any material respect or materially affect the fair market value of the Owned Real Property. Within ten (10) business days after receipt of such written notice of Unpermitted Exceptions from THSB, FSB shall commence using its best efforts to cure any such Unpermitted Exceptions to the satisfaction of THSB prior to the Closing.

(c) With respect to all Owned Real Property and all real property formerly owned, leased, or used by FSB, and to FSB's knowledge, each of the prior owners, have conducted their respective business in material compliance with all applicable federal, state, county, and municipal laws, statutes, regulations, rules, ordinances, orders, directives, restrictions, permits, authorizations, common law or agency requirements, and requirements relating to, without limitation, responsible property transfer, underground storage tanks, petroleum products, air pollutants, water pollutants or storm water or process waste water, or otherwise relating to the environment, air, water, soil, or toxic or hazardous substances or to the manufacturing, recycling, handling, processing, distribution, use, generation, treatment, storage, disposal, or transport of any hazardous or toxic substances or petroleum products (including polychlorinated biphenyls, whether contained or uncontained, and asbestos-containing materials, whether friable or not), including, without limitation, the Federal Solid Waste Disposal Act, the Hazardous and Solid Waste Amendments, the Federal Clean Air Act, the Federal Clean Water Act, the Occupational Health and Safety Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986, all as amended, and regulations of the Environmental Protection Agency, the Nuclear Regulatory Agency, the Army Corps of Engineers, the Department of Interior, the United States Fish and Wildlife Service, and any state department of natural resources or state environmental protection agency now or at any time thereafter in effect (collectively, "**Environmental Laws**"). There are

no pending or, to the knowledge of FSB, threatened claims, actions, or proceedings by any local municipality, sewage district, or other Governmental Authority against FSB with respect to the Environmental Laws, and there is no reasonable basis or grounds for any such claim, action, or proceeding. No environmental clearances are required for the conduct of the business of FSB as currently conducted or the consummation of the Merger or any of the other transactions contemplated hereby. FSB is not the owner, or has not been in the chain of title, or the operator or lessee, of any property on which any substances have been used, stored, deposited, treated, recycled, or disposed of, other than in compliance with Environmental Laws and which substances, if known to be present on, at, or under such property, would require clean-up, removal, treatment, abatement, response costs, or any other remedial action under any Environmental Law. FSB does not have any liability for any clean-up or remediation under any of the Environmental Laws with respect to any Real Property.

## **2.11 Loans and Investments.**

(a) The FSB Disclosure Schedule contains (i) a list of each loan by FSB that has been classified by regulatory examiners or management as “Other Loans Especially Mentioned,” “Substandard,” “Doubtful,” or “Loss” or that has been identified by accountants or auditors (internal or external) as having a significant risk of uncollectability as of May 31, 2023, (ii) the most recent loan watch list of FSB and a list of all loans which have been determined to be thirty (30) days or more past due with respect to principal or interest payments, have been placed on nonaccrual status, or have been designated as Troubled Debt Restructuring (“**TDR**”) loans, and (iii) a list of all unfunded loan commitments (and loans currently under consideration) of the types and amounts described in Section 4.04(v) of this Agreement. FSB has not sold, purchased, or entered into any loan participation arrangement which was outstanding on May 31, 2023, except where such participation is on a pro rata basis according to the respective contributions of the participants to such loan amount. FSB does not currently have any participation interest in and has not originated, purchased or sold any loan with or through another financial institution on a recourse basis against FSB.

(b) All loans reflected in the FSB Financial Statements as of May 31, 2023 and which have been made, extended, renewed, restructured, approved, amended, or acquired since May 31, 2023: (i) have been made for good, valuable, and adequate consideration in the ordinary course of business; (ii) constitute the legal, valid, and binding obligation of the obligor and any guarantor named therein, except to the extent limited by general principles of equity and public policy or by bankruptcy, insolvency, fraudulent transfer, reorganization, liquidation, moratorium, readjustment of debt, or other laws of general application relative to or affecting the enforcement of creditors’ rights; (iii) are evidenced by notes, instruments, or other evidences of indebtedness which are true, genuine, and what they purport to be; and (iv) if secured, are secured by perfected security interests or recorded mortgages naming FSB as the secured party or mortgagee (unless by written agreement to the contrary).

(c) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect on FSB, each outstanding Loan of FSB (including Loans held for resale to investors) was solicited and originated, and is and has been administered and, where applicable, serviced, and the relevant Loan files are being maintained, in all material respects in accordance with the relevant notes or other credit or security documents, the written underwriting



standards of FSB (and, in the case of Loans held for resale to investors, the underwriting standards, if any, of the applicable investors) and with all applicable federal, state and local laws, regulations and rules.

(d) The allowance for loan and lease losses and the carrying value for OREO, if any, which is shown on the FSB Financial Statements is, in the judgment of management of FSB, adequate in all respects under the requirements of GAAP to provide for possible losses on loans and leases outstanding as of the respective dates.

(e) None of the investments reflected in the FSB Financial Statements as of March 31, 2023, are subject to any restriction, whether contractual or statutory, which materially impairs the ability of FSB to dispose freely of such investment at any time. FSB is not a party to any repurchase agreements with respect to securities. All United States Treasury securities, obligations of other United States Government agencies and corporations, obligations of states of the United States and their political subdivisions, and other investment securities classified as “held to maturity” held by FSB, as reflected in the latest balance sheet in the FSB Financial Statements, are carried in the aggregate at no more than cost adjusted for amortization of premiums and accretion of discounts. All United States Treasury securities, obligations of other United States Government agencies and corporations, obligations of states of the United States and their political subdivisions, and other investment securities classified as “available for sale” held by FSB, as reflected in the latest balance sheet in the FSB Financial Statements, are carried in the aggregate at market value. Provisions for losses have been made on all such securities that have had a decline in value deemed “other than temporary” as defined in SEC Staff Accounting Bulletin No. 59. FSB does not own or maintain any Bank Owned Life Insurance.

**2.12 Indebtedness.** Except (i) as set forth in the FSB Disclosure Schedule, (ii) as set forth in the FSB Financial Statements, and (iii) for customer deposits and ordinary trade payables, FSB has not, and will not have at the Effective Time, any indebtedness for borrowed money.

**2.13 No Anti-Takeover Plan.** FSB has no outstanding plan, program, or agreement involving, restricting, prohibiting, or discouraging a change in control or merger of FSB or which reasonably could be considered an anti-takeover mechanism. The FSB Board has approved this Agreement and the transactions contemplated hereby as required to render inapplicable to such Agreement and the transactions contemplated hereby any “moratorium,” “control share,” “fair price,” “takeover” or “interested stockholder” law.

#### **2.14 Employee Benefit Plans.**

(a) Schedule 2.14(a) of the FSB Disclosure Schedule lists all existing material FSB Plans (as defined below). With respect to the employee benefit plans, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), sponsored or otherwise maintained by any member of a controlled group of corporations under Section 414(b) the Internal Revenue Code of 1986, as amended (the “**Code**”), of which FSB is or was a member, and any trade or business (whether or not incorporated) which is or was under common control with FSB under Code Section 414(c), and all other entities which together with FSB are or were prior to the date hereof treated as a single employer under Code Section 414(m) or 414(o) (an “**ERISA Affiliate**”), whether written or oral, in which FSB or any ERISA Affiliate participates as

a participating employer, or to which FSB or any ERISA Affiliate contributes, or any nonqualified employee benefit plans or deferred compensation (whether funded or unfunded), bonus, stock, stock purchase, performance share, phantom stock or incentive plans or arrangements, or other employee benefit or fringe benefit plans, programs, policies, practices, or arrangements, whether or not subject to ERISA, for the benefit of former or current employees or directors (or their beneficiaries or dependents) of FSB or any ERISA Affiliate, and including all such plans which have been terminated, merged into another plan, frozen, or discontinued (individually, “**FSB Plan**” and collectively, “**FSB Plans**”). With respect to the FSB Plans, FSB represents and warrants, except as set forth in the FSB Disclosure Schedule:

(i) All such FSB Plans have on a continued basis since their adoption, been, in all material respects, maintained and administered in compliance with their respective terms and with the requirements prescribed by all applicable statutes, orders and governmental rules or regulations, including without limitation, ERISA and the Department of Labor (“**Department**”) Regulations promulgated thereunder and the Code and Treasury Regulations promulgated thereunder, except to the extent any noncompliance would not result in a material liability imposed upon THSB.

(ii) All FSB Plans intended to constitute tax-qualified plans under Code Section 401(a) have complied in form and operation since their adoption and have been timely amended to comply in all material respects with all applicable requirements of the Code and the Treasury Regulations and each such Plan either (A) has received a favorable determination letter from the Internal Revenue Service upon which FSB may rely regarding such plan’s tax qualified status under the Code, or (B) is a pre-approved volume submitter or prototype plan that is the subject of an opinion or advisory letter issued by the Internal Revenue Service.

(iii) All FSB Plans that provide for payments of “nonqualified deferred compensation” (as defined in Code Section 409A(d)(1)) have, in all material respects, been (A) operated in good faith compliance with the applicable requirements of Code Section 409A and applicable guidance thereunder since January 1, 2005, and (B) amended to comply in written form with Code Section 409A and the Treasury Regulations promulgated thereunder.

(iv) No FSB Plan (or its related trust) holds any stock or other securities of FSB and no FSB Plan allows for the granting of any awards of or with respect to any stock or other securities of FSB.

(v) Neither FSB, an ERISA Affiliate nor any other fiduciary, as defined in ERISA Section 3(21)(A), of a FSB Plan has engaged in any transaction that may subject FSB, any ERISA Affiliate, or any FSB Plan to a civil penalty imposed by ERISA Section 502 or any other provision of ERISA or excise taxes under Code Section 4971, 4975, 4976, 4977, 4979, or 4980B.

(vi) All contributions, premiums, or other payments accrued or owed by FSB under the terms of any FSB Plan have been paid or properly accrued and reflected in the FSB Financial Statements to the extent required by GAAP.

(vii) All obligations required to be performed by FSB or any ERISA Affiliate under any provision of any FSB Plan attributable to periods prior to the Effective Date have been performed by it in all material respects, and neither FSB nor any ERISA Affiliate is, in any material respect, in default under or in violation of any provision of any FSB Plan.

(viii) All required reports and descriptions for the FSB Plans which are due on or before the date hereof have, in all material respects, been timely filed and distributed to participants and beneficiaries, and all notices and disclosures required by ERISA or the Code with respect to all FSB Plans have been proper as to form and timely given.

(ix) No event has occurred which would reasonably constitute grounds for an enforcement action by any party under Part 5 of Title I of ERISA with respect to any FSB Plan.

(x) There are no examinations, audits, enforcement actions, or proceedings, or any other investigations, pending or threatened, by any Governmental Authority involving any FSB Plan.

(xi) There are no actions, suits, proceedings, or claims pending (other than routine claims for benefits) or threatened against FSB or any ERISA Affiliate in connection with any FSB Plan or the assets of any FSB Plan.

(xii) Any FSB Plan may be amended and terminated at any time without any material liability and these rights have always been maintained by FSB and its ERISA Affiliates.

(b) FSB has made available to THSB true, accurate, and complete copies and, in the case of any plan or program which has not been reduced to writing, a materially complete summary, of, and Schedule 2.14(b) of the FSB Disclosure Schedule lists, all of the following FSB Plans or information, as applicable:

(i) All pension, retirement, profit-sharing, savings, stock purchase, stock bonus, stock ownership, stock option, restricted stock, restricted stock unit, phantom stock, performance share and stock appreciation right plans that are currently in effect or under which FSB has or may have any liability, all amendments thereto, and, if required under the reporting and disclosure requirements of ERISA, all current summary plan descriptions thereof (including any modifications thereto);

(ii) All employment, deferred compensation (whether funded or unfunded), salary continuation, change in control, indemnity, consulting, retention, bonus, severance, and collective bargaining, agreements, arrangements, or understandings that are currently in effect or under which FSB has or may have any liability;

(iii) All executive and other incentive compensation plans, programs, and agreements that are currently in effect or under which FSB has or may have any liability;

(iv) All group insurance, medical, and prescription drug arrangements, policies, or plans that are currently in effect or under which FSB has or may have any liability;

(v) All other incentive, welfare, or employee benefit plans, understandings, arrangements, or agreements, maintained or sponsored, participated in, or contributed to by FSB currently, or under which FSB has or may have any liability, with respect to its current or former directors, officers, or employees;

(vi) All reports and returns filed with the Internal Revenue Service or the Department within the preceding three (3) years by FSB or any ERISA Affiliate with respect to any FSB Plan and all determination letters issued by the Internal Revenue Service; and,

(vii) All applicable nondiscrimination testing for any FSB Plan for the three (3) preceding years.

(c) Except as disclosed in the FSB Disclosure Schedule, no current or former director, officer, or employee of FSB or any ERISA Affiliate (i) is entitled to or may become entitled to any benefit under any FSB Plans that are welfare benefit plans (as defined in ERISA Section 3(1)) after termination of employment with FSB or any ERISA Affiliate, except to the extent such individuals may be entitled to continue their group health care coverage pursuant to Code Section 4980B, or (ii) is currently receiving, or entitled to commence receiving, a disability benefit under a long-term or short-term disability plan that is a FSB Plan maintained by FSB or an ERISA Affiliate.

(d) With respect to all FSB Plans that are group health plans as defined in ERISA Section 607(1), sponsored or maintained by FSB or any ERISA Affiliate, no director, officer, employee, or agent of FSB or any ERISA Affiliate has engaged in any action or failed to act in such a manner that, as a result of such action or failure to act, would cause a tax to be imposed on FSB or any ERISA Affiliate under Code Section 4980B(a), or would cause a penalty to be imposed under ERISA and the regulations promulgated thereunder. With respect to all such plans, all applicable provisions of Code Section 4980B and ERISA Sections 601-606 have been complied with by FSB or any ERISA Affiliate, and all other provisions of ERISA and the regulations promulgated thereunder have been complied with in all material respects.

(e) Except as disclosed in the FSB Disclosure Schedule, there are no collective bargaining, employment, management, consulting, deferred compensation, change in control, reimbursement, indemnity, retirement, early retirement, severance, or similar plans or agreements, commitments, or understandings, or any employee benefit or retirement plan or agreement, binding upon FSB or any ERISA Affiliate, and no such agreement, commitment, understanding, or plan is under discussion or negotiation by management with any employee or group of employees, any member of management or any other Person.

(f) Except as disclosed in Schedule 2.14(f) of the FSB Disclosure Schedule, no Voluntary Employees' Beneficiary Association ("VEBA"), as defined in Code Section 501(c)(9), is or has been sponsored, maintained, or contributed to by FSB or any ERISA Affiliate.

(g) Except as contemplated in this Agreement or as disclosed in the FSB Disclosure Schedule, there are no benefits or liabilities under any employee benefit plan or program that will be accelerated or otherwise come due as a result of the transactions contemplated by the terms of this Agreement, including, but not limited to, the Merger and/or the Bank Merger and any

termination of employment relating thereto and occurring prior to, at, or following the Effective Time.

(h) Except as disclosed in Schedule 2.14(h) of the FSB Disclosure Schedule, neither FSB nor any of its ERISA Affiliates has ever sponsored, maintained, participated in, contributed to, or had any obligation with respect to any plan that is subject to Code Section 412 or Title IV of ERISA, that is or has been subject to Sections 4063 or 4064 of ERISA or that is a “multiple employer welfare arrangement,” as defined in Section 3(40) of ERISA. Neither FSB nor any of its ERISA Affiliates has ever participated in or had any obligation to contribute to a “multiemployer plan,” as defined in Section 3(37) of ERISA.

(i) Except as disclosed in the FSB Disclosure Schedule, as a result, directly or indirectly, of the transactions contemplated by this Agreement (including, without limitation, any termination of employment relating thereto and occurring prior to, at, or following the Effective Time), FSB, its ERISA Affiliates, and their respective successors will not be obligated to make a payment that would be characterized as an “excess parachute payment” to an individual who is a “disqualified individual,” as such terms are defined in Code Section 280G.

(j) Each FSB Plan that is a health plan is and has been operated and maintained in compliance with the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, including the regulations and official guidance thereunder (collectively, the “ACA”). To the extent required by the ACA, FSB or its ERISA Affiliate has offered all full-time employees (as defined in the ACA) of FSB or the ERISA Affiliate the ability to elect minimum essential coverage under an eligible employer-sponsored plan within the meaning of Code Section 5000A(f)(1)(B) that is affordable and provides minimum value for themselves and their dependents, such that there will not be any liability or excise tax under Section 4980H of the Code. No excise tax or penalty under the ACA is outstanding, has accrued, or has arisen with respect to any period prior to the Closing, with respect to any FSB Plan. To the extent required by the ACA, FSB has complied with the applicable information reporting requirements under Code Section 6055 and Section 6056 and related regulations. To the extent required by the ACA, FSB or the applicable ERISA Affiliate has maintained all records necessary to demonstrate compliance with the ACA.

(k) Each individual who is classified by FSB or any ERISA Affiliate as an independent contractor has been properly classified for purposes of participation and benefit accrual under each FSB Plan.

(l) Except as contemplated by this Agreement, neither FSB nor any ERISA Affiliate has made any promises or commitments, whether legally binding or not, to create any new plan, agreement, or arrangement, or to modify or change in any material way FSB Plans.

**2.15 Labor and Employment Matters.** FSB is, and has been in the past five (5) years, in material compliance with all applicable Laws relating to labor and employment, employment practices, terms and conditions of employment, including those relating to wages, hours, collective bargaining, unemployment compensation, worker’s compensation, occupational safety and health requirements, equal including those relating to wages, hours, collective bargaining, unemployment compensation, worker’s compensation, equal employment opportunity, age and disability

discrimination, immigration control, employee classification, information privacy and security, payment, and withholding of taxes. Within the past three (3) years, there has not been, and as of the date of this Agreement there is not pending or threatened, any labor dispute, work stoppage, labor strike, or lockout against FSB. No employee of FSB is covered by an effective or pending collective bargaining agreement or similar labor agreement. There has not been any activity on behalf of any labor organization or employee group to organize any such employees. Except as set forth on the FSB Disclosure Schedule, no employee or independent contractor of FSB is a party to any employment agreement, confidentiality, non-disclosure or proprietary information agreement, non-compete agreement, non-solicitation agreement, or any similar agreement with FSB, and neither FSB nor any employee or independent contractor is in violation of any such agreement. FSB is in compliance with all notice and other requirements under the Worker Adjustment and Retraining Notification Act of 1988, and any other similar applicable foreign, state, or local laws relating to facility closings and layoffs.

**2.16 Obligations to Employees.** All material obligations and liabilities of and all payments by FSB or any ERISA Affiliate and all FSB Plans (other than those obligations and liabilities of the PEO), whether arising by operation of law, by contract, or by past custom, practice, or policy, for payments to trusts or other funds, to any government agency or authority, or to any present or former director, officer, employee, or agent (or his or her heirs, legatees, or legal representatives) payable as of the date of this Agreement have been and are being paid to the extent required by applicable Law or by the plan, custom, practice, policy, trust, or contract, and if not due or payable as of the date of this Agreement, adequate actuarial accruals and reserves for such payments have been and are being made by FSB or an ERISA Affiliate to the extent required by GAAP and applicable Law applied on a consistent basis and sound actuarial methods with respect to the following: (a) withholding taxes or unemployment compensation; (b) FSB Plans; (c) employment, salary continuation, change in control, consulting, retirement, early retirement, severance, or reimbursement; and (d) collective bargaining plans and agreements. All accruals and reserves referred to in this Section 2.16 are correctly and accurately reflected and accounted for in all material respects in the FSB Financial Statements and the books, statements, and records of FSB.

**2.17 Taxes, Returns and Reports.** FSB has since January 1, 2015 (a) duly and timely filed (taking into account any extension of time within which to file) all material federal, state, local, and foreign tax returns of every type and kind required to be filed, and each such return is true, accurate, and complete; (b) paid or otherwise adequately reserved in accordance with GAAP for all taxes, assessments, and other governmental charges due or claimed to be due upon it or any of its income, properties, or assets; and (c) not requested an extension of time for any such payments (which extension is still in force). FSB has established as set forth in the FSB Financial Statements and shall establish and set forth in the Subsequent FSB Financial Statements, in accordance with GAAP, a reserve for taxes adequate to cover all of FSB's tax liabilities (including, without limitation, income taxes, payroll taxes and withholding, and franchise fees) for the period covered by such FSB Financial Statements. FSB has not, nor will it have, any liability for taxes of any nature for or with respect to the operation of its business, from the date hereof up to and including the Effective Time, except to the extent set forth in the Subsequent FSB Financial Statements or as accrued or reserved for on the books and records of FSB. FSB is not currently under audit by any state or federal taxing authority, and no federal, state, or local tax returns of FSB has been audited by any taxing authority during the past five (5) years. FSB has not waived

any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax assessment or deficiency. Except as set forth in the FSB Disclosure Schedule, FSB is not a party to or bound by any tax allocation or sharing agreement.

**2.18 Insurance.** The FSB Disclosure Schedule contains a true, accurate, and complete list of all policies of insurance (including, without limitation, financial institutions bond, directors' and officers' liability insurance, property and casualty insurance, group health or hospitalization insurance, employment practices liability insurance, and cybersecurity insurance) owned or held by FSB on the date hereof or with respect to which FSB pays any premiums. Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect on FSB, FSB is insured with reputable insurers against such risks and in such amounts as the management of FSB reasonably has determined to be prudent and consistent with industry practice, and FSB is in compliance in all material respects with its insurance policies and is not in default under any of the terms thereof, each such policy is outstanding and in full force and effect with no lapses in coverage and, except for policies insuring against potential liabilities of officers, directors and employees of FSB, FSB is the sole beneficiary of such policies, and all premiums and other payments due under any such policy have been paid, and all claims thereunder have been filed in due and timely fashion. FSB has maintained in effect such policies or predecessor policies of the same type since January 1, 2016.

**2.19 Books and Records.** The books of account, minute books, stock record books, and other records of FSB are complete and correct in all material respects and have been maintained in accordance with FSB's business practices and all applicable Laws, including the maintenance of an adequate system of internal controls required by such Laws. The minute books of FSB contain accurate and complete records in all material respects of all meetings held, and corporate action taken by, its respective FSB Members, the FSB Board and committees of the FSB Board. At the Closing, all of those books and records will be in the possession of FSB.

**2.20 Broker's, Finder's or Other Fees.** Except for reasonable fees and expenses of FSB's attorneys and accountants, all of which shall be paid or accrued by FSB at or prior to the Effective Time, no agent, broker or other Person acting on behalf of FSB or under any authority of FSB is or shall be entitled to any commission, broker's or finder's fee or any other form of compensation or payment from any of the parties hereto relating to this Agreement or the Merger or other transactions contemplated hereby.

**2.21 Interim Events.** Except as otherwise permitted hereunder or disclosed on the FSB Disclosure Schedule, since December 31, 2020, FSB has not:

- (a) Experienced any events, changes, developments, or occurrences which have had, or are reasonably likely to have, a Material Adverse Effect on FSB;
- (b) Received notice of any issues, concerns, examinations, disciplinary issues, or similar notice from any local, state, or federal regulatory body that would have an impact on FSB;
- (c) Suffered any damage, destruction, or loss to any of its properties, not fully paid by insurance proceeds, in excess of \$20,000 in the aggregate;

(d) Declared, distributed, or paid any dividend or other distribution to its members, except for distributions as permitted by Section 4.04(iii) hereof;

(e) Except as required under applicable law or the terms of an applicable FSB Plan, granted or agreed to grant any material increase in benefits payable or to become payable under any pension, retirement, profit sharing, change in control, health, bonus, insurance, or other welfare benefit plan or agreement to employees, officers, or directors of FSB;

(f) Except as required under applicable law or the terms of an applicable FSB Plan, increased the salary of (or granted any bonus to) any director, officer, or employee, or entered into any employment contract, indemnity agreement, or understanding with any officer or employee or installed or amended any existing employee welfare, pension, retirement, change in control, stock option, stock appreciation, stock dividend, profit sharing, or other similar plan or arrangement;

(g) Leased, sold, or otherwise disposed of any of its assets except in the ordinary course of business or leased, purchased or otherwise acquired from third parties any assets except in the ordinary course of business;

(h) Except for the Merger and other transactions contemplated by this Agreement, merged, consolidated, agreed to merge or consolidate FSB with or into any third party, or acquired or agreed to acquire any stock, equity interest, assets, or business of any third party;

(i) Incurred, assumed, or guaranteed any material obligation or liability (fixed or contingent) other than obligations and liabilities incurred in the ordinary course of business;

(j) Mortgaged, pledged, or subjected to a lien, security interest, option, or other encumbrance any of its assets except for tax and other liens which arise by operation of law and with respect to which payment is not past due and except for pledges or liens: (i) required to be granted in connection with acceptance by FSB of government deposits; or (ii) granted in connection with repurchase or reverse repurchase agreements;

(k) Canceled, released, or compromised any loan, debt, obligation, claim, or receivable other than in the ordinary course of business;

(l) Entered into any transaction, contract, or commitment other than in the ordinary course of business;

(m) Agreed to enter into any transaction for the borrowing or loaning of monies, other than in the ordinary course of its lending business;

(n) Amended their articles/certificate of incorporation, charter, or bylaws or adopted any resolutions by the FSB Board or members with respect to the same; or

(o) Converted, or applied to convert, from a mutual savings bank to any other form of bank;

(p) Conducted its business in any manner other than substantially as it was being conducted prior to September 30, 2021.



**2.22 Insider Transactions.** Except as set forth in the FSB Disclosure Schedule, during the preceding five (5) years, no officer or director of FSB or member of the “immediate family” or “related interests” (as such terms are defined in Regulation O) of any such officer or director has currently, or has had during such time period, any direct or indirect interest in any property, assets, business, or right which is owned, leased, held, or used by FSB or in any liability, obligation or indebtedness of FSB, except for deposits of FSB, membership interests in FSB, and interests in compensatory arrangements.

**2.23 Indemnification Agreements.**

(a) FSB is not a party to any indemnification, indemnity, or reimbursement agreement, contract, commitment, or understanding to indemnify any present or former director, officer, employee, member, or agent against liability or hold the same harmless from liability other than as expressly provided in the certificate of incorporation or bylaws of FSB.

(b) During the preceding five (5) years, no claims have been made against or filed with FSB nor have any claims been threatened against FSB, for indemnification against liability or for reimbursement of any costs or expenses incurred in connection with any legal or regulatory proceeding by any present or former director, officer, member, employee or agent of FSB.

**2.24 FSB Member Approval.** The affirmative vote of the FSB Members is not required for authorization of this Agreement and the Merger. Under 205 ILCS 8005, the IDFPR Secretary may require approval of FSB Members in order to approve the merger contemplated in this Agreement. In the event that the IDFPR Secretary, or any other Regulatory Agency, does require FSB Member approval, FSB and the FSB Board shall recommend that the FSB Members approve and adopt this Agreement and the Merger contemplated hereby and will solicit votes in favor of this Agreement from the FSB Members. Additionally, each director and executive officer of FSB shall agree to vote or direct the vote of any interests in favor of the Merger.

**2.25 Intellectual Property.**

(a) For purposes of this Agreement, “**Intellectual Property**” shall mean all patents and applications for patents (including divisions, continuations, continuations in part, reexaminations and renewal applications, all improvements thereto, and any renewals, extensions or reissues thereof, in any jurisdiction), trademarks, trademark registrations and applications for trademark registrations, trade names, brand names, corporate names and assumed names, logos, symbols, service marks, domain names, website content, social media handles and related accounts, database rights, copyright registrations or applications for registration of copyrights in any jurisdiction (including any renewals or extensions thereof), mask works, technology, know-how, trade secrets, ideas, algorithms, processes, computer software programs or applications (excluding Off-The-Shelf Software (as defined below)) (the software programs or applications, in both source code and object code form, collectively, “**Software**”), and all other intellectual property rights of any kind, whether tangible or intangible and whether or not registered. For purposes of this Agreement, “**Off-The-Shelf Software**” shall mean readily available commercial software used subject to a non-negotiated shrink-wrap or click-through license.

(b) Schedule 2.25 of the FSB Disclosure Schedule sets forth a true, correct, and complete list, as of the date hereof, of all Intellectual Property and Software owned by FSB, including the name/title and application and/or registration numbers and dates as applicable, that consists of: (1) issued patents and pending patent applications; (2) registered trademarks and pending applications for trademark registration; (3) material unregistered trademarks; (4) registered copyrights and pending applications for copyright registrations; (5) material unregistered copyrights; (6) domain names; (7) social media handles and related accounts; (8) corporate names and assumed names; (9) material trade secrets; and (10) Software. FSB is the sole owner of the entire right, title and interest in and to, and has the right to use, free and clear of any lien, restriction, security, interests, royalty or other payment obligations, or encumbrances of any nature, charges, claims of infringement, derivation, co-ownership, or other claims of third parties, all Intellectual Property owned by FSB.

(c) FSB owns, or validly licenses, or otherwise possesses a legally sufficient and enforceable right to use (in each case, free and clear of any lien, restriction, security, interests, charges, claims, rights of third parties, or encumbrances of any nature) all material Intellectual Property owned by or licensed or used by FSB in their respective businesses, as currently conducted. Except as listed on Schedule 2.25 of the FSB Disclosure Schedule, FSB has not (1) licensed any Intellectual Property owned by it to any third party, (2) entered into any exclusive agreements relating to Intellectual Property owned by it, or (3) used any Intellectual Property owned by any other Person other than subject to a valid license.

(d) FSB is not in conflict, in violation, or infringement of, nor has FSB received any written notices of any claim or assertion thereof by any other Person with respect to, any Intellectual Property used or owned by it.

(e) FSB is in accordance with all applicable licenses, pursuant to which FSB acquired the right to use any Intellectual Property, and has not infringed, misappropriated, or otherwise violated, through the use of Intellectual Property, the rights of any Persons. No claims have been asserted or threatened against FSB, or any indemnitee thereof, concerning the ownership, validity, registrability, enforceability, infringement, use, or licensed right to use any Intellectual Property.

(f) No third party has infringed, misappropriated, or otherwise violated the Intellectual Property rights of FSB, and there is no pending claim or claim threatened in writing or otherwise with respect to Intellectual Property and third parties, including that (i) any third party has infringed or otherwise violated either FSB's Intellectual Property rights, or (ii) the owned or claimed Intellectual Property of a third party interferes with, infringes, dilutes, or otherwise harms any Intellectual Property rights of FSB.

(g) To the extent FSB has designated any of its information, materials, software, or processes a trade secret, FSB has taken sufficient measures to protect the confidentiality of all trade secrets that are owned, used, or held by it.

(h) FSB has taken commercially reasonable actions to avoid the abandonment, cancellation, or unenforceability of all Intellectual Property respectively owned or licensed, by FSB.

(i) FSB hereby states that all material Software owned, licensed, used, or otherwise held for use by FSB is (i) in good working order and condition and is sufficient in all material respects for the purposes for which it is currently used; and (ii) does not contain any bug, defect, or error that materially and adversely affects the use, functionality, or performance of such Software or any system containing or used in conjunction with such Software (collectively, “**Defective Code**”). FSB has not experienced any material defects in design, functionality, or material in connection with the use of such Software that has not been corrected.

(j) No Software owned, licensed, or used by FSB contains any “back door,” “drop dead device,” “time bomb,” “Trojan Horse,” “virus,” “worm,” “spyware,” or “adware” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing or facilitating, any of the following functions: (i) disrupting, disabling, harming, or otherwise impeding in any manner, the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed, or (ii) compromising the privacy or data security of any user or damaging or destroying any data file without the user’s consent (collectively, “**Malicious Code**”).

## **2.26 Information Technology.**

(a) The computers, Software, computer programs, in source code and object code forms, servers, workstations, routers, hubs, switches, circuits, networks, data communications lines, repair and refurbishment equipment, and all other information technology equipment owned, used, or held for use by FSB (collectively, “**FSB IT Assets**”) operate and perform in all material respects in accordance with their documentation and functional specifications and, otherwise, as required for the conduct of FSB’s business, and have not materially malfunctioned or failed within the past three (3) years. FSB takes commercially reasonable care and action, consistent with current banking industry standards, to protect the confidentiality, integrity, and security of FSB IT Assets (and all third party and customer information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification, or corruption, including, but not limited to (1) the use of robust encryption technology, and (2) the implementation of a comprehensive security plan which will promptly identify any and all internal and external risks to the security of FSB’s confidential information or that of third parties or customers, and implements, monitors, and improves adequate and effective safeguards to control such risks. FSB have achieved a “baseline” maturity level in all domains of its information systems according to the Federal Financial Institutions Examination Council’s (“**FFIEC**”) Cybersecurity Assessment Tool. FSB has implemented commercially reasonable data backup, data storage, system redundancy, and disaster avoidance and recovery procedures, as well as a commercially reasonable business continuity plan, in each case consistent with banking industry practices. No claims are pending or threatened against FSB alleging a violation of any Person’s privacy rights of any Persons or rights regarding the protection of personally identifiable information or other non-public information.

(b) Except as set forth in the FSB Disclosure Schedule, since January 1, 2019, no third party has gained unauthorized access to any information technology networks controlled by and material to the operation of the business of FSB.

(c) In connection with the collection, storage, transfer (including transfer across national borders), and/or use of any personally identifiable information from any companies or individuals, including any customers, prospective customers, employees, and/or other third parties (collectively, “**Personal Information**”), FSB has implemented commercially reasonable disclosures, policies, and procedures with respect to the collection, compilation, use, disclosure, processing, sharing, security, disposal, transfer, protection, and storage of Personal Information that comply in all material respects with applicable Laws in relevant jurisdictions, the privacy provisions of the Gramm-Leach Bliley Act (“**GLBA**”), the Consumer Privacy Protection Act of 2017, and all other applicable identity protection laws relating to banking (collectively, “**Privacy Laws**”). No privacy policy of FSB in effect at any time during the prior three (3) years has been materially inaccurate, misleading, or deceptive. FSB has been in compliance in all material respects with all of their privacy policies in effect at any time during the prior three (3) years, all applicable Privacy Laws, all contractual obligations concerning sharing or protecting Personal Information, and all material contractual obligations concerning Personal Information, data privacy, and data security. In the last five (5) years, there have been no data breaches involving unauthorized disclosures of Personal Information to any third parties. FSB (i) has not received written notice of any claims; (ii) has not been charged with the violation of any applicable Privacy Laws or, (iii) has not been or is not currently under investigation with respect to any violation of any applicable Privacy Laws or applicable privacy policies. FSB has commercially reasonable safeguards in place to protect Personal Information in their possession or control from unauthorized access and has contractually obligated all third parties who process or store Personal Information on FSB’s behalf to do the same.

**2.27 Community Reinvestment Act.** FSB received a rating of “satisfactory” or better in its most recent examination or interim review with respect to the Community Reinvestment Act.

**2.28 Bank Secrecy and Anti-Money Laundering Compliance.** FSB has not received any notice or communication from any regulatory authority alleging violation of, or noncompliance with, any legal requirement concerning bank secrecy or anti-money laundering, including the Currency and Foreign Transactions Reporting Act, the Money Laundering Control Act of 1986, Annunzio-Wylie Anti-Money Laundering Act, the Money Laundering Suppression Act of 1994, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “**Patriot Act**”) (each such legal requirement and the rules promulgated thereunder, a “**BSA/AML Law**”). FSB has not been cited, fined, or otherwise notified of any failure by it to comply with a BSA/AML Law in the past five (5) years. There are no facts or circumstances that could form the basis for assertion of any proceeding against FSB under any BSA/AML Law that, if determined adversely to FSB, could reasonably be expected to adversely affect FSB. The FSB Board has adopted and implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that comply with Section 326 of the Patriot Act and such anti-money laundering program meets the requirements in all material respects of Section 352 of the Patriot Act and the regulations thereunder, and it has complied in all material respects with any requirements to file reports and other necessary documents as required by the Patriot Act and the regulations thereunder.

**2.29 Regulatory Status.** As of the date hereof, FSB, as an “insured depository institution” as defined in the FDIA, meets all capital requirements, standards and ratios required by each state or federal bank regulator exercising regulatory or supervisory jurisdiction over it. No such regulator has indicated that FSB is in a “troubled” condition. The deposits of FSB are insured by the in accordance with the FDIA, to the fullest extent provided by applicable Law, and FSB has paid, prepaid, or properly reserved or accrued for all current premiums and assessments with respect to such deposit insurance. As of the date hereof, no proceedings for the revocation of such deposit insurance are pending or threatened.

**2.30 Agreements with Regulatory Agencies.** Except as disclosed in Schedule 2.30 of the FSB Disclosure Schedule, FSB: (a) is not subject to any cease-and-desist, consent order, or other order or enforcement action issued by; or (b) is not a party to any written agreement, consent agreement, or memorandum of understanding with; or (c) is not a party to any commitment letter or similar undertaking, or subject to any order or directive, or has been otherwise ordered to pay any civil money penalty by; or (d) has not been, during the preceding five (5) years, a recipient of any supervisory letter from; or (e) during the preceding five (5) years, has adopted any policies, procedures, or board resolutions at the request or suggestion of; any Regulatory Agency or other Governmental Authority that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its ability to pay dividends, its credit or risk management policies, its management, or its business, other than those of general application that apply to similarly situated mutual savings banks or their subsidiaries, whether or not set forth in the FSB Disclosure Schedule (a “**FSB Regulatory Agreement**”). FSB has not been advised, during the preceding five (5) years, by any Regulatory Agency or other Governmental Authority that it is considering issuing, initiating, ordering, or requesting any such FSB Regulatory Agreement. There are no refunds or restitutions required to be paid or corrective action required to be taken as a result of an examination or criticism by any Regulatory Agency or body or set forth in any accountant’s or auditor’s report to FSB. FSB has substantially complied with all material requirements of any written agreement, consent agreement, or memorandum of understanding issued by any Regulatory Agency or Governmental Authority disclosed in Schedule 2.30 of the FSB Disclosure Schedule.

**2.31 Approval Delays.** To FSB’s knowledge, there is no reason why the granting of any of the Regulatory Approvals would be denied or unduly delayed and FSB will use its commercially reasonable efforts to ensure that it does not delay any of the Regulatory Approvals in connection with the Agreement and the Merger contemplated herein.

**2.32 Internal Controls.** Except as disclosed in Schedule 2.32 of the FSB Disclosure Schedule, FSB has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Except as disclosed in Schedule 2.32 of the FSB Disclosure Schedule, during the preceding three (3) years, (i) through the date hereof, FSB has not received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of FSB or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that FSB has engaged in questionable accounting or auditing practices, and (ii) no attorney representing FSB, whether or not employed by FSB, has reported evidence of a violation of securities laws, breach

of fiduciary duty, or similar violation by FSB or any of its officers, directors, employees, or agents to the FSB Board or any committee thereof or to any director or officer of FSB.

**2.33 Fiduciary Accounts.** FSB has properly administered all accounts for which it acts as a fiduciary, including, without limitation, accounts for which it serves as a trustee, agent, custodian, personal representative, guardian, conservator, or investment advisor, in accordance with the terms of the governing documents and applicable Laws and regulations. FSB, nor any of its respective directors, officers, or employees, has committed any breach of trust with respect to any fiduciary account and the records for each such fiduciary account are true and correct and accurately reflect the assets of such fiduciary account.

**2.34 Disclaimer.** EXCEPT AS SET FORTH IN THIS AGREEMENT (AS MODIFIED BY THE FSB DISCLOSURE SCHEDULE), NONE OF FSB OR ANY OF ITS RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, OR REPRESENTATIVES MAKE OR HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF FSB OR THEIR BUSINESS. ANY SUCH OTHER REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED.

### ARTICLE III.

#### REPRESENTATIONS AND WARRANTIES OF THSB

On or prior to the date hereof, THSB has delivered to FSB a schedule (the “**THSB Disclosure Schedule**”) 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 this Article III or to one or more of its covenants contained in Article IV or Article V.

As used in this Agreement, and in relation to THSB, “**knowledge**” means those facts that are actually known by J. Bart Colwell, President and Chief Executive Officer of THSB, or Kent Stultz, Chief Financial Officer.

Accordingly, THSB represents and warrants to FSB as follows, except as set forth in the THSB Disclosure Schedule:

**3.01 Organization and Authority.** THSB is an Indiana-chartered, FDIC-insured stock savings bank. THSB has full power and authority (corporate and otherwise) to own and lease its properties as presently owned and leased and to conduct its business in the manner and by the means utilized as of the date hereof. Except as provided in the Disclosure Schedule, THSB owns directly no voting stock or equity securities of any corporation, partnership, association, or other entity.

**3.02 Authorization.**

(a) THSB has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder, subject to the fulfillment of the conditions precedent set forth in Sections 6.01(d) and (e) hereof. This Agreement and its execution and delivery by THSB have been duly authorized and approved by the Board of Directors of THSB (the “**THSB Board**”),

and, assuming due execution and delivery by FSB, constitutes a valid and binding obligation of THSB, subject to the terms and conditions hereof, and is enforceable in accordance with its terms, except to the extent limited by general principles of equity and public policy and by bankruptcy, insolvency, fraudulent transfer, reorganization, liquidation, moratorium, readjustment of debt, or other laws of general application relating to or affecting the enforcement of creditors' rights.

(b) Neither the execution of this Agreement nor consummation of the Merger contemplated hereby: (i) conflicts with or violates the Articles of Incorporation or Bylaws of THSB; (ii) conflicts with or violates any local, state, federal, or foreign law, statute, ordinance, rule, or regulation (provided that the approvals of or filings with applicable government regulatory agencies or authorities required for consummation of the Merger are obtained) or any court or administrative judgment, order, injunction, writ or decree; (iii) conflicts with, results in a breach of or constitutes a default under any note, bond, indenture, mortgage, deed of trust, license, lease, contract, agreement, arrangement, commitment or other instrument to which THSB is a party or by which THSB is subject or bound; (iv) results in the creation of or gives any Person the right to create any lien, charge, claim, encumbrance or security interest, or results in the creation of any other rights or claims of any other party (other than FSB) or any other adverse interest, upon any right, property or asset of THSB; or (v) terminates, requires the consent of (or notice to) any Person, or gives any Person the right to terminate, accelerate, amend, modify or refuse to perform under any note, bond, indenture, mortgage, agreement, contract, lease, license, arrangement, deed of trust, commitment or other instrument to which THSB is bound or with respect to which THSB is to perform any duties or obligations or receive any rights or benefits.

(c) Other than in connection or in compliance with the provisions of the applicable federal and state banking, securities, antitrust, and corporation statutes, all as amended, and the rules and regulations promulgated thereunder, no notice to, filing with, exemption by or consent, authorization or approval of any Governmental Authority is necessary for consummation of the Merger by THSB.

### **3.03 Compliance with Law.**

(a) THSB is not currently in violation of, and during the preceding five (5) years, has not been in violation of, any Law, except where such violation would not have a Material Adverse Effect on THSB. THSB possesses and holds all licenses, franchises, permits, certificates, and other authorizations necessary for the continued conduct of their business without interference or interruption, except where the failure to possess and hold the same would not have a Material Adverse Effect on THSB.

(b) THSB is not subject to any understandings or commitments with, and there are no orders or directives of, any government regulatory agencies or authorities with respect to the financial condition, results of operations, business, assets, or capital of THSB. There are no refunds or restitutions required to be paid as a result of any criticism of any Regulatory Agency or body cited in any examination report of THSB as a result of an examination by any Regulatory Agency or body or set forth in any accountant's or auditor's report to THSB.

(c) All of the existing offices of THSB have been legally authorized and established in accordance with all applicable federal, state, and local laws, statutes, regulations, rules, ordinances, orders, restrictions, and requirements, except such as would not have a Material Adverse Effect on THSB.

**3.04 Accuracy of Information Provided to FSB.** THSB agrees that the information concerning THSB that is provided or to be provided by THSB to FSB in relation to this Agreement and for inclusion in any other documents to be filed with any regulatory authority or Governmental Authority in connection with the Merger and the other transactions contemplated by this Agreement will at the respective times such documents are filed and when mailed, not be false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, THSB shall have no responsibility for the truth or accuracy of any information provided by FSB with respect to FSB or in any document submitted to, or other communication with, any regulatory authority or Governmental Authority.

### **3.05 Litigation and Pending Proceedings.**

(a) Except as disclosed on the THSB Disclosure Schedule, and except for lawsuits involving collection of delinquent accounts and other matters involving THSB in the ordinary course of its business, there are no claims, actions, suits, proceedings, mediations, arbitrations, or investigations pending and served against THSB or, to THSB's knowledge, threatened in any court or before any government agency or authority, arbitration panel or otherwise against THSB which, if determined adversely to THSB, would have a Material Adverse Effect on THSB.

(b) THSB is not: (i) subject to any outstanding judgment, order, writ, injunction, or decree of any Governmental Authority, except in the ordinary course of business regarding customer and fiduciary accounts; (ii) presently charged with or, to THSB's knowledge, under governmental investigation with respect to, any actual or alleged violations of any law, statute, rule, regulation, or ordinance; or (iii) the subject of any pending or threatened proceeding by any Governmental Authority having jurisdiction over their respective business, assets, capital, properties, or operations.

### **3.06 Financial Statements and Reports.**

(a) Schedule 3.06 of the THSB Disclosure Schedule includes copies of the following financial statements and reports of THSB, including the notes thereto (collectively, the "**THSB Financial Statements**"):

(i) balance sheets and the related statements of earnings, statements of cash flows, and statements of changes in shareholders' equity of THSB, on a stand-alone basis, as of and for the fiscal years ended December 31, 2018, 2019, 2020, 2021 and 2022;

(ii) Call Reports ("**Call Reports**") for THSB for the periods ending on December 31, 2019, December 31, 2020, December 31, 2021 and 2022 and March 31, 2023.



(b) The THSB Financial Statements present fairly in all material respects the consolidated financial position of THSB as of and at the dates shown and the results of operations, (if presented) cash flows, and (if presented) changes in shareholders' equity for the periods covered thereby and are complete, correct, represent bona fide transactions, and have been prepared from the books and records of THSB. The THSB Financial Statements described in clause (i) above are audited financial statements and have been prepared in conformance with GAAP, except as may otherwise be indicated in any accountants' notes or reports with respect to such financial statements.

(c) Since December 31, 2020, on a consolidated basis, THSB has not incurred any material liability other than in the ordinary course of business consistent with past practice.

**3.07 Absence of Undisclosed Liabilities.** Except: (a) as provided in the THSB Financial Statements; (b) for unfunded loan commitments and obligations on letters of credit to customers of THSB made in the ordinary course of business; (c) for trade payables incurred in the ordinary course of THSB business; (d) for transactions taken with the consent of FSB (which consent shall not be unreasonably withheld, conditioned, or delayed); and (e) for the transactions contemplated by this Agreement and obligations for services rendered pursuant thereto; THSB has not, nor will have at the Effective Time, any obligation, agreement, contract, commitment, liability, lease, or license made outside of the ordinary course of business, nor, to THSB's knowledge, does there exist any circumstances resulting from transactions effected or events occurring on or prior to the date of this Agreement or from any action omitted to be taken during such period which could reasonably be expected to result in any such obligation, agreement, contract, commitment, liability, lease, or license. THSB is not delinquent in the payment of any amount due pursuant to any trade payable, and each has properly accrued for such payables in accordance with GAAP.

**3.08 Community Reinvestment Act.** THSB received a rating of "satisfactory" or better in its most recent examination or interim review with respect to the Community Reinvestment Act.

**3.09 Bank Secrecy and Anti-Money Laundering Compliance.** THSB has not received any notice or communication from any regulatory authority alleging violation of, or noncompliance with, a BSA/AML Law. THSB has not been cited, fined, or otherwise notified of any failure by it to comply with a BSA/AML Law in the past five (5) years. To the knowledge of THSB, there are no facts or circumstances that could form the basis for assertion of any proceeding against THSB under any BSA/AML Law that, if determined adversely to THSB, could reasonably be expected to adversely affect THSB. The THSB Board has adopted and implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that comply with Section 326 of the Patriot Act and such anti-money laundering program meets the requirements in all material respects of Section 352 of the Patriot Act and the regulations thereunder, and it has complied in all material respects with any requirements to file reports and other necessary documents as required by the Patriot Act and the regulations thereunder.

**3.10 Approval Delays.** To the knowledge of THSB, there is no reason why the granting of any of the Regulatory Approvals would be denied or unduly delayed and THSB will use its commercially reasonable efforts to ensure that it does not delay any of the Regulatory Approvals in connection with the Agreement and the Merger contemplated herein.

**3.11 Shareholder Approval.** Approval by the majority of the shareholders of THSB's capital stock is required by Law to enter into this Agreement and to consummate the Merger. Parent Company is the sole shareholder of THSB and has indicated its intent to adopt resolutions to approve the Agreement and the Merger.

**3.12 Agreements with Regulatory Agencies.** THSB is not subject to any cease-and-desist, consent order, or other order or enforcement action issued by, or is a party to any written agreement, consent agreement, or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been, during the preceding five (5) years, a recipient of any supervisory letter from, or, during the preceding five (5) years, has adopted any policies, procedures or board resolutions at the request or suggestion of any Regulatory Agency or other Governmental Authority that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its ability to pay dividends, its credit or risk management policies, its management or its business, other than those of general application that apply to similarly situated bank holding companies or their subsidiaries, whether or not set forth in the THSB Disclosure Schedule (a "**THSB Regulatory Agreement**"), nor has THSB been advised, during the preceding five (5) years, by any Regulatory Agency or other Governmental Authority that it is considering issuing, initiating, ordering, or requesting any such THSB Regulatory Agreement. There are no refunds or restitutions required to be paid as a result of any criticism of any Regulatory Agency or body cited in any examination report of THSB as a result of an examination by any Regulatory Agency or body or set forth in any accountant's or auditor's report to THSB.

**3.13 Capitalization.** THSB is, and immediately after giving effect to the Merger will be, well-capitalized, as such term is defined under guidelines published by the FDIC.

**3.14 Broker.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or other transactions contemplated by this Agreement based upon arrangements made by or on behalf of THSB.

**3.15 Disclaimer.** EXCEPT AS SET FORTH IN THIS AGREEMENT, NONE OF THSB, THE PARENT COMPANY, OR ANY OF ITS RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, OR REPRESENTATIVES MAKE OR HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THSB OR ITS BUSINESS. ANY SUCH OTHER REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED.

## **ARTICLE IV.**

### **CERTAIN COVENANTS**

FSB covenants and agrees with THSB and covenants to act as follows (and THSB covenants and agrees with FSB as follows):

**4.01 FSB Member Approval.** The affirmative vote of the FSB Members is required for authorization of this Agreement and the Merger, unless waived by the IDFPR Secretary or as

otherwise required by a Governmental Authority (as defined in Section 4.14). In the event that the IDFPF Secretary or any Governmental Authority does not waive the FSB Member approval requirement, FSB and the FSB Board shall recommend to FSB Members that the FSB Members should approve and adopt this Agreement and the Merger and will solicit votes in favor of this Agreement from the FSB Members. Additionally, each director and executive officer of FSB shall agree to vote or direct the vote of any interests in favor of the Merger pursuant to an agreement. FSB shall, in the event the requirement is not waived, submit this Agreement to the FSB Members for approval and adoption in accordance, with applicable Law, the Certificate of Incorporation and Bylaws of FSB, and the requirement of any Governmental Authority as soon as reasonably practicable after the date of this Agreement.

**4.02 Waiver of Member Approval.** FSB, as a part of the application of THSB pursuant to Section 4.03 and Section 6.01(d), shall submit all documentation necessary to the appropriate Regulatory Agency in order to acquire a waiver of the requirement to obtain member approval of the Agreement and Merger from the IDFPF Secretary. FSB shall use all commercially reasonable efforts to cause the IDFPF Secretary to waive the requirement to obtain member approval of the Agreement and Merger.

**4.03 Other Approvals.**

(a) FSB shall proceed expeditiously, cooperate fully, and use commercially reasonable efforts to assist THSB in procuring, upon terms and conditions consistent with the condition set forth in Section 6.01(d) hereof, all consents, authorizations, approvals, registrations, and certificates, in completing all filings and applications and in satisfying all other requirements prescribed by law which are necessary for consummation of the Merger on the terms and conditions provided in this Agreement at the earliest possible reasonable date.

(b) FSB will use commercially reasonable efforts to obtain any required third-party consents to agreements, contracts, commitments, leases, instruments, and documents listed on the FSB Disclosure Schedule and which FSB and THSB agree are material, each of which are set forth on Schedule 4.03 of the FSB Disclosure Schedule.

(c) Any written materials or information provided by FSB to THSB for use by THSB in any filing with any state or federal Regulatory Agency or authority shall not contain any untrue or misleading statement of material fact or shall omit to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not false or misleading.

**4.04 Conduct of Business.** After the date of this Agreement and until the Effective Time or until this Agreement is terminated as herein provided, except as expressly contemplated or permitted by this Agreement, as required by Law (including the Pandemic Measures), as required by any Regulatory Agencies, or as consented to in writing by THSB (which consent will not be unreasonably withheld, conditioned, or delayed), FSB shall: (1) carry on its business diligently, substantially in the manner as is presently being conducted and in the ordinary course of business consistent with past practices; (2) use commercially reasonable efforts to preserve its business organization intact, keep available the services of the present officers and employees, and preserve its present relationships with customers and Persons having business dealings with it; (3) use

commercially reasonable efforts to maintain all of the properties and assets that it owns or utilizes in the operation of its business as currently conducted in good operating condition and repair, reasonable wear and tear excepted (including, without limitation, installing any upgrades or patches and performing other recommended or required maintenance of its Software); (4) maintain its books, records, and accounts in the usual, regular, and ordinary manner, on a basis consistent with prior years and in compliance in all material respects with all statutes, laws, rules, and regulations applicable to them and to the conduct of its business; (5) not knowingly do or fail to do anything which will cause a breach of, or default in, any contract, agreement, commitment, obligation, understanding, arrangement, lease, or license to which it is a party or by which it is or may be subject or bound; and (6) take no action that would reasonably be expected to adversely affect or materially delay the ability to obtain any necessary approvals of any Regulatory Agency or other Governmental Authority required for the transactions contemplated hereby or to perform its respective covenants and agreements under this Agreement or to consummate the transactions contemplated hereby on a timely basis. Specifically, by way of example but not limitation, after the date of this Agreement and until the Effective Time or until this Agreement is terminated as herein provided, except as expressly contemplated or permitted by this Agreement, as required by Law (including the Pandemic Measures), or as required by any Regulatory Agencies, FSB will not, without the prior written consent of THSB, which consent shall not be unreasonably denied, withheld, or delayed:

(i) undertake any action to cause FSB to reorganize, change, or otherwise convert from a mutual savings bank to a stock savings bank or other type of institution other than those actions contemplated in this Agreement and Merger;

(ii) authorize a class of stock, or issue any stock, issue or grant any warrant, option, right, or other agreement of any character;

(iii) except as set forth on Schedule 4.04(iii) of the FSB Disclosure Schedule, make any distribution to its members;

(iv) purchase or otherwise acquire any investment security for their own account that exceeds \$500,000 individually or purchase or otherwise acquire any security other than U.S. Treasury or other governmental obligations or asset-backed securities issued or guaranteed by United States governmental or other governmental agencies, and, in either case, any such purchased or otherwise acquired security shall have an average remaining life of three (3) years or less, or sell any investment security owned by them other than sales made in the ordinary course of business as previously conducted during the past three (3) years and in accordance with applicable Laws and regulations or engage in any activity that would be inconsistent with the classification of equity securities as either “held to maturity” or “available for sale”, or purchase any debt securities that would not be classified as “available for sale”, or fail to comply with any duties or obligations of any investment security;

(v) except for unfunded loan commitments, loans currently under consideration, and loans made under FSB’s tax lending program, each of which are disclosed in Schedule 2.11 of the FSB Disclosure Schedule, make, renew, or otherwise modify any loan, loan commitment, letter of credit, or other extension of credit

(individually, a “**Loan**” and collectively, “**Loans**”) to any Person if the Loan is an existing credit on the books of FSB and classified as “Other Loans Especially Mentioned,” “Substandard,” “Doubtful,” or “Loss”. FSB also shall not make, purchase, renew, modify, amend, or extend the maturity of (1) any new commercial Loan, (2) any 1 to 4 family residential mortgage Loan with a loan to value in excess of 80% (unless private mortgage insurance is obtained) or any other 1 to 4 family residential mortgage Loan in excess of \$350,000; *provided, however*, that in the event the loan is to be sold to an investor such loan will not be subject to this section if the loan meets the criteria of the investor, (3) any consumer Loan in excess of \$50,000, (4) any home equity Loan or line of credit in excess of \$50,000, or (5) any Loan participation; *provided*, that FSB may take any such action in respect of any such Loan or Loans if the Chief Credit Officer of THSB shall be provided with notice of the proposed action in writing and THSB shall not provide written objection to the taking of such proposed action within three (3) business days of being provided with such notice (the lack of such objection being deemed prior written consent of THSB for purposes of this Section);

(vi) except (1) as contemplated by this Agreement, (2) as disclosed on Schedule 4.04(vi) of the FSB Disclosure Schedule, (3) in accordance with the terms of any FSB Plan, or (4) for increases in an individual’s annual salary in the ordinary course of business consistent with past practice in an amount less than five percent (5.00%), pay or agree to pay, conditionally or otherwise, any additional compensation (including bonuses) or severance benefit, take any action that would give rise to an acceleration of the right to payment, or otherwise make any changes with respect to the fees or compensation payable (or to become payable) to consultants, directors, officers, or employees, or, except as required by Law, or except as contemplated by this Agreement, adopt or make any change in any FSB Plan or other arrangement (including any agreement for indemnification) or payment made to, for or with any of such consultants, directors, officers, or employees;

(vii) fail to accrue, pay, discharge, and satisfy all debts, liabilities, obligations, and expenses, including, without limitation, trade payables, incurred in the regular and ordinary course of business as such debts, liabilities, obligations, and expenses become due, unless the same are being contested in good faith;

(viii) except for obligations disclosed in this Agreement, federal funds purchased by FSB, trade payables, loan advances from the Federal Home Loan Bank of Chicago with notice and approval by THSB, and similar liabilities and obligations incurred in the ordinary course of business and the payment, discharge or satisfaction in the ordinary course of business of liabilities reflected in the FSB Financial Statements or the Subsequent FSB Financial Statements, borrow any money or incur any indebtedness in an aggregate amount exceeding \$500,000;

(ix) change its accounting methods, except as may be necessary and appropriate to conform to (1) changes in tax law requirements, (2) changes in GAAP or regulatory accounting principles, as required by FSB’s independent auditors or its regulatory authorities, or (3) changes requested by THSB pursuant to this Agreement;

(x) make, change, or revoke any material tax election, file any material amended tax return, enter into any closing agreement with respect to a material amount of taxes, settle any material tax claim or assessment, or surrender any right to claim a refund of a material amount of taxes;

(xi) make application for the opening or closing of any, or open or close any, branch or automated banking facility;

(xii) waive, release, grant, or transfer any material rights of value or enter into, amend, or terminate (or give notice of termination with respect to) any contract, agreement, lease, commitment, understanding, arrangement, or transaction or incur any liability or obligation (other than as contemplated by Section 4.04(v) and legal, accounting, and investment banking or financial advisory fees related to the Merger), or which contain any financial commitment extending more than twelve (12) months following the date of this Agreement;

(xiii) except as already committed in writing as of the date of this Agreement, make any capital expenditures in excess of \$10,000 individually or \$25,000 in the aggregate;

(xiv) except as required by applicable Law or regulation: (1) implement or adopt any material change in its interest rate risk management or hedging policies, procedures, or practices; (2) fail to follow its existing policies or practices with respect to managing its exposure to interest rate risk; or (3) fail to use commercially reasonable means to avoid any material increase in its aggregate exposure to interest rate risk;

(xv) take any action that would change FSB's loan loss reserves that is not in compliance with FSB's policy and past practices consistently applied and in compliance with GAAP;

(xvi) except as already committed in writing as of the date of this Agreement, cancel, release, or compromise any indebtedness owing to FSB or any claims which FSB may possess, or voluntarily waive any material rights with respect thereto;

(xvii) pay, discharge, settle, or compromise any litigation, claim, action, arbitration, or other proceeding against FSB, unless such payment, discharge, settlement, or compromise does not require FSB to pay any monies, incur any obligation or admit any wrongdoing or liability;

(xviii) take any action that is intended or is reasonably likely to result in (A) any of its representations or warranties set forth in this Agreement being or becoming untrue, (B) any of the conditions to the Merger set forth in this Agreement not being satisfied, or (C) a breach of any provision of this Agreement; except, in each case, as may be required by applicable Law;

(xix) maintain the rate of interest paid by FSB on any deposit product, including without limitation on certificates of deposit, in a manner and pursuant to policies inconsistent with past practices;

(xx) amend the Certificate of Incorporation or Bylaws of FSB, or similar governing documents of FSB;

(xxi) maintain an allowance for loan and lease losses which is not adequate in all material respects under the requirements of GAAP, as determined in the reasonable discretion of THSB, to provide for possible losses, net of recoveries, relating to Loans previously charged off, on Loans and leases outstanding;

(xxii) make any new loan or other extension of credit to any Marijuana Related Business; or

(xxiii) agree or commit to do, or enter into any contract regarding, anything that would be precluded by this Section.

**4.05 Insurance.** FSB shall maintain, or cause to be maintained, in full force and effect, all currently in-force insurance on its assets, properties, and operations, including, but not limited to, its financial institutions bond, directors' and officers' liability insurance, cybersecurity insurance, employment practices liability insurance, and property and casualty insurance in such amounts and with regard to such liabilities and hazards as are currently insured by FSB as of the date of this Agreement.

#### **4.06 Accruals for Loan Loss Reserve and Expenses.**

(a) Prior to the Effective Time, FSB shall make, consistent with GAAP and applicable banking laws and regulations, such appropriate accounting entries in its books and records and use commercially reasonable efforts to take such other actions as FSB shall deem to be necessary or desirable in anticipation of the Merger including, without limitation, accruals or the creation of reserves for employee benefits and Merger-related expenses.

(b) Subject to applicable Law (including, without limitation, applicable banking laws and regulations and GAAP), FSB shall consult and cooperate in good faith with THSB with respect to determining, as reasonably specified in a written notice from THSB to FSB, based upon such consultation and subject to the conditions in Section 4.06(d), the amount and the timing for recognizing for financial accounting and/or income tax reporting purposes of FSB's expenses of the Merger.

(c) Subject to applicable Law (including, without limitation, applicable banking laws and regulations and GAAP), FSB shall make such conforming changes and entries as contemplated in Section 4.06(b) above, but: (i) in no event prior to the fifth (5<sup>th</sup>) day next preceding the Closing Date; (ii) only after THSB acknowledges in writing that all conditions to its obligation to consummate the Merger have been satisfied and certifies in writing to FSB that THSB will at the Effective Time deliver to FSB the certificate contemplated in Section 6.02(f); and (iii) the conforming changes and entries as contemplated in this Section 4.06 shall have no impact on the calculation of FSB Adjusted Consolidated Bank Equity Capital.

(d) Notwithstanding anything to the contrary contained herein, FSB's representations, warranties, and covenants contained in this Agreement shall not be deemed to be untrue or

breached in any respect for any purpose as a consequence of any modifications or changes undertaken at THSB's request in compliance with this Section 4.06(d).

#### **4.07 Acquisition Proposals.**

(a) FSB will, and will cause its officers, directors, and representatives to, immediately cease and cause to be terminated any existing solicitations, discussions, or negotiations with any Person concerning an Acquisition Proposal (as defined in Section 4.07(e)). During the period from the date of this Agreement through the Effective Time, FSB shall not terminate, amend, modify, or waive any material provision of any confidentiality or similar agreement to which FSB is a party (other than any involving THSB).

(b) Except as permitted in this Section 4.07, FSB shall not, and shall cause its directors, officers, and representatives not to, (i) solicit, initiate, or knowingly encourage or facilitate, or take any other action designed to, or that could reasonably be expected to, facilitate (including by way of furnishing non-public information) any inquiries with respect to an Acquisition Proposal, or (ii) engage or participate in discussions with any Person regarding an Acquisition Proposal, except in each case as to notify such Person of the existence of the provisions of this Section 4.07. Without limiting the foregoing, it is agreed that any violation of the restrictions contained in the first sentence of this Section 4.07(b) by any representative of FSB shall be a breach of this Section 4.07 by FSB.

(c) Neither the FSB Board nor any committee thereof shall (or shall agree or resolve to) (i) fail to make, withdraw, or modify in a manner adverse to THSB or propose to withdraw or modify in a manner adverse to THSB (or take any action inconsistent with) the recommendation by the FSB Board or any such committee of this Agreement or the Merger, or approve or recommend, or propose to recommend, the approval or recommendation of any Acquisition Proposal (any of the foregoing being referred to herein as an “**Adverse Recommendation Change**”), or (ii) cause or permit FSB to enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement, or other agreement (each, an “**Acquisition Agreement**”) constituting or related to, or which is intended to or would be reasonably likely to lead to, any Acquisition Proposal ). Notwithstanding the foregoing, at any time prior to the special meeting of the FSB Members to approve the Merger, or any time prior to the Effective Time, in the event the vote of the FSB Members is waived, the FSB Board may, in response to a Superior Proposal, effect an Adverse Recommendation Change, *provided*, that the FSB Board determines in good faith, after consultation with its outside legal counsel, that the failure to do so would be reasonably likely to result in a breach of its fiduciary duties to the members of FSB under applicable Law, and *provided, further*, that the FSB Board may not effect such an Adverse Recommendation Change unless (A) the FSB Board shall have first provided prior written notice to THSB (an “**Adverse Recommendation Change Notice**”) that it is prepared to effect an Adverse Recommendation Change in response to a Superior Proposal, which notice shall, in the case of a Superior Proposal, attach the most current version of any proposed written agreement or letter of intent relating to the transaction that constitutes such Superior Proposal (it being understood that any amendment to the financial terms or any other material term of such Superior Proposal shall require a new notice and a new ten (10) business day period) and (B) THSB does not make, within ten (10) business days after receipt of such notice, a proposal that would, in



the reasonable good faith judgment of the FSB Board (after consultation with financial advisors and outside legal counsel), cause the offer previously constituting a Superior Proposal to no longer constitute a Superior Proposal or that the Adverse Recommendation Change is no longer required to comply with the FSB Board's fiduciary duties to the shareholders of FSB under applicable Law. FSB agrees that, during the ten (10) business day period prior to its effecting an Adverse Recommendation Change, FSB and its officers, directors, and representatives shall negotiate in good faith with THSB and its officers, directors, and representatives regarding any revisions to the terms of the transactions contemplated by this Agreement proposed by THSB.

(d) In addition to the obligations of FSB set forth in paragraphs (a), (b) and (c) of this Section 4.07, FSB shall as promptly as possible, and in any event within two (2) business days after FSB first obtains knowledge of the receipt thereof, advise THSB orally and in writing of (i) any Acquisition Proposal or any request for information that FSB reasonably believes could lead to or contemplates an Acquisition Proposal or (ii) any inquiry FSB reasonably believes could lead to any Acquisition Proposal, along with the terms and conditions of such Acquisition Proposal, request, or inquiry (including any subsequent amendment or other modification to such terms and conditions) and the identity of the Person making any such Acquisition Proposal or request or inquiry. In connection with any such Acquisition Proposal, request, or inquiry, if there occurs or is presented to FSB any offer, material change, modification, or development to a previously made offer, letter of intent, or any other material development, FSB (or its outside counsel) shall (A) advise and confer with THSB (or its outside counsel) regarding the progress of negotiations concerning any Acquisition Proposal, the material resolved and unresolved issues related thereto, and the material terms (including material amendments or proposed amendments as to price and other material terms) of any such Acquisition Proposal, request, or inquiry, and (B) promptly upon receipt or delivery thereof provide THSB with true, correct, and complete copies of any document or communication related thereto.

(e) For purposes of this Agreement, "**Acquisition Proposal**" shall mean (i) any inquiry, proposal, or offer from any Person or group of Persons (other than as contemplated by this Agreement) relating to, or that could reasonably be expected to lead to, any direct or indirect acquisition or purchase, in one transaction or a series of transactions, of (A) assets or businesses that constitute 20% or more of the revenues, net income, or assets of FSB, taken as a whole; or (B) (i) any merger, consolidation, business combination, recapitalization, liquidation, dissolution, joint venture, or similar transaction involving FSB pursuant to which any Person or the shareholders of any Person would acquire "control" of FSB as defined under the BHC Act and Regulation Y promulgated thereunder; or (ii) any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Merger or that could reasonably be expected to dilute materially the benefits to THSB of the transactions contemplated hereby, other than the transactions contemplated hereby. For purposes of this Section 4.07, a "**Person**" shall include a natural person, or any legal, commercial, or Governmental Authority, including, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any Person acting in a representative capacity.

(f) For purposes of this Agreement, "**Superior Proposal**" shall mean any written offer made by a third party to consummate an Acquisition Proposal that the FSB Board determines in good faith (after consulting with its outside legal counsel and its financial advisers) would, if

consummated, be more favorable to the FSB Members than the transactions contemplated by this Agreement (taking into account all the factors relating to such Superior Proposal deemed relevant by the FSB Board, including without limitation, the amount and form of consideration, the timing of payment, risk of consummation of the transaction, the financing thereof, and all other conditions thereto (including any changes to the terms and conditions of this Agreement and the transactions contemplated herein proposed by THSB in response to such offer)).

**4.08 Press Releases.** THSB and FSB shall use reasonable efforts (i) to develop a joint communications plan with respect to this Agreement and the transactions contemplated hereby, (ii) to ensure that all press releases and other public statements with respect to this Agreement and the transactions contemplated hereby shall be consistent with such joint communications plan, and (iii) except where (and to the extent that) such prior consultation is not reasonably possible due to time considerations in respect of any announcement required by applicable Law, to consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement or the transactions contemplated hereby.

**4.09 Changes and Supplements to Disclosure Schedules.** FSB shall promptly supplement, amend, and update, upon the occurrence of any change prior to the Effective Time, and as of the Effective Time, the FSB Disclosure Schedule with respect to any matters or events hereafter arising which, if in existence or having occurred as of the date of this Agreement, would have been required to be set forth or listed on the FSB Disclosure Schedule or this Agreement and including, without limitation, any fact which, if existing or known as of the date hereof, would have made any of the representations or warranties of FSB contained herein incorrect, untrue, or misleading. No such supplement, amendment, or update shall have any effect for the purposes of determining satisfaction of the conditions set forth in Article VI or become part of the FSB Disclosure Schedule unless THSB shall have first consented in writing with respect thereof (which consent shall not be unreasonably withheld, conditioned, or delayed).

**4.10 Failure to Fulfill Conditions; Cooperation.** In the event FSB determines that a condition to its obligation to complete the Merger cannot be fulfilled, it will promptly notify THSB. FSB shall cooperate fully, completely, and promptly with THSB in connection with satisfying all conditions set forth in this Agreement and effecting the transactions contemplated by this Agreement.

**4.11 Access; Information.**

(a) THSB and its representatives and agents, shall, upon reasonable notice to FSB, at all times during normal business hours prior to the Effective Time, have full and continuing access to the employees, properties, facilities, operations, books, and records of FSB. THSB and its representatives and agents may, prior to the Effective Time, have discussions with the employees of FSB in order to familiarize itself and themselves with the abilities and responsibilities of such employees, and make or cause to be made such reasonable investigation of the operations, books, records, and properties of FSB and of their financial and legal condition as deemed necessary or advisable to familiarize themselves with such employees, operations, books, records, properties, and other matters; *provided, however*, that such access or investigation shall not interfere unnecessarily or unreasonably with the normal business operations of FSB. In addition, after receipt of all Regulatory Approvals and required member approvals, if any, FSB shall cooperate

with THSB to facilitate introductions to FSB's customers and key business partners and referral sources.

(b) Notwithstanding anything to the contrary contained herein, no investigation by THSB or FSB shall affect the representations and warranties made by FSB or THSB herein.

(c) Any confidential information or trade secrets received by THSB, FSB or their representatives or agents in the course of such examination will be treated confidentially, and any correspondence, memoranda, records, copies, documents, and electronic or other media of any kind containing such confidential information or trade secrets or both shall be destroyed by THSB or FSB, as applicable, or at THSB's or FSB's request, returned to THSB or FSB, as applicable, in the event this Agreement is terminated as provided in Article VII hereof; *provided, however*, that the parties may retain such received confidential information to comply with applicable Law or regulation or professional standard or bona fide internal compliance policy requirements. Additionally, any confidential information or trade secrets received by THSB or FSB, or either of their agents or representatives in the course of their examinations (whether conducted prior to or after the date of this Agreement) shall be treated confidentially. and in accordance with the Confidentiality Agreement (as defined in Section 10.09).

(d) This Section 4.11 will not require the disclosure of any information to THSB or FSB: (i) which would be prohibited by law, including the disclosure of confidential supervisory information; or (ii) which would be subject to attorney-client privilege.

(e) Except to the extent prohibited by applicable Law or any Regulatory Agency, in order to provide for a smooth transition after the Closing, FSB shall provide THSB with copies of minutes and consents from all FSB Board and committee meetings no later than fourteen (14) days thereafter; *provided, however*, that such materials shall not include matters related to discussions concerning matters that the FSB Board or its legal counsel has reasonably determined to be subject to attorney-client privilege.

**4.12 Financial Statements.** As soon as available after the date of this Agreement, FSB will deliver to THSB any additional audited consolidated financial statements which are prepared on its behalf or at its direction, the quarterly consolidated unaudited balance sheets and profit and loss statements of FSB prepared for its internal use, FSB's Call Reports for each quarterly period completed prior to the Effective Time, all other financial reports or statements submitted to regulatory authorities after the date hereof, and all other financial statements and financial information reasonably requested by THSB (collectively, "**Subsequent FSB Financial Statements**"). The Subsequent FSB Financial Statements will be prepared on a basis consistent with past accounting practices and GAAP (to the extent applicable) and shall present fairly the financial condition and results of operations as of the dates and for the periods presented (except in the case of Call Report information for the absence of notes and/or year-end adjustments).

**4.13 Environmental.** FSB will cooperate with the conduct, at any time after the date hereof until the Effective Time (the "**Investigation Period**"), of such physical, zoning, land use, environmental, and other inspections, examinations, and investigations of the Real Property by THSB or its designees, including, without limitation any Phase I or Phase II environmental site assessments and surveys of the Real Property (the "**Property Inspections**"). Subject to the rights

of any tenants arising under their leases affecting the applicable Owned Real Property, THSB shall conduct the Property Inspections during reasonable business hours with at least two (2) days' prior notice to FSB. THSB may conduct the Phase I environmental site assessment at its sole cost and expense. If a Phase II environmental site assessment is required as a result of a Phase I environmental site assessment, FSB and THSB shall conduct the Phase II environmental site assessment and share the expense equally up to ten thousand dollars (\$10,000.00). Any expenses greater than ten thousand dollars (\$10,000.00) for the Phase II environmental site assessment shall be at the sole expense of FSB. If any environmental clean-up or remedial costs are necessary as a result of the Phase II site assessment ("**Phase II Remedy Costs**"), FSB shall be solely responsible for the Phase II Remedy Costs. THSB shall furnish true and complete copies of any reports of the environmental consulting firm designated by THSB (the "**Designated Environmental Consultant**") that it receives with respect to any Real Property, promptly upon THSB's receipt of such reports.

**4.14 Governmental Reports and Member Information.** Promptly upon it becoming available, FSB shall furnish to THSB one (1) copy of each financial statement, report, or notice sent by FSB to any Governmental Authority or to the FSB Members, and of any order issued by any Governmental Authority in any proceeding to which FSB is a party. For purposes of this Agreement, "**Governmental Authority**" shall mean any court, board, agency, department, committee, commission, central bank, office or authority of any nature whatsoever (including any political subdivision or instrumentality thereof) for any governmental or quasi-governmental unit (whether federal, state, commonwealth, county, district, municipal, city, parish, provincial or otherwise) now or hereafter in existence (including, without limitation, (i) any state regulatory authority, (ii) the SEC, (iii) the FRB, (iv) the FDIC, and (v) any self-regulatory organization of which FSB is a member ((i) – (v), collectively, "**Regulatory Agencies**", and individually, a Regulatory Agency)).

**4.15 Adverse Actions.** FSB shall not knowingly take any action that is intended or is reasonably likely to result in (a) any of its representations and warranties set forth in this Agreement being or becoming untrue in any respect at any time at or prior to the Effective Time, (b) any of the conditions to the Merger set forth in Article VI not being satisfied, (c) a material violation of any provision of this Agreement, (d) a material delay in the consummation of the Merger except, in each case, as may be required by applicable Law or regulation, or (e) any payment to Persons who are disqualified individuals in respect of FSB, or its successors, not being allowable as deductions for federal income tax purposes reason of Section 280G of the Code.

**4.16 Employee Benefits and Employees.**

(a) Neither the terms of Section 5.03 hereof nor the provision of any employee benefits by THSB to employees of FSB shall: (i) create any employment contract, agreement, or understanding with or employment rights for, or constitute a commitment or obligation of employment to, any of the officers or employees of FSB; or (ii) prohibit or restrict THSB, whether before or after the Effective Time, from changing, amending, or terminating any employee benefits provided to its employees from time to time.

(b) Nothing in this Agreement shall be deemed to (i) establish, amend, or modify any FSB Plan, THSB Plan or any other benefit or employment plan, program, agreement or

arrangement, or (ii) alter or limit the ability of FSB, the Surviving Corporation or any of its affiliates to amend, modify or terminate any particular FSB Plan, THSB Plan or any other benefit or employment plan, program, agreement or arrangement after the Effective Time. Without limiting the generality of and subject to Section 5.03(f), nothing in this Agreement, express or implied, is intended to or shall confer upon any person, including any current or former employee, officer, director or consultant of FSB or affiliates, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(c) Before Closing, with FSB's prior consent (which consent shall not be unreasonably withheld), THSB may conduct such training and other programs as it may, in its reasonable discretion and at its sole expense, elect to provide for those employees who will be continuing employment with THSB; *provided, however*, that such training and other programs shall not materially interfere with or prevent the performance of the normal business operations of FSB.

(d) THSB and FSB agree to address any issues related to the differences between the vacation and paid time off policies of THSB (including, without limitation, any banked paid time) and the vacation and paid time off policies of FSB governing the use of paid time off accrued prior to the Effective Time, and prior to the Effective Time, communicate the proposed reconciliation of the policies to employees of FSB who continue as employees of THSB after the Effective Time ("**Continuing Employees**"). Effective as of the later of the Effective Time or the date on which the THSB vacation and paid time off policies are made available to the Continuing Employees, such Continuing Employees will be subject to the terms and conditions of the THSB vacation/paid time off policy in place for similarly situated employees of THSB.

#### **4.17 Termination of 401(k) Plan.**

(a) FSB shall make, or cause to be made, timely contributions to the First Savings Bank 401(k) Plan (the "**FSB 401(k) Plan**") between the date hereof and the Effective Time consistent with the terms of the FSB 401(k) Plan and past practices, including, without limitation, elective deferral contributions of those FSB 401(k) Plan participants who are employed by FSB or its Subsidiaries.

(b) No later than twenty (20) business days prior to the Closing Date, FSB, pursuant to the provisions of the FSB 401(k) Plan, shall, subject to review and approval by THSB and to consummation of the Merger: (i) adopt, or cause to be adopted, resolutions to terminate the FSB 401(k) Plan, consistent with the provisions of Code Section 401(k)(10), effective as of a date that is not later than the day before the Closing Date (the "**Plan Termination Date**") and (ii) amend, or cause to be amended, the FSB 401(k) Plan effective as of a date not later than the Plan Termination Date to vest fully all accrued benefits and to provide that all benefits under the FSB 401(k) Plan shall be distributed in accordance with plan terms as soon as administratively feasible after the termination date.

(c) Any contributions due to the FSB 401(k) Plan for the period prior to the Plan Termination Date, and not yet paid on the Plan Termination Date, will be contributed, or caused to be contributed by FSB as soon as administratively feasible following the Plan Termination Date.

(d) FSB shall continue, or cause to be continued, in full force and effect, until the Effective Time: (i) the fidelity bond, if any, issued to FSB as described in ERISA Section 412; and (ii) the ERISA fiduciary liability insurance policy currently in effect, if any, for the benefit of the covered fiduciaries of the FSB 401(k) Plan.

#### **4.18 Disposition of Welfare Benefit and Sec. 125 Plans.**

(a) Any welfare benefit (health, dental/vision, life/AD&D, LTD), Internal Revenue Code Section 125, or “cafeteria,” plans currently sponsored by FSB or First Savings Bank shall be terminated as of the Effective Time on terms reasonably acceptable to THSB, unless THSB determines that any such plan shall be continued past the Effective Time. FSB shall take, or cause to be taken, all actions necessary to terminate all of FSB’s group insurance policies before the Effective Time on terms reasonably acceptable to THSB, unless otherwise instructed by THSB.

(b) From the date of this Agreement through the Effective Time, FSB shall continue to: (i) pay the applicable insurance premiums necessary to continue the benefits under FSB’s welfare benefit plans; (ii) contribute to the cafeteria plan the pre-tax amounts which the cafeteria plan participants elect to defer from compensation; and (iii) pay all eligible claims incurred, in accordance with the terms and conditions of such plan, under the cafeteria plan’s health and dependent care flexible spending accounts prior to the Effective Time.

(c) In the event any FSB cafeteria plan is terminated prior to the Closing Date, the balances in any health and dependent care flexible spending accounts thereunder as of the date of termination shall be transferred to the applicable components of the THSB cafeteria plan to the extent permitted under the THSB plan. Benefit and compensation deferral elections in effect at that time shall be continued under the THSB cafeteria plan, subject to subsequent changes as provided in the THSB plan. All benefit payments related to the transferred balances shall be made in accordance with the THSB cafeteria plan.

**4.19 Cooperation on Conversion of Systems.** FSB agrees to commence immediately after the date of this Agreement (and continue until Closing or completed) using its commercially reasonable efforts to ensure an orderly transfer of information, processes, systems, and data to THSB and to otherwise assist THSB in facilitating the conversion of all of FSB’s systems into, or to conform with, THSB’s systems (including cooperating with THSB in the training of FSB’s employees on THSB’s systems), so that, as of the Closing, the systems of FSB are readily convertible to THSB’s systems to the fullest extent possible without actually converting them prior to the Closing. At its own discretion, THSB will convert FSB’s systems to THSB’s systems following the Closing. FSB and THSB shall meet on a regular basis to discuss and plan for the conversion of FSB’s data processing and related electronic informational systems to those used by THSB, which planning shall include, without limitation: (i) discussion of possible termination by FSB of third-party service provider arrangements effective at or following the Effective Time; (ii) non-renewal of personal property leases and software licenses used by FSB in connection with its systems operations; and (iii) retention of outside consultants and additional employees to assist with the conversion and outsourcing, as appropriate, of proprietary or self-provided system services.

**4.20 Installation/Conversion of Equipment.** Prior to the Effective Time, at times mutually agreeable to THSB and FSB, THSB may, at THSB's sole expense, install teller equipment, platform equipment, security equipment, and computers at the FSB offices, branches, and ATM locations, and FSB shall cooperate with THSB in connection with such installation; *provided, however*, that such installations shall not interfere with the normal business activities and operations of FSB or require material alterations to FSB's facilities.

**4.21 Termination of Contracts.** FSB shall cooperate with THSB to determine which contracts, agreements, or arrangements will not be retained by THSB and will be terminated (collectively, the "**Terminated Contracts**"). FSB shall promptly give notice and take all other appropriate and commercially reasonable actions to terminate the Terminated Contracts and to determine any and all termination costs, including without limitation, early termination fees, penalties, and recaptures of discounts.

**4.22 Accuracy of Information Provided to THSB.** FSB agrees that the information concerning FSB that is provided or to be provided by FSB to THSB for inclusion in any documents filed or to be filed with any regulatory authority or Governmental Authority in connection with the Merger and the other transactions contemplated by this Agreement will, at the respective times such documents are filed, not be false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, FSB shall have no responsibility for the truth or accuracy of any information supplied by THSB with respect to THSB or any of their affiliates contained in any document submitted to, or other communication with, any Governmental Authority.

## **ARTICLE V.**

### **COVENANTS OF THSB**

THSB covenants and agrees with FSB and covenants and agrees to act as follows (and FSB covenants and agrees with THSB as follows):

**5.01 Approvals.** THSB shall have primary responsibility of the preparation, filing, and costs of all bank regulatory applications required for consummation of the Merger, and THSB shall file such applications as promptly as practicable after the execution of this Agreement and in no event later than twenty (20) business days after the date hereof. THSB shall provide to FSB and its counsel copies of all applications filed and copies of all material written communications with all state and federal bank regulatory agencies relating to such applications. THSB and FSB shall cooperate fully and use commercially reasonable efforts to procure, upon terms and conditions reasonably acceptable to each of them, all consents, authorizations, approvals, registrations, and certificates, to complete all filings and applications and to satisfy all other requirements prescribed by law which are necessary for consummation of the Merger on the terms and conditions provided in this Agreement.

**5.02 Liquidation Account.** THSB shall establish the limited duration liquidation account, attached hereto as **Exhibit A**, to become effective as of the Effective Time and terminate on the third (3<sup>rd</sup>) anniversary of the Closing Date.

### 5.03 Employee Benefit Plans and Employee Payments.

(a) Commencing on or around the Effective Time, THSB shall make available to the officers and employees of FSB who continue as employees of THSB after the Effective Time (“**Continuing Employees**”), substantially the same employee benefits as are generally available to all similarly situated THSB employees, except where different benefits are required by other provisions of this Agreement.

(b) From and after the Effective Time, Continuing Employees will be subject to the terms and conditions of the THSB vacation/paid time off policy in place for similarly situated employees of THSB, with credit given for all prior years of service with FSB for purposes of determining vacation/paid time off pay eligibility and the amount of such vacation/paid time off pay.

(c) For purposes of participation and vesting (but not benefit accruals other than for paid time off and severance) under the employee benefit plans, programs or arrangements sponsored or maintained by THSB (each a “**THSB Benefit Plan**” and collectively the “**THSB Benefit Plans**”), service with or credited or recognized by FSB under the corresponding FSB Benefit Plan shall be treated as service with THSB, provided, however, that such service shall not be recognized to the extent that such recognition would result in a duplication of benefits. To the extent permitted under applicable law, for the plan year during which Continuing Employees transition to the welfare THSB Benefit Plans, THSB shall use its best efforts to cause welfare THSB Benefit Plans that cover the Continuing Employees after the Effective Time to (i) waive any waiting period and restrictions and limitations for preexisting conditions or insurability (except for pre-existing conditions that were excluded, or restrictions or limitations that were applicable, under the FSB Benefit Plans), and (ii) cause any deductible, co-insurance, or maximum out-of-pocket payments made by the Continuing Employees under welfare FSB Benefit Plans to be credited to such Continuing Employees under welfare THSB Benefit Plans, so as to reduce the amount of any deductible, co-insurance or maximum out-of-pocket payments payable by such Continuing Employees under welfare THSB

(d) Each Continuing Employee shall be eligible to participate in the THSB 401(k) Plan on or as soon as administratively practicable after the Effective Time. Any other former employee of FSB who is employed by THSB after the Effective Time shall be eligible to be a participant in the THSB 401(k) Plan upon complying with eligibility requirements. Service with or credited or recognized by FSB shall be recognized as service under the THSB 401(k) Plan.

(e) THSB may elect to continue to maintain all FSB employee welfare benefit and cafeteria plans currently in effect at the Effective Time until such time as THSB determines, in its sole discretion, to modify or terminate any or all of those plans. Claims incurred under the employee welfare benefit and cafeteria plans prior to plan termination shall be paid in accordance with the applicable plan’s claim submission procedures and deadlines.

(f) Until the Effective Time, FSB shall be liable for all obligations for continued health coverage pursuant to Section 4980B of the Code and Sections 601 through 609 of ERISA (“**COBRA**”) for eligible employees who incur a qualifying event before the Effective Time. THSB shall, after the Effective Time, be liable for (i) all obligations for continued health coverage under



COBRA with respect to each qualified beneficiary of FSB who incurs a termination on and after the Effective Time, and (ii) for continued health coverage under COBRA from and after the Effective Time for each qualified beneficiary of FSB who incurs a qualifying event before the Effective Time.

**5.04 Adverse Actions.** THSB shall not knowingly take any action that is intended or is reasonably likely to result in (a) any of its representations and warranties set forth in this Agreement being or becoming untrue in any respect at any time at or prior to the Effective Time, (b) any of the conditions to the Merger set forth in Article VI not being satisfied, or (c) a material violation of any provision of this Agreement.

**5.05 Indemnification.**

(a) For a period of two (2) years following the Effective Time, THSB agrees that all rights to indemnification (including rights to advancement of expenses) provided for in the respective Certificate/Articles of Incorporation and Bylaws of FSB, or required under any applicable Law, in each case as in effect on the date hereof, will survive the Merger and will not be amended, repealed, or otherwise modified in any manner that would adversely affect the rights thereunder of the present and former directors and officers of FSB (each, an “**Indemnified Party**”) for acts or omissions occurring or alleged to have occurred at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time. Notwithstanding anything to the contrary contained in this Section 5.05, THSB shall not be required to indemnify, defend, or hold harmless any Indemnified Party to a greater extent than either FSB could, as of the date of this Agreement, indemnify, defend, and hold harmless such Indemnified Party, and indemnification shall only be provided to the extent it is permitted by any applicable federal or state Laws.

(b) The provisions of this Section 5.05 shall survive the Effective Time and are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party and his or her heirs and personal representatives.

(c) In the event that either THSB or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving entity of such consolidation or merger, or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of THSB shall assume the obligations set forth in this Section 5.05.

(d) The following provisions shall apply to any challenge or litigation brought against FSB or their respective employees, officers, and directors with respect to the execution and/or consummation of this Agreement, or the transactions contemplated hereby (“**Transaction Litigation**”):

(i) At all times before the Closing, FSB shall keep THSB fully informed about the conduct of any Transaction Litigation and shall not settle any such Transaction Litigation without THSB’s advance written consent (which consent shall not be unreasonably withheld, conditioned, or delayed).

(ii) Should Transaction Litigation continue or be initiated after the Closing, THSB shall have the sole right to control the defense of the Transaction Litigation, including the right to settle any such litigation without consent from any FSB employees, officers, or directors who are defendants, so long as such settlement does not, with respect to any such defendants, (1) involve an admission of fault or personal liability, (2) impose any legal restrictions on such defendant's future conduct, or (3) require payment of any amount in settlement.

**5.06 Changes and Supplements to THSB Disclosure Schedules.** THSB shall promptly supplement, amend, and update, upon the occurrence of any change prior to the Effective Time, and as of the Effective Time, the THSB Disclosure Schedule with respect to any matters or events hereafter arising which, if in existence or having occurred as of the date of this Agreement, would have been required to be set forth or listed on the THSB Disclosure Schedule or this Agreement and including, without limitation, any fact which, if existing or known as of the date hereof, would have made any of the representations or warranties of THSB contained herein materially incorrect, untrue or misleading. No such supplement, amendment, or update shall have any effect for the purposes of determining satisfaction of the conditions set forth in Article VI or become part of the THSB Disclosure Schedule unless FSB shall have first consented in writing with respect thereof.

**5.07 Failure to Fulfill Conditions; Cooperation.** In the event THSB determines that a condition to its obligation to complete the Merger cannot be fulfilled, it will promptly notify FSB. THSB shall cooperate fully, completely, and promptly with FSB in connection with satisfying all conditions set forth in this Agreement and effecting the transactions contemplated by this Agreement.

## ARTICLE VI.

### CONDITIONS PRECEDENT TO THE MERGER

**6.01 Conditions Precedent to THSB's Obligations.** The obligation of THSB to consummate the Merger is subject to the satisfaction and fulfillment of each of the following conditions on or prior to the Effective Time, unless waived in writing by THSB:

(a) **Representations and Warranties at Effective Time.** The representations and warranties of FSB set forth in Section 2.01 (Organization and Authority), Section 2.02 (Authorization), Section 2.03 (Capitalization), Section 2.13 (No Member Rights Plan), Section 2.18 (Deposit Insurance), Section 2.20 (Broker's, Finder's or Other Fees), Section 2.24 (Member Approval), Section 2.27 (Community Reinvestment Act), and Section 2.30 (Agreements with Regulatory Agencies)(in each case after giving effect to the lead in to Article II) shall be true and correct in each case as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date. All other representations and warranties of FSB set forth in this Agreement (without giving effect to any qualification as to materiality or Material Adverse Effect set forth in such representations or warranties but, in each case, after giving effect to the lead in to Article II) shall be true and correct in all respects as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date; *provided, however*, that for purposes of this sentence, such

representations and warranties shall be deemed to be true and correct unless the failure or failures of such representations and warranties to be so true and correct, either individually or in the aggregate, and without giving effect to any qualification as to materiality or Material Adverse Effect set forth in such representations or warranties, has had or would reasonably be expected to have a Material Adverse Effect on FSB or the Surviving Corporation.

(b) **Covenants.** Each of the covenants and agreements of FSB shall have been fulfilled or complied with in all material respects from the date of this Agreement through and as of the Effective Time.

(c) **Deliveries at Closing.** THSB shall have received from FSB at the Closing the items and documents, in form and content reasonably satisfactory to THSB, set forth in Section 9.02(b).

(d) **Regulatory Approvals.** All regulatory approvals required to consummate the transactions contemplated hereby (“**Regulatory Approvals**”) shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired and no such approvals shall contain any conditions, restrictions, or requirements which the THSB Board reasonably determines in good faith would (i) following the Effective Time, have a Material Adverse Effect on THSB, or (ii) materially reduce the benefits of the transactions contemplated hereby to such a degree that THSB would not have entered into this Agreement had such conditions, restrictions, or requirements been known at the date hereof.

(e) **FSB Member Approval.** In the event the IDFPR Secretary, or any other Regulatory Agency, requires the FSB Members to approve this Agreement, the FSB Members shall have approved and adopted this Agreement as required by applicable Law and the terms of this Agreement.

(f) **Termination of Agreements with Regulatory Agencies.** FSB shall have received confirmation from the Regulatory Agency or Governmental Authority that issued any written agreements, consent agreements, or memorandums of understanding to FSB, that such written agreements, consent agreements, or memorandums of understanding will be terminated promptly on terms and conditions satisfactory to THSB, at its discretion, when FSB is merged with and into THSB and that THSB.

(g) **Officers’ Certificate.** FSB shall have delivered to THSB a certificate signed by its President and its Secretary, dated as of the Effective Time, certifying that: (i) the representations and warranties of FSB contained in Article II are true, accurate and correct in all respects on and as of the Effective Time, subject to the standard specified in Section 6.01(a); (ii) all the covenants of FSB have been complied with in all material respects from the date of this Agreement through and as of the Effective Time; and (iii) FSB has satisfied and fully complied with all conditions necessary to make this Agreement effective as to it.

(h) **Material Proceedings.** Neither THSB nor FSB shall be subject to any statute, rule, regulation, injunction, order, or decree, which shall have been enacted, entered, promulgated, or enforced, which prohibits, prevents, or makes illegal the completion of the Merger, and no material claim, litigation or proceeding shall have been initiated and pending or threatened relating to the Agreement or the Merger or seeking to prevent the completion of the Merger.

(i) **Consents.** FSB shall have obtained or caused to be obtained (a) all written consents, if any, required to be obtained under the Material Contracts, and (b) all permits, authorizations, other written consents, permissions, and approvals as required for the lawful consummation of this Merger and as required under all agreements, contracts, appointments, indentures, plans, trusts or other arrangements with third parties required to effect the transactions contemplated by this Agreement.

(j) **Material Change.** No Material Adverse Effect to FSB shall have occurred or is reasonably likely to occur from the date hereof.

**6.02 Conditions Precedent to FSB's Obligations.** The obligation of FSB to consummate the Merger is subject to the satisfaction and fulfillment of each of the following conditions on or prior to the Effective Time, unless waived in writing by FSB:

(a) **Representations and Warranties at Effective Time.** Each of the representations and warranties of THSB contained in this Agreement shall be true, accurate, and correct in all respects, at and as of the Effective Time as though such representations and warranties had been made or given on and as of the Effective Time (except that representations and warranties that by their express terms speak as of the date of this Agreement or some other date shall be true and correct only as of such date).

(b) **Covenants.** Each of the covenants and agreements of THSB shall have been fulfilled or complied with in all material respects from the date of this Agreement through and as of the Effective Time.

(c) **Deliveries at Closing.** FSB shall have received from THSB at the Closing the items and documents, in form and content reasonably satisfactory to FSB, listed in Section 9.02(a) hereof.

(d) **Regulatory Approvals.** All Regulatory Approvals shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired.

(e) **Officers' Certificate.** THSB shall have delivered to FSB a certificate signed by its Chief Executive Officer and its Secretary, dated as of the Effective Time, certifying that: (i) the representations and warranties of THSB contained in Article III are true, accurate and correct in all respects on and as of the Effective Time subject to the standard specified in Section 9.02(a) above; (ii) all the covenants of THSB have been complied with in all material respects from the date of this Agreement through and as of the Effective Time; and (iii) THSB has satisfied and fully complied with all conditions necessary to make this Agreement effective as to it.

(f) **Material Proceedings.** Neither THSB nor FSB shall be subject to any statute, rule, regulation, injunction, order, or decree, which shall have been enacted, entered, promulgated, or enforced, which prohibits, prevents, or makes illegal the completion of the Merger, and no material claim, litigation, or proceeding shall have been initiated and pending or threatened seeking to prevent the completion of the Merger.

## ARTICLE VII.

### TERMINATION OF MERGER

**7.01 Termination.** This Agreement may be terminated and abandoned at any time prior to the Closing Date, only as follows:

- (a) by the mutual written consent of THSB and FSB; or
- (b) by either of FSB or THSB by written notice to the other, if:
  - (i) this Agreement and the Merger are not approved by the requisite vote of the FSB Members, if required by the IDFPR Secretary or any other Regulatory Agency;
  - (ii) (x) any Governmental Authority of competent jurisdiction shall have issued an order, decree, judgment, or injunction or taken any other action that permanently restrains, enjoins, or otherwise prohibits or makes illegal the consummation of the Merger, and such order, decree, judgment, injunction, or other action shall have become final and non-appealable; or (y) any consent or approval of any Governmental Authority whose consent or approval is required to consummate the Merger has been denied and such denial (despite the commercially reasonable efforts of the parties hereto to appeal or reverse such denial) has become final and non-appealable; or (z) any application, filing, or notice for a regulatory approval has been withdrawn at the request or recommendation of the applicable Governmental Authority; *provided, however*, that the right to terminate this Agreement under this Section 7.01(b)(ii) shall not be available to a party whose failure (or the failure of any of its affiliates) to fulfill any of its obligations (excluding warranties and representations) under this Agreement has been the cause of or resulted in the occurrence of any event described in clauses (x), (y) and (z) above;
  - (iii) the consummation of the Merger shall not have occurred on or before December 31, 2023 (the “**Outside Date**”); *provided* that the right to terminate this Agreement under this Section 7.01(b)(iii) shall not be available to any party whose breach of any provision of this Agreement causes the failure of the Merger to occur on or before the Outside Date; or
- (c) by written notice from THSB to FSB, if:
  - (i) any event shall have occurred which is not capable of being cured prior to the Outside Date and would result in any condition set forth in Section 6.01 not being satisfied prior to the Outside Date;
  - (ii) FSB breaches or fails to perform any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform would give rise to the failure of a condition set forth in Section 6.01, and such condition is incapable of being satisfied by the Outside Date or such breach has not been cured by FSB within twenty (20) business days after FSB’s receipt of written notice of such breach from THSB;

(iii) there shall have occurred after the date of this Agreement any event, change, condition, circumstance or state of facts, or aggregation of events, changes, conditions, circumstance or state of facts, that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on FSB;

(iv) if the FSB Board shall fail to include its recommendation to approve the Merger if an affirmative vote of FSB Members is required by the IDFPR Secretary or any other Regulatory Agency;

(v) in the event of an Adverse Recommendation Change or an Adverse Recommendation Change Notice;

(vi) if the FSB Board shall approve any Acquisition Proposal or publicly recommend that the FSB Members accept or approve any Acquisition Proposal; or

(vii) if FSB shall have entered into, or publicly announced its intention to enter into, a definitive agreement, agreement in principle or letter of intent with respect to any Acquisition Proposal; or

(d) by written notice from FSB to THSB if:

(i) any event shall have occurred which is not capable of being cured prior to the Outside Date and would result in any condition set forth in Section 6.02 not being satisfied prior to the Outside Date;

(ii) THSB breaches or fails to perform any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform would give rise to the failure of a condition set forth in Section 6.02 and such condition is incapable of being satisfied by the Outside Date or such breach has not been cured by THSB within twenty (20) business days after THSB's receipt of written notice of such breach from FSB;

(iii) there shall have occurred after the date of this Agreement any event, change, condition, circumstance or state of facts, or aggregation of events, changes, conditions, circumstance or state of facts, that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on THSB; or

## **7.02 Effect of Termination.**

(a) Subject to the remainder of this Section 7.02, in the event of the termination of this Agreement pursuant to Section 7.01, this Agreement shall forthwith become null and void and have no effect, without any liability on the part of THSB or FSB and each of their respective directors, officers, employees, advisors, agents, shareholders, or members and all rights and obligations of any party under this Agreement shall cease, except for the agreements contained in Sections 4.11(c) and 7.02 and Article X, which shall remain in full force and effect and survive any termination of this Agreement; *provided, however*, that nothing contained in this Agreement, including this Section 7.02, shall relieve any party hereto from liabilities or damages arising out of any fraud or intentional or willful breach by such party of any of its representations, warranties, covenants or other agreements contained in this Agreement or any related agreement.

(b) FSB shall pay to THSB an amount in cash equal to the legal, accounting, and administrative expenses borne by THSB in preparing, reviewing, negotiating, executing or undertaking any action in order to initiate, consummate and effect this Agreement and Merger (the “**Termination Fee**”) if:

- (i) this Agreement is terminated by THSB pursuant to Section 7.01(c); or
- (ii) this Agreement is terminated by either party pursuant to Section 7.01(b)(i) as a result of the failure, if required, of the FSB Members to approve this Agreement and the Merger by the requisite vote and, prior to the date that is twelve (12) months after such termination, FSB enters into any Acquisition Agreement or any Acquisition Proposal is consummated (regardless of whether such Acquisition Proposal is made or consummated before or after termination of this Agreement); or
- (iii) this Agreement is terminated by either FSB or THSB pursuant to Section 7.01(b)(iii) and (A) prior to the date of such termination, an Acquisition Proposal was made, and (B) prior to the date that is twelve (12) months after such termination, FSB enters into any Acquisition Agreement or any Acquisition Proposal is consummated.

(c) Any fee due under Section 7.02(b) shall be paid by FSB by wire transfer of same day funds concurrently with such termination.

(d) In the event THSB would be entitled to the Termination Fee pursuant to Section 7.02(a), THSB may elect, in its sole discretion, to terminate this Agreement and require the payment of such Termination Fee, in which event the Termination Fee shall be the sole and exclusive remedy for such termination event and such fee shall constitute liquidated damage; *provided, however*, this Agreement shall not be terminated until the Termination Fee is paid in full. FSB acknowledges that the agreements contained in this Section 7.02 are integral to the transactions contemplated by this Agreement, and that, without these agreements, THSB would not have entered into this Agreement. Accordingly, if FSB fails to promptly pay the Termination Fee, and, in order to obtain such payment, THSB commences a suit that results in a judgment against FSB for the Termination Fee, FSB shall also pay to THSB its reasonable costs and expenses (including attorneys’ and accountants’ fees and expenses) in connection with such suit and any appeal relating thereto, together with interest at the national prime rate in effect on the date such payment was required to be made.

## **ARTICLE VIII.**

### **EFFECTIVE TIME OF THE MERGER**

Upon the terms and subject to the conditions specified in this Agreement, the Merger shall become effective on the day and at the time specified in the Articles of Merger as filed with the Indiana Secretary of State (the “**Effective Time**”). Unless otherwise mutually agreed to by the parties hereto, the parties shall cause the Effective Time to occur within ten (10) business days after the later to occur of (a) all conditions precedent to the Merger set forth in this Agreement have been fulfilled (other than conditions that, by their nature, are required to be fulfilled on the

Closing Date), and (b) all waiting periods in connection with the bank regulatory applications filed for the approval of the Merger have expired.

## ARTICLE IX.

### CLOSING

**9.01 Closing Date and Place.** So long as all conditions precedent set forth in Article VI hereof have been satisfied and fulfilled, the closing of the Merger (the “**Closing**”) will take place on the date determined to be the date of the Effective Time by Article VIII hereof (the “**Closing Date**”) at a location to be reasonably determined by THSB.

#### 9.02 Deliveries.

- (a) At the Closing, THSB will deliver to FSB the following:
  - (i) the officers’ certificate contemplated by Section 6.02(f) hereof;
  - (ii) copies of all Regulatory Approvals necessary to consummate the Merger;
  - (iii) copies of the resolutions adopted by the THSB Board, certified by the Secretary of THSB relative to the approval of this Agreement and the Merger; and
  - (iv) such other documents and information as FSB or its legal counsel may reasonably request via written notice to THSB.
- (b) At the Closing, FSB will deliver to THSB the following:
  - (i) the officers’ certificate contemplated by Section 6.01(f) hereof;
  - (ii) copies of the resolutions adopted by the FSB Board certified by the Secretary of FSB relative to the approval of this Agreement and the Merger;
  - (iii) evidence of the termination of any agreement at the request or direction of THSB or as otherwise required by this Agreement (including, without limitation, the termination of the FSB 401(k) Plan, and/or any FSB Plan); and
  - (iv) such other documents and information as THSB or its legal counsel may reasonably request via written notice to FSB.

## ARTICLE X.

### MISCELLANEOUS

**10.01 Effective Agreement.** This Agreement and the recitals hereof shall be binding upon and inure to the benefit of and be enforceable by the respective parties hereto and their respective successors and assigns; *provided, however*, that neither this Agreement nor any of the rights, interests or obligations of the respective parties hereto under this Agreement may be



assigned by any party hereto without the prior written consent of the other parties hereto. Except as provided by Section 5.05 (dealing with rights to indemnification and advancements of expenses), the representations, warranties, covenants and agreements contained in this Agreement, as well as the documents and instruments referred to herein, are for the sole benefit of the parties hereto and their successors and assigns, and they will not be construed as conferring any rights on any other Persons.

#### **10.02 Waiver; Amendment.**

(a) The parties hereto may by an instrument in writing: (i) extend the time for the performance of or otherwise amend any of the covenants, conditions or agreements of the other parties under this Agreement; (ii) waive any inaccuracies in the representations or warranties of the other parties contained in this Agreement or in any document delivered pursuant hereto or thereto; (iii) waive the performance by the other parties of any of the covenants or agreements to be performed by it or them under this Agreement; or (iv) waive the satisfaction or fulfillment of any condition, the nonsatisfaction or nonfulfillment of which is a condition to the right of the party so waiving to consummate the Merger. The waiver by any party hereto of a breach of or noncompliance with any provision of this Agreement will not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

(b) This Agreement may be amended, modified or supplemented only by a written agreement executed by the parties hereto.

**10.03 Notices.** All notices, requests and other communications hereunder will be in writing and will be deemed to have been duly given if delivered by hand and receipted for, delivered by certified United States Mail, return receipt requested, first class postage pre-paid, or delivered by overnight express receipted delivery service as follows:

If to THSB:

The Hometown Savings Bank  
533 Ohio Street  
Terre Haute, IN 47807  
Attn: J. Bart Colwell, President  
Email: bcolwell@thsb.com

with a copy (which shall not constitute notice) to:

Amundsen Davis, LLC  
Capital Center, South Tower  
201 North Illinois Street, Suite 1400  
Indianapolis, Indiana 46204  
Attn: John W. Tanselle  
Email: jtanselle@amundsendavislaw.com

If to First Savings Bank:

First Savings Bank  
6 West Williams Street  
Danville, IL 61832  
Attn: Mark Garrett  
Email: mark.garrett@fsbdanville.com

with a copy (which shall not constitute notice) to:

Brown, Hay & Stephens, LLP  
205 S. 5<sup>th</sup> Street, Suite 1000  
P.O. Box 2459  
Springfield, Illinois 62705  
Attn: Harvey M. Stephens  
Email: hmstephens@bhslaw.com

or such substituted address or Person as any of them has given to the other in writing. All such notices, requests or other communications shall be effective: (a) if delivered by hand, when delivered; (b) if mailed in the manner provided herein, five (5) business days after deposit with the United States Postal Service; (c) if delivered by overnight express delivery service, on the next business day after deposit with such service; or (d) if delivered to the applicable email address, upon confirmed transmission by sender to such email address.

**10.04 Headings.** The headings in this Agreement have been inserted solely for ease of reference and should not be considered in the interpretation or construction of this Agreement.

**10.05 Severability.** In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

**10.06 Counterparts; Facsimile.** This Agreement may be executed in any number of counterparts and by facsimile, each of which will be an original, but such counterparts shall together constitute one and the same instrument.

**10.07 Governing Law; Specific Enforcement; Venue.** This Agreement (and any and all other documents, agreements and instruments entered into in connection with the Merger and any related transaction; collectively, the “**Related Agreements**”) shall be governed by and construed in accordance with the laws of the State of Indiana and applicable federal laws, without regard to principles of conflicts of law. The parties hereto hereby agree that all claims, actions, suits and proceedings between the parties hereto relating to this Agreement or any Related Agreement shall be filed, tried and litigated only in the Circuit or Superior Courts of Vigo County, Indiana or the United States District Court for the Southern District of Indiana, Indianapolis Division. In connection with the foregoing, the parties hereto consent to the jurisdiction and venue of such courts and expressly waive any claims or defenses of lack of personal jurisdiction of or proper venue by such courts. The parties agree that irreparable damage would occur in the event that any provision of this Agreement or any Related Agreement was not performed in accordance with its specific terms on a timely basis or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or other equitable relief to prevent breaches of this Agreement or any Related Agreement and to enforce specifically the terms and provisions of this Agreement or any Related Agreement in any court identified above, this being in addition to any other remedy to which they are entitled at law or in equity.

**10.08 Waiver of Jury Trial.** Each of the parties hereby waives trial by jury in any judicial proceeding involving, directly, in any matters (whether sounding in tort, contract or otherwise) in any way arising out of, related to, or connected with this Agreement or any Related Agreement.

**10.09 Entire Agreement.** This Agreement and the Exhibits hereto supersede all other prior or contemporaneous understandings, commitments, representations, negotiations or agreements, whether oral or written, among the parties hereto relating to the Merger or matters contemplated herein and constitute the entire agreement between the parties hereto, except as otherwise provided herein and except for the Confidentiality Agreement dated July 8, 2020, by

and between the parties (the “**Confidentiality Agreement**”). Upon the execution of this Agreement by all the parties hereto, any and all other prior writings of either party relating to the Merger, will terminate and will be rendered of no further force or effect. The parties hereto agree that each party and its counsel reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**10.10 Survival of Representations, Warranties or Covenants.** Except as set forth in the following sentence, none of the representations, warranties or covenants of the parties will survive the Effective Time or the earlier termination of this Agreement, and thereafter the parties will have no further liability with respect thereto. The covenants contained in Sections 4.11(c) and 7.02 and this Article X shall survive termination of this Agreement and remain in full force and effect. The covenants contained in Sections 1.01, 1.03, 4.15, 4.17, 4.18, 5.02, 5.03, 5.05 and all of the provisions of this Article X shall survive the Effective Time.

**10.11 Expenses.** Except as provided elsewhere in this Agreement, each party to this Agreement shall pay its own expenses incidental to the Merger contemplated hereby.

**10.12 Certain References.** Whenever in this Agreement a singular word is used, it also will include the plural wherever required by the context and vice versa, and the masculine or neuter gender shall include the masculine, feminine and neuter genders. Except as expressly stated otherwise, all references in this Agreement to periods of days shall be construed to refer to calendar, not business, days. The term “**business day**” will mean Monday through Friday of each week, except a legal holiday recognized as such by the U.S. government or any day on which banking institutions in the State of Indiana are authorized or obligated to close.

**10.13 Confidential Supervisory Information.** Notwithstanding any other provision of this Agreement, no disclosure, representation or warranty shall be made (or other action taken) pursuant to this Agreement that would involve the disclosure of confidential supervisory information (including confidential supervisory information as defined in 12 C.F.R. § 261.2(c) and as identified in 12 C.F.R. § 309.5(g)(8)) of a Governmental Authority by any party to this Agreement to the extent prohibited by applicable Law. To the extent legally permissible, appropriate substitute disclosures or actions shall be made or taken under circumstances in which the limitations of the preceding sentence apply. For the avoidance of doubt, this Section 10.13 shall not relieve a party of its obligation to provide any required financial statements, certificates, notices and other information under this Agreement, but in providing such financial statements, certificates, notices and other information the party shall not be obligated to disclose confidential supervisory information otherwise contained therein.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, THSB and FSB have made and entered into this Agreement as of the day and year first above written and have caused this Agreement to be executed, attested in counterparts and delivered by their duly authorized officers.

**THE HOMETOWN SAVINGS BANK**

By: \_\_\_\_\_  
J. Bart Colwell  
President

**FIRST SAVINGS BANK**

By: \_\_\_\_\_  
Mark Garrett  
President and CEO

*[Signature Page to Agreement and Plan of Merger]*

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**Exhibit A**  
**Liquidation Account**

## **LIMITED DURATION LIQUIDATION ACCOUNT**

The Hometown Savings Bank, Terre Haute, Indiana (the “**Savings Bank**”) shall establish, at the effective time of the merger (the “**Merger**”) with First Savings Bank, Danville, Illinois (“**FSB**”), a Liquidation Account in an amount equal to **\$8,592,000.00**, which is FSB’s total equity as reflected in the “*Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than \$5 Billion - FFIEC 051*” as of March 31, 2023, filed by FSB. The Liquidation Account shall terminate, and cease to be of any force or effect, on the **third anniversary of the consummation of the Merger**.

### **Limited Duration Liquidation Account**

Following the Merger, the Liquidation Account will be maintained by the Savings Bank for the benefit of the Eligible Account Holders (as defined below) who continue to maintain their Deposit Accounts at the Savings Bank. Each Eligible Account Holder shall, with respect to his or her Deposit Account, hold a related inchoate interest in a portion of the Liquidation Account balance, in relation to their Deposit Account as of the Eligibility Record Date (as defined below) or to such balance as it may be subsequently reduced, as hereinafter provided.

In the unlikely event of a complete liquidation of the Savings Bank (and only in such event), following all liquidation payments to creditors (including those to account holders of the Savings Bank to the extent of their Deposit Accounts), each Eligible Account Holder shall be entitled to receive a liquidating distribution from the Liquidation Account, in the amount of the then adjusted subaccount balance for its Deposit Account then held, before any liquidation distribution may be made to any holders of the Savings Bank’s capital stock. A merger, consolidation, sale of bulk assets or similar combination or transaction with another insured or uninsured financial institution following the Merger would not be considered a liquidation and, in these types of transactions, the Liquidation Account would be assumed by the surviving institution.

The initial subaccount balance for a Deposit Account held by an Eligible Account Holder shall be determined in accordance with 12 C.F.R. §192.460. Such initial subaccount balance shall not be increased, but shall be subject to downward adjustment as described in 12 C.F.R. §192.470. In the event of such downward adjustment, the subaccount balance shall not be subsequently increased notwithstanding any subsequent increase in the deposit balance of the related Deposit Account.

The establishment and maintenance of the Liquidation Account shall not operate to restrict the use or application of any of the equity accounts of the Savings Bank, except that the Savings Bank shall not declare or pay a cash dividend on, or repurchase any of its capital stock, if the effect thereof would cause its equity to be reduced below the amount required for the Liquidation Account.

### **Certain Definitions**

**Deposit Account** – Any withdrawable account, including, without limitation, savings accounts, time accounts, demand accounts, NOW accounts, money market accounts, certificate accounts and passbook accounts.

**Eligible Account Holder** – Any Person holding a Qualifying Deposit (as defined below) with FSB as of the close of business on March 31, 2023, for purposes of determining subscription rights and establishing subaccount balances in the Liquidation Account.

**Eligibility Record Date** – The date for determining Eligible Account Holders of FSB, which is March 31, 2023.

**Person** – An individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

**Qualifying Deposit** – The aggregate balance of all Deposit Accounts in FSB of an Eligible Account Holder as of the close of business on the Eligibility Record Date, provided the aggregate balance is not less than \$50.00.