

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): April 12, 2021**

**NICOLET BANKSHARES, INC.**

*(Exact name of registrant as specified in its charter)*

**Wisconsin**  
*(State or other jurisdiction  
of incorporation)*

**001-37700**  
*(Commission  
File Number)*

**47-0871001**  
*(IRS Employer  
Identification No.)*

**111 North Washington Street  
Green Bay, Wisconsin 54301**  
*(Address of principal executive offices)*

**(920) 430-1400**  
*(Registrant's telephone number, including area code)*

**Not Applicable**  
*(Former name or former address, if changed since last report)*

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class  
**Common stock, par value \$0.01 per share**

Trading Symbol(s)  
**NCBS**

Name of each exchange on which registered  
**The NASDAQ Stock Market LLC**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter.)

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01 Entry into a Material Definitive Agreement**

Nicolet Bankshares, Inc. ("Nicolet") and Mackinac Financial Corporation ("Mackinac") entered into an Agreement and Plan of Merger, dated April 12, 2021 (the "Merger Agreement"), pursuant to which Mackinac will merge with and into Nicolet (the "Merger"). Following the Merger, mBank, the wholly-owned bank subsidiary of Mackinac, will merge with and into Nicolet National Bank, Nicolet's wholly-owned bank subsidiary, with Nicolet National Bank continuing as the surviving bank and all bank branches operating under the Nicolet National Bank brand.

Nicolet and Mackinac have agreed to prepare and file with the Securities and Exchange Commission a registration statement on Form S-4, which will include a proxy statement/prospectus to be mailed to both Nicolet and Mackinac shareholders. As soon as practicable following effectiveness of the registration statement on Form S-4, Nicolet and Mackinac will each call a special shareholder meeting to approve the Merger Agreement.

*Merger Consideration:* Pursuant to the terms and subject to the conditions set forth in the Merger Agreement, at the effective time of the Merger, Mackinac shareholders will have the right to receive 0.22 shares of Nicolet common stock and \$4.64 in cash for each share of common stock of Mackinac with total consideration to consist of approximately 80% stock and 20% cash.

*Closing Conditions:* Consummation of the Merger is subject to certain customary closing conditions, including without limitation, (i) approval of the Merger Agreement by both Nicolet and Mackinac shareholders, (ii) the receipt of all requisite regulatory approvals, and (iii) receipt of a tax opinion of Nicolet's counsel that the Merger will qualify as a tax-free reorganization.

*Representations, Warranties and Covenants:* The Merger Agreement includes detailed representations, warranties and covenant provisions that are customary for transactions of this type.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is attached hereto as Exhibit 2.1.

The representations and warranties set forth in the Merger Agreement have been made solely for the benefit of the parties to the Merger Agreement. In addition, such representations and warranties (i) have been made only for the purpose of the Merger Agreement; (ii) have been qualified by the disclosures made to the other party in connection with the Merger Agreement; (iii) are subject to materiality qualifications contained in the Merger Agreement, which may differ from what may be viewed as material by investors; and (iv) have been included in the Merger Agreement for the purpose of allocating risk between the contracting parties and not for the purpose of establishing such matters as facts. Based upon the foregoing reasons, you should not rely on the representations and warranties as statements of factual information. Investors should read the Merger Agreement together with the other information concerning Nicolet and Mackinac that is in reports and statements filed with the SEC.

**Item 8.01 Other Events**

On April 12, 2021, Nicolet Bankshares, Inc. ("Nicolet"), and Mackinac Financial Corporation ("Mackinac"), issued a joint press release announcing that the companies have entered into a definitive merger agreement dated April 12, 2021 (the "Merger Agreement"), pursuant to which Mackinac will merge with and into Nicolet (the "Merger"). A copy of the joint press release is attached hereto as Exhibit 99.1. In addition, Nicolet is providing supplemental information regarding the proposed merger in the investor presentation slides attached hereto as Exhibit 99.2.

The Merger Agreement was unanimously approved by the board of directors of each company. It is subject to shareholder approval of each company, regulatory approvals and other customary closing conditions. The Merger is expected to close in the third quarter of 2021. Upon consummation of the transaction, the branch offices of mBank are expected to open as Nicolet National Bank branches.

**Forward Looking Statements "Safe Harbor" Statement Under the Private Securities Litigation Reform Act of 1995.**

Certain statements contained in this communication, which are not statements of historical fact, constitute forward-looking statements within the meaning of the federal securities law. Such statements include, but are not limited to, certain plans, expectations, goals, projections and benefits relating to the proposed merger between Nicolet and Mackinac, which are subject to numerous assumptions, risks and uncertainties. Words or phrases such as "anticipate," "believe," "aim," "can," "conclude," "continue," "could," "estimate," "expect," "foresee," "goal," "intend," "may," "might," "outlook," "possible," "plan," "predict," "project," "potential," "seek," "should," "target," "will," "will likely," "would," or the negative of these terms or other comparable terminology, as well as similar expressions, are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.

Forward-looking statements are not historical facts but instead express only management's beliefs regarding future results or events, many of which, by their nature, are inherently uncertain and outside of management's control. It is possible that actual

results and outcomes may differ, possibly materially, from the anticipated results or outcomes indicated in these forward-looking statements. In addition to factors disclosed in reports filed by Nicolet and Mackinac with the SEC, risks and uncertainties for Nicolet, Mackinac and the combined company that may cause actual results or outcomes to differ materially from those anticipated include, but are not limited to: (1) the possibility that any of the anticipated benefits of the proposed merger will not be realized or will not be realized within the expected time period; (2) the risk that integration of Mackinac's operations with those of Nicolet will be materially delayed or will be more costly or difficult than expected; (3) the parties' inability to meet expectations regarding the timing of the proposed merger; (4) changes to tax legislation and their potential effects on the accounting for the merger; (5) the inability to complete the proposed merger due to the failure of Nicolet's or Mackinac's shareholders to adopt the Merger Agreement; (6) the failure to satisfy other conditions to completion of the proposed merger, including receipt of required regulatory and other approvals; (7) the failure of the proposed merger to close for any other reason; (8) diversion of management's attention from ongoing business operations and opportunities due to the proposed merger; (9) the challenges of integrating and retaining key employees; (10) the effect of the announcement of the proposed merger on Nicolet's, Mackinac's or the combined company's respective customer and employee relationships and operating results; (11) the possibility that the proposed merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events; (12) dilution caused by Nicolet's issuance of additional shares of Nicolet common stock in connection with the merger; (13) the magnitude and duration of the COVID-19 pandemic and its impact on the global economy and financial market conditions and the business, results of operations and financial condition of Nicolet, Mackinac and the combined company; (14) changes in consumer demand for financial services; and (15) general competitive, economic, political and market conditions and fluctuations. Please refer to each of Nicolet's and Mackinac's Annual Report on Form 10-K for the year ended December 31, 2020, as well as their other filings with the SEC, for a more detailed discussion of risks, uncertainties and factors that could cause actual results to differ from those discussed in the forward-looking statements.

All forward-looking statements included in this communication are made as of the date hereof and are based on information available to management at that time. Except as required by law, neither Nicolet nor Mackinac assumes any obligation to update any forward-looking statement to reflect events or circumstances that occur after the date the forward-looking statements were made.

**Important Information and Where to Find It**

This communication relates to the proposed merger transaction involving Nicolet and Mackinac. In connection with the proposed merger, Nicolet and Mackinac will file a joint proxy statement/prospectus on Form S-4 and other relevant documents concerning the merger with the Securities and Exchange Commission (the "SEC"). **BEFORE MAKING ANY VOTING OR INVESTMENT DECISION, INVESTORS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER DOCUMENTS TO BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED MERGER OR INCORPORATED BY REFERENCE IN THE JOINT PROXY STATEMENT/PROSPECTUS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT NICOLET, MACKINAC AND THE PROPOSED MERGER.** When available, the joint proxy statement/prospectus will be delivered to shareholders of Nicolet and Mackinac. Investors may obtain copies of the joint proxy statement/prospectus and other relevant documents (as they become available) free of charge at the SEC's website ([www.sec.gov](http://www.sec.gov)). Copies of the documents filed with the SEC by Nicolet will be available free of charge on Nicolet's website at [www.nicoletbank.com](http://www.nicoletbank.com). Copies of the documents filed with the SEC by Mackinac will be available free of charge on Mackinac's website at [www.bankmbank.com](http://www.bankmbank.com).

Nicolet, Mackinac and certain of their directors, executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the shareholders of Nicolet and the shareholders of Mackinac in connection with the proposed merger. Information about the directors and executive officers of Nicolet and Mackinac will be included in the joint proxy statement/prospectus for the proposed transaction filed with the SEC. Information about the directors and executive officers of Nicolet is also included in the proxy statement for its 2021 annual meeting of shareholders, which was filed with the SEC on March 2, 2021. Information about the directors and executive officers of Mackinac is also included in the proxy statement for its 2020 annual meeting of shareholders, which was filed with the SEC on April 22, 2020. Additional information regarding the interests of such participants and other persons who may be deemed participants in the transaction will be included in the joint proxy statement/prospectus and the other relevant documents filed with the SEC when they become available.

**No Offer or Solicitation**

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

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**Investor Relations & Media Contacts:**

**Mackinac:** Paul Tobias – Chief Executive Officer, Mackinac Financial Corporation  
Phone: 248.290.5901  
Email: ptobias@bankmbank.com

Kelly George – President & CEO, mBank  
Phone: 906.341.7140  
Email: kgeorge@bankmbank.com

**Nicolet:** Mike Daniels – President & CEO, Nicolet National Bank  
Jeff Gahnz – VP, Marketing / Public Relations, Nicolet National Bank  
Phone: 920.430.1400  
Email: mdaniels@nicoletbank.com or jgahnz@nicoletbank.com

**Item 9.01 Financial Statements and Exhibits.**

Exhibit No.	Description of Exhibit
2.1	<a href="#">Agreement and Plan of Merger Between Nicolet Bankshares, Inc. and Mackinac Financial Corporation dated April 12, 2021</a>
99.1	<a href="#">Joint Press Release, dated April 12, 2021</a>
99.2	<a href="#">Supplemental Investor Presentation, dated April 12, 2021</a>
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document

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**Signatures**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: April 12, 2021

NICOLET BANKSHARES, INC.

By: /s/ Ann K. Lawson  
Ann K. Lawson  
Chief Financial Officer

**AGREEMENT AND PLAN OF MERGER**  
**BY AND BETWEEN**  
**NICOLET BANKSHARES, INC.**  
**AND**  
**MACKINAC FINANCIAL CORPORATION**  
**APRIL 12, 2021**

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**Exhibits**

- A** Form of Bank Plan of Merger
- B** Form of Voting and Support Agreement

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## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (together with all exhibits and schedules, this "**Agreement**") is entered into as of April 12, 2021, by and between Nicolet Bankshares, Inc., a Wisconsin corporation ("**Nicolet**"), and Mackinac Financial Corporation, a Michigan corporation (the "**Company**").

### RECITALS

**A.** The parties to this Agreement desire to effect a merger of the Company with and into Nicolet (the "**Merger**") in accordance with this Agreement and the applicable provisions of the WBCL and the MBCA, with Nicolet as the surviving entity in the Merger (sometimes referred to in such capacity as the "**Surviving Entity**").

**B.** The respective boards of directors of the Company and Nicolet have approved the Merger upon the terms and subject to the conditions of this Agreement and, in accordance with the applicable provisions of the WBCL and the MBCA, approved and declared the advisability of this Agreement and determined that consummation of the Merger in accordance with the terms of this Agreement is in the best interests of their respective companies and shareholders.

**C.** The parties intend that the Merger qualify as a "reorganization" under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and that this Agreement be and hereby is adopted as a "plan of reorganization" within the meaning of Section 1.368-2(g) of the Treasury regulations promulgated thereunder.

**D.** The parties desire to make certain representations, warranties and agreements in connection with the Merger and the other transactions contemplated by this Agreement, and the parties also agree to certain prescribed conditions to the Merger and other transactions.

### AGREEMENTS

In consideration of the foregoing premises and the following mutual promises, covenants and agreements, the parties hereby agree as follows:

#### ARTICLE 1 THE MERGER

**Section 1.1 The Merger.** Upon the terms and subject to the conditions of this Agreement and in accordance with the applicable provisions of the WBCL and the MBCA, at the Effective Time, the Company shall be merged with and into Nicolet pursuant to the provisions of, and with the effects provided in, the WBCL and the MBCA, the separate corporate existence of the Company shall cease and Nicolet will be the Surviving Entity.

#### **Section 1.2 Effective Time: Closing.**

(a) The closing of the Merger (the "**Closing**") shall occur through the mail or at a place that is mutually acceptable to Nicolet and the Company, or if they fail to agree, at the offices of Bryan Cave Leighton Paisner LLP, 1201 W. Peachtree Street, 14<sup>th</sup> Floor, Atlanta, Georgia 30309, at 10:00 a.m., local time, on the date that is five (5) Business Days after the satisfaction or waiver (subject to applicable Legal Requirements) of the latest to occur of the conditions set forth in **Article 8** and **Article 9** (other than those conditions that by their nature are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of those conditions) or at such other time and place as Nicolet and the Company may agree in writing (the "**Closing Date**"). Subject to the provisions of **Article 10**, failure to consummate the Merger on the date and time and at the place determined pursuant to this **Section 1.2** will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

(b) The parties hereto agree to file on the Closing Date articles of merger with the Wisconsin Department of Financial Institutions (the "**Articles of Merger**") and a certificate of merger with the Michigan

Department of Licensing and Regulatory Affairs. The Merger shall become effective as of the date and time specified in the Articles of Merger (the "**Effective Time**").

**Section 1.3 Effects of the Merger.** At the Effective Time, the effects of the Merger shall be as provided in this Agreement, the Articles of Merger and the applicable provisions of the WBCL and the MBCA. Without limiting the generality of the foregoing, at the Effective Time, all of the property, rights, privileges, powers and franchises of the Company shall be vested in the Surviving Entity, and all debts, liabilities and duties of the Company shall become the debts, liabilities and duties of the Surviving Entity.

**Section 1.4 Organizational Documents of the Surviving Entity.** The Nicolet Articles of Incorporation and the Nicolet Bylaws, as in effect immediately prior to the Effective Time, shall be the articles of incorporation and bylaws of the Surviving Entity until thereafter amended in accordance with the provisions thereof and applicable Legal Requirements.

**Section 1.5 Directors and Officers of the Surviving Entity.** At the Effective Time, the directors shall be the directors of Nicolet immediately prior to the Effective Time and one (1) person from the Company Board, to be designated by the Company and reasonably acceptable to Nicolet prior to the Effective Time (such person from the Company Board is expected to be Paul D. Tobias) (the "**Company Director**"). At the Effective Time, the executive officers of the Surviving Entity shall be the executive officers of Nicolet immediately prior to the Effective Time. Such directors and executive officers shall serve until their resignation, removal or until their successors shall have been elected or appointed and shall have qualified in accordance with the laws and governing documents applicable to Nicolet or Nicolet Bank.

**Section 1.6 Location of the Surviving Entity.** The principal offices of the Surviving Entity will be located at 111 N. Washington Street, Green Bay, Wisconsin 54301.

**Section 1.7 Bank Merger.** Following the Effective Time of the Merger, the Bank shall be merged with and into Nicolet Bank in accordance with the provisions of the National Bank Act (12 U.S.C. § 215a), Section 18(c) of the Federal Deposit Insurance Act and Article 6 of Chapter 487 of the Michigan Compiled Laws and pursuant to the terms and conditions of the Plan of Merger by and between Nicolet Bank and the Bank, a form of which is attached as **Exhibit A** (the "**Bank Plan of Merger**"). Following the execution and delivery of this Agreement, the Company will cause the Bank, and Nicolet will cause Nicolet Bank, to execute and deliver the Bank Plan of Merger substantially in the form set forth in **Exhibit A**.

**Section 1.8 Absence of Control.** Subject to any specific provisions of this Agreement, it is the intent of the parties to this Agreement that neither Nicolet nor the Company by reason of this Agreement shall be deemed (until consummation of the Merger) to control, directly or indirectly, the other party or any of its respective Subsidiaries and shall not exercise, or be deemed to exercise, directly or indirectly, a controlling influence over the management or policies of such other party or any of its respective Subsidiaries.

**Section 1.9 Alternative Structure.** Notwithstanding anything to the contrary contained in this Agreement, before the Effective Time, Nicolet may change the method of effecting the Contemplated Transactions if and to the extent that it concludes such a change to be desirable; *provided*, that: (a) any such change shall not affect the U.S. federal income tax consequences of the Merger to holders of Company Common Stock; and (b) no such change shall (i) alter or change the amount or kind of the consideration to be issued to holders of Company Common Stock as consideration in the Merger or (ii) materially impede or delay consummation of the Merger. If Nicolet elects to make such a change, the parties shall execute appropriate documents to reflect the change.

## ARTICLE 2 CONVERSION OF SECURITIES IN THE MERGER

### Section 2.1 Consideration.

- (a) At the Effective Time, by virtue of the Merger and without any action on the part of Nicolet, the Company, or the holder of any shares of Company Common Stock, each share of Company Common



Stock issued and outstanding immediately prior to the Effective Time, will be converted, subject to the fractional share procedures in **Section 2.4** and the dissenters rights provisions in **Section 2.5**, into the right to receive:

- (i) 0.22 fully paid and nonassessable shares (the "**Exchange Ratio**") of Nicolet Common Stock (the "**Per Share Stock Consideration**"), and
- (ii) \$4.64 in cash, without interest (the "**Per Share Cash Consideration**").

(b) The total cash and stock consideration to be paid by Nicolet in respect of shares of Company Common Stock is referred to herein as the "**Merger Consideration.**" Notwithstanding anything in this **Section 2.1** to the contrary, at the Effective Time and by virtue of the Merger, each share of Company Common Stock held in the Company's treasury and each share of Company Common Stock owned directly or indirectly by Nicolet (other than shares held in a fiduciary capacity or in connection with debts previously contracted) will be cancelled and no shares of Nicolet Common Stock, cash, or other consideration will be issued or paid in exchange therefor.

**Section 2.2 Exchange of Company Stock Certificates.**

(a) The parties to this Agreement agree: (i) that Computershare Trust Company, N.A. shall serve, pursuant to customary terms of an exchange agent agreement, as the exchange agent for purposes of this Agreement (the "**Exchange Agent**"); and (ii) to execute and deliver the exchange agent agreement at or prior to the Effective Time. Nicolet shall be solely responsible for the payment of any fees and expenses of the Exchange Agent.

(b) At or prior to the Effective Time, Nicolet shall authorize the issuance of and shall make available to the Exchange Agent, for the benefit of the holders of Company Common Stock for exchange in accordance with this **Article 2**: (i) a sufficient number of shares of Nicolet Common Stock and cash for payment of the Merger Consideration pursuant to **Section 2.1**, and (ii) sufficient cash for payment of cash in lieu of any fractional shares of Nicolet Common Stock in accordance with **Section 2.4**. Such amount of cash and shares of Nicolet Common Stock, together with any dividends or distributions with respect thereto paid after the Effective Time, are referred to in this **Article 2** as the "**Conversion Fund.**"

(c) Within five (5) Business Days after the Closing Date, Nicolet shall cause the Exchange Agent to mail to each holder of record of one or more certificates or evidence of book-entry representing such shares of Company Common Stock (the "**Company Stock Certificates**") the letter of transmittal and other appropriate and customary transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the Company Stock Certificates shall pass, only upon proper delivery of such Company Stock Certificates to the Exchange Agent) (the "**Letter of Transmittal**") for use in effecting the surrender of Company Stock Certificates pursuant to this Agreement.

(d) Upon proper surrender of a Company Stock Certificate for exchange to the Exchange Agent, together with a properly completed and duly executed Letter of Transmittal, the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor his, her or its Merger Consideration plus cash in lieu of any fractional shares of Nicolet Common Stock in accordance with **Section 2.2** deliverable in respect of the shares of Company Common Stock represented by such Company Stock Certificate; thereupon such Company Stock Certificate shall forthwith be cancelled.

(e) No interest will be paid or accrued on any portion of the Merger Consideration deliverable upon surrender of a Company Stock Certificate.

(f) After the Effective Time, there shall be no transfers of Outstanding Company Shares on the stock transfer books of the Company.

(g) No dividends or other distributions declared with respect to Nicolet Common Stock and payable to the holders of record thereof after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate until the holder thereof shall surrender such Company Stock Certificate in accordance with this **Article 2**. Promptly after the surrender of a Company Stock Certificate in accordance with this **Article 2**, the record holder thereof shall be entitled to receive any such dividends or other distributions, without interest

thereon, which theretofore had become payable with respect to shares of Nicolet Common Stock into which the shares of Company Common Stock represented by such Company Stock Certificate were converted at the Effective Time pursuant to **Section 2.1**. No holder of an unsurrendered Company Stock Certificate shall be entitled, until the surrender of such Company Stock Certificate, to vote the shares of Nicolet Common Stock into which such holder's Company Common Stock shall have been converted.

(h) Any portion of the Conversion Fund that remains unclaimed by the shareholders of the Company twelve (12) months after the Effective Time shall be paid to the Surviving Entity, or its successors in interest. Any shareholders of the Company who have not theretofore complied with this **Article 2** shall thereafter look only to the Surviving Entity, or its successors in interest, for issuance of Nicolet Common Stock and/or cash pursuant to the Merger Consideration and the payment of cash in lieu of any fractional shares deliverable in respect of such shareholders' shares of Company Common Stock, as well as any accrued and unpaid dividends or distributions on shares of such Nicolet Common Stock. Notwithstanding the foregoing, none of the Surviving Entity, the Exchange Agent or any other person shall be liable to any former holder of shares of Company Common Stock for any amount delivered in good faith to a public official pursuant to applicable abandoned property, escheat or similar laws.

(i) In the event any Company Stock Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Company Stock Certificate to be lost, stolen or destroyed and, if required by the Surviving Entity, the posting by such person of a bond in such amount as the Exchange Agent may determine is reasonably necessary as indemnity against any claim that may be made against it with respect to such Company Stock Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Company Stock Certificate, and in accordance with this **Article 2**, shares of Nicolet Common Stock and/or cash pursuant to the Merger Consideration and cash in lieu of any fractional shares deliverable in respect thereof pursuant to this Agreement.

(j) If, between the date of this Agreement and the Effective Time, the outstanding shares of Nicolet Common Stock shall have been changed into a different number of shares or into a different class by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, the Merger Consideration per share shall be adjusted appropriately to provide the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such event.

**Section 2.3 Cancellation of Shares.** At the Effective Time, the shares of Company Common Stock will no longer be outstanding and will automatically be cancelled and will cease to exist. Company Stock Certificates that represented Company Common Stock before the Effective Time will be deemed for all purposes to represent the number of shares of Nicolet Common Stock or cash into which they were converted pursuant to this **Article 2**.

**Section 2.4 No Fractional Shares.** Notwithstanding anything to the contrary contained in this Agreement, no fractional shares of Nicolet Common Stock shall be issued as Merger Consideration in the Merger. Each holder of Company Common Stock who would otherwise be entitled to receive a fractional share of Nicolet Common Stock pursuant to this **Article 2** shall instead be entitled to receive an amount in cash (without interest) rounded to the nearest whole cent, determined by multiplying Nicolet Common Stock Price by the fractional share of Nicolet Common Stock to which such former holder would otherwise be entitled.

**Section 2.5 Dissenting Shares.** Notwithstanding anything in this **Article 2** to the contrary, no Dissenting Shares shall be converted in the Merger. All dissenting shares shall be cancelled, and the holders thereof shall thereafter be entitled only to such rights as are granted by Chapter 450 Section 1762 of the MBCA; *provided, however*, that if any such shareholder fails to perfect his, her or its rights as a dissenting shareholder with respect to his, her or its Dissenting Shares in accordance with Chapter 450 of the MBCA or withdraws or loses such holder's dissenter's rights, such shares held by such shareholder shall be deemed to have been converted into, and become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration to which the holder of such shares would have been entitled as of the Effective Time, without interest thereon.

**Section 2.6 Nicolet Common Stock.** At the Effective Time, by virtue of the Merger and without any action on the part of Nicolet, the Company, or the holder of any shares of Nicolet Common Stock, the shares of

Nicolet Common Stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and shall not be affected by the Merger.

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as Previously Disclosed, the Company hereby represents and warrants to Nicolet as follows:

**Section 3.1 Company Organization.** The Company: (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and is also in good standing in each other jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a Material Adverse Effect on the Company; (b) is registered with the Federal Reserve as a bank holding company under the Bank Holding Company Act of 1956, as amended; and (c) has full power and authority, corporate and otherwise, to operate as a bank holding company and to own, operate and lease its properties as presently owned, operated and leased, and to carry on its business as it is now being conducted. The copies of the Company Articles of Incorporation and the Company Bylaws and all amendments thereto set forth in the SEC Reports are true, complete and correct, and the Company Articles of Incorporation and the Company Bylaws are in full force and effect as of the date of this Agreement. Other than the Subsidiaries set forth in Section 3.1 of the Company Disclosure Schedules, the Company has no "Significant Subsidiary" as set forth in Rule 1-02 or Regulation S-X promulgated under the Exchange Act.

**Section 3.2 Subsidiary Organizations.** The Bank is a Michigan state-chartered bank duly organized, validly existing and in good standing under the laws of the State of Michigan. Each Subsidiary of the Company is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is also in good standing in each other jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a Material Adverse Effect on the Company. Each Subsidiary of the Company has full power and authority, corporate and otherwise, to own, operate and lease its properties as presently owned, operated and leased, and to carry on its business as it is now being conducted. The deposit accounts of the Bank are insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by applicable Legal Requirements, and all premiums and assessments required to be paid in connection therewith have been paid when due. The Company has delivered or made available to Nicolet copies of the charter (or similar organizational documents) and bylaws of each Subsidiary of the Company and all amendments thereto, each of which are true, complete and correct and in full force and effect as of the date of this Agreement.

**Section 3.3 Authorization; Enforceability.** The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Company Board. The Company Board has determined that the Merger, on substantially the terms and conditions set forth in this Agreement, is advisable and in the best interests of the Company and its shareholders, and that the Agreement and transactions contemplated hereby are in the best interests of the Company and its shareholders. The Company Board has directed the Merger, on substantially the terms and conditions set forth in this Agreement, be submitted to the Company's shareholders for consideration at a duly held meeting of such shareholders and has resolved to recommend that the Company's shareholders vote in favor of the adoption and approval of this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company, and the consummation by it of its obligations under this Agreement, have been authorized by all necessary corporate action, subject to the Company Shareholder Approval, and, subject to the receipt of the Requisite Regulatory Approvals, this Agreement constitutes a legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other Legal Requirements affecting creditors' rights generally and subject to general principles of equity.

**Section 3.4 No Conflict.** Neither the execution nor delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with or result in a violation of any provision of the certificate of

incorporation, certificate of formation or charter (or similar organizational documents) or bylaws or operating agreement, each as in effect on the date hereof, or any currently effective resolution adopted by the board of directors, shareholders, manager or members of, the Company or any of its Subsidiaries; (b) assuming receipt of the Requisite Regulatory Approvals, contravene, conflict with or result in a violation of, or give any Regulatory Authority or other Person the valid and enforceable right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which the Company or any of its Subsidiaries, or any of their respective assets that are owned or used by them, may be subject, except for any contravention, conflict or violation that is permissible by virtue of obtaining the Requisite Regulatory Approvals; (c) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any Company Material Contract; or (d) result in the creation of any material lien, charge or encumbrance upon or with respect to any of the assets owned or used by the Company or any of its Subsidiaries. Except for the Requisite Regulatory Approvals, the Company Shareholder Approval and the Registration Statement, neither the Company nor any of its Subsidiaries is or will be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

**Section 3.5 Capitalization.**

(a) The authorized capital stock of the Company currently consists exclusively of (i) 18,000,000 shares of Company Common Stock, no par value per share, of which, as of March 31, 2021 (the “**Company Capitalization Date**”), 10,550,393 shares were issued and outstanding, and (ii) 500,000 shares of preferred stock, \$1.00 par value (the “**Company Preferred Stock**”), of which, as of the Company Capitalization Date, no shares were issued and outstanding. The Company does not have outstanding any bonds, debentures, notes or other debt obligations having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) with the shareholders of the Company on any matter. All of the issued and outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid and nonassessable. None of the outstanding shares of Company Common Stock were issued in violation of any preemptive rights.

(b) As of the Company Capitalization Date, no shares of Company Capital Stock were reserved for issuance except for 14,560 shares of Company Common Stock reserved for issuance pursuant to future awards under Company Stock Plans.

(c) Other than 178,311 shares of Company Common Stock issued pursuant to restricted stock awards under Company Stock Plans, no equity-based awards were outstanding as of the Company Capitalization Date. Since the Company Capitalization Date through the date hereof, the Company has not: (i) issued or repurchased any shares of Company Common Stock or other equity securities of the Company; or (ii) issued or awarded any options, stock appreciation rights, restricted shares, restricted stock units, deferred equity units, awards based on the value of Company Common Stock or any other equity-based awards. From the Company Capitalization Date through the date of this Agreement, neither the Company nor any of its Subsidiaries has: (A) accelerated the vesting of or lapsing of restrictions with respect to any stock-based compensation awards or long-term incentive compensation awards; (B) with respect to executive officers of the Company or its Subsidiaries, entered into or amended any employment, severance, change in control or similar agreement (including any agreement providing for the reimbursement of excise taxes under Section 4999 of the Code); or (C) adopted or materially amended any Company Stock Plan.

(d) None of the shares of Company Common Stock were issued in violation of any federal or state securities laws or any other applicable Legal Requirement. As of the date of this Agreement, except as set forth in **Section 3.5(d)** of the Company Disclosure Schedules, there are: (i) no outstanding subscriptions, Contracts, conversion privileges, options, warrants, calls or other rights obligating the Company or the Bank to issue, sell or otherwise dispose of, or to purchase, redeem or otherwise acquire, any shares of capital stock of the Company or the Bank; and (ii) no contractual obligations of the Company or the Bank to repurchase, redeem or otherwise acquire any shares of Company Common Stock or any equity security of the Company or the Bank or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of the Company or the Bank. Except as permitted by this Agreement, since the Company Capitalization Date, no shares of Company Common Stock have been purchased, redeemed or otherwise acquired, directly or indirectly, by the

Company or the Bank and no dividends or other distributions payable in any equity securities of the Company or the Bank have been declared, set aside, made or paid to the shareholders of the Company. Other than the Bank, the Company does not own, nor has any Contract to acquire, any equity interests or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

**Section 3.6 Company Subsidiary Capitalization.** Except as set forth in **Section 3.6** of the Company Disclosure Schedules, all of the issued and outstanding shares of capital stock or other equity ownership interests of the Subsidiaries of the Company are owned by the Company, directly or indirectly, free and clear of any material liens, pledges, charges, claims and security interests and similar encumbrances, and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. No Company Subsidiary has nor is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of capital stock or any other equity security of such Subsidiary or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of such Subsidiary.

**Section 3.7 Company SEC Reports; Financial Statements and Reports; Regulatory Filings.**

(a) The Company has timely filed all Company SEC Reports, and all such Company SEC Reports have complied as to form in all material respects, as of their respective filing dates and effective dates, as the case may be, with all applicable requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder. The Company SEC Reports were prepared in accordance with applicable Legal Requirements in all material respects. As of their respective filing dates, none of the Company SEC Reports contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date. As of the date hereof, there are no outstanding comments from or unresolved issues raised by the SEC with respect to any of the Company SEC Reports. No Subsidiary of the Company is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

(b) The financial statements presented (or incorporated by reference) in the Company SEC Reports (including the related notes, where applicable) have been prepared in conformity with GAAP, except in each case as indicated in such statements or the notes thereto, and comply in all material respects with all applicable Legal Requirements. Taken together, the financial statements presented in the Company SEC Reports (collectively, the "**Company Financial Statements**") are complete and correct in all material respects and fairly and accurately present the respective financial position, assets, liabilities and results of operations of the Company and its Subsidiaries at the respective dates of and for the periods referred to in the Company Financial Statements, subject to normal year-end audit adjustments in the case of unaudited Company Financial Statements. The Company Financial Statements do not include any assets or omit to state any liabilities, absolute or contingent, or other facts, which inclusion or omission would render the Company Financial Statements misleading in any material respect as of the respective dates thereof and for the periods referred to therein. As of the date hereof, Plante & Moran, PLLC has not resigned (or informed the Company that it intends to resign) or been dismissed as independent registered public accountant of the Company.

(c) The Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 that are applicable to it or any of its Subsidiaries. The Company maintains a system of disclosure controls and procedures as defined in Rule 13a-15 and 15d-15 under the Exchange Act that are designed to provide reasonable assurance that information required to be disclosed by the Company in reports that the Company is required to file under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management to allow timely decisions regarding required disclosures. As of December 31, 2020, such controls and procedures were effective, in all material respects, to provide such reasonable assurance.

(d) The Company and its Subsidiaries have established and maintained a system of internal control over financial reporting (within the meaning of Rule 13a-15 and Rule 15d-15 under the Exchange Act) ("**Internal Control Over Financial Reporting**"). The Company's certifying officers have evaluated the effectiveness of the Company's Internal Control Over Financial Reporting as of the end of the period covered by the most recently filed quarterly report on Form 10-Q, or annual report on Form 10-K for the fourth quarter, under the

Exchange Act (the “**Company Evaluation Date**”). The Company presented in such quarterly report the conclusions of the certifying officers about the effectiveness of the Company’s Internal Control Over Financial Reporting based on their evaluations as of the Company Evaluation Date. Since the Company Evaluation Date, there have been no changes in the Company’s Internal Control Over Financial Reporting that have materially affected, or are reasonably likely to materially affect, the Company’s Internal Control Over Financial Reporting. The Company has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(e) The Company Regulatory Reports have been filed with the appropriate Regulatory Authority. The Company Regulatory Reports have been prepared in material compliance with the rules and regulations of the respective federal or state banking regulator with which they were filed, except as otherwise noted therein. Each Company Regulatory Report fairly presents, in all material respects, the financial position of the Company or the Bank, as appropriate, and the results of its operations at the date and for the period indicated in such Company Regulatory Report in conformity with the Instructions for the Preparation of Call Reports and other relevant guidance as promulgated by applicable regulatory authorities. None of the Company Regulatory Reports contains any material items of special or nonrecurring income or any other income not earned in the Ordinary Course of Business (it being understood that income relating to the Paycheck Protection Program is deemed earned in the Ordinary Course), except as expressly specified therein.

(f) Each of the Company and its Subsidiaries has filed all forms, reports and documents required to be filed since January 1, 2019, with all applicable federal or state securities or banking authorities except to the extent failure would not have a Material Adverse Effect on the Company and its Subsidiaries. Such forms, reports and documents: (i) complied as to form in all material respects with applicable Legal Requirements; and (ii) did not at the time they were filed, after giving effect to any amendment thereto filed prior to the date hereof, contain an 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 therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date.

(g) Except for normal examinations conducted by a Regulatory Authority in the Ordinary Course of Business of the Company and its Subsidiaries, no Regulatory Authority has initiated since January 1, 2019, or has pending any proceeding, enforcement action or to the Knowledge of the Company, investigation into the business, disclosures or operations of the Company or the Bank. Since January 1, 2019, no Regulatory Authority has resolved any proceeding, enforcement action or, to the Knowledge of the Company, investigation into the business, disclosures or operations of the Company or the Bank. The Company and its Subsidiaries have fully complied with, and there is no unresolved violation, criticism or exception by any Regulatory Authority with respect to, any report or statement relating to any examination or inspection of the Company or the Bank. Since January 1, 2019, there have been no formal or informal inquiries by, or disagreements or disputes with, any Regulatory Authority with respect to the business, operations, policies or procedures of the Company or the Bank (other than normal examinations conducted by a Regulatory Authority in the Company’s Ordinary Course of Business). To the Knowledge of the Company, there has not been any event or occurrence since January 1, 2019 that would result in a determination that the Bank is not an eligible depository institution as defined in 12 C.F.R. § 303.2(r).

**Section 3.8 Books and Records.** The books of account, minute books, stock record books and other records kept by the Company and each of its Subsidiaries are in all material respects complete and accurate and have been maintained in accordance with applicable Legal Requirements and accounting requirements. The Company Financial Statements have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries. Each of the Company and its Subsidiaries maintains accurate books and records reflecting its assets and liabilities and maintains proper and adequate internal accounting controls that provide assurance that (a) transactions are executed with management’s general or specific authorizations; (b) transactions are recorded as necessary to permit preparation of the Company Financial Statements and the Company Regulatory Reports in accordance with GAAP, and to maintain asset and liability accountability; (c) access to each Company asset and

incurrence of each liability of the Company are permitted only in accordance with management's specific or general authorizations; (d) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals, and appropriate action is taken with respect to any difference; and (e) extensions of credit and other receivables are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. None of the Company's systems, controls, data or information are recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of the Company, its Subsidiaries or their accountants, except as would not reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has been advised of any material deficiencies in the design or operation of internal controls over financial reporting which could reasonably be expected to adversely affect its ability to record, process, summarize and report financial data, or any fraud, whether or not material, that involves management. No material weakness in internal controls has been identified by the Company's auditors, and there have been no significant changes in internal controls that could reasonably be expected to materially and adversely affect internal controls. The minute books of the Company and its Subsidiaries contain accurate and complete records in all material respects of all meetings held of, and corporate action taken by, its respective shareholders, boards of directors and committees of the boards of directors. At the Closing, all of those books and records will be in the possession of the Company and its Subsidiaries.

**Section 3.9 Properties.**

(a) **Section 3.9** of the Company Disclosure Schedules lists or describes all interests in real property owned by the Company and each of its Subsidiaries, including OREO, as of the date of this Agreement and the principal buildings and structures located thereon, together with the address of such real estate, and each lease of real property to which it is a party, identifying the parties thereto, the annual rental payable, the expiration date thereof and a brief description of the property covered, and in each case of either owned or leased real property, the proper identification, if applicable, of each such property as a branch or main office or other office.

(b) The Company and each of its Subsidiaries has good and marketable title to all assets and properties, whether real or personal, tangible or intangible, that it purports to own, subject to no liens, mortgages, security interests, encumbrances or charges of any kind except: (i) as noted in the most recent Company Financial Statements; (ii) statutory liens for Taxes not yet delinquent or being contested in good faith by appropriate Proceedings and for which appropriate reserves have been established and reflected in the Company Financial Statements; (iii) 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; (iv) easements, rights of way, and other similar encumbrances that do not materially affect the use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties; and (v) minor defects and irregularities in title and encumbrances that do not materially impair the use thereof for the purposes for which they are held (collectively, the "**Company Permitted Exceptions**"). Each of the Company and its Subsidiaries as lessee has the right under valid and existing leases to occupy, use, possess and control any and all of the respective property leased by it, and each such lease is valid and without default thereunder by the lessee or, to the Knowledge of the Company, the lessor. All buildings and structures owned by the Company and its Subsidiaries lie wholly within the boundaries of the real property owned or validly leased by it, and do not encroach upon the property of, or otherwise conflict with the property rights of, any other Person.

**Section 3.10 Loans: Loan Loss Reserve.**

(a) Each loan, loan agreement, note, lease or other borrowing agreement by the Bank, any participation therein, and any guaranty, renewal or extension thereof (the "**Company Loans**") reflected as an asset on any of the Company Financial Statements or reports filed with the Regulatory Authorities is evidenced by documentation that is customary and legally sufficient in all material respects and constitutes, to the Knowledge of the Company, the legal, valid and binding obligation of the obligor named therein, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally or equitable principles or doctrines.

(b) All Company Loans originated or purchased by the Bank were made or purchased in accordance with the policies of the board of directors of the Bank and in the Ordinary Course of Business of the Bank. Except as set forth in **Section 3.10(b)** of the Company Disclosure Schedules, the Bank's interest in all Company Loans is free and clear of any security interest, lien, encumbrance or other charge, and the Bank has complied in all material respects with all Legal Requirements relating to such Company Loans. There has been no default on, or forgiveness or waiver of, in whole or in part, any Company Loan made to an executive officer or director of the Bank or an entity controlled by an executive officer or director during the three (3) years immediately preceding the date hereof.

(c) Except as set forth in **Section 3.10(c)** of the Company Disclosure Schedules, as of the date of this Agreement, the Bank is not a party to any Company Loan: (i) under the terms of which the obligor is more than ninety (90) days delinquent in payment of principal or interest or in default of any other material provision as of the dates shown thereon or for which the Bank has discontinued the accrual of interest; (ii) that has been classified as "substandard," "doubtful," "loss," "other loans especially mentioned" or any comparable classifications by the Bank; (iii) that has been listed on any "watch list" or similar internal report of the Bank; (iv) that has been the subject of any notice from any obligor of adverse environmental conditions potentially affecting the value of any collateral for such Company Loan; (v) with respect to which the Bank has Knowledge of potential violations of any Environmental Laws that may have occurred on the property serving as collateral for such Company Loan or by any obligor of such Company Loan; or (vi) that represents an extension of credit to an executive officer or director of the Bank or an entity controlled by an executive officer or director.

(d) The Bank's allowance for loan and lease losses reflected in the Company Financial Statements (including footnotes thereto) was determined on the basis of the Bank's continuing review and evaluation of the portfolio of Company Loans under the requirements of GAAP and Legal Requirements, was established in a manner consistent with the Bank's internal policies, and, in the reasonable judgment of the Bank, was appropriate in all material respects under the requirements of GAAP and all Legal Requirements to provide for possible or specific losses, net of recoveries relating to Company Loans previously charged-off, on outstanding Company Loans.

**Section 3.11 Taxes.**

(a) The Company and each of its Subsidiaries have duly and timely filed all Tax Returns required to be filed by them for all taxable or reporting periods ending on or before the Closing Date, and each such Tax Return is true, correct and complete in all material respects. The Company and its Subsidiaries have paid, or made adequate provision for the payment of, all Taxes (whether or not reflected in Tax Returns as filed or to be filed) due and payable by the Company and each of its Subsidiaries, or claimed to be due and payable by any Regulatory Authority, and are not delinquent in the payment of any Tax, except such Taxes as are being contested in good faith and as to which adequate reserves have been provided.

(b) There is no claim or assessment pending or, to the Knowledge of the Company, threatened against the Company or its Subsidiaries for any Taxes that they owe. No audit, examination or investigation related to Taxes paid or payable by the Company or any of its Subsidiaries is presently being conducted or, to the Knowledge of the Company, threatened by any Regulatory Authority. Neither the Company nor any of its Subsidiaries are the beneficiary of any extension of time within which to file any Tax Return, and there are no liens for Taxes (other than Taxes not yet delinquent) upon any of the Company's or its Subsidiaries' assets. Neither the Company nor any of its Subsidiaries has executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax that is currently in effect.

(c) The Company and each of its Subsidiaries have delivered or made available to Nicolet true, correct and complete copies of all Tax Returns relating to income taxes and franchise taxes owed by the Company and its Subsidiaries with respect to the last two (2) fiscal years.

(d) To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has engaged in any transaction that could affect the Tax liability for any Tax Returns not closed by applicable statute of limitations: (i) which is a "reportable transaction" or a "listed transaction" or (ii) a "significant purpose of which is the avoidance or evasion of U.S. federal income tax" within the meaning of Sections 6662, 6662A, 6011, 6111 or



6707A of the Code or of the regulations of the U.S. Department of the Treasury promulgated thereunder or pursuant to notices or other guidance published by the IRS (irrespective of the effective dates).

(e) The Company and each of its Subsidiaries are in compliance with, and their records contain all information and documents (including properly completed IRS Forms W-9) necessary to comply with, all applicable information reporting and Tax withholding requirements under federal, state, and local Tax Legal Requirements, and such records identify with specificity all accounts subject to backup withholding under Section 3406 of the Code.

(f) Neither the Company nor any of its Subsidiaries has experienced a change in ownership with respect to its stock, within the meaning of Section 382 of the Code, other than the ownership change that will occur as a result of the transactions contemplated by this Agreement.

(g) There is no pending claim by any taxing authority of a jurisdiction where either the Company or the Bank has not filed Tax Returns that either the Company or Bank is subject to taxation in that jurisdiction.

(h) Neither the Company nor any Subsidiary has ever been a member of an "affiliated group" within the meaning of Code Section 1504(a) filing a consolidated federal income tax return, other than any "affiliated group" of which the Company is the "common parent." Except as set forth in **Section 3.11(h)** of the Company Disclosure Schedules, neither the Company nor any of its Subsidiaries is a party to any Tax sharing or Tax allocation agreement that will remain in effect after consummation to the Mergers contemplated by this Agreement.

(i) Within the past two (2) years, neither the Company nor any of its Subsidiaries has distributed stock of another Person, nor has the stock of either the Company or any Subsidiary been distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code.

(j) The Company has not taken or agreed to take any action, and has no Knowledge of any fact or circumstance that is reasonably likely, to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

**Section 3.12 Employee Benefits.**

(a) **Section 3.12(a)** of the Company Disclosure Schedules includes a complete and correct list of each Company Benefit Plan. The Company has delivered or made available to Nicolet true and complete copies of the following with respect to each Company Benefit Plan: (i) copies of each Company Benefit Plan (including a written description where no formal plan document exists), and all related plan descriptions and other material written communications provided to participants of the Company Benefit Plans, as required by applicable law; (ii) to the extent applicable, the last three (3) years' of annual reports on Form 5500, including all schedules thereto and the opinions of independent accountants; and (iii) such other material ancillary documents, as follows:

(i) all contracts with third party administrators, actuaries, investment managers, consultants, insurers, and independent contractors;

(ii) all non-routine notices and other communications that were given by the Company, any Subsidiary, or any Company Benefit Plan to the IRS, the DOL or the PBGC pursuant to applicable law within the three (3) years preceding the date of this Agreement; and

(iii) all notices or other communications that were given by the IRS, the PBGC, or the DOL to the Company, any Subsidiary, or any Company Benefit Plan within the three (3) years preceding the date of this Agreement.

(b) Except as set forth in **Section 3.12(b)(i)** of the Company Disclosure Schedules, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (including possible terminations of employment in connection therewith) will cause a payment, vesting, increase or acceleration of benefits or benefit entitlements under any Company Benefit Plan or any other increase in the liabilities of the Company or any subsidiary under any Company Benefit Plan. Except as set forth in **Section 3.12(b)(ii)** of the Company Disclosure Schedules, no Company Benefit Plan provides for payment of any amount which, considered in the aggregate with amounts payable pursuant to all other Company Benefit Plans, would

reasonably be expected to result in any amount being non-deductible for federal income tax purposes by virtue of Section 280G of the Code. **Section 3.12(b)(iii)** of the Company Disclosure Schedules sets forth the name of each Person who is or would be entitled pursuant to any Contract or Company Benefit Plan to receive any payment from the Bank as a result of the consummation of the Contemplated Transactions (including any payment that is or would be due as a result of any actual or constructive termination of a Person's employment or position following such consummation) and the maximum amount of such payment.

(c)

(i) Except as set forth in **Section 3.12(c)(i)** of the Company Disclosure Schedules, no Company Benefit Plan is and neither the Company nor any of the Company ERISA Affiliates has any liability with respect to, (A) any "multiemployer plan" (as defined in Section 3(37) of ERISA), (B) any "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA), or (C) any self-insured plan (including any plan pursuant to which a stop loss policy or contract applies). With respect to any Company Benefit Plan that is a "multiple employer plan" (as defined in Section 413(c) of the Code) or is provided by or through a professional employer organization, neither the Company nor any of the Company ERISA Affiliates has any liabilities other than the payment and/or remittance of premiums and/or required contributions on behalf of enrolled individuals.

(ii) Except as set forth on **Section 3.12(c)(ii)** of the Company Disclosure Schedules, with respect to each Employee Benefit Plan which is subject to the provisions of Title IV of ERISA in which the Company participates or has participated ("Pension Plan"), (A) the Company has not incurred any Liability under Title IV of ERISA (other than premiums pursuant to Section 4007 of ERISA which have been timely paid) or Section 4971 of the Code; (B) any Pension Plan has satisfied the requirements of Sections 412, 430, and 436 of the Code and Sections 302 or 303 of ERISA, in each case, in all material respects; (C) no Pension Plan is in "at-risk" status within the meaning of Section 430(i)(4) of the Code or Section 303(i)(4) of ERISA or subject to the limitations of Section 436 of the Code; (D) no accumulated funding deficiency, if applicable, within the meaning of ERISA Section 302 or Code Section 412, whether or not waived, and no unsatisfied liability within the meaning of Section 412 of the Code or Section 302 of ERISA has been incurred; (E) no waiver of the minimum funding standards of Section 412 of the Code or Section 302 of ERISA has been requested of or granted by the IRS with respect to any Pension Plan, nor has any lien in favor of any Pension Plan arisen under Sections 412(n) or 430(k) of the Code or Sections 302(f) or 303(k) of ERISA; (F) the Company has not been required to provide security to any Pension Plan pursuant to Sections 412(c)(4) or 436 of the Code or Sections 306 or 307 of ERISA; (G) the Company has not withdrawn from any Pension Plan during a plan year in which it was a "substantial employer" (as defined in ERISA Section 4001(a)(2)), (H) the PBGC has not instituted proceedings or, to the Knowledge of the Company, threatened to institute proceedings to terminate any Pension Plan, (I) to the Knowledge of the Company, no other event or condition has occurred that might constitute grounds under ERISA Section 4042 for the termination of, or the appointment of a trustee to administer, any Pension Plan; (J) all required premium payments to the PBGC have been paid when due; (K) no "reportable event" (as described in ERISA Section 4043 and the regulations thereunder) has occurred or will occur by virtue of the consummation of the transactions contemplated by this Agreement except for a reportable event for which the notice requirement has been waived by the PBGC; and (xii), the present value of all "benefit liabilities" (whether or not vested) (as defined in ERISA Section 4001(a)(16)) under each Pension Plan did not exceed as of the most recent plan actuarial valuation date, and will not exceed as of the Closing Date, the then current value of the assets of such Pension Plan as determined pursuant to Code Section 412. For purposes of determining the present value of benefit liabilities under any Pension Plan, the actuarial assumptions and methods used under such Pension Plan for the most recent plan actuarial valuation shall be used and all benefits provided under the Pension Plan shall be deemed to be fully vested. For purposes of this subsection, the Company shall include each member of the controlled group (as defined in ERISA Section 4001(a)(14)(A)) of which the Company is a member and which is under common control (within the meaning of ERISA Section 4001(a)(14)(B) and the regulations thereunder).

(d) Except as set forth in **Section 3.12(d)** of the Company Disclosure Schedules, each Company Benefit Plan that is intended to qualify under Section 401 and related provisions of the Code is the subject of a favorable determination letter or may rely upon an opinion letter from the IRS to the effect that it is so qualified under the Code and that its related funding instrument is tax exempt under Section 501 of the Code (or the Company and its Subsidiaries are otherwise relying on an opinion letter issued to the prototype sponsor), and, to the

Company's Knowledge, there are no facts or circumstances that would adversely affect the qualified status of any Company Benefit Plan or the tax-exempt status of any related trust.

- (e) Except as set forth in **Section 3.12(e)** of the Company Disclosure Schedules, each Company Benefit Plan is and has been administered in all material respects in compliance with its terms and with all applicable Legal Requirements.
- (f) Other than routine claims for benefits made in the Ordinary Course of Business, there is no litigation, claim or assessment pending or, to the Company's Knowledge, threatened by, on behalf of, or against any Company Benefit Plan or against the administrators or trustees or other fiduciaries of any Company Benefit Plan that alleges a violation of applicable state or federal law or violation of any Company Benefit Plan document or related agreement.
- (g) Neither the Company nor, to the Knowledge of the Company, any of its directors, officers, employees or any Company Benefit Plan fiduciary has any liability for failure to comply with all applicable Legal Requirements for any action or failure to act in connection with the administration or investment of any Company Benefit Plan. Except as set forth in **Section 3.12(g)** of the Company Disclosure Schedules, to the Company's Knowledge, no party in interest (as defined in Code Section 4975(e)(2)) of any Company Benefit Plan has engaged in any nonexempt prohibited transaction (as described in Code Section 4975(c) or ERISA Section 406).
- (h) All accrued contributions and other payments to be made by the Company or any Subsidiary to any Company Benefit Plan (i) through the date hereof have been made or reserves adequate for such purposes have been set aside therefor and reflected in the Company Financial Statements, and (ii) through the Closing Date will have been made or reserves adequate for such purposes will have been set aside therefor.
- (i) Except as set forth in **Section 3.12(i)** of the Company Disclosure Schedules, there are no obligations under any Company Benefit Plan to provide health or other welfare benefits to retirees or other former employees, directors, consultants or their dependents (other than rights under Section 4980B of the Code or Section 601 of ERISA or comparable state laws).
- (j) Each individual who is classified by the Company or any Subsidiary as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Company Benefit Plan.
- (k) Except as identified on **Section 3.12(k)** of the Company Disclosure Schedules, there are no surrender charges, penalties, or other costs or fees that would be imposed by any person against the Company, any Company Benefit Plan, or any other person, including any Company Benefit Plan participant or beneficiary, as a result of the hypothetical liquidation as of the Closing Date of any insurance, annuity, or investment contracts or any other similar investment held by any Company Benefit Plan.
- (l) Except as set forth in **Section 3.12(l)** and **Section 3.12(e)** of the Company Disclosure Schedules, the Company may, at any time, amend or terminate any Company Benefit Plan (other than an employment or similar agreement with an employee) that it sponsors or maintains and may withdraw from any Company Benefit Plan to which it contributes (but does not sponsor or maintain), without obtaining the consent of any third party, other than an insurance company in the case of any benefit underwritten by an insurance company, and without incurring liability except for unpaid premiums or contributions due for the pay period that includes the effective date of such amendment, withdrawal or termination and for customary termination expenses. Any third party agreement pertaining to the maintenance of a Company Benefit Plan may be terminated upon the provision of ninety (90) days' prior notice or less without penalty.

**Section 3.13 Compliance with Legal Requirements.** The Company and each of its Subsidiaries hold all material licenses, certificates, permits, franchises and rights from all appropriate Regulatory Authorities necessary for the conduct of their respective businesses. Each of the Company and its Subsidiaries is, and at all times since January 1, 2019, has been, in compliance with each material Legal Requirement that is or was applicable to it or to the conduct or operation of its respective businesses or the ownership or use of any of its respective assets, except as set forth in **Section 3.13** of the Company Disclosure Schedules. Except for issues identified in any periodic Reports of Examination from a Regulatory Authority, neither the Company nor the Bank has received, at any time since January 1, 2019, any notice or other communication (whether oral or written) from any Regulatory

Authority or any other Person regarding: (a) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement; or (b) any actual, alleged, possible, or potential obligation on the part of the Company or the Bank to undertake, or to bear all or any portion of the cost of, any remedial action of any nature in connection with a failure to comply with any Legal Requirement. The Company has Previously Disclosed all internal investigations conducted since January 1, 2019 that involved management or officers of either of the Company or any Subsidiary.

**Section 3.14 Legal Proceedings: Orders.**

(a) Except as set forth in **Section 3.14(a)** of the Company Disclosure Schedules, since January 1, 2019, there have been, and currently are, no Proceedings or Orders pending, entered into or, to the Knowledge of the Company, threatened against or affecting the Company, its Subsidiaries or any of their respective assets, businesses, current or former directors or executive officers, or the Contemplated Transactions, that have not been fully satisfied, settled or terminated. No officer, director, employee or agent of the Company or its Subsidiaries is subject to any Order that prohibits such officer, director, employee or agent from engaging in or continuing any conduct, activity or practice relating to the businesses of the Company or any Subsidiary as currently conducted.

(b) Neither the Company nor any of its Subsidiaries: (i) is subject to any cease and desist or other Order or enforcement action issued by; (ii) is a party to any written agreement, consent agreement or memorandum of understanding with; (iii) is a party to any commitment letter or similar undertaking to; (iv) is subject to any order or directive by; (v) is subject to any supervisory letter from; (vi) has been ordered to pay any civil money penalty, which has not been paid, by; or (vii) has adopted any policies, procedures or board resolutions at the request of, any Regulatory Authority that currently restricts in any material respect the conduct of its business, in any manner relates to its capital adequacy, restricts its ability to pay dividends or interest or limits in any material manner its credit or risk management policies, its management or its business. To the Knowledge of the Company, none of the foregoing has been threatened by any Regulatory Authority.

**Section 3.15 Absence of Certain Changes and Events.** Since December 31, 2020, except as disclosed in the Company Financial Statements or in **Section 3.15** of the Company Disclosure Schedules, (i) there have been no events, changes, or occurrences which have had, or are reasonably likely to have, individually or in the aggregate, a Material Adverse Effect on the Company, (ii) the Company has not declared, set aside for payment or paid any dividend to holders of, or declared or made any distribution on, any shares of Company Common Stock and (iii) neither the Company nor the Bank has taken any action, or failed to take any action, prior to the date of this Agreement, which action or failure, if taken after the date of this Agreement, would represent or result in a material breach or violation of any of the covenants and agreements of the Company provided in Article 5. Except as may result from the transactions contemplated by this Agreement, or as set forth in **Section 3.15** of the Company Disclosure Schedules, neither the Company nor any of its Subsidiaries has since December 31, 2020:

(a) borrowed any money other than deposits, overnight fed funds or Federal Home Loan Bank of Indianapolis advances not over six (6) months in maturity or entered into any capital lease or leases; or, except in the Ordinary Course of Business: (i) lent any money or pledged any of its credit in connection with any aspect of its business whether as a guarantor, surety, issuer of a letter of credit or otherwise, (ii) mortgaged or otherwise subjected to any lien any of its assets, sold, assigned or transferred any of its assets in excess of \$100,000 in the aggregate or (iii) incurred any other liability or loss representing, individually or in the aggregate, over \$100,000;

(b) suffered over \$100,000 in damage, destruction or loss to immovable or movable property, whether or not covered by insurance;

(c) failed to operate its business in the Ordinary Course of Business, or failed to use reasonable efforts to preserve its business or to preserve the goodwill of its customers and others with whom it has business relations;

(d) forgiven any debt owed to it in excess of \$100,000, or cancelled any of its claims or paid any of its noncurrent obligations or Liabilities except in the Ordinary Course of Business;

(e) made any capital expenditure or capital addition or betterment in excess of \$100,000;

- (f) entered into any agreement requiring the payment, conditionally or otherwise, of any salary, bonus, extra compensation (including payments for unused vacation or sick time), pension or severance payment to any of its present or former directors, officers or employees, except such agreements as are terminable at will without any penalty or other payment by it or increased (except for increases of not more than 5% consistent with past practices) the compensation (including salaries, fees, bonuses, profit sharing, incentive, pension, retirement or other similar payments) of any such person whose annual compensation would, following such increase, exceed \$100,000;
- (g) except as required in accordance with GAAP, changed any accounting practice followed or employed in preparing the Company Financial Statements;
- (h) authorized or issued any capital stock; granted any stock option or right to purchase shares of capital stock; declared or paid any dividend or other distribution or payment in respect of shares of capital stock;
- (i) amended its articles of incorporation, charter or bylaws or adopted any resolutions by their board of directors or shareholders with respect to the same; or
- (j) entered into any agreement, contract or commitment to do any of the foregoing.

**Section 3.16 Material Contracts.** Section 3.16 of Company Disclosure Schedules lists or describes the following with respect to the Company and its Subsidiaries (each such agreement or document, a “**Company Material Contract**”), as of the date of this Agreement, for which true, complete and correct copies of each have been delivered or made available to Nicolet:

- (a) each Contract relating to the borrowing of money by the Company or the guarantee by the Company of any such obligations (other than Contracts evidencing deposit liabilities, purchase of federal funds, repurchase agreements, trade payables, or Federal Home Loan Bank of Indianapolis advances);
- (b) each Contract that involves performance of services or delivery of goods or materials (other than Contracts entered into in the Ordinary Course of Business and involving payments under any individual Contract not in excess of \$100,000);
- (c) each Contract with respect to patents, trademarks, copyrights, or other intellectual property, including agreements with current or former employees, consultants or contractors regarding the appropriation or the nondisclosure of any of its intellectual property;
- (d) each collective bargaining agreement and other Contract to or with any labor union or other employee representative of a group of employees;
- (e) each joint venture, partnership and other Contract (however named) involving a sharing of profits, losses, costs or liabilities by it with any other Person;
- (f) each Contract containing covenants that in any way purport to restrict, in any material respect, the business activity of the Company or its Subsidiaries or limit, in any material respect, the ability of the Company or its Subsidiaries to engage in any line of business or to compete with any Person;
- (g) each employment agreement, consulting agreement, non-competition, severance or change in control agreement or similar arrangement or plan with respect to any independent contractor or employee of the Company or its Subsidiaries;
- (h) each Contract relating to the provision of data processing or network communication services; and
- (i) each amendment, supplement and modification in respect of any of the foregoing.

**Section 3.17 No Defaults.** Each Company Material Contract is in full force and effect and is valid and enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other Legal Requirements affecting creditors’ rights generally and subject to general principles of equity. To the Knowledge of the Company, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a material violation or breach of, or give the

Company, any of its Subsidiaries or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Company Material Contract. Except in the Ordinary Course of Business with respect to any Company Loan, neither the Company nor the any of its Subsidiaries has given to or received from any other Person, at any time since January 1, 2019, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or breach of, or default under, any Company Material Contract, that has not been terminated or satisfied prior to the date of this Agreement. Other than in the Ordinary Course of Business, there are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate, any material amounts paid or payable to the Company or any of its Subsidiaries under current or completed Company Material Contracts with any Person, and no such Person has made written demand for such renegotiation.

**Section 3.18 Insurance.** Section 3.18 of the Company Disclosure Schedules lists all insurance policies and bonds owned or held as of the date of this Agreement by the Company and its Subsidiaries with respect to their respective business, operations, properties or assets (including bankers' blanket bond and insurance providing benefits for employees), true, complete and correct copies of each of which have been delivered or made available to Nicolet. The Company and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. The Company and its Subsidiaries are in compliance in all material respects with their insurance policies and are not in default under any of the terms thereof. Each such policy is outstanding and in full force and effect and, except for policies insuring against potential liabilities of officers, directors and employees of the Company and its Subsidiaries, the Company or the relevant Subsidiary thereof is the sole beneficiary of such policies. 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. Section 3.18 of the Company Disclosure Schedules lists and briefly describes all claims that have been filed under such insurance policies and bonds within the past two (2) years prior to the date of this Agreement that individually or in the aggregate exceed \$150,000 and the current status of such claims. All such claims have been filed in due and timely fashion. None of the Company or any of its Subsidiaries has had any insurance policy or bond cancelled or nonrenewed by the issuer of the policy or bond within the past two (2) years.

**Section 3.19 Compliance with Environmental Laws.** There are no actions, suits, investigations, liabilities, inquiries, Proceedings or Orders involving the Company or any of its Subsidiaries or any of their respective assets that are pending or, to the Knowledge of the Company, threatened, nor to the Knowledge of the Company, is there any factual basis for any of the foregoing, as a result of any asserted failure of the Company or any of its Subsidiaries of, or any predecessor thereof, to comply with any Environmental Law. No environmental clearances or other governmental approvals are required for the conduct of the business of the Company or any of its Subsidiaries or the consummation of the Contemplated Transactions. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries is the owner of any interest in real estate on which any substances have been generated, used, stored, deposited, treated, recycled or disposed of, which substances if known to be present on, at or under such property, would require notification to any Regulatory Authority, clean up, removal or some other remedial action under any Environmental Law at such property or any impacted adjacent or down gradient property. The Company and each Subsidiary has complied in all material respects with all Environmental Laws applicable to it and its business operations.

**Section 3.20 Transactions with Affiliates.** Since January 1, 2017, all transactions required to be disclosed by the Company pursuant to Item 404 of Regulation S-K promulgated under the Securities Act have been disclosed in the Company SEC Reports. No transaction, or series of related transactions, is currently proposed by the Company or any of its Subsidiaries or, to the Knowledge of the Company, by any other Person, to which the Company or any of its Subsidiaries would be a participant that would be required to be disclosed under Item 404 of Regulation S-K promulgated under the Securities Act if consummated.

**Section 3.21 Brokers; Opinion of Financial Advisor.** Except for fees and other obligations owed pursuant to an engagement letter between the Company and Piper Sandler & Co. that has been Previously Disclosed, neither the Company nor any of the Subsidiaries, nor any of their respective Representatives, has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement. The Company Board has received the opinion of Piper Sandler & Co., to the effect that, as of the date of such opinion, and based upon and subject to the factors and assumptions set forth

therein, the Merger Consideration to be received by the holders of Company Common Stock in connection with the Merger is fair, from a financial point of view, to the holders of Company Common Stock.

**Section 3.22 Approval Delays.** To the Knowledge of the Company, there is no reason why the granting of any of the Requisite Regulatory Approvals would be denied or unduly delayed. The Bank is an "eligible bank" (as such term is defined at 12 C.F.R. § 5.3(g)), "well-capitalized" (as such term is defined at 12 C.F.R. § 225.2(r)) and "well managed" (as such term is defined at 12 C.F.R. § 225.2(s)), and the rating of the Bank under the CRA is no less than "satisfactory." The Bank has not been informed that its status as an "eligible bank," "well-capitalized," "well managed" or, for CRA purposes, "satisfactory," will change within one (1) year.

**Section 3.23 Labor Matters.**

(a) There are no collective bargaining agreements or other labor union Contracts applicable to any employees of the Company or any of its Subsidiaries. There is no labor dispute, strike, work stoppage or lockout, or, to the Knowledge of the Company, threat thereof, by or with respect to any employees of the Company or any of its Subsidiaries, and there has been no labor dispute, strike, work stoppage or lockout in the previous three (3) years. There are no organizational efforts with respect to the formation of a collective bargaining unit presently being made, or to the Knowledge of the Company, threatened, involving employees of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has engaged or is engaging in any unfair labor practice. The Company and its Subsidiaries are in compliance in all material respects with all applicable Legal Requirements respecting employment and employment practices, terms and conditions of employment, wages, hours of work and occupational safety and health. No Proceeding asserting that the Company or any of any of its Subsidiaries has committed an unfair labor practice (within the meaning of the National Labor Relations Act of 1935) or seeking to compel the Company or any of its Subsidiaries to bargain with any labor organization as to wages or conditions of employment is pending or, to the Knowledge of the Company, threatened with respect to the Company or its Subsidiaries before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Regulatory Authority.

(b) Neither the Company nor any of its Subsidiaries is a party to, or otherwise bound by, any consent decree with, or citation by, any Regulatory Authority relating to employees or employment practices. None of the Company, any of its Subsidiaries or any of its or their executive officers has received within the past three (3) years any written notice of intent by any Regulatory Authority responsible for the enforcement of labor or employment laws to conduct an investigation relating to the Company or any of its Subsidiaries and, to the Knowledge of the Company, no such investigation is in progress.

**Section 3.24 Intellectual Property.** Except as set forth in **Section 3.24** of the Company Disclosure Schedules, each of the Company and its Subsidiaries has the unrestricted right and authority, and the Surviving Entity and its Subsidiaries will have the unrestricted right and authority from and after the Effective Time, to use all patents, trademarks, copyrights, service marks, trade names or other intellectual property owned by them as is necessary to enable them to conduct and to continue to conduct all material phases of the businesses of the Company and its Subsidiaries in the manner presently conducted by them, and, to the Knowledge of the Company, such use does not, and will not, conflict with, infringe on or violate any patent, trademark, copyright, service mark, trade name or any other intellectual property right of any Person.

**Section 3.25 Investments.**

(a) **Section 3.25(a)** of the Company Disclosure Schedules includes a complete and correct list and description as of December 31, 2020, of: (i) all investment and debt securities, mortgage-backed and related securities, marketable equity securities and securities purchased under agreements to resell that are owned by the Company or any of its Subsidiaries, other than, with respect to the Bank, in a fiduciary or agency capacity (the "**Company Investment Securities**"); and (ii) any such Company Investment Securities that are pledged as collateral to another Person. Each of the Company and its Subsidiaries has good and marketable title to all Company Investment Securities held by it, free and clear of any liens, mortgages, security interests, encumbrances or charges, except for the Company Permitted Exceptions and except to the extent such Company Investment Securities are pledged in the Ordinary Course of Business consistent with prudent banking practices to secure obligations of the Company or the Bank. The Company Investment Securities are valued on the books of the Company and its Subsidiaries in accordance with GAAP.

(b) Except as set forth in **Section 3.25(b)** of the Company Disclosure Schedules and as may be imposed by applicable securities laws and restrictions that may exist for securities that are classified as "held to maturity," none of the Company Investment Securities is subject to any restriction, whether contractual or statutory, that materially impairs the ability of the Company or any of its Subsidiaries to dispose of such investment at any time. With respect to all material repurchase agreements to which the Company or any of its Subsidiaries is a party, the Company or such Subsidiary of the Company, as the case may be, has a valid, perfected first lien or security interest in the securities or other collateral securing each such repurchase agreement, and the value of the collateral securing each such repurchase agreement equals or exceeds the amount of the debt secured by such collateral under such agreement.

(c) None of the Company or any of its Subsidiaries has sold or otherwise disposed of any Company Investment Securities in a transaction in which the acquiror of such Company Investment Securities or other person has the right, either conditionally or absolutely, to require the Company or any of its Subsidiaries to repurchase or otherwise reacquire any such Company Investment Securities.

(d) There are no interest rate swaps, caps, floors, option agreements or other interest rate risk management arrangements (other than loan caps or floors contained within Company Loans entered into in the Ordinary Course of Business) to which the Company or the Bank is bound.

**Section 3.26 Absence of Undisclosed Liabilities.** Other than unfunded loan commitments and letters of credit extended in the Ordinary Course of Business, neither the Company nor any of its Subsidiaries has any material liabilities, except liabilities which are accrued or reserved against in the balance sheets of the Company as of December 31, 2020, included in the Company Financial Statements delivered prior to the date of this Agreement or reflected in the notes thereto. Neither the Company nor any of its Subsidiaries has incurred or paid any material liability since December 31, 2020, except for such liabilities incurred or paid (a) in the Ordinary Course of Business consistent with past business practice or (b) in connection with the transactions contemplated by this Agreement. Neither the Company nor any of its Subsidiaries is directly or indirectly liable, by guarantee, indemnity, or otherwise, upon or with respect to, or obligated, by discount or repurchase agreement or in any other way, to provide funds in respect to, or obligated to guarantee or assume any liability of any Person for any amount in excess of \$50,000. Except (x) as reflected in the Company's Financial Statements included in the Form 10-K filed by the Company for the fiscal year ended on December 31, 2020 or (y) for liabilities incurred in the Ordinary Course of Business since December 31, 2020 or in connection with this Agreement or the transactions contemplated hereby, neither the Company nor any of its Subsidiaries has any material liabilities. **Section 3.26** of the Company Disclosure Schedules lists, and the Company has delivered to Nicolet copies of, the documentation creating or governing, all securitization transactions and off-balance sheet arrangements effected by the Company or any of its Subsidiaries other than letters of credit or unfunded loan commitments extended in the Ordinary Course of Business.

**Section 3.27 Bank Secrecy Act; PATRIOT Act; Anti-Money Laundering.** Neither the Company nor any of its Subsidiaries has any reason to believe that any facts or circumstances exist, which would cause the Company or the Bank to be deemed to be operating in violation in any material respect of the Bank Secrecy Act of 1970, as amended and its implementing regulations (31 C.F.R. Part 103), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and the regulations promulgated thereunder (the "**PATRIOT Act**"), any order issued with respect to anti-money laundering by the United States Department of the Treasury's Office of Foreign Assets Control, or any other applicable anti-money laundering law. Furthermore, the Company Board has adopted, and the Company has implemented, an anti-money laundering program that contains adequate and appropriate customer identification verification procedures, that has not been deemed ineffective by any Governmental Authority and that meets the requirements of Sections 326 and 352 of the PATRIOT Act.

**Section 3.28 Disaster Recovery and Business Continuity.** The Company has developed and implemented a contingency planning program to evaluate the impact of significant events that may adversely affect the Company's or the Bank's customers, assets, or employees. To the Company's Knowledge, such program ensures that the Company and the Bank can recover their mission critical functions, and complies in all material respects with the requirements of the Federal Financial Institutions Examination Council and the FDIC.



**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES OF NICOLET**

Except as Previously Disclosed, Nicolet hereby represents and warrants to the Company as follows:

**Section 4.1 Nicolet Organization.** Nicolet: (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and is also in good standing in each other jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a Material Adverse Effect on Nicolet; (b) is registered with the Federal Reserve as a financial holding company under the Bank Holding Company Act of 1956, as amended; and (c) has full power and authority, corporate and otherwise, to operate as a bank holding company and to own, operate and lease its properties as presently owned, operated and leased, and to carry on its business as it is now being conducted. The copies of the Nicolet Articles of Incorporation and Nicolet Bylaws and all amendments thereto set forth in Nicolet SEC Reports are true, complete and correct, and in full force and effect as of the date of this Agreement. Nicolet has no "Significant Subsidiary" as set forth in Rule 1-02 or Regulation S-X promulgated under the Exchange Act other than the Subsidiaries listed on Exhibit 21 to Nicolet's Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

**Section 4.2 Nicolet Subsidiary Organizations.** Nicolet Bank is a national bank duly organized, validly existing and in good standing under the laws of the United States. Each Nicolet Subsidiary is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is also in good standing in each other jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a Material Adverse Effect on Nicolet. Each Subsidiary of Nicolet has full power and authority, corporate and otherwise, to own, operate and lease its properties as presently owned, operated and leased, and to carry on its business as it is now being conducted. The deposit accounts of Nicolet Bank are insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by applicable Legal Requirements, and all premiums and assessments required to be paid in connection therewith have been paid when due. Nicolet has delivered or made available to the Company copies of the charter (or similar organizational documents) and bylaws of each Subsidiary of Nicolet and all amendments thereto, each of which are true, complete and correct and in full force and effect as of the date of this Agreement.

**Section 4.3 Authorization; Enforceability.** Nicolet has the requisite corporate power and authority to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Nicolet Board. The Nicolet Board has determined that the Merger, on substantially the terms and conditions set forth in this Agreement, is advisable and in the best interests of Nicolet and its shareholders, and that the Agreement and transactions contemplated hereby are in the best interests of Nicolet and its shareholders. The Nicolet Board has directed the Merger, on substantially the terms and conditions set forth in this Agreement, be submitted to the Nicolet's shareholders for consideration at a duly held meeting of such shareholders and has resolved to recommend that Nicolet's shareholders vote in favor of the adoption and approval of this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Nicolet, and the consummation by it of its obligations under this Agreement, have been authorized by all necessary corporate action, subject to Nicolet Shareholder Approval, and, subject to the receipt of the Requisite Regulatory Approvals, this Agreement constitutes a legal, valid and binding obligation of Nicolet enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other Legal Requirements affecting creditors' rights generally and subject to general principles of equity.

**Section 4.4 No Conflict.** Neither the execution nor delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with or result in a violation of any provision of the certificate of incorporation, certificate of formation or charter (or similar organizational documents) or bylaws or operating agreement, each as in effect on the date hereof, or any currently effective resolution adopted by the board of directors, shareholders, manager or members of, Nicolet or any of its Subsidiaries; (b) assuming receipt of the Requisite Regulatory Approvals, contravene, conflict with or result in a violation of, or give any Regulatory

Authority or other Person the valid and enforceable right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which Nicolet or any of its Subsidiaries, or any of their respective assets that are owned or used by them, may be subject, except for any contravention, conflict or violation that is permissible by virtue of obtaining the Requisite Regulatory Approvals; (c) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any Nicolet Material Contract; or (d) result in the creation of any material lien, charge or encumbrance upon or with respect to any of the assets owned or used by Nicolet or any of its Subsidiaries. Except for the Requisite Regulatory Approvals, the Nicolet Shareholder Approval, the Registration Statement and the stock exchange listing required under **Section 6.7**, neither Nicolet nor any of its Subsidiaries is or will be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

**Section 4.5 Nicolet Capitalization.**

(a) The authorized capital stock of Nicolet currently consists exclusively of: (i) 30,000,000 shares of Nicolet Common Stock, par value \$0.01 per share, of which, as of March 31, 2021 (the "**Nicolet Capitalization Date**"), 10,002,322 shares were issued (including 14,425 shares of restricted stock granted but not yet vested under the Nicolet Stock Plans), 9,987,897 shares were outstanding, and no shares were treasury shares; and (ii) 10,000,000 shares of Nicolet's preferred stock, no par value per share (the "**Nicolet Preferred Stock**"), of which: (i) 14,964 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series A, are authorized, but no shares are outstanding; (ii) 748 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series B, are authorized but no shares are outstanding; and (iii) 24,400 shares of Non-Cumulative Perpetual Preferred Stock, Series C, are authorized, but no shares are outstanding. Nicolet does not have outstanding any bonds, debentures, notes or other debt obligations having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) with the shareholders of Nicolet on any matter. All of the issued and outstanding shares of Nicolet Capital Stock have been, and those shares of Nicolet Common Stock to be issued pursuant to the Merger will be, duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(b) As of the Nicolet Capitalization Date, no shares of Nicolet Capital Stock were reserved for issuance other than: (i) 1,338,494 shares of Nicolet Common Stock reserved for issuance pursuant to future awards under Nicolet Stock plans, (ii) 1,419,213 shares of Nicolet Common Stock reserved for issuance in connection with outstanding stock options, unvested restricted stock, or other equity awards under Nicolet Stock Plans; (iii) 141,082 shares of Nicolet Common Stock reserved for issuance under Nicolet's 401(k) plan; (iv) 59,615 shares of Nicolet Common Stock reserved for issuance pursuant to Nicolet's 2009 Deferred Compensation Plan for Non-Employee Directors; and (v) 133,233 shares of Nicolet Common Stock reserved for issuance under the Nicolet Bankshares, Inc. Employee Stock Purchase Plan.

(c) Since the Nicolet Capitalization Date through the date hereof, and except as set forth in **Section 4.5(c)** of the Nicolet Disclosure Schedules, Nicolet has not: (i) issued or repurchased any shares of Nicolet Common Stock or Nicolet Preferred Stock or other equity securities of Nicolet, other than in connection with the exercise of Nicolet Equity Awards that were outstanding on the Nicolet Capitalization Date or settlement thereof, in each case in accordance with the terms of the relevant Nicolet Stock Plan; or (ii) issued or awarded any options, stock appreciation rights, restricted shares, restricted stock units, deferred equity units, awards based on the value of Nicolet Common Stock or any other equity-based awards.

(d) None of the shares of Nicolet Common Stock were issued in violation of any federal or state securities laws or any other applicable Legal Requirement. As of the date of this Agreement there are: (i) other than outstanding Nicolet Equity Awards, no outstanding subscriptions, Contracts, conversion privileges, options, warrants, calls or other rights obligating Nicolet or any of its Subsidiaries to issue, sell or otherwise dispose of, or to purchase, redeem or otherwise acquire, any shares of capital stock of Nicolet or any of its Subsidiaries; and (ii) no contractual obligations of Nicolet or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of Nicolet Common Stock or any equity security of Nicolet or its Subsidiaries or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of Nicolet or its Subsidiaries.

**Section 4.6 Nicolet Subsidiary Capitalization.** All of the issued and outstanding shares of capital stock or other equity ownership interests of each Subsidiary of Nicolet are owned by Nicolet, directly or indirectly, free and clear of any material liens, pledges, charges, claims and security interests and similar encumbrances, and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable (except as provided in 12 U.S.C. § 55) and free of preemptive rights. No Subsidiary of Nicolet has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of capital stock or any other equity security of such Subsidiary or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of such Subsidiary.

**Section 4.7 Nicolet SEC Reports; Financial Statements and Reports; Regulatory Filings.**

(a) Nicolet has timely filed all Nicolet SEC Reports, and all such Nicolet SEC Reports have complied as to form in all material respects, as of their respective filing dates and effective dates, as the case may be, with all applicable requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder. The Nicolet SEC Reports were prepared in accordance with applicable Legal Requirements in all material respects. As of their respective filing dates, none of the Nicolet SEC Reports contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date. As of the date hereof, there are no outstanding comments from or unresolved issues raised by the SEC with respect to any of the Nicolet SEC Reports. No Subsidiary of Nicolet is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

(b) The financial statements presented (or incorporated by reference) in the Nicolet SEC Reports (including the related notes, where applicable) have been prepared in conformity with GAAP, except in each case as indicated in such statements or the notes thereto, and comply in all material respects with all applicable Legal Requirements. Taken together, the financial statements presented in the Nicolet SEC Reports (collectively, the "**Nicolet Financial Statements**") are complete and correct in all material respects and fairly and accurately present the respective financial position, assets, liabilities and results of operations of Nicolet and its Subsidiaries at the respective dates of and for the periods referred to in the Nicolet Financial Statements, subject to normal year-end audit adjustments in the case of unaudited Nicolet Financial Statements. The Nicolet Financial Statements do not include any assets or omit to state any liabilities, absolute or contingent, or other facts, which inclusion or omission would render the Nicolet Financial Statements misleading in any material respect as of the respective dates thereof and for the periods referred to therein. As of the date hereof, Wipfli, LLP has not resigned (or informed Nicolet that it intends to resign) or been dismissed as independent registered public accountants of Nicolet.

(c) Nicolet is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 that are applicable to it or any of its Subsidiaries. Nicolet maintains a system of disclosure controls and procedures as defined in Rule 13a-15 and 15d-15 under the Exchange Act that are designed to provide reasonable assurance that information required to be disclosed by Nicolet in reports that Nicolet is required to file under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to Nicolet's management to allow timely decisions regarding required disclosures. As of the Nicolet Capitalization Date, to the Knowledge of Nicolet, such controls and procedures were effective, in all material respects, to provide such reasonable assurance.

(d) Nicolet and its consolidated Subsidiaries have established and maintained a system of Internal Control Over Financial Reporting. Nicolet's certifying officers have evaluated the effectiveness of Nicolet's Internal Control Over Financial Reporting as of the end of the period covered by the most recently filed quarterly report on Form 10-Q, or annual report on Form 10-K for the fourth quarter, under the Exchange Act (the "**Nicolet Evaluation Date**"). Nicolet presented in such quarterly report the conclusions of the certifying officers about the effectiveness of Nicolet's Internal Control Over Financial Reporting based on their evaluations as of the Nicolet Evaluation Date. Since the Nicolet Evaluation Date, there have been no changes in Nicolet's Internal Control Over Financial Reporting that have materially affected, or are reasonably likely to materially affect, Nicolet's Internal Control Over Financial Reporting. Nicolet has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with

management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(e) Nicolet and each of its Subsidiaries has filed all forms, reports and documents required to be filed since January 1, 2019, with all applicable federal or state securities or banking authorities except to the extent failure would not have a Material Adverse Effect on Nicolet and its Subsidiaries. Such forms, reports and documents: (i) complied as to form in all material respects with applicable Legal Requirements; and (ii) did not at the time they were filed, after giving effect to any amendment thereto filed prior to the date hereof, contain an 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 therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date.

(f) Except for normal examinations conducted by a Regulatory Authority in the Ordinary Course of Business of Nicolet and its Subsidiaries, no Regulatory Authority has initiated since January 1, 2019, or has pending any proceeding, enforcement action or to the Knowledge of Nicolet, investigation into the business, disclosures or operations of Nicolet or its Subsidiaries. Since January 1, 2019, no Regulatory Authority has resolved any proceeding enforcement action or, to the Knowledge of Nicolet, investigation into the business, disclosures or operations of Nicolet or its Subsidiaries. Nicolet and its Subsidiaries have fully complied with, and there is no unresolved violation, criticism or exception by any Regulatory Authority with respect to, any report or statement relating to any examination or inspection of Nicolet or its Subsidiaries. Since January 1, 2019, there have been no formal or informal inquiries by, or disagreements or disputes with, any Regulatory Authority with respect to the business, operations, policies or procedures of Nicolet or its Subsidiaries (other than normal examinations conducted by a Regulatory Authority in Nicolet's Ordinary Course of Business). To the Knowledge of Nicolet, there has not been any event or occurrence since January 1, 2019 that would result in a determination that Nicolet Bank is not an eligible depository institution as defined in 12 C.F.R. § 303.2(r).

**Section 4.8 Loans: Loan Loss Reserve.**

(a) Each loan, loan agreement, note, lease or other borrowing agreement by Nicolet Bank, any participation therein, and any guaranty, renewal or extension thereof (the "**Nicolet Loans**") reflected as an asset on any of the Nicolet Financial Statements or reports filed with the Regulatory Authorities is evidenced by documentation that is customary and legally sufficient in all material respects and constitutes, to the Knowledge of Nicolet, the legal, valid and binding obligation of the obligor named therein, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally or equitable principles or doctrines.

(b) All Nicolet Loans originated or purchased by Nicolet Bank were made or purchased in accordance with the policies of the board of directors of Nicolet Bank and in the Ordinary Course of Business of Nicolet Bank.

(c) Nicolet Bank's allowance for credit losses-loans reflected in the Nicolet Financial Statements (including footnotes thereto) was determined on the basis of Nicolet Bank's continuing review and evaluation of the portfolio of Nicolet Loans under the requirements of GAAP and Legal Requirements, was established in a manner consistent with Nicolet Bank's internal policies, and, in the reasonable judgment of Nicolet Bank, was appropriate in all material respects under the requirements of GAAP and all Legal Requirements to provide for possible or specific losses, net of recoveries relating to Nicolet Loans previously charged-off, on outstanding Nicolet Loans.

**Section 4.9 Taxes.**

(a) Nicolet and each of its Subsidiaries have duly and timely filed all Tax Returns required to be filed by them for all taxable or reporting periods ending on or before the Closing Date, and each such Tax Return is true, correct and complete in all material respects. Nicolet and each of its Subsidiaries have paid, or made

adequate provision for the payment of, all Taxes (whether or not reflected in Tax Returns as filed or to be filed) due and payable by Nicolet and each of its Subsidiaries, or claimed to be due and payable by any Regulatory Authority, and are not delinquent in the payment of any Tax, except such Taxes as are being contested in good faith and as to which adequate reserves have been provided.

(b) There is no claim or assessment pending or, to the Knowledge of Nicolet, threatened against Nicolet and its Subsidiaries for any Taxes that they owe. Except as disclosed in **Section 4.9(b)** of the Nicolet Disclosure Schedules, no audit, examination or investigation related to Taxes paid or payable by Nicolet or any of its Subsidiaries is presently being conducted or, to the Knowledge of Nicolet, threatened by any Regulatory Authority. Neither Nicolet nor its Subsidiaries are the beneficiary of any extension of time within which to file any Tax Return, and there are no liens for Taxes (other than Taxes not yet delinquent) upon any of Nicolet's or its Subsidiaries' assets. Neither Nicolet nor its Subsidiaries have executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax that is currently in effect.

(c) To the Knowledge of Nicolet, Nicolet and each of its Subsidiaries have not engaged in any transaction that could affect the Tax liability for any Tax Returns not closed by applicable statute of limitations: (i) which is a "reportable transaction" or a "listed transaction" or (ii) a "significant purpose of which is the avoidance or evasion of U.S. federal income tax" within the meaning of Sections 6662, 6662A, 6011, 6111 or 6707A of the Code or of the regulations of the U.S. Department of the Treasury promulgated thereunder or pursuant to notices or other guidance published by the IRS (irrespective of the effective dates).

(d) It is the present intention of Nicolet to continue at least one significant historic business line of the Company, or to use at least a significant portion of the Company's historic business assets in a business, in each case within the meaning of Treas. Reg. Section 1.368-1(d).

**Section 4.10 Employee Benefits.**

(a) Except as disclosed in **Section 4.10(a)** of the Nicolet Disclosure Schedules, each Nicolet Benefit Plan is and has been administered in all material respects in compliance with its terms and with all applicable Legal Requirements.

(b) Other than routine claims for benefits made in the Ordinary Course of Business, there is no litigation, claim or assessment pending or, to Nicolet's Knowledge, threatened by, on behalf of, or against any Nicolet Benefit Plan or against the administrators or trustees or other fiduciaries of any Nicolet Benefit Plan that alleges a violation of applicable state or federal law or violation of any Nicolet Benefit Plan document or related agreement.

(c) Neither Nicolet nor, to Nicolet's Knowledge, any of its directors, officers, employees or any Nicolet Benefit Plan fiduciary has any liability for failure to comply with all applicable Legal Requirements for any action or failure to act in connection with the administration or investment of any Nicolet Benefit Plan. To Nicolet's Knowledge, no party in interest (as defined in Code Section 4975(e)(2)) of any Nicolet Benefit Plan has engaged in any nonexempt prohibited transaction (as described in Code Section 4975(c) or ERISA Section 406).

(d) All accrued contributions and other payments to be made by Nicolet or any Subsidiary to any Nicolet Benefit Plan (i) through the date hereof have been made or reserves adequate for such purposes have been set aside therefor and reflected in the Nicolet Financial Statements, and (ii) through the Closing Date will have been made or reserves adequate for such purposes will have been set aside therefor.

(e) Except as set forth in **Section 4.10(e)** of the Nicolet Disclosure Schedules, each Nicolet Benefit Plan that is intended to qualify under Section 401 and related provisions of the Code is the subject of a favorable determination letter or may rely upon an opinion letter from the IRS to the effect that it is so qualified under the Code and that its related funding instrument is tax exempt under Section 501 of the Code (or the Company and its Subsidiaries are otherwise relying on an opinion letter issued to the prototype sponsor), and, to the Nicolet's Knowledge, there are no facts or circumstances that would adversely affect the qualified status of any Nicolet Benefit Plan or the tax-exempt status of any related trust.

**Section 4.11 Books and Records.** The books of account, minute books, stock record books and other records of Nicolet and its Subsidiaries are complete and correct in all material respects and have been maintained in accordance with Nicolet's business practices and all applicable Legal Requirements, including the maintenance of an

adequate system of internal controls required by such Legal Requirements. The minute books of Nicolet and each of its Subsidiaries contain accurate and complete records in all material respects of all meetings held of, and corporate action taken by, its respective shareholders, boards of directors and committees of the boards of directors. At the Closing, all of those books and records will be in the possession of Nicolet and its Subsidiaries.

**Section 4.12 Compliance with Legal Requirements.** Nicolet and each of its Subsidiaries hold all material licenses, certificates, permits, franchises and rights from all appropriate Regulatory Authorities necessary for the conduct of their respective businesses. Nicolet and each of its Subsidiaries is, and at all times since January 1, 2019, has been, in compliance with each material Legal Requirement that is or was applicable to it or to the conduct or operation of its respective businesses or the ownership or use of any of its respective assets. Neither Nicolet nor any of its Subsidiaries has received, at any time since January 1, 2019, any notice or other communication (whether oral or written) from any Regulatory Authority or any other Person regarding: (a) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement; or (b) any actual, alleged, possible, or potential obligation on the part of Nicolet or any of its Subsidiaries to undertake, or to bear all or any portion of the cost of, any remedial action of any nature in connection with a failure to comply with any Legal Requirement.

**Section 4.13 Legal Proceedings: Orders.**

(a) Except as set forth in **Section 4.13(a)** of the Nicolet Disclosure Schedules, since January 1, 2019, there have been, and currently are, no Proceedings or Orders pending, entered into or, to the Knowledge of Nicolet, threatened against or affecting Nicolet, any of its Subsidiaries or any of their respective assets, businesses, current or former directors or executive officers, or the Contemplated Transactions, that have not been fully satisfied, settled or terminated. No officer, director, employee or agent of Nicolet or any of its Subsidiaries is subject to any Order that prohibits such officer, director, employee or agent from engaging in or continuing any conduct, activity or practice relating to the businesses of Nicolet or any of its Subsidiaries as currently conducted.

(b) Neither Nicolet nor any of its Subsidiaries: (i) is subject to any cease and desist or other Order or enforcement action issued by; (ii) is a party to any written agreement, consent agreement or memorandum of understanding with; (iii) is a party to any commitment letter or similar undertaking to; (iv) is subject to any order or directive by; (v) is subject to any supervisory letter from; (vi) has been ordered to pay any civil money penalty, which has not been paid, by; or (vii) has adopted any policies, procedures or board resolutions at the request of; any Regulatory Authority that currently restricts in any material respect the conduct of its business, in any manner relates to its capital adequacy, restricts its ability to pay dividends or interest or limits in any material manner its credit or risk management policies, its management or its business. To the Knowledge of Nicolet, none of the foregoing has been threatened by any Regulatory Authority.

**Section 4.14 Absence of Certain Changes and Events.** Since December 31, 2020, Nicolet and its Subsidiaries have conducted their respective businesses only in the Ordinary Course of Business, and without limiting the foregoing with respect to each, since December 31, 2020, there has not been any event or events that have had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Nicolet.

**Section 4.15 No Defaults.** To the Knowledge of Nicolet, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a material violation or breach of, or give Nicolet, any of its Subsidiaries or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Nicolet Material Contract.

**Section 4.16 Compliance with Environmental Laws.** Nicolet and each Subsidiary of Nicolet has complied in all material respects with all Environmental Laws applicable to it and its business operations.

**Section 4.17 Transactions with Affiliates.** Since January 1, 2019, all transactions required to be disclosed by Nicolet pursuant to Item 404 of Regulation S-K promulgated under the Securities Act have been disclosed in the Nicolet SEC Reports. No transaction, or series of related transactions, is currently proposed by Nicolet or any of its Subsidiaries or, to the Knowledge of Nicolet, by any other Person, to which Nicolet or any of its Subsidiaries would be a participant that would be required to be disclosed under Item 404 of Regulation S-K promulgated under the Securities Act if consummated.

**Section 4.18 Approval Delays.** To the Knowledge of Nicolet, there is no reason why the granting of any of the Requisite Regulatory Approvals would be denied or unduly delayed. Nicolet Bank is an "eligible bank" (as such term is defined at 12 C.F.R. § 5.3(g)), "well-capitalized" (as such term is defined at 12 C.F.R. § 225.2(r)) and "well managed" (as such term is defined at 12 C.F.R. § 225.2(s)), and the rating of Nicolet Bank under the CRA is no less than "satisfactory." Nicolet Bank has not been informed that its status as an "eligible bank," "well-capitalized," "well managed" or, for CRA purposes, "satisfactory," will change within one (1) year.

**Section 4.19 Labor Matters.**

(a) There are no collective bargaining agreements or other labor union Contracts applicable to any employees of Nicolet or any of its Subsidiaries. There is no labor dispute, strike, work stoppage or lockout, or, to the Knowledge of Nicolet, threat thereof, by or with respect to any employees of Nicolet or any of its Subsidiaries, and there has been no labor dispute, strike, work stoppage or lockout in the previous three (3) years. There are no organizational efforts with respect to the formation of a collective bargaining unit presently being made, or to the Knowledge of Nicolet, threatened, involving employees of Nicolet or any of its Subsidiaries. Neither Nicolet nor any of its Subsidiaries has engaged or is engaging in any unfair labor practice. Nicolet and its Subsidiaries are in compliance in all material respects with all applicable Legal Requirements respecting employment and employment practices, terms and conditions of employment, wages, hours of work and occupational safety and health. No Proceeding asserting that Nicolet or any of its Subsidiaries has committed an unfair labor practice (within the meaning of the National Labor Relations Act of 1935) or seeking to compel Nicolet or any of its Subsidiaries to bargain with any labor organization as to wages or conditions of employment is pending or, to the Knowledge of Nicolet, threatened with respect to Nicolet or any of its Subsidiaries before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Regulatory Authority.

(b) Neither Nicolet nor any of its Subsidiaries is a party to, or otherwise bound by, any consent decree with, or citation by, any Regulatory Authority relating to employees or employment practices. None of Nicolet, any of its Subsidiaries or any of its or their executive officers has received within the past three (3) years any written notice of intent by any Regulatory Authority responsible for the enforcement of labor or employment laws to conduct an investigation relating to Nicolet or any of its Subsidiaries and, to the Knowledge of Nicolet, no such investigation is in progress.

**ARTICLE 5  
THE COMPANY'S COVENANTS**

**Section 5.1 Access and Investigation.**

(a) Subject to any applicable Legal Requirement, Nicolet and its Representatives shall, at all times during normal business hours and with reasonable advance notice, have such reasonable access to the facilities, operations, records and properties of the Company and each of its Subsidiaries in accordance with the provisions of this **Section 5.1(a)** as shall be necessary for the purpose of determining the Company's continued compliance with the terms and conditions of this Agreement and preparing for the integration of Nicolet and the Company following the Effective Time. Nicolet and its Representatives may, during such period, make or cause to be made such reasonable investigation of the operations, records and properties of the Company and each of its Subsidiaries and of their respective financial and legal conditions as Nicolet shall deem necessary or advisable to familiarize itself with such records, properties and other matters; *provided, however*, that such access or investigation shall not interfere materially with the normal operations of the Company or any of its Subsidiaries. Upon request, the Company and each of its Subsidiaries will furnish Nicolet or its Representatives attorneys' responses to auditors' requests for information regarding the Company or such Subsidiary, as the case may be, and such financial and operating data and other information reasonably requested by Nicolet (provided, such disclosure would not result in the waiver by the Company or any of its Subsidiaries of any claim of attorney-client privilege). No investigation by Nicolet or any of its Representatives shall affect the representations and warranties made by the Company in this Agreement. This **Section 5.1(a)** shall not require the disclosure of any information to Nicolet the disclosure of which, in the Company's reasonable judgment: (i) would be prohibited by any applicable Legal Requirement including the prohibitions on disclosure of confidential supervisory information (including confidential supervisory information as defined in 12 C.F.R. § 261.2); (ii) would result in the breach of any agreement with any third party in effect on the date of this Agreement; or (iii) relate to pending or threatened litigation or investigations,

if disclosure might affect the confidential nature of, or any privilege relating to, the matters being discussed. If any of the restrictions in the preceding sentence shall apply, the Company and Nicolet will make, to the extent legally permissible, appropriate alternative disclosure arrangements, including adopting additional specific procedures to protect the confidentiality of sensitive material and to ensure compliance with any applicable Legal Requirement.

(b) From the date hereof until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, the Company shall promptly furnish to Nicolet: (i) a copy of each report, schedule, registration statement and other document filed, furnished or received by it during such period pursuant to the requirements of federal and state banking laws or federal or state securities laws, which is not generally available on the SEC's EDGAR internet database; and (ii) a copy of each report filed by it or any of its Subsidiaries with any Regulatory Authority; in each case other than portions of such documents relating to confidential supervisory or examination materials or the disclosure of which would violate any applicable Legal Requirement.

(c) The Company shall provide, and cause each of its Subsidiaries to provide, to Nicolet all information provided to the directors on all such boards or members of such committees in connection with all meetings of the board of directors and committees of the board of directors of the Company or otherwise provided to the directors or members, and to provide any other financial reports or other analysis prepared for senior management of the Company or its Subsidiaries; in each case other than portions of such documents relating to attorney-client privilege, confidential supervisory information or the disclosure of which would violate any applicable Legal Requirement.

(d) All information obtained by Nicolet in accordance with this **Section 5.1** shall be treated in confidence as provided in that certain confidentiality and non-disclosure agreement dated October 2, 2020, between Nicolet and the Company (the "**Confidentiality Agreement**").

**Section 5.2 Operation of the Company and Company Subsidiaries.**

(a) Except as Previously Disclosed, as expressly contemplated by or permitted by this Agreement, as required by applicable Legal Requirement, or with the prior written consent of Nicolet, which shall not be unreasonably withheld, conditioned or delayed, during the period from the date of this Agreement to the earlier of the Closing Date or the termination of this Agreement pursuant to its terms, the Company shall, and shall cause each of its Subsidiaries to: (i) conduct its business in the Ordinary Course of Business in all material respects; (ii) use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships; and (iii) take no action that is intended to or would reasonably be expected to adversely affect or materially delay the ability of the Company or Nicolet to obtain any of the Requisite Regulatory Approvals, to perform its covenants and agreements under this Agreement or to consummate the Contemplated Transactions.

(b) Except as Previously Disclosed, as expressly contemplated by or permitted by this Agreement, as required by applicable Legal Requirement, or with the prior written consent of Nicolet, which shall not be unreasonably withheld, conditioned or delayed, during the period from the date of this Agreement to the earlier of the Closing Date or the termination of this Agreement pursuant to its terms, the Company will not, and will cause each of its Subsidiaries not to:

(i) other than pursuant to the terms of any Contract to which the Company is a party that is outstanding on the date of this Agreement (as disclosed in **Section 5.2(b)(i)** of the Company Disclosure Schedules): (A) issue, sell or otherwise permit to become outstanding, or dispose of or encumber or pledge, or authorize or propose the creation of, any additional shares of Company Capital Stock or any security convertible into Company Capital Stock; (B) permit any additional shares of Company Capital Stock to become subject to new grants; or (C) grant any registration rights with respect to shares of Company Capital Stock;

(ii) (A) make, declare, pay or set aside for payment any dividend on or in respect of, or declare or make any distribution on any shares of Company Capital Stock (other than dividends from its wholly owned Subsidiaries to it or another of its wholly owned Subsidiaries); *provided, however,* the Company may continue paying its regular quarterly dividend of \$0.14 per share of Company Common Stock consistent with past practice, or (B) directly or indirectly adjust, split, combine, redeem, reclassify, purchase or otherwise acquire, any shares of Company Capital Stock (other than repurchases of shares of Company Common Stock in the Ordinary Course of Business to satisfy obligations under the Company Benefit Plans);



(iii) amend the terms of, waive any rights under, terminate, knowingly violate the terms of or enter into: (A) any Company Material Contract (other than as permitted by **Section 5.2(b)(xiii)**); (B) any material restriction on the ability of the Company or its Subsidiaries to conduct its business as it is presently being conducted; or (C) any Contract or other binding obligation relating to any class of Company Capital Stock or rights associated therewith or any outstanding instrument of indebtedness;

(iv) enter into loan transactions not in accordance with, or consistent with, past practices of the Bank;

(v) (A) enter into any extensions of credit that is not in material compliance with the provisions of the Bank's formal loan policy as in effect as of the date of this Agreement; or (B) other than incident to a reasonable loan restructuring, extend additional credit to any Person and any director or officer of, or any owner of a material interest in, such Person (any of the foregoing with respect to a Person being referred to as a "**Borrowing Affiliate**") if such Person or such Borrowing Affiliate is the obligor under any indebtedness to the Company or any of its Subsidiaries which constitutes a nonperforming loan or against any part of such indebtedness the Company or any of its Subsidiaries has established loss reserves or any part of which has been charged-off by the Company or any of its Subsidiaries;

(vi) maintain an allowance for loan and lease losses which is not appropriate in all material respects under the requirements of GAAP to provide for possible losses, net of recoveries relating to Company Loans previously charged off, on Company Loans and leases outstanding (including accrued interest receivable);

(vii) fail to: (A) charge-off any Company Loans or leases that would be deemed uncollectible in accordance with GAAP or any applicable Legal Requirement; or (B) place on non-accrual any Company Loans or leases that are past due greater than ninety (90) days (it being understood that modifications of such loans consistent with regulatory COVID-relief guidelines and consistent with past practice shall not be a violation of this **Section 5.2(b)**);

(viii) sell, transfer, mortgage, encumber, license, let lapse, cancel, abandon or otherwise dispose of or discontinue any of its assets, deposits, business or properties, except for sales, transfers, mortgages, encumbrances, licenses, lapses, cancellations, abandonments or other dispositions or discontinuances in the Ordinary Course of Business and in a transaction that, together with other such transactions, is not material to the Company and its Subsidiaries, taken as a whole;

(ix) acquire (other than by way of foreclosures or acquisitions of control in a fiduciary or similar capacity or in satisfaction of debts previously contracted in good faith, in each case in the Ordinary Course of Business) all or any portion of the assets, business, deposits or properties of any other entity except in the Ordinary Course of Business and in a transaction that, together with other such transactions, is not material to the Company and its Subsidiaries, taken as a whole, and does not present a material risk that the Closing Date will be materially delayed or that any approvals necessary to complete the Merger or the other Contemplated Transactions will be more difficult to obtain;

(x) purchase any equity security for its investment portfolio that is inconsistent with the Bank's formal investment policy as in effect as of the date of this Agreement or that are not in strict compliance with the provisions of such investment policy;

(xi) amend its articles of incorporation or its bylaws, or similar governing documents of the Bank;

(xii) implement or adopt any change in its accounting principles, practices or methods, other than as may be required by GAAP or applicable regulatory accounting requirements;

(xiii) (A) except in the Ordinary Course of Business or as required by applicable Legal Requirements, materially increase in any manner the compensation or benefits of any of the current or former directors, officers, employees, consultants, independent contractors or other service providers of the Company or the Bank (collectively, the "**Company Employees**") other than ordinary course base salary increases for Company Employees, incentive payments consistent with past practice or payment of prorated bonuses in amounts consistent with past practices, in each case, *provided that* the Company properly accrues for such expenses; (B) become a party

to, establish, amend, commence participation in, terminate or commit itself to the adoption of any stock option plan or other stock-based compensation plan, compensation, severance, pension, consulting, non-competition, change in control, retirement, profit-sharing, welfare benefit, or other employee benefit plan or agreement or employment agreement with or for the benefit of any Company Employee (or newly hired employees), director or shareholder; (C) accelerate the vesting of or lapsing of restrictions with respect to any stock-based compensation or other long-term incentive compensation under any Company Benefit Plans; (D) cause the funding of any rabbi trust or similar arrangement or take any action to fund or in any other way secure the payment of compensation or benefits under any Company Benefit Plan; (E) materially change any actuarial assumptions used to calculate funding obligations with respect to any Company Benefit Plan that is required by applicable Legal Requirements to be funded or change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP or any applicable Legal Requirement; or (F) conduct the administration of the Company Benefit Plans in any manner other than the Ordinary Course of Business;

(xiv) hire any new employees with an annual salary in excess of \$75,000;

(xv) incur or guarantee any indebtedness for borrowed money other than deposits, overnight fed funds or Federal Home Loan Bank of Indianapolis advances not over six (6) months in maturity or enter into any capital lease or leases; or, except in the Ordinary Course of Business: (A) lend any money or pledge any of its credit in connection with any aspect of its business, whether as a guarantor, surety, issuer of a letter of credit or otherwise; (B) mortgage or otherwise subject to any lien any of its assets or sell, assign or transfer any of its assets in excess of \$100,000 in the aggregate; or (C) incur any other liability or loss representing, individually or in the aggregate, over \$100,000;

(xvi) enter into any new line of business or materially change its lending, investment, underwriting, risk and asset liability management and other banking and operating policies, except as required by applicable Legal Requirements or requested by any Regulatory Authority;

(xvii) settle any action, suit, claim or proceeding against it or any of its Subsidiaries, except for an action, suit, claim or proceeding that is settled in an amount and for consideration not in excess of \$150,000 and that would not: (A) impose any material restriction on the business of the Company or its Subsidiaries; or (B) create precedent for claims that is reasonably likely to be material to it or its Subsidiaries;

(xviii) make application for the opening, relocation or closing of any, or open, relocate or close any, branch office, loan production office or other significant office or operations facility;

(xix) make or change any material Tax elections, change or consent to any change in its or the Bank's method of accounting for Tax purposes (except as required by applicable Tax law), take any material position on any material Tax Return filed on or after the date of this Agreement, settle or compromise any material Tax liability, claim or assessment, enter into any closing agreement, waive or extend any statute of limitations with respect to a material amount of Taxes, surrender any right to claim a refund for a material amount of Taxes, or file any material amended Tax Return; or

(xx) agree to take, make any commitment to take, or adopt any resolutions of the Company Board in support of, any of the actions prohibited by this Section 5.2.

**Section 5.3 Notice of Changes.** The Company will give prompt notice to Nicolet of any fact, event or circumstance known to it that: (a) is reasonably likely, individually or taken together with all other facts, events and circumstances known to it, to result in a Material Adverse Effect on the Company; or (b) would cause or constitute a material breach of any of the Company's representations, warranties, covenants or agreements contained herein that reasonably could be expected to give rise, individually or in the aggregate, to the failure of a condition in Article 8; *provided, however*, that a failure to comply with this section shall not constitute a breach of this Agreement or the failure of any condition set forth in Article 8 to be satisfied unless the underlying Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Article 8 to be satisfied.

**Section 5.4 Shareholders Meeting.** The Company shall, as promptly as reasonably practicable after the date the Registration Statement is declared effective, take all action necessary, including as required by and in accordance with the MBCA, the Company Articles of Incorporation and the Company Bylaws to duly call, give

notice of, convene and hold a meeting of its shareholders (the “**Company Shareholders Meeting**”) for the purpose of obtaining the Company Shareholder Approval. The Company and the Company Board will use their reasonable best efforts to obtain from its shareholders the votes in favor of the adoption of this Agreement required by the MBCA, including by recommending that its shareholders vote in favor of this Agreement, and the Company and the Company Board will not withdraw, qualify or adversely modify (or publicly propose or resolve to withdraw, qualify or adversely modify) the Company Board’s recommendation to the Company’s shareholders that the Company’s shareholders vote in favor of the adoption and approval of this Agreement (an “**Adverse Recommendation**”). However, if, prior to the time the Company Shareholder Approval is obtained, the Company Board, after consultation with its financial advisor and outside counsel, determines in good faith that (a) an Acquisition Proposal constitutes a Superior Proposal and (b) it is reasonably likely that to continue to recommend this Agreement to its shareholders in light of such Acquisition Proposal would result in a violation of its fiduciary duties under the MBCA, then, in submitting this Agreement at the Company Shareholders Meeting, the Company Board may make an Adverse Recommendation or publicly propose or resolve to make an Adverse Recommendation.

**Section 5.5 Information Provided to Nicolet.** The Company agrees that the information concerning the Company or any of its Subsidiaries that is provided or to be provided by the Company in writing to Nicolet specifically for inclusion in the Registration Statement or Proxy Statement and any other documents to be filed with any Regulatory Authority in connection with the Contemplated Transactions will: (a) at the respective times such documents are filed and, in the case of the Registration Statement, when it becomes effective and, with respect to the Proxy Statement, 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; or (b) in the case of the Proxy Statement or any amendment thereof or supplement thereto, at the time of the Company Shareholders Meeting, not be false or misleading with respect to any material fact, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of any proxy for the meeting in connection with which the Proxy Statement shall be mailed. The Company will have a duty to correct any material misleading statement specified by the Company for inclusion, and so included, in the Registration Statement or Proxy Statement and any other documents filed with any Regulatory Authority. Notwithstanding the foregoing, the Company shall have no responsibility for the truth or accuracy of any information with respect to Nicolet or any of its Subsidiaries or any of their Affiliates contained in the Registration Statement or the Proxy Statement or in any document submitted to, or other communication with, any Regulatory Authority.

**Section 5.6 Operating Functions.** The Company and its Subsidiaries shall cooperate with Nicolet and Nicolet Bank in connection with planning for the efficient and orderly combination of the parties and the operation of the Bank and Nicolet Bank, and in preparing for the consolidation of the banks’ appropriate operating functions to be effective on upon consummation of the Bank Plan of Merger; *provided, however*, that the foregoing actions shall not unduly interfere with the business operations of the Company or its Subsidiaries. Without limiting the foregoing, the Company shall provide office space and support services (and other reasonably requested support and assistance) in connection with the foregoing, and senior officers of the Company and Nicolet shall meet from time to time as the Company or Nicolet may reasonably request, to review the financial and operational affairs of the Company and its Subsidiaries, with the understanding that, notwithstanding any other provision contained in this Agreement: (a) neither Nicolet nor Nicolet Bank shall under any circumstance be permitted to exercise control of the Company or the Bank or any of the Company’s other Subsidiaries prior to the Effective Time; (b) neither the Company nor any of its Subsidiaries shall be under any obligation to act in a manner that could reasonably be deemed to constitute anti-competitive behavior under federal or state antitrust laws; and (c) neither the Company nor any of its Subsidiaries shall be required to agree to any material obligation that is not contingent upon the consummation of the Merger.

**Section 5.7 Company Benefit Plans.**

(a) In order to facilitate a clean transition, following receipt of all Requisite Regulatory Approvals, upon the reasonable request in writing by Nicolet, the Company shall take appropriate action to amend, suspend or terminate any Company Benefit Plan up to fourteen (14) days prior to the anticipated Effective Time.

(b) Prior to the Effective Time, the Company shall accrue the costs associated with any contingent payments due or that could become due in connection with the execution and delivery of this Agreement

or the consummation of the Contemplated Transactions (including possible terminations of employment in connection therewith) under any Company Benefit Plan, including without limitation any change of control or severance agreements, retention or stay bonus programs, or other similar arrangements.

(c) Prior to the Effective Time, at the direction of Nicolet, the Company shall take reasonable steps under applicable IRS Code Section 409A relief programs to amend any Company Benefit Plans that are subject to, or could be subject to, Code Section 409A as Nicolet reasonably determines are necessary or desirable to conform to or clarify any such Company Benefit Plan's exemption from, or compliance with, the requirements of Section 409A.

**Section 5.8 Voting and Support Agreement.** Concurrently with the execution and delivery of this Agreement, the Company shall cause to be executed and delivered to Nicolet a voting and support agreement, in the form attached hereto as **Exhibit B**, approving this Agreement and the consummation of the Contemplated Transactions, executed by each director of the Company who holds Company Common Stock.

**Section 5.9 Liquidation of Company Subsidiaries.** The Company shall use commercially reasonable efforts to cause, effective prior to Closing, the dissolution and liquidation of First Rural Relending Company and North Country Capital Trust. The Company shall keep Nicolet apprised of the status of these subsidiaries, and will give due consideration to Nicolet's comments regarding the process for dissolution and liquidation.

**Section 5.10 Acquisition Proposals.**

(a) The Company will immediately cease and cause to be terminated any activities, discussions or negotiations with any Persons other than Nicolet with respect to any Acquisition Proposal and will use its reasonable best efforts to enforce any confidentiality or similar agreement relating to an Acquisition Proposal. The Company will within one (1) Business Day advise Nicolet of the receipt of any Acquisition Proposal and the substance thereof (including the identity of the Person making such Acquisition Proposal), and will keep Nicolet apprised of any related developments, discussions and negotiations (including the material terms and conditions of the Acquisition Proposal) on a reasonably current basis.

(b) The Company agrees that it will not, and will cause its Subsidiaries and its Subsidiaries' officers, directors, agents, advisors and affiliates not to, initiate, solicit, encourage or knowingly facilitate inquiries or proposals with respect to, or engage in any negotiations concerning, or provide any confidential or nonpublic information or data to, or have any discussions with, any Person relating to, any Acquisition Proposal (other than contacting a Person for the sole purpose of seeking clarification of the terms and conditions of such Acquisition Proposal); *provided* that, in the event the Company receives an unsolicited *bona fide* Acquisition Proposal, from a Person other than Nicolet, after the execution of this Agreement and prior to the receipt of the Company Shareholder Approval, and the Company Board concludes in good faith, after consultation with its financial advisor and outside counsel, that such Acquisition Proposal constitutes a Superior Proposal or could reasonably be likely to result in a Superior Proposal and, after considering the advice of outside counsel, that failure to take such actions could be reasonably likely to result in a violation of the directors' fiduciary duties under applicable law, the Company may: (i) furnish information with respect to it to such Person making such Acquisition Proposal pursuant to a customary confidentiality agreement (subject to the requirement that any such information not previously provided to Nicolet shall be promptly furnished to Nicolet); (ii) participate in discussions or negotiations regarding such Acquisition Proposal; and (iii) terminate this Agreement in order to concurrently enter into an agreement with respect to such Acquisition Proposal; *provided, however*, that the Company may not terminate this Agreement pursuant to this **Section 5.10** unless and until (x) five (5) Business Days have elapsed following the delivery to Nicolet of a written notice of such determination by the Company Board and, during such five (5) Business-Day period, the parties cooperate with one another with the intent of enabling the parties to engage in good faith negotiations so that the Contemplated Transactions may be effected, and (y) at the end of such five (5) Business-Day period, the Company Board continues, in good faith and after consultation with outside legal counsel and financial advisors, to believe that a Superior Proposal continues to exist.

(c) Nothing contained in this Agreement shall prevent the Company or the Company Board from complying with Rule 14d-9 and Rule 14e-2 under the Exchange Act with respect to an Acquisition Proposal.

provided that such Rules will in no way eliminate or modify the effect that any action pursuant to such Rules would otherwise have under this Agreement.

**Section 5.11 Company Debt Agreements.** If requested by Nicolet, the Company shall use commercially reasonable efforts to repay in full all indebtedness owing under any Company Debt Agreement, and to deliver to Nicolet prior to Closing evidence of such repayment and evidence of the release of any security interests in assets of the Company related thereto.

#### ARTICLE 6 NICOLET'S COVENANTS

**Section 6.1 Operation of Nicolet and Nicolet Subsidiaries.** From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, unless prior written consent of the Company shall have been obtained, and except as otherwise expressly contemplated herein, Nicolet covenants and agrees that it shall take no action that would reasonably be expected to (a) materially adversely affect the ability of Nicolet to obtain any Consents required for the transactions contemplated hereby without imposition of a condition or restriction of the type referred to in Sections 8.5 and 9.5, or (b) that would reasonably be expected to materially adversely affect the ability of Nicolet to perform its covenants and agreements under this Agreement.

**Section 6.2 Notice of Changes.** Nicolet will give prompt notice to the Company of any fact, event or circumstance known to it that: (a) is reasonably likely, individually or taken together with all other facts, events and circumstances known to it, to result in a Material Adverse Effect on Nicolet, or (b) would cause or constitute a material breach of any of Nicolet's representations, warranties, covenants or agreements contained herein that reasonably could be expected to give rise, individually or in the aggregate, to the failure of a condition in Article 9 provided, however, that a failure to comply with this section shall not constitute a breach of this Agreement or the failure of any condition set forth in Article 9 to be satisfied unless the underlying Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Article 9 to be satisfied.

**Section 6.3 Nicolet Shareholders Meeting.** Nicolet shall, as promptly as reasonably practicable after the date the Registration Statement is declared effective, take all action necessary, including as required by and in accordance with the WBCL, Nicolet Articles of Incorporation and Nicolet Bylaws to duly call, give notice of, convene and hold a meeting of its shareholders (the "Nicolet Shareholders Meeting") for the purpose of obtaining the Nicolet Shareholder Approval. Nicolet and Nicolet Board will use their reasonable best efforts to obtain from its shareholders the votes in favor of the adoption of this Agreement required by the WBCL, and in favor of the issuance of Nicolet Common Stock pursuant to this Agreement required by the Nasdaq Rules, including by recommending that its shareholders vote in favor of the adoption and approval of this Agreement and stock issuance, and Nicolet and Nicolet Board will not make an Adverse Recommendation. However, if, prior to the time Nicolet Shareholder Approval is obtained, the Nicolet Board, after consultation with outside counsel, determines in good faith that (a) an Acquisition Proposal constitutes a Superior Proposal and (b) it is reasonably likely that to continue to recommend this Agreement to its shareholders in light of such Acquisition Proposal would result in a violation of its fiduciary duties under the WBCL, then, in submitting this Agreement at the Nicolet Shareholders Meeting, the Nicolet Board may make an Adverse Recommendation or publicly propose or resolve to make an Adverse Recommendation.

**Section 6.4 Indemnification.**

(a) From and after the Effective Time, Nicolet shall, to the fullest extent permitted under applicable Legal Requirements, indemnify and hold harmless (1) any natural person who is or was a director or officer of the Company or any Subsidiary of the Company, (2) any natural person who, while a director or officer of the Company or any Subsidiary of the Company, is or was serving either pursuant to the Company's or such Subsidiary's specific request or as a result of the nature of such person's duties to the Company or to such Subsidiary as a director, officer, partner, trustee, member of any governing or decision-making committee, manager, employee or agent of another corporation or foreign corporation, partnership joint venture, trust or other enterprise, and (3) any natural person who, while a director or officer of the Company or any Subsidiary of the Company, is or was serving an employee benefit plan because his or her duties to the Company or to such Subsidiary also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan (each, an "Indemnified Party"), against any and all reasonable fees (including reasonable attorneys' fees), costs,

charges, disbursements and other expenses actually and reasonably incurred by the Indemnified Party (collectively, "**Expenses**") in connection with any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves federal, state or local law and which is brought by or in the right of any Person (any such action, an "**Indemnification Proceeding**") to which the Indemnified Party was made a party by virtue of his or her service in any of the capacities set forth above in clauses (1) through (3) of this **Section 6.4(a)**, to the extent that such Indemnified Party has been successful on the merits or otherwise in the defense of such Indemnification Proceeding.

(b) From and after the Effective Time, Nicolet shall, to the fullest extent permitted under applicable Legal Requirements, indemnify and hold harmless (1) any natural person who is or was an employee or agent of the Company or any Subsidiary of the Company, (2) any natural person who, while an employee or agent of the Company or any Subsidiary of the Company, is or was serving either pursuant to the Company's or such Subsidiary's specific request or as a result of the nature of such person's duties to the Company or to such Subsidiary as a director, officer, partner, trustee, member of any governing or decision-making committee, manager, employee or agent of another corporation or foreign corporation, partnership joint venture, trust or other enterprise, and (3) any natural person who, while an employee or agent of the Company or any Subsidiary of the Company, is or was serving an employee benefit plan because his or her duties to the Company or to such Subsidiary also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan (each, an "**Indemnified Employee**"), against any and all Expenses in connection with any Indemnification Proceeding to which the Indemnified Employee was made a party by virtue of his or her service in any of the capacities set forth above in clauses (1) through (3) of this **Section 6.4(b)**, to the extent that such Indemnified Employee has been successful on the merits or otherwise in the defense of such Indemnification Proceeding.

(c) From and after the Effective Time, Nicolet shall indemnify and hold harmless any Indemnified Party against any obligation to pay a judgment, penalty, assessment, forfeiture or fine, including an excise tax assessed with respect to an employee benefit plan, or the agreement to pay any amount in settlement of an Indemnification Proceeding, and pre- and post-judgment interest related thereto, and any Expenses incurred by such Indemnified Party in connection with an Indemnification Proceeding, unless it shall be proven by final judicial adjudication that such person breached or failed to perform a duty owed to the Company or to any Subsidiary of the Company which constituted: (1) a willful failure to deal fairly with the Company, any Subsidiary of the Company, or the respective shareholders thereof in connection with a matter in which the Indemnified Party had a material conflict of interest, (2) a violation of the criminal law, unless the Indemnified Party had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful, (3) a transaction from which the Indemnified Party derived an improper personal benefit, or (4) willful misconduct.

(d) From and after the Effective Time, Nicolet may indemnify and hold harmless any Indemnified Employee against any obligation to pay a judgment, penalty, assessment, forfeiture or fine, including an excise tax assessed with respect to an employee benefit plan, or the agreement to pay any amount in settlement of an Indemnification Proceeding, and pre- and post-judgment interest related thereto, and any Expenses incurred by such Indemnified Employee in connection with an Indemnification Proceeding, unless it shall be proven by final judicial adjudication that such person breached or failed to perform a duty owed to the Company or to any Subsidiary of the Company which constituted: (1) a willful failure to deal fairly with the Company, any Subsidiary of the Company, or the respective shareholders thereof in connection with a matter in which the Indemnified Employee had a material conflict of interest, (2) a violation of the criminal law, unless the Indemnified Employee had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful, (3) a transaction from which the Indemnified Employee derived an improper personal benefit, or (4) willful misconduct. Any determination of whether an Indemnified Employee shall receive indemnification pursuant to this **Section 6.4(d)** shall be made at the sole and exclusive discretion of Nicolet.

(e) Upon written request by an Indemnified Party who has been made party to an Indemnification Proceeding, Nicolet shall reimburse the Expenses of such Indemnified Party as incurred if the Indemnified Party provides Nicolet with all of the following: (1) a written affirmation of his or her good faith belief that he or she did not breach or fail to perform his or her duties to the Company and (2) a written undertaking, executed personally or on his or her behalf, to repay to Nicolet such reimbursements if and to the extent that it is ultimately determined that such Indemnified Party was not entitled to indemnification for such amounts under the terms of this Agreement.

(f) Upon written request by an Indemnified Employee who has been made party to an Indemnification Proceeding, Nicolet may reimburse the Expenses of such Indemnified Employee as incurred if the Indemnified Employee provides Nicolet with all of the following: (1) a written affirmation of his or her good faith belief that he or she did not breach or fail to perform his or her duties to the Company or to any Subsidiary of the Company and (2) a written undertaking, executed personally or on his or her behalf, to repay to Nicolet such reimbursements if and to the extent that it is ultimately determined that such Indemnified Employee was not entitled to indemnification for such amounts under the terms of this Agreement. Any determination of whether an Indemnified Employee shall receive reimbursement for Expenses as such Expenses are incurred pursuant to this **Section 6.4(f)** shall be made at the sole and exclusive discretion of Nicolet.

(g) Notwithstanding any other provision of this Agreement, in order for any Indemnified Party or Indemnified Employee to be entitled to indemnification under this Agreement, such Indemnified Party or Indemnified Employee must make a written request to Nicolet. This written request shall contain a declaration that Nicolet shall have the right to exercise all rights and remedies available to such Indemnified Party or Indemnified Employee against any other Party arising out of or related to the Indemnification Proceeding for which indemnification is being sought and that the Indemnified Party or Indemnified Employee has assigned to Nicolet all such rights and remedies. Nicolet shall have no obligation to indemnify any Indemnified Party or Indemnified Employee under this Agreement if and to the extent that such Indemnified Party or Indemnified Employee has previously received indemnification or allowance for Expenses from any Party in connection with the same Indemnification Proceeding.

(h) For a period of six (6) years after the Effective Time or, if such term coverage is not available, such other maximum period of coverage available, Nicolet shall maintain a directors' and officers' liability insurance policy or policies covering each Indemnified Party and Indemnified Employee covered by the Company's directors' and officers' liability insurance policy in effect as of the date hereof, on and subject to terms and conditions no less advantageous to the insureds than the Company's directors' and officers' liability insurance policy in effect as of the date hereof, for acts or omissions occurring prior to the Effective Time; *provided*, that in no event shall Nicolet be required to expend annually in the aggregate an amount in excess of 250% of the amount of the aggregate premiums paid by the Company for fiscal year 2020 for such purpose and, if Nicolet is unable to maintain such policy (or substitute policy) as a result of this proviso, Nicolet shall obtain a policy or policies of insurance with substantially similar terms and conditions as may then be available, and with an equal or lesser claims reporting time period as may then be available for payment of such amount; *provided further*, that in lieu of the obligations of this subsection, Nicolet may request that the Company obtain, and upon such request the Company shall obtain, such extended reporting period coverage under the Company's existing insurance programs (to be effective as of the Effective Time).

(i) If Nicolet or any of its successors or assigns shall (i) consolidate with or merge into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfer all or substantially all its properties and assets to any Person, then, and in each such case, Nicolet shall use commercially reasonable efforts to cause proper provision to be made so that the successor and assign of Nicolet assumes the obligations set forth in this **Section 6.4**.

(j) The provisions of this **Section 6.4** shall survive consummation of the Merger and the Bank Merger and are intended to be for the benefit of, and will be enforceable by, each Indemnified Party, each Indemnified Employee, his or her heirs, and his or her legal representatives.

**Section 6.5 Board Representation.**

(a) On or prior to the Effective Time, Nicolet shall cause the Company Director (expected to be Paul D. Tobias) to be added to the board of directors of the Surviving Entity and Nicolet Bank. No other directors or employees of the Company shall be designated to serve on the board of directors of the Surviving Entity or Nicolet Bank at the Effective Time. The appointment of the Company Director to the board of directors of the Surviving Entity and Nicolet Bank shall be subject to the bylaws of the Surviving Entity and Nicolet Bank, respectively, and the Company Director must (i) be reasonably acceptable to the Nominating Committee of the Surviving Entity or Nicolet Bank, as applicable, and (ii) satisfy and comply with the requirements regarding service as a member of the board of directors of the Surviving Entity or Nicolet Bank, as applicable, provided under

applicable Legal Requirements and the practices and policies of such board that are generally applicable to its members.

(b) Subject to and in accordance with the bylaws of the Surviving Entity, effective as of the Effective Time, the officers of Nicolet in office immediately prior to the Effective Time, together with such additional persons as may thereafter be elected, shall serve as the officers of the Surviving Entity from and after the Effective Time in accordance with the bylaws of the Surviving Entity.

**Section 6.6 Authorization and Reservation of Nicolet Common Stock.** Nicolet Board shall, as of the date hereof, authorize and reserve the maximum number of shares of Nicolet Common Stock to be issued pursuant to this Agreement and take all other necessary corporate action to consummate the Contemplated Transactions.

**Section 6.7 Stock Exchange Listing.** Nicolet shall cause all shares of Nicolet Common Stock issuable or to be reserved for issuance under this Agreement to be approved for listing on the Nasdaq Capital Market prior to the Closing Date.

#### ARTICLE 7 COVENANTS OF ALL PARTIES

**Section 7.1 Regulatory Approvals.** Nicolet and the Company and their respective Subsidiaries will cooperate and use all reasonable best efforts to as promptly as possible prepare, file, effect and obtain all Requisite Regulatory Approvals, and the parties will comply with the terms of such Requisite Regulatory Approvals. Each of Nicolet and the Company will have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable Legal Requirements relating to the exchange of information, with respect to all substantive written information submitted to any Regulatory Authority in connection with the Requisite Regulatory Approvals. In exercising the foregoing right, each of the parties will act reasonably and as promptly as practicable. Each party agrees that it will consult with the other party with respect to obtaining all permits, consents, approvals and authorizations of all Regulatory Authorities necessary or advisable to consummate the Contemplated Transactions, and each party will keep the other party apprised of the status of material matters relating to completion of the Contemplated Transactions. Nicolet and the Company will, upon request, furnish the other party with all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with any filing, notice or application made by or on behalf of such other party or any of its Subsidiaries with or to any Regulatory Authority in connection with the Contemplated Transactions.

**Section 7.2 SEC Registration.** As soon as practicable following the date of this Agreement, the Company and Nicolet shall prepare and file with the SEC the Joint Proxy Statement and Nicolet shall prepare and file with the SEC the Registration Statement, in which the Joint Proxy Statement will be included. Nicolet shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the Merger and the Contemplated Transactions. The Company will use its reasonable best efforts to cause the Joint Proxy Statement to be mailed to the Company's shareholders, and Nicolet will use its reasonable best efforts to cause the Joint Proxy Statement to be mailed to Nicolet's shareholders, in each case as promptly as practicable after the Registration Statement is declared effective under the Securities Act. Nicolet will advise the Company, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of Nicolet Capital Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC to amend the Joint Proxy Statement or the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information, and the Company will advise Nicolet, promptly after it receives notice thereof, of any request by the SEC to amend the Joint Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information. The parties shall use reasonable best efforts to respond (with the assistance of the other party) as promptly as practicable to any comments of the SEC with respect thereto. If prior to the Effective Time any event occurs with respect to the Company, Nicolet or any Subsidiary of the Company or Nicolet, respectively, or any change occurs with respect to information supplied by or on behalf of the Company or Nicolet, respectively, for inclusion in the Proxy Statement or the Registration



Statement that, in each case, is required to be described in an amendment of, or a supplement to, the Proxy Statement or the Registration Statement, the Company or Nicolet, as applicable, shall promptly notify the other of such event, and the Company or Nicolet, as applicable, shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Proxy Statement and the Registration Statement and, as required by applicable Legal Requirements, in disseminating the information contained in such amendment or supplement to the Company's shareholders and to Nicolet's shareholders.

**Section 7.3 Publicity.** Neither the Company nor Nicolet shall, and neither the Company nor Nicolet shall permit any of its Subsidiaries to, issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public statement or, except as otherwise specifically provided in this Agreement, any disclosure of nonpublic information to a third party, concerning, the Contemplated Transactions without the prior consent (which shall not be unreasonably withheld or delayed) of Nicolet, in the case of a proposed announcement, statement or disclosure by the Company, or the Company, in the case of a proposed announcement, statement or disclosure by Nicolet; *provided, however*, that either party may, without the prior consent of the other party (but after prior consultation with the other party to the extent practicable under the circumstances), issue or cause the publication of any press release or other public announcement to the extent required by applicable Legal Requirements or by the Nasdaq Rules. Subject to the foregoing, Nicolet and the Company agree that the press release announcing the execution and delivery of this Agreement shall be a joint press release of Nicolet and the Company, mutually agreed upon by both parties. Thereafter, and subject to the limitations of this paragraph, Nicolet and the Company shall each use their reasonable best efforts to develop a joint communications plan with respect to the Contemplated Transactions and to ensure that all press releases and other public statements with respect to the Contemplated Transactions shall be consistent with such joint communications plan.

**Section 7.4 Reasonable Best Efforts; Cooperation; Takeover Statutes.** Each of Nicolet and the Company agrees to exercise good faith and use its reasonable best efforts to satisfy the various covenants and conditions to Closing in this Agreement, and to consummate the Contemplated Transactions as promptly as practicable. Neither Nicolet nor the Company will intentionally take or intentionally permit to be taken any action that would be a breach of the terms or provisions of this Agreement. Between the date of this Agreement and the Closing Date, each of Nicolet and the Company will, and will cause each Subsidiary of Nicolet and the Company, respectively, and all of their respective Affiliates and Representatives to, cooperate with respect to all filings that any party is required by any applicable Legal Requirements to make in connection with the Contemplated Transactions. Subject to applicable Legal Requirements and the instructions of any Regulatory Authority, each party shall keep the other party reasonably apprised of the status of matters relating to the completion of the Contemplated Transactions, including promptly furnishing the other party with copies of notices or other written communications received by it or any of its Subsidiaries from any Regulatory Authority with respect to such transactions. Without limiting the foregoing, none of Nicolet, the Company or their respective Boards of Directors shall take any action that would cause any Takeover Statute to become applicable to this Agreement or the Contemplated Transactions, and each shall take all necessary steps to exempt (or ensure the continued exemption of) the Contemplated Transactions from any applicable Takeover Statute now or hereafter in effect. If any Takeover Statute may become, or may purport to be, applicable to the Contemplated Transactions, each party and the members of their respective Boards of Directors will grant such approvals and take such actions as are necessary so that the Contemplated Transactions may be consummated as promptly as practicable on the terms contemplated hereby and thereby and otherwise act to eliminate or minimize the effects of any Takeover Statute on any of the Contemplated Transactions, including, if necessary, challenging the validity or applicability of any such Takeover Statute.

**Section 7.5 Tax Free Reorganization.**

(a) The parties intend that the Merger qualify as a reorganization within the meaning of Section 368(a) and related sections of the Code and that this Agreement constitute a "plan of reorganization" within the meaning of Section 1.368-2(g) of the Treasury regulations promulgated thereunder. From and after the date of this Agreement and until the Effective Time, each of the Company and Nicolet shall use its commercially reasonable efforts to cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code, and will not knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken which action or failure to act would reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Following the Effective Time, neither Nicolet nor

any Affiliate of Nicolet knowingly shall take any action, cause any action to be taken, fail to take any action, or cause any action to fail to be taken, which action or failure to act would reasonably be expected to prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(b) As of the date hereof, the Company does not know of any reason why it would not be able to deliver to Nicolet's counsel, as of the date of the legal opinion referred to in **Sections 8.8 and 9.8**, a certificate substantially in compliance with IRS published advance ruling guidelines, with reasonable or customary exceptions and modifications thereto (the "**IRS Guidelines**"), to enable counsel of Nicolet to deliver the legal opinion contemplated by **Sections 8.8 and 9.8**, and the Company hereby agrees to deliver such certificate effective as of the date of such opinion to counsel of Nicolet.

(c) As of the date hereof Nicolet does not know of any reason (i) why it would not be able to deliver to its counsel, as of the date of the legal opinion referred to in **Sections 8.8 and 9.8**, a certificate substantially in compliance with the IRS Guidelines, to enable counsel of Nicolet to deliver the legal opinion contemplated by **Sections 8.8 and 9.8**; or (ii) why counsel of Nicolet would not be able to deliver the opinion required by **Sections 8.8 and 9.8**. Nicolet hereby agrees to deliver such certificate effective as of the date of such opinion to counsel of Nicolet.

(d) Following the Effective Time, Nicolet will continue at least one significant historic business line of the Company, or use at least a significant portion of the Company's historic business assets in a business, in each case within the meaning of Treas. Reg. Section 1.368-1(d), except that Nicolet may transfer the Company's historic business assets (i) to a corporation that is a member of Nicolet's "qualified group," within the meaning of Treas. Reg. Section 1.368-1(d)(4)(ii), or (ii) to a partnership if (A) one or more members of Nicolet's "qualified group" have active and substantial management functions as a partner with respect to the Company's historic business or (B) members of Nicolet's "qualified group" in the aggregate own an interest in the partnership representing a significant interest in the Company's historic business, in each case within the meaning of Treas. Reg. Section 1.368-1(d)(4)(iii).

**Section 7.6 Employees; Employee Contracts; Employee Benefits.**

(a) All individuals employed by the Company or the Bank immediately prior to the Closing ("**Covered Employees**") shall automatically become employees of Nicolet as of the Closing. Following the Closing, Nicolet shall maintain employee benefit plans and compensation opportunities for the benefit of Covered Employees that provide employee benefits and compensation opportunities that, in the aggregate, (i) are no less favorable than the employee benefits and compensation opportunities that are made available to similarly-situated employees of Nicolet under the Nicolet Benefit Plans, and (ii) such severance benefits are as mutually agreed between Nicolet and the Company; *provided, however*, that: (i) in no event shall any Covered Employee be eligible to participate in any closed or frozen Nicolet Benefit Plan; and (ii) until such time as Nicolet shall cause Covered Employees to participate in the Nicolet Benefit Plans, a Covered Employee's continued participation in the Company Benefit Plans shall be deemed to satisfy the foregoing provisions of this sentence (it being understood that participation in the Nicolet Benefit Plans may commence at different times with respect to each Nicolet Benefit Plan).

(b) For all purposes (other than purposes of benefit accruals and allocations of employer contributions under Nicolet's 401(k) Plan) under the Nicolet Benefit Plans providing benefits to the Covered Employees (the "**New Plans**"), each Covered Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors to the same extent as such Covered Employee was entitled to credit for such service under any applicable Company Benefit Plan in which such Covered Employee participated or was eligible to participate immediately prior to the Transition Date; *provided, however*, that the foregoing shall not apply to the extent that its application would result in a duplication of benefits with respect to the same period of service.

(c) In addition, and without limiting the generality of the foregoing, as of the Transition Date, Nicolet shall use commercially reasonable efforts to provide that: (i) each Covered Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is similar in type to an applicable Company Benefit Plan in which such Covered Employee was participating immediately prior to the Transition Date (such Company Benefit Plans prior to the Transition Date

collectively, the "Old Plans"); (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, vision or similar benefits to any Covered Employee, all pre-existing condition exclusions and actively-at-work requirements of such New Plan shall be waived for such Covered Employee and his or her covered dependents, unless such conditions would not have been waived under the Old Plan in which such Covered Employee, as applicable, participated or was eligible to participate immediately prior to the Transition Date; and (iii) any eligible expenses incurred by such Covered Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the Transition Date shall be taken into account under such New Plan to the extent such eligible expenses were incurred during the plan year of the New Plan in which the Transition Date occurs for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Covered Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

**Section 7.7 Section 16 Matters.** Prior to the Effective Time, the parties will each take such steps as may be necessary or appropriate to cause any disposition of Company Capital Stock or conversion of any derivative securities in respect of shares of Company Capital Stock or acquisition of Nicolet Common Stock, as applicable, in connection with the consummation of the Contemplated Transactions to be exempt under Rule 16b-3 promulgated under the Exchange Act.

**Section 7.8 Shareholder Litigation.** Each of the Company and Nicolet shall give the other the reasonable opportunity to consult concerning the defense of any shareholder litigation against the Company or Nicolet, as applicable, or any of their respective directors or officers relating to the Contemplated Transactions.

#### ARTICLE 8 CONDITIONS PRECEDENT TO OBLIGATIONS OF NICOLET

The obligations of Nicolet to consummate the Contemplated Transactions and to take the other actions required to be taken by Nicolet at the Closing are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Nicolet in whole or in part):

**Section 8.1 Accuracy of Representations and Warranties.** For purposes of this Section 8.1, the accuracy of the representations and warranties of the Company set forth in this Agreement shall be assessed as of the date of this Agreement and as of the Closing Date (or such other date(s) as specified, to the extent any representation or warranty speaks as of a specific date). The representations and warranties set forth in Section 3.3 and Section 3.5(a) shall be true and correct (except for inaccuracies which are *de minimis* in amount and effect). There shall not exist inaccuracies in the representations and warranties of the Company set forth in this Agreement (including the representations set forth in Section 3.3 and Section 3.5(a)) such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a Material Adverse Effect; *provided that*, for purposes of this sentence only, those representations and warranties which are qualified by references to "material" or "Material Adverse Effect" or to the "Knowledge" of any Person shall be deemed not to include such qualifications.

**Section 8.2 Performance by the Company.** The Company shall have performed or complied in all material respects with all of the covenants and obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date.

**Section 8.3 Shareholder Approvals.** Each of the Company Shareholder Approval and the Nicolet Shareholder Approval shall have been obtained.

**Section 8.4 No Proceedings.** Since the date of this Agreement, there must not have been commenced or be pending any Proceeding: (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions; or (b) that may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Contemplated Transactions, in either case that would reasonably be expected by the Nicolet Board to have a Material Adverse Effect on the Surviving Entity.

**Section 8.5 Regulatory Approvals.** All Requisite 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 or been terminated and there shall not be any action taken, or any Legal Requirement enacted, entered, enforced or deemed applicable to the Contemplated Transactions, by any Regulatory Authority, in connection with the grant of a Requisite Regulatory Approval, which shall have imposed a restriction or condition on, or requirement of, such

approval that would, after the Effective Time, reasonably be expected by the Nicolet Board to have a Material Adverse Effect on the Surviving Entity.

**Section 8.6 Registration Statement.** The Registration Statement shall have become effective under the Securities Act. No stop order shall have been issued or threatened by the SEC that suspends the effectiveness of the Registration Statement, and no Proceeding shall have been commenced or be pending or threatened for such purpose.

**Section 8.7 Officer's Certificate.** Nicolet shall have received a certificate signed on behalf of the Company by an executive officer of the Company certifying as to the matters set forth in **Sections 8.1 and 8.2**.

**Section 8.8 Tax Opinion.** Nicolet shall have received a written opinion of Bryan Cave Leighton Paisner LLP, addressed to the Company and Nicolet, in form and substance reasonably satisfactory to the Company and Nicolet, dated as of the Closing Date, to the effect that: (a) the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code; and (b) each of the Company and Nicolet will be a party to such reorganization within the meaning of Section 368(b) of the Code.

**Section 8.9 Stock Exchange Listing.** Nicolet shall have filed with the Nasdaq Stock Market, LLC a notification form for the listing of all shares of Nicolet Common Stock to be delivered in the Merger, and the Nasdaq Stock Market, LLC shall not have objected to the listing of such shares of Nicolet Common Stock.

**Section 8.10 Minimum Tangible Common Equity.** As of the Closing Date, the Company shall have Tangible Common Equity of no less than \$145,000,000.

**Section 8.11 No Material Adverse Effect.** From the date of this Agreement to the Closing, there shall be and have been no change in the financial condition, assets or business of the Company or the Bank that has had or would reasonably be expected to have a Material Adverse Effect on the Company.

**Section 8.12 Consents.** The Company shall have obtained or caused to be obtained the written consents, permissions and approvals as required under any agreements, contracts, appointments, indentures, plans, trusts or other arrangements with third parties as set forth on **Section 8.12** of the Company Disclosure Schedules that are required to effect the Contemplated Transactions.

**Section 8.13 Company Debt Agreements.** If Nicolet makes the request detailed in **Section 5.11**, the Company shall have delivered to Nicolet the evidence of repayment in full of all applicable indebtedness owing under any Company Debt Agreement subject to this requirement.

#### ARTICLE 9 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE COMPANY

The obligations of the Company to consummate the Contemplated Transactions and to take the other actions required to be taken by the Company at the Closing are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Company, in whole or in part):

**Section 9.1 Accuracy of Representations and Warranties.** For purposes of this **Section 9.1**, the accuracy of the representations and warranties of Nicolet set forth in this Agreement shall be assessed as of the date of this Agreement and as of the Closing Date (or such other date(s) as specified, to the extent any representation or warranty speaks as of a specific date). The representations and warranties set forth in **Section 4.3** and **Section 4.5(a)** shall be true and correct (except for inaccuracies which are *de minimis* in amount and effect). There shall not exist inaccuracies in the representations and warranties of Nicolet set forth in this Agreement (including the representations set forth in **Section 4.3** and **Section 4.5(a)**) such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a Material Adverse Effect; *provided, that*, for purposes of this sentence only, those representations and warranties which are qualified by references to "material" or "Material Adverse Effect" or to the "Knowledge" of any Person shall be deemed not to include such qualifications.

**Section 9.2 Performance by Nicolet.** Nicolet shall have performed or complied in all material respects with all of the covenants and obligations to be performed or complied with by it under the terms of this Agreement on or prior to the Closing Date.

**Section 9.3 Shareholder Approval.** Each of the Company Shareholder Approval and the Nicolet Shareholder Approval shall have been obtained.

**Section 9.4 No Proceedings.** Since the date of this Agreement, there must not have been commenced or be pending any Proceeding: (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions; or (b) that may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Contemplated Transactions, in either case that would reasonably be expected by the Company Board to have a Material Adverse Effect on the Surviving Entity.

**Section 9.5 Regulatory Approvals.** All Requisite 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 or been terminated and there shall not be any action taken, or any Legal Requirement enacted, entered, enforced or deemed applicable to the Contemplated Transactions, by any Regulatory Authority, in connection with the grant of a Requisite Regulatory Approval, which shall have imposed a restriction or condition on, or requirement of, such approval that would, after the Effective Time, reasonably be expected by the Company Board to have a Material Adverse Effect on the Surviving Entity.

**Section 9.6 Registration Statement.** The Registration Statement shall have become effective under the Securities Act. No stop order shall have been issued or threatened by the SEC that suspends the effectiveness of the Registration Statement, and no Proceeding shall have been commenced or be pending or threatened for such purpose.

**Section 9.7 Officer's Certificate.** The Company shall have received a certificate signed on behalf of Nicolet by an executive officer of Nicolet certifying as to the matters set forth in **Sections 9.1 and 9.2**.

**Section 9.8 Tax Opinion.** The Company shall have received a written opinion of Bryan Cave Leighton Paisner LLP, addressed to the Company and Nicolet, in form and substance reasonably satisfactory to the Company and Nicolet, dated as of the Closing Date, to the effect that: (a) the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code; and (b) each of the Company and Nicolet will be a party to such reorganization within the meaning of Section 368(b) of the Code.

**Section 9.9 Stock Exchange Listing.** Nicolet shall have filed with the Nasdaq Stock Market, LLC a notification form for the listing of all shares of Nicolet Common Stock to be delivered in the Merger, and the Nasdaq Stock Market, LLC shall not have objected to the listing of such shares of Nicolet Common Stock.

**Section 9.10 No Material Adverse Effect.** From the date of this Agreement to the Closing, there shall be and have been no change in the financial condition, assets or business of Nicolet or any of its Subsidiaries that has had or would reasonably be expected to have a Material Adverse Effect on Nicolet.

#### **ARTICLE 10 TERMINATION**

**Section 10.1 Termination of Agreement.** This Agreement may be terminated only as set forth below, whether before or after approval of the matters presented in connection with the Merger by the shareholders of the Company or Nicolet:

(a) by mutual consent of the Nicolet Board and the Company Board, each evidenced by appropriate written resolutions;

(b) by Nicolet, if the Company shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform, either individually or together with other such breaches, in the aggregate, if occurring or continuing on the date on which the Closing would otherwise occur would result in the failure of any of the conditions set forth in **Section 8.1** and **Section 8.2** and such breach or failure to perform has not been or cannot be cured within thirty (30) days following written notice to the party committing such breach, making such untrue representation and warranty or failing to perform; *provided*, that such breach or failure is not a result of the failure by Nicolet to perform and comply in all material respects with any of its obligations or representations and warranties under this Agreement that are to be performed or complied with by it prior to or on the date required hereunder;

(c) by the Company, if Nicolet shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement which breach or failure to perform, either individually or together with other such breaches, in the aggregate, if occurring or continuing on the date on which the Closing would otherwise occur would result in the failure of any of the conditions set forth in **Section 9.1** and **Section 9.2** and such breach or failure to perform has not been or cannot be cured within thirty (30) days following written notice to the party committing such breach, making such untrue representation and warranty or failing to perform, *provided*, that such breach or failure is not a result of the failure by the Company to perform and comply in all material respects with any of its obligations or representations and warranties under this Agreement that are to be performed or complied with by it prior to or on the date required hereunder;

(d) by Nicolet or the Company, if: (i) any Regulatory Authority that must grant a Requisite Regulatory Approval has denied approval of any of the Contemplated Transactions and such denial has become final and nonappealable; (ii) any application, filing or notice for a Requisite Regulatory Approval has been withdrawn at the request or recommendation of the applicable Regulatory Authority; or (iii) if the Company Shareholder Approval or the Nicolet Shareholder Approval is not obtained following the Company Shareholders Meeting or the Nicolet Shareholder Meeting respectively; *provided, however*, that the right to terminate this Agreement under this **Section 10.1(d)** 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 above;

(e) by Nicolet or the Company, if the Effective Time shall not have occurred at or before April 12, 2022 (the "**Termination Date**"); *provided, however*, that the right to terminate this Agreement under this **Section 10.1(e)** shall not be available to any party to this Agreement whose failure to fulfill any of its obligations (excluding warranties and representations) under this Agreement has been the cause of or resulted in the failure of the Effective Time to occur on or before such date;

(f) by Nicolet or the Company, if any court of competent jurisdiction or other Regulatory Authority shall have issued a judgment, Order, injunction, rule or decree, or taken any other action restraining, enjoining or otherwise prohibiting any of the Contemplated Transactions and such judgment, Order, injunction, rule, decree or other action shall have become final and nonappealable;

(g) by Nicolet, prior to receipt of the Company Shareholder Approval, if the Company Board makes an Adverse Recommendation;

(h) by the Company, prior to receipt of the Company Shareholder Approval pursuant to **Section 5.10**;

(i) by the Company, prior to receipt of the Nicolet Shareholder Approval, if the Nicolet Board makes an Adverse Recommendation; or

(j) by Nicolet, if the holders of more than 5% in the aggregate of the outstanding shares of Company Common Stock assert dissenters' rights in compliance with Chapter 450 of the MBCA.

**Section 10.2 Effect of Termination or Abandonment.** In the event of the termination of this Agreement and the abandonment of the Merger pursuant to **Section 10.1**, this Agreement shall become null and void, and there shall be no liability of one party to the other or any restrictions on the future activities on the part of any party to this Agreement, or its respective directors, officers or shareholders, except that: (i) the Confidentiality Agreement, this **Section 10.2**, **Section 10.3** and **Article 11** shall survive such termination and abandonment; and (ii) no such termination shall relieve the breaching party from liability resulting from any willful and material breach by that party of this Agreement.

**Section 10.3 Fees and Expenses.**

(a) Except as otherwise provided in this **Section 10.3**, all fees and expenses incurred in connection with this Agreement, the Merger and the other Contemplated Transactions shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated, except that the expenses incurred in connection with the filing, printing and mailing of the Proxy Statement, and all filing and other fees paid to the SEC, in each case in connection with the Merger (other than attorneys' fees, accountants' fees and related expenses), shall be shared equally by Nicolet and the Company.

(b) If this Agreement is terminated by Nicolet pursuant to **Section 10.1(g)** or by the Company pursuant to **Section 10.1(h)**, then the Company shall pay to Nicolet, within two (2) Business Days after such termination, the amount of \$10,000,000 (the "**Termination Fee**") by wire transfer of immediately available funds to such account as Nicolet shall designate.

(c) If (i) an Acquisition Proposal with respect to the Company shall have been communicated to or otherwise made known to the Company shareholders or the Company Board, or any Person shall have publicly announced an intention (whether or not conditional) to make an Acquisition Proposal with respect to the Company after the date of this Agreement, (ii) thereafter this Agreement is terminated by the Company or Nicolet pursuant to (A) **Section 10.1(e)** (if the Company Shareholder Approval has not theretofore been obtained) or (B) **Section 10.1(d)(iii)** based on the failure to obtain the Company Shareholder Approval, and (iii) prior to the date that is twelve (12) months after the date of such termination, the Company enters into a definitive written agreement with any Person with respect to such Acquisition Proposal, then the Company shall pay to Nicolet, within two (2) Business Days after execution of such definitive written agreement, the Termination Fee by wire transfer of immediately available funds to such account as Nicolet shall designate.

(d) All payments made pursuant to this **Section 10.3** shall constitute liquidated damages and the receipt thereof shall be the sole and exclusive remedy of the receiving party against the party making such payment, its Affiliates and their respective directors, officers and shareholders for any claims arising out of or relating in any way to this Agreement or the transactions contemplated herein.

#### ARTICLE 11 MISCELLANEOUS

**Section 11.1 Survival.** Except for covenants that are expressly to be performed after the Closing, none of the representations, warranties and covenants contained herein shall survive beyond the Closing.

**Section 11.2 Governing Law.** All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal laws of the State of Wisconsin applicable to Contracts made and wholly to be performed in such state without regard to conflicts of laws.

**Section 11.3 Assignments, Successors and No Third Party Rights.** Neither party to this Agreement may assign any of its rights under this Agreement (whether by operation of law or otherwise) without the prior written consent of the other party. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentence, this Agreement and every representation, warranty, covenant, agreement and provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except for **Section 6.4**, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with **Section 11.5** without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, persons other than the parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

**Section 11.4 Modification.** This Agreement may be amended, modified or supplemented by the parties at any time before or after the Company Shareholder Approval and/or Nicolet Shareholder Approval is obtained; *provided, however*, that after the Company Shareholder Approval is obtained, there may not be, without further approval of the Company's and Nicolet's shareholders, respectively, any amendment of this Agreement that requires further approval under applicable Legal Requirements. This Agreement may not be amended, modified or supplemented except by an instrument in writing signed on behalf of each of the parties.

**Section 11.5 Extension of Time; Waiver.** At any time prior to the Effective Time, the parties may, to the extent permitted by applicable Legal Requirements: (a) extend the time for the performance of any of the

obligations or other acts of the other party; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement; or (c) waive compliance with or amend, modify or supplement any of the agreements or conditions contained in this Agreement which are for the benefit of the waiving party. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. Except as provided in **Article 10**, the rights and remedies of the parties to this Agreement are cumulative and not alternative. To the maximum extent permitted by applicable Legal Requirements: (x) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (y) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (z) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

**Section 11.6 Notices.** All notices, consents, waivers and other communications under this Agreement shall be in writing (which shall include electronic mail) and shall be deemed to have been duly given if delivered by hand or by nationally recognized overnight delivery service (receipt requested), mailed by registered or certified U.S. mail (return receipt requested) postage prepaid or sent by electronic mail (with confirmation) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Nicolet, to:

Nicolet Bankshares, Inc.  
111 N. Washington Street  
Green Bay, WI 54301  
(920) 430-7317  
batwell@nicoletbank.com  
Robert B. Atwell

Telephone:  
Email:  
Attention:

with copies to:

Bryan Cave Leighton Paisner LLP  
One Atlantic Center, 14<sup>th</sup> Floor  
1201 W. Peachtree Street, NW  
Atlanta, GA 30309-3488  
(404) 572-6810  
Robert.Klingler@bcplaw.com  
Robert D. Klingler

Telephone:  
Email:  
Attention:



If to the Company, to:

Mackinac Financial Corporation  
130 South Cedar Street  
Manistique, MI 49854  
(906) 341-7140  
kgeorge@bankmbank.com  
Kelly W. George

Telephone:  
Email:  
Attention:

with copies to:

Honigman LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226-3506  
(313) 456-7446  
jkuras@honigman.com  
Jeffrey H. Kuras

Telephone:  
Email:  
Attention:

or to such other Person or place as the Company shall furnish to Nicolet or Nicolet shall furnish to the Company in writing. Except as otherwise provided herein, all such notices, consents, waivers and other communications shall be effective: (a) if delivered by hand, when delivered; (b) if delivered by overnight delivery service, on the next Business Day after deposit with such service; and (c) if mailed in the manner provided in this **Section 11.6**, five (5) Business Days after deposit with the U.S. Postal Service.

**Section 11.7 Entire Agreement.** This Agreement, the Schedules and any documents executed by the parties pursuant to this Agreement and referred to herein, together with the Confidentiality Agreement, constitute the entire understanding and agreement of the parties hereto and supersede all other prior agreements and understandings, written or oral, relating to such subject matter between the parties.

**Section 11.8 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Legal Requirements, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Legal Requirements, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement unless the consummation of the Contemplated Transactions is adversely affected thereby.

**Section 11.9 Further Assurances.** The parties agree: (a) to furnish upon request to each other such further information; (b) to execute and deliver to each other such other documents; and (c) to do such other acts and things; all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

**Section 11.10 Counterparts.** This Agreement and any amendments thereto may be executed in any number of counterparts (including by electronic means), each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other party, it being understood that each party need not sign the same counterpart.

## ARTICLE 12 DEFINITIONS

**Section 12.1 Definitions.** In addition to those terms defined throughout this Agreement, the following terms, when used herein, shall have the following meanings:

(a) **“Acquisition Proposal”** means a tender or exchange offer to acquire more than 25% of the voting power in the Company or the Bank, a proposal for a merger, consolidation or other business combination involving the Company or the Bank or any other proposal or offer to acquire in any manner more than 25% of the voting power in, or more than 25% of the business, assets or deposits of, the Company or the Bank, other than the transactions contemplated hereby and other than any sale of whole loans and securitizations in the Ordinary Course of Business.

(b) **“Affiliate”** means, with respect to any specified Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with, such specified Person.

(c) **“Bank”** means mBank, a wholly-owned subsidiary of the Company.

(d) **“Bank Merger”** means the merger of the Bank with and into, and under the charter of, Nicolet Bank pursuant to the Bank Plan of Merger.

(e) **“Business Day”** means any day except Saturday, Sunday and any day on which banks in Wisconsin are authorized or required by law or other government action to close.

(f) **“Company Articles of Incorporation”** means the Articles of Incorporation of the Company, as amended.

(g) **“Company Benefit Plan”** means any: (i) qualified or nonqualified “employee pension benefit plan” (as defined in Section 3(2) of ERISA) or other deferred compensation or retirement plan or arrangement; (ii) “employee welfare benefit plan” (as defined in Section 3(1) of ERISA) or other health, welfare or similar plan or arrangement; (iii) “employee benefit plan” (as defined in Section 3(3) of ERISA); (iv) equity-based compensation plan or arrangement (including any stock option, stock purchase, stock ownership, stock appreciation, restricted stock, restricted stock unit, phantom stock or similar plan, agreement or award); (v) other paid time off, compensation, severance, bonus, profit-sharing or incentive plan or arrangement; (vi) other employee benefit plan, practice, policy or arrangement of any kind; or (vii) change in control agreement or employment or severance agreement, in each case with respect to clauses (i) through (vii) of this definition, to which contributions have been made by the Company or the Bank or any Company ERISA Affiliate or under which any current or former employee, director, agent or independent contractor of the Company or the Bank or any beneficiary thereof is covered, is eligible for coverage or has payment or other benefit rights, and for which the Company or the Bank has liability, including by reason of having a Company ERISA Affiliate.

(h) **“Company Board”** means the board of directors of the Company.

(i) **“Company Bylaws”** means the Bylaws of the Company, as amended.

(j) **“Company Capital Stock”** means Company Common Stock and Company Preferred Stock.

(k) **“Company Common Stock”** means the common stock, no par value per share, of the Company.

(l) **“Company Debt Agreement”** means any agreement or understanding, and any transaction documents pursuant thereto, representing a loan, credit facility or debt instrument or otherwise memorializing any indebtedness incurred by the Company or First Rural Relending Company and owing to any lending party or parties in effect or outstanding as of the time of this Agreement or at the Effective Time.

(m) **“Company ERISA Affiliate”** means each “person” (as defined in Section 3(9) of ERISA) that is treated as a single employer with the Company or the Bank for purposes of Section 414(b), (c), (m) and (o) of the Code.

(n) **“Company Regulatory Reports”** means (i) the Consolidated Reports of Condition and Income for A Bank With Domestic Offices Only - FFIEC 041 of the Bank for periods between January 1, 2019 and December 31, 2020, as filed with the FDIC; (ii) the Consolidated Reports of Condition and Income for A Bank With Domestic Offices Only - FFIEC 041 of the Bank with respect to periods ended subsequent to December 31, 2020, as filed with the FDIC; (iii) the Parent Company Only Financial Statements for Small Holding Companies, Form FR Y-9SP, of the Company for the periods ended December 31, 2020, June 30, 2020, December 31, 2019 and June 30,

2019; and (iv) the Parent Company Only Financial Statements for Small Holding Companies, Form FR Y-9SP, of the Company with respect to periods ended subsequent to December 31, 2020.

- (o) **"Company SEC Reports"** means the annual, quarterly and other reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) filed or furnished by the Company with the SEC under the Securities Act, the Exchange Act, or the rules and regulations of the SEC thereunder, since January 1, 2019.
- (p) **"Company Shareholder Approval"** means the adoption and approval of this Agreement by the shareholders of the Company, in accordance with the MBCA and the Company Articles of Incorporation.
- (q) **"Company Stock Plans"** means the Mackinac Financial Corporation 2012 Incentive Compensation Plan.
- (r) **"Contemplated Transactions"** means all of the transactions contemplated by this Agreement, including: (i) the Merger; (ii) the Bank Merger; (iii) the performance by Nicolet and the Company of their respective covenants and obligations under this Agreement; and (iv) Nicolet's issuance of shares of Nicolet Common Stock pursuant to the Registration Statement, the Per Share Cash Consideration, and cash in lieu of fractional shares, in exchange for shares of Company Common Stock.
- (s) **"Contract"** means any agreement, contract, obligation, promise or understanding (whether written or oral and whether express or implied) that is legally binding: (i) under which a Person has or may acquire any rights; (ii) under which such Person has or may become subject to any obligation or liability; or (iii) by which such Person or any of the assets owned or used by such Person is or may become bound.
- (t) **"Control," "Controlling" or "Controlled"** when used with respect to any specified Person, means the power to vote 25 percent (25%) or more of any class of voting securities of a Person, the power to control in any manner the election of a majority of the directors or partners of such Person, or the power to exercise a controlling influence over the management or policies of such Person.
- (u) **"CRA"** means the Community Reinvestment Act, as amended.
- (v) **"Deposit Insurance Fund"** means the fund that is maintained by the FDIC to allow it to make up for any shortfalls from a failed depository institution's assets.
- (w) **"Derivative Transactions"** means any swap transaction, option, warrant, forward purchase or sale, transaction, futures transaction, cap transaction, floor transaction or collar transaction relating to one or more currencies, commodities, bonds, equity, securities, loans, interest rates, prices, values, or other financial or nonfinancial assets, credit-related events or conditions or any indexes, or other similar transaction or combination of any of these transactions, including collateralized mortgage obligations or other similar instruments or any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to such transactions.
- (x) **"Dissenting Shares"** shall mean shares with respect to which the holders thereof have perfected dissenters' rights under Chapter 450 of the MBCA.
- (y) **"DOL"** means the U.S. Department of Labor.
- (z) **"Environment"** means surface or subsurface soil or strata, surface waters and sediments, navigable waters, groundwater, drinking water supply and ambient air.
- (aa) **"Environmental Laws"** means any federal, state or local law, statute, ordinance, rule, regulation, code, order, permit or other legally binding requirement applicable to the business or assets of Nicolet, the Company or any of their respective Subsidiaries that imposes liability or standards of conduct with respect to the Environment and/or Hazardous Materials.
- (bb) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.
- (cc) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.
- (dd) **"FDIC"** means the Federal Deposit Insurance Corporation.

- (ee) **"Federal Reserve"** means the Board of Governors of the Federal Reserve System.
- (ff) **"GAAP"** means generally accepted accounting principles in the U.S., consistently applied.
- (gg) **"Hazardous Materials"** means any hazardous, toxic or dangerous substance, waste, contaminant, pollutant, gas or other material that is classified as such under Environmental Laws or is otherwise regulated under Environmental Laws.
- (hh) **"Intangible Assets"** means any asset that is considered an intangible asset under GAAP, including, without limitation, any goodwill and any other identifiable intangible assets recorded in accordance with GAAP, but excluding any mortgage servicing assets recorded as an intangible asset.
- (ii) **"IRS"** means the U.S. Internal Revenue Service.
- (jj) **"Joint Proxy Statement"** means a joint proxy statement prepared by Nicolet and the Company for use in connection with Company Shareholders Meeting and Nicolet Shareholders Meeting, all in accordance with the rules and regulations of the SEC.
- (kk) **"Knowledge"** means, assuming due inquiry under the facts or circumstances, the actual knowledge of the chief executive officer, president, chief financial officer, chief credit officer or general counsel of Nicolet or the Company, as the context requires.
- (ll) **"Legal Requirement"** means any federal, state, local, municipal, foreign, international, multinational or other Order, constitution, law, ordinance, regulation, rule, policy statement, directive, statute or treaty.
- (mm) **"Material Adverse Effect"** as used with respect to a party, means an event, circumstance, change, effect or occurrence which, individually or together with any other event, circumstance, change, effect or occurrence: (i) is materially adverse to the business, condition (financial or otherwise), assets, liabilities or results of operations of such party and its Subsidiaries, taken as a whole; or (ii) materially impairs the ability of such party to perform its obligations under this Agreement or to consummate the Merger and the other Contemplated Transactions on a timely basis; provided that, in determining whether a Material Adverse Effect has occurred, there shall be excluded any effect to the extent attributable to or resulting from: (A) changes in Legal Requirements and the interpretation of such Legal Requirements by courts or governmental authorities; (B) changes in GAAP or regulatory accounting requirements; (C) changes or events generally affecting banks, bank holding companies or financial holding companies, or the economy or the financial, securities or credit markets, including changes in prevailing interest rates, liquidity and quality, currency exchange rates, price levels or trading volumes in the U.S. or foreign securities markets; (D) changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States; (E) the effects of any quarantine, "shelter in place", "stay at home", workforce reduction, social distancing, shut down, closure, safety or any other Law, order, directive, guideline, guidance or recommendation promulgated by any Governmental Entity, including the Centers for Disease Control and Prevention and including the World Health Organization, in response to or relating in any way to the novel coronavirus disease, COVID-19 virus (SARS-COV-2) (or any mutation or variation thereof or related health condition, or any related or associated epidemics, pandemics or disease outbreaks); and (F) the effects of the actions expressly permitted or required by this Agreement or that are taken with the prior written consent of the other party in contemplation of the Contemplated Transactions, including the costs and expenses associated therewith, including Transaction Costs, Severance Costs, and the response of customers, vendors, licensors, investors, or employees; except with respect to clauses (A), (B), (C), (D) and (E), to the extent that the effects of such change are materially disproportionately adverse to the financial condition, results of operations or business of such party and its Subsidiaries, taken as a whole, as compared to other companies in the industry in which such party and its Subsidiaries operate.
- (nn) **"MBCA"** means the Michigan Business Corporation Act, as amended.
- (oo) **"Nasdaq Rules"** means the listing rules of the Nasdaq Capital Market.

- (pp) **"Nicolet Articles of Incorporation"** means the Amended and Restated Articles of Incorporation of Nicolet, as amended.
- (qq) **"Nicolet Bank"** means Nicolet National Bank, and a wholly-owned subsidiary of Nicolet.
- (rr) **"Nicolet Benefit Plan"** means any: (i) qualified or nonqualified "employee pension benefit plan" (as defined in Section 3(2) of ERISA) or other deferred compensation or retirement plan or arrangement; (ii) "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) or other health, welfare or similar plan or arrangement; (iii) "employee benefit plan" (as defined in Section 3(3) of ERISA); (iv) equity-based plan or arrangement (including any stock option, stock purchase, stock ownership, stock appreciation, restricted stock, restricted stock unit, phantom stock or similar plan, agreement or award); (v) other paid time off, compensation, severance, bonus, profit-sharing or incentive plan or arrangement; (vi) other employee benefit plan, practice, policy or arrangement of any kind; or (vii) change in control agreement or employment or severance agreement, in each case with respect to clauses (i) through (vi) of this definition, to which contributions have at any time been made by Nicolet or any of its Subsidiaries or any Nicolet ERISA Affiliate or under which any employee, former employee, director, agent or independent contractor of Nicolet or any of its Subsidiaries or any beneficiary thereof is covered, is eligible for coverage or has benefit rights, and for which Nicolet or any of its Subsidiaries has liability, including by reason of having a Nicolet ERISA Affiliate.
- (ss) **"Nicolet Board"** means the board of directors of Nicolet.
- (tt) **"Nicolet Bylaws"** means the Nicolet Amended and Restated Bylaws, as amended.
- (uu) **"Nicolet Capital Stock"** means Nicolet Common Stock and Nicolet Preferred Stock, collectively.
- (vv) **"Nicolet Common Stock"** means the common stock, \$0.01 par value per share, of Nicolet.
- (ww) **"Nicolet Common Stock Price"** means the volume weighted average closing price of Nicolet Common Stock on the Nasdaq Capital Market over the twenty (20) trading day period immediately preceding the second (2<sup>nd</sup>) trading day prior to the Closing Date.
- (xx) **"Nicolet Equity Award"** means any outstanding stock option, stock appreciation right, restricted stock award, restricted stock unit, or other equity award granted under a Nicolet Stock Plan.
- (yy) **"Nicolet ERISA Affiliate"** means each "person" (as defined in Section 3(9) of ERISA) that is treated as a single employer with Nicolet or any of its Subsidiaries for purposes of Section 414(b), (c), (m) or (o) of the Code.
- (zz) **"Nicolet Material Contract"** means any contract that is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated under the Securities Act).
- (aaa) **"Nicolet Shareholder Approval"** means the adoption and approval of this Agreement by the shareholders of Nicolet, in accordance with the WBCL and Nicolet Articles of Incorporation, and approval of the issuance of the Nicolet Common Stock pursuant to this Agreement by the shareholders of Nicolet, in accordance with Nasdaq Rules.
- (bbb) **"Nicolet SEC Reports"** means the annual, quarterly and other reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) filed or furnished by Nicolet with the SEC under the Securities Act, the Exchange Act, or the regulations thereunder, since January 1, 2019.
- (ccc) **"Nicolet Stock Plans"** means any of the following:  
Nicolet Bankshares, Inc. 2002 Stock Incentive Plan.  
Nicolet Bankshares, Inc. 2010 Equity Incentive Plan.  
Nicolet Bankshares, Inc. 2011 Long-Term Incentive Plan, as amended.

- (ddd) **“Order”** means any award, decision, injunction, judgment, order, ruling, extraordinary supervisory letter, policy statement, memorandum of understanding, resolution, agreement, directive, subpoena or verdict entered, issued, made, rendered or required by any court, administrative or other governmental agency, including any Regulatory Authority, or by any arbitrator.
- (eee) **“Ordinary Course of Business”** shall include any action taken by a Person only if such action is consistent with the past practices of such Person and is similar in nature and magnitude to actions customarily taken in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as such Person.
- (fff) **“OREO”** means real estate owned by a Person and designated as “other real estate owned.”
- (ggg) **“Outstanding Company Shares”** means the shares of Company Common Stock issued and outstanding immediately prior to the Effective Time.
- (hhh) **“PBGC”** means the U.S. Pension Benefit Guaranty Corporation.
- (iii) **“Person”** means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, foundation, joint venture, estate, trust, association, organization, labor union or other entity or Regulatory Authority.
- (jjj) **“Proceeding”** means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any judicial or governmental authority, including a Regulatory Authority, or arbitrator.
- (kkk) **“Registration Statement”** means a registration statement on Form S-4 or other applicable form under the Securities Act covering the shares of Nicolet Common Stock to be issued pursuant to this Agreement, which shall include the Joint Proxy Statement.
- (lll) **“Regulatory Authority”** means any federal, state or local governmental body, agency, court or authority that, under applicable Legal Requirements: (i) has supervisory, judicial, administrative, police, enforcement, taxing or other power or authority over the Company, Nicolet, or any of their respective Subsidiaries; (ii) is required to approve, or give its consent to, the Contemplated Transactions; or (iii) with which a filing must be made in connection therewith.
- (mmm) **“Representative”** means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.
- (nnn) **“Requisite Regulatory Approvals”** means all necessary documentation, applications, notices, petitions, filings, permits, consents, approvals and authorizations from all applicable Regulatory Authorities for approval of the Contemplated Transactions.
- (ooo) **“SEC”** means the Securities and Exchange Commission.
- (ppp) **“Securities Act”** means the Securities Act of 1933, as amended.
- (qqq) **“Severance Costs”** shall mean any and all amounts in the nature of compensation paid or payable pursuant to any agreement with any employee of the Company, the Bank or any other Subsidiary of the Company, as determined on an after-tax basis, that is contingent upon a change in control of the Company or a sale of a substantial portion of the assets of the Company, regardless of whether such payment is due or made before, on or after the Closing Date, and regardless of whether such payments are subject to termination of employment or other events that may occur after the Closing Date. For the avoidance of doubt, all such payments that could become due after a change in ownership upon voluntary termination of employment of an executive under any employment agreement would be considered a Severance Cost.
- (rrr) **“Subsidiary”** with respect to any Person means an affiliate controlled by such Person directly or indirectly through one or more intermediaries.

(sss) **“Superior Proposal”** means a bona fide written Acquisition Proposal which the Company Board concludes in good faith to be more favorable from a financial point of view to the Company shareholders than the Merger and the other transactions contemplated hereby, (i) after receiving the advice of its financial advisors (which shall be Piper Sandler & Co., or any nationally recognized investment banking firm), (ii) after taking into account the likelihood and timing of consummation of the proposed transaction on the terms set forth therein (as compared to, and with due regard for, the terms herein) and (iii) after taking into account all legal (with the advice of outside counsel), financial (including the financing terms of any such proposal), regulatory (including the advice of outside counsel regarding the potential for regulatory approval of any such proposal) and other aspects of such proposal and any other relevant factors permitted under applicable law.

(ttt) **“Takeover Statutes”** means any provisions of any potentially applicable “moratorium,” “control share,” “fair price,” “business combination,” “takeover” or “interested shareholder” law.

(uuu) **“Tangible Common Equity”** means the excess of Tangible Assets over the total liabilities of the Company, calculated in accordance with GAAP (which calculation, for the avoidance of doubt, will include total assets minus only goodwill and deposit based intangibles) as of the Closing Date, as adjusted to exclude: (i) Transaction Costs; (ii) Severance Costs (to the extent such Transaction Costs and Severance Costs are set forth in **Section 12.1(uuu)** of the Company Disclosure Schedules); and (iii) any changes to the valuation of the Company (or the Bank) investment portfolio attributed to ASC 320, whether upward or downward, from December 31, 2020.

(vvv) **“Tangible Assets”** means, as of the Closing Date, the total assets of the Company, calculated in accordance with GAAP, consistently applied, less any Intangible Assets.

(www) **“Tax”** means any tax (including any income tax, franchise tax, capital gains tax, value-added tax, sales tax, property tax, escheat tax, use tax, payroll tax, gift tax or estate tax), levy, assessment, tariff, duty (including any customs duty), deficiency or other fee, and any related charge or amount (including any fine, penalty, interest or addition to tax), imposed, assessed or collected by or under the authority of any Regulatory Authority or payable pursuant to any tax-sharing agreement or any other Contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee.

(xxx) **“Tax Return”** means any return (including any information return), report, statement, schedule, notice, form or other document or information filed with or submitted to, or required to be filed with or submitted to, any Regulatory Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any Legal Requirement relating to any Tax.

(yyy) **“Transaction Costs”** shall mean any and all amounts incurred by the Company or Nicolet, as determined on an after-tax basis, whether or not paid by the Company or Nicolet and whether incurred before, on or after the date of this Agreement, that arise out of or in connection with the negotiation and preparation of this Agreement and the consummation and performance of the transactions contemplated hereby.

(zzz) **“Transition Date”** means, with respect to any Covered Employee, the date Nicolet commences providing benefits to such employee with respect to each New Plan.

(aaaa) **“U.S.”** means the United States of America.

(bbbb) **“WBCL”** means the Wisconsin Business Corporation Law, as amended.

#### **Section 12.2 Principles of Construction.**

(a) In this Agreement, unless otherwise stated or the context otherwise requires, the following uses apply: (i) actions permitted under this Agreement may be taken at any time and from time to time in the actor’s sole discretion; (ii) references to a statute shall refer to the statute and any successor statute, and to all regulations promulgated under or implementing the statute or its successor, as in effect at the relevant time; (iii) in computing periods from a specified date to a later specified date, the words “from” and “commencing on” (and the like) mean “from and including,” and the words “to,” “until” and “ending on” (and the like) mean “to, but excluding”; (iv) references to a governmental or quasi-governmental agency, authority or instrumentality shall also

refer to a regulatory body that succeeds to the functions of the agency, authority or instrumentality; (v) indications of time of day mean Central Time; (vi) "including" means "including, but not limited to"; (vii) all references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Agreement unless otherwise specified; (viii) all words used in this Agreement will be construed to be of such gender or number as the circumstances and context require; (ix) the captions and headings of articles, sections, schedules and exhibits appearing in or attached to this Agreement have been inserted solely for convenience of reference and shall not be considered a part of this Agreement nor shall any of them affect the meaning or interpretation of this Agreement or any of its provisions; and (x) any reference to a document or set of documents in this Agreement, and the rights and obligations of the parties under any such documents, means such document or documents as amended from time to time, and any and all modifications, extensions, renewals, substitutions or replacements thereof.

(b) The schedules of each of the Company and Nicolet referred to in this Agreement (the "**Company Disclosure Schedules**" and the "**Nicolet Disclosure Schedules**," respectively, and collectively the "**Schedules**") shall consist of items, the disclosure of which with respect to a specific party 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 herein or to one or more covenants contained herein, which Schedules were delivered by each of the Company and Nicolet to the other before the date of this Agreement. In the event of any inconsistency between the statements in the body of this Agreement and those in the Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control. For purposes of this Agreement, "**Previously Disclosed**" means information set forth by the Company or Nicolet in the applicable paragraph of its Schedules, or any other paragraph of its Schedules (so long as it is reasonably clear from the context that the disclosure in such other paragraph of its Schedule is also applicable to the section of this Agreement in question).

(c) All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

(d) With regard to each and every term and condition of this Agreement and any and all agreements and instruments subject to the terms hereof, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the parties hereto desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration shall be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

(e) No disclosure, representation, or warranty shall be required to be made (or any other action taken) pursuant to this Agreement that would involve the disclosure of confidential supervisory information of any Regulatory Authority by any party hereto to the extent prohibited by a Legal Requirement, and, to the extent legally permissible, appropriate substitute disclosures or actions shall be made or taken under circumstances in which the limitations of this sentence apply.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers on the day and year first written above.

**NICOLET:**  
NICOLET BANKSHARES, INC.

**By:** /s/ Robert B. Atwell  
Name: Robert B. Atwell  
Title: Chairman, President and Chief Executive Officer

**COMPANY:**  
MACKINAC FINANCIAL CORPORATION

**By:** /s/ Paul D. Tobias  
Name: Paul D. Tobias  
Title: Chairman and Chief Executive Officer

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

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**EXHIBIT A**  
**PLAN OF MERGER  
BY AND BETWEEN  
NICOLET NATIONAL BANK  
AND  
MBANK**

This Plan of Merger (the "Plan") is made and entered into as of the [●] day of April, 2021, by and between Nicolet National Bank, a bank organized under the laws of the United States of America and located in Green Bay, Wisconsin, and mBank, a bank organized under the laws of the Michigan and located in Manistique, Michigan ("mBank").

**WITNESSETH:**

WHEREAS, Nicolet Bankshares, Inc. ("Nicolet") and Mackinac Financial Corporation (the "Company"), entered into an Agreement and Plan of Merger (the "Agreement") dated April [●], 2021, pursuant to which the Company will merge with and into Nicolet;

WHEREAS, pursuant to the Agreement and the terms of this Plan, mBank will merge with and into Nicolet National Bank (the "Bank Merger");

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

1. Merger. Pursuant to the provisions of Chapter 487 of the Michigan Banking Code and Section 215a of the National Bank Act, mBank shall be merged with and into Nicolet National Bank. Nicolet National Bank shall be the survivor of the Bank Merger (the "Resulting Bank"), and shall operate with the name "Nicolet National Bank." The Resulting Bank shall be liable for all liabilities of mBank in accordance with the provisions of 12 USC 215a(a)(4).
2. Effective Date of the Merger. The Bank Merger shall become effective on the date that Articles of Merger reflecting the Bank Merger become effective with the Office of the Comptroller of the Currency (the "Effective Date").
3. Location, Articles and Bylaws and Directors and Executive Officers of the Resulting Bank. On the Effective Date of the Bank Merger:
  - (a) The main office of the Resulting Bank shall be located at the main office of Nicolet National Bank immediately prior to the Effective Date.
  - (b) The Articles of Association of the Resulting Bank shall be the Articles of Association of Nicolet National Bank in effect immediately prior to the Effective Date. The Bylaws of the Resulting Bank shall be the Bylaws of Nicolet National Bank in effect immediately prior to the Effective Date of the Merger.
  - (c) From and after the Effective Date, the executive officers of the Resulting Bank shall be the executive officers of Nicolet National Bank immediately prior to the Effective Date of the Merger. From and after the Effective Date, the directors of the Resulting Bank shall be (i) the directors of Nicolet National Bank immediately prior to the Effective Date of the Merger and (ii) Paul D. Tobias. Such directors and executive officers shall serve until their resignation, removal or until their successors shall

have been elected or appointed and shall have been qualified in accordance with Articles of Association and Bylaws of Nicolet National Bank.

4. Manner of Converting Shares.

(a) By virtue of the Bank Merger, automatically and without any action on the part of the holder thereof, each of the shares of mBank common stock issued and outstanding immediately prior to the Effective Date shall be cancelled and retired at the Effective Date and no consideration shall be issued in exchange therefor.

(b) Upon and after the Effective Date, each issued and outstanding share of Nicolet National Bank common stock shall remain unchanged and shall continue to evidence the same number of shares of Nicolet National Bank common stock.

5. Conditions Precedent to Consummation. Consummation of the Bank Merger herein provided for is conditioned upon (a) receipt of all necessary consents to the Bank Merger from applicable regulatory authorities, (b) approval of the Plan by the Company, as sole shareholder of mBank, (c) approval of the Plan by Nicolet, as sole shareholder of Nicolet National Bank, and (d) closing of the merger of the Company and Nicolet.

6. Termination. This Plan may be terminated by the mutual consent of the Parties at any time prior to the Effective Date. The Plan shall also be terminated automatically in the event the Agreement is terminated pursuant to the provisions of Article 10 thereof.

7. Counterparts, Headings, Governing Law. This Plan may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. The title of this Plan and the headings herein are for convenience or reference only and shall not be deemed a part of this Plan. This Plan shall be governed by and construed in accordance with the laws of the State of Michigan and the National Bank Act.

[SIGNATURES ON NEXT PAGE]

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

**NICOLET NATIONAL BANK**

[BANK SEAL] By: \_\_\_\_\_

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

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Secretary

*[Signature Page to Bank Plan of Merger]*

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**MBANK**

[BANK SEAL] By: \_\_\_\_\_

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

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

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*[Signature Page to Bank Plan of Merger]*

**EXHIBIT B**

**FORM OF VOTING AND SUPPORT AGREEMENT**

Nicolet Bankshares, Inc.  
Attention: Chief Executive Officer

Ladies and Gentlemen:

The undersigned is a shareholder of Mackinac Financial Corporation (the "Company"), a Michigan corporation and a registered bank holding company under the BHC Act. This Voting and Support Agreement relates to the Agreement and Plan of Merger, dated as of April 12, 2021 (the "Agreement"), between the Company and Nicolet Bankshares, Inc., a Wisconsin corporation ("Nicolet"). Under the terms of the Agreement, the Company will be merged into and with Nicolet (the "Merger"), and the shares of the Company's common stock, \$0.01 par value per share (the "Company Common Stock") will be converted into and exchanged for the Merger Consideration pursuant to the Agreement. This Voting and Support Agreement represents an agreement between the undersigned and Nicolet regarding certain rights and obligations of the undersigned in connection with the Merger.

In consideration of the execution and delivery by Nicolet of the Agreement and the mutual covenants, conditions and agreements contained herein and therein, the receipt and sufficiency of which is hereby acknowledged, the undersigned and Nicolet, intending to be legally bound, hereby agree as follows:

1. *Vote on the Merger.* The undersigned agrees to vote all shares of Company Common Stock that the undersigned owns beneficially or of record in favor of approving the Agreement and the transactions contemplated thereby, unless Nicolet is then in breach or default in any material respect as regards any covenant, agreement, representation or warranty as to it contained in the Agreement; provided, however, that nothing in this sentence shall be deemed to require the undersigned to vote any shares of Company Common Stock over which the undersigned has or shares voting power solely in a fiduciary capacity on behalf of any person, if the undersigned determines, in good faith after consultation with legal counsel, that such a vote would cause a breach of fiduciary duty to such other person.

2. *Restriction on Transfer.* The undersigned further agrees that the undersigned will not, without the prior written consent of Nicolet, transfer any shares of Company Common Stock prior to the earlier of the Effective Time or the Termination Date, each such term as set forth in the Agreement, except (a) by operation of law, (b) by will, (c) under the laws of descent and distribution, (d) with the prior written consent of Nicolet, which consent shall not be unreasonably withheld, for any sales, assignments, transfers or other dispositions necessitated by hardship, or (e) as Nicolet may otherwise agree in writing.

3. *No Agreement as Director or Officer.* The undersigned makes no agreement or understanding in this Voting and Support Agreement in the undersigned's capacity as a director or officer of the Company or any of its Subsidiaries, and nothing in this Voting and Support Agreement: (a) will limit or affect any actions or omissions taken by the undersigned in the undersigned's capacity as such a director or officer, including exercising rights under the Agreement, and no such actions or omissions shall be deemed a breach of this Voting and Support Agreement, or (b) will be construed to prohibit, limit or restrict the undersigned from exercising the undersigned's fiduciary duties as an officer or director to the Company or its shareholders.

4. *Miscellaneous.* This Voting and Support Agreement is the complete agreement between Nicolet and the undersigned concerning the subject matter hereof. Any notice required to be sent to any party hereunder shall be sent by registered or certified mail, return receipt requested, or electronic mail using the addresses set forth herein or such other address as shall be furnished in writing by the parties. This Voting and Support Agreement shall be governed by the laws of the State of Michigan.

Exhibit B-1

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5. *Termination.* This Voting and Support Agreement shall terminate upon the earliest of (a) the mutual written agreement of the undersigned and Nicolet, (b) the Effective Time, (c) the termination of the Agreement in accordance with its terms, and (d) any reduction in the Merger Consideration, extension of the Termination Date, change in the type of merger consideration, or other amendment, modification, waiver or change to the Agreement that is material and adverse to the undersigned and not consented to in advance in writing by the undersigned. For avoidance of doubt, a decline in Nicolet's stock price shall not be considered a reduction in the merger consideration.

6. *Capitalized Terms.* Unless otherwise defined herein, all capitalized terms in this Voting and Support Agreement shall have the same meaning as given such terms in the Agreement.

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[SIGNATURE PAGE FOLLOWS]

This Voting and Support Agreement is executed as of the 12<sup>th</sup> day of April, 2021.

Very truly yours,

\_\_\_\_\_  
Signature

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

\_\_\_\_\_

\_\_\_\_\_

Address  
Telephone No. \_\_\_\_\_

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*[Signature Page to Voting and Support Agreement]*



AGREED TO AND ACCEPTED as of  
April 12, 2021

**NICOLET BANKSHARES, INC.**

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

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

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

111 N. Washington Street  
Green Bay, WI 54301

Telephone No. \_\_\_\_\_

*[Signature Page to Voting and Support Agreement]*

**FOR IMMEDIATE RELEASE****Nicolet Bankshares, Inc. To Acquire Mackinac Financial Corporation**

**GREEN BAY, WI and MANISTIQUE, MI, April 12, 2021**– Nicolet Bankshares, Inc. (NASDAQ: NCBS) (“Nicolet”) and Mackinac Financial Corporation (NASDAQ: MFNC) (“Mackinac”) today jointly announced the execution of a definitive merger agreement, pursuant to which Nicolet will acquire Mackinac and its wholly-owned banking subsidiary, mBank.

Based on the financial results as of December 31, 2020, the combined company will have pro forma total assets of \$6.1 billion, deposits of \$5.2 billion and loans of \$3.9 billion, and Mackinac would represent approximately 25% of the combined company’s year-end assets.

Mike Daniels, President and CEO of Nicolet National Bank said, “The acquisition of mBank is an important step in Nicolet’s planned growth. This deal is not about expanded geographies but rather about the characteristics of the communities we will serve. Together, we will combine two organizations that understand the positive impact that a strong community bank can make. We look forward to becoming an integral part of the Upper Peninsula and Northern Michigan.

We want to offer two initial thoughts when it comes to the question of what’s next. First, we know that scale and efficiencies matter in community banking today. Our customers continue to tell and show us that convenience no longer means a branch on every corner. Second, we understand that actions speak louder than words. We want the communities to know that we are committed to realizing the promise of this acquisition. After the transaction is complete, people will see a strong community bank focused on keeping decisions local. We will build and expand on mBank’s legacy of being a great steward of its communities. Together, we will find the best ways to serve to become the lead-local community bank.”

Paul Tobias, Chairman and CEO of Mackinac said, “On behalf of our Board of Directors, I am pleased to announce our merger into the Nicolet family. We have found a strategic partner that is a true community bank with deep commitments to the markets we serve. The market cultures of our respective organizations mesh well, and the greater lending access will strengthen our value to current and prospective customers. This deal represents a fair transaction that unlocks shareholder value for us both.”

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Bob Atwell, CEO and Chairman of Nicolet said, "Nicolet always takes the long view when it comes to acquisitions. This deal with Mackinac represents a unique and sizeable opportunity to expand Nicolet's franchise across a greater Northern footprint, while at the same time, being highly accretive to long-term shareholder value. It also opens up the possibility for future expansion into the state of Michigan, if and when the opportunity arises."

Kelly George, President and CEO of mBank said, "In Nicolet, we have found a strategic partner who shares our vision of being people-driven and community-centric. Together, we will continue to deliver personal and timely decisions through local bankers who are a part of the communities we serve. Maintaining and creating strong relationships will continue to be the value we bring to our customers."

***Transaction Information***

Under the terms of the merger agreement, Mackinac shareholders will have the right to receive 0.22 shares of Nicolet's common stock and \$4.64 for each share of common stock of Mackinac Financial Corporation with total consideration to consist of approximately 80% stock and 20% cash. Based upon the closing price of Nicolet Bancshares common stock of \$84.40 on April 9, 2021, the implied per share purchase price is \$23.21, with an aggregate transaction value of approximately \$248 million.

The estimated transaction value is a 1.69 multiple of Mackinac's tangible book value as of December 31, 2020 and equates to approximately 18.3x Mackinac's 2020 earnings per share. Additional assumptions and metrics can be found in the related Investor Presentation.

***Leadership/Employee Information***

Post-merger, Paul Tobias will join the Boards of Directors of Nicolet Bankshares and Nicolet National Bank. All customer-facing employees of Mackinac are expected to stay on in the same capacity.

***Approvals and Closing Date***

The transaction has been unanimously approved by the boards of directors of both companies. It is subject to both Mackinac and Nicolet shareholder approval, regulatory approvals and other customary closing conditions and is expected to close in the third quarter of 2021. Upon consummation of the transaction, Nicolet's existing branch at 325 W. Pine Street, Eagle River, WI is expected to close and consolidate with continued service out of the legacy mBank office at 400 E. Wall Street, Eagle River, WI.

***Advisors***

Hovde Group, LLC provided a fairness opinion to the Board of Directors and Bryan Cave Leighton Paisner LLP served as legal counsel to Nicolet in this transaction. Piper Sandler & Co.

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served as financial advisor and delivered a fairness opinion to the Board of Directors of Mackinac, and Honigman LLP served as Mackinac's legal counsel.

**About Nicolet Bankshares, Inc.**

Nicolet Bankshares, Inc. is the bank holding company of Nicolet National Bank, a growing, full-service, community bank providing services ranging from commercial and consumer banking to wealth management and retirement plan services. Founded in Green Bay in 2000, Nicolet National Bank operates branches in Northeast and Central Wisconsin and the upper peninsula of Michigan. More information can be found at [www.nicoletbank.com](http://www.nicoletbank.com).

**About Mackinac Financial Corporation**

Mackinac Financial Corporation is a registered bank holding company formed under the Bank Holding Company Act of 1956 with assets in excess of \$1.5 billion and whose common stock is traded on the NASDAQ stock market as "MFNC." The principal subsidiary of the Corporation is mBank. Headquartered in Manistique, Michigan, mBank has 28 branch locations; ten in the Upper Peninsula, ten in the Northern Lower Peninsula, one in Oakland County, Michigan, and seven in Northern Wisconsin. The Corporation's banking services include commercial lending and treasury management products and services geared toward small- to mid-sized businesses, as well as a full array of personal and business deposit products and consumer loans.

**Forward Looking Statements "Safe Harbor" Statement Under the Private Securities Litigation Reform Act of 1995**

Certain statements contained in this communication, which are not statements of historical fact, constitute forward-looking statements within the meaning of the federal securities law. Such statements include, but are not limited to, certain plans, expectations, goals, projections and benefits relating to the proposed merger between Nicolet and Mackinac, which are subject to numerous assumptions, risks and uncertainties. Words or phrases such as "anticipate," "believe," "aim," "can," "conclude," "continue," "could," "estimate," "expect," "foresee," "goal," "intend," "may," "might," "outlook," "possible," "plan," "predict," "project," "potential," "seek," "should," "target," "will," "will likely," "would," or the negative of these terms or other comparable terminology, as well as similar expressions, are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.

Forward-looking statements are not historical facts but instead express only management's beliefs regarding future results or events, many of which, by their nature, are inherently uncertain and outside of management's control. It is possible that actual results and outcomes may differ, possibly materially, from the anticipated results or outcomes indicated in these forward-looking statements. In addition to factors disclosed in reports filed by Nicolet and Mackinac with the SEC, risks and uncertainties for Nicolet, Mackinac and the combined company that may cause actual results or outcomes to differ materially from those anticipated include, but are not limited to: (1) the possibility that any of the anticipated benefits of the proposed merger will not be realized or will not be realized within the expected time period; (2) the risk that integration of

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Mackinac's operations with those of Nicolet will be materially delayed or will be more costly or difficult than expected; (3) the parties' inability to meet expectations regarding the timing of the proposed merger; (4) changes to tax legislation and their potential effects on the accounting for the merger; (5) the inability to complete the proposed merger due to the failure of Nicolet's or Mackinac's shareholders to adopt the Merger Agreement; (6) the failure to satisfy other conditions to completion of the proposed merger, including receipt of required regulatory and other approvals; (7) the failure of the proposed merger to close for any other reason; (8) diversion of management's attention from ongoing business operations and opportunities due to the proposed merger; (9) the challenges of integrating and retaining key employees; (10) the effect of the announcement of the proposed merger on Nicolet's, Mackinac's or the combined company's respective customer and employee relationships and operating results; (11) the possibility that the proposed merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events; (12) dilution caused by Nicolet's issuance of additional shares of Nicolet common stock in connection with the merger; (13) the magnitude and duration of the COVID-19 pandemic and its impact on the global economy and financial market conditions and the business, results of operations and financial condition of Nicolet, Mackinac and the combined company; (14) changes in consumer demand for financial services; and (15) general competitive, economic, political and market conditions and fluctuations. Please refer to each of Nicolet's and Mackinac's Annual Report on Form 10-K for the year ended December 31, 2020, as well as their other filings with the SEC, for a more detailed discussion of risks, uncertainties and factors that could cause actual results to differ from those discussed in the forward-looking statements.

All forward-looking statements included in this communication are made as of the date hereof and are based on information available to management at that time. Except as required by law, neither Nicolet nor Mackinac assumes any obligation to update any forward-looking statement to reflect events or circumstances that occur after the date the forward-looking statements were made.

#### **Important Information and Where to Find It**

This communication relates to the proposed merger transaction involving Nicolet and Mackinac. In connection with the proposed merger, Nicolet and Mackinac will file a joint proxy statement/prospectus on Form S-4 and other relevant documents concerning the merger with the Securities and Exchange Commission (the "SEC"). **BEFORE MAKING ANY VOTING OR INVESTMENT DECISION, INVESTORS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER DOCUMENTS TO BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED MERGER OR INCORPORATED BY REFERENCE IN THE JOINT PROXY STATEMENT/PROSPECTUS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT NICOLET, MACKINAC AND THE PROPOSED MERGER.** When available, the joint proxy statement/prospectus will be delivered to shareholders of Nicolet and Mackinac. Investors may obtain copies of the joint proxy statement/prospectus and other relevant documents (as they become available) free of charge at the SEC's website ([www.sec.gov](http://www.sec.gov)). Copies of the documents filed with the SEC by Nicolet will be available free of charge on Nicolet's website at

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www.nicoletbank.com. Copies of the documents filed with the SEC by Mackinac will be available free of charge on Mackinac's website at www.bankmbank.com.

Nicolet, Mackinac and certain of their directors, executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the shareholders of Nicolet and the shareholders of Mackinac in connection with the proposed merger. Information about the directors and executive officers of Nicolet and Mackinac will be included in the joint proxy statement/prospectus for the proposed transaction filed with the SEC. Information about the directors and executive officers of Nicolet is also included in the proxy statement for its 2021 annual meeting of shareholders, which was filed with the SEC on March 2, 2021. Information about the directors and executive officers of Mackinac is also included in the proxy statement for its 2020 annual meeting of shareholders, which was filed with the SEC on April 22, 2020. Additional information regarding the interests of such participants and other persons who may be deemed participants in the transaction will be included in the joint proxy statement/prospectus and the other relevant documents filed with the SEC when they become available.

**No Offer or Solicitation**

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

**Investor Relations & Media Contacts:**

Mackinac: Paul Tobias – Chief Executive Officer, Mackinac Financial Corporation  
Phone: (248) 290-5901  
Email: ptobias@bankmbank.com

Kelly George – President & CEO, mBank  
Phone: (906) 341-7140  
Email: kgeorge@bankmbank.com

Nicolet: Mike Daniels – President & CEO, Nicolet National Bank  
Jeff Gahnz – VP, Marketing / Public Relations, Nicolet National Bank  
Phone: 920.430.1400  
Email: mdaniels@nicoletbank.com or jgahnz@nicoletbank.com



**Nicolet**  
BANKSHARES, INC.

**Acquisition of Mackinac Financial Corporation  
April 12, 2021**

# Securities Legend

## Forward Looking Statements “Safe Harbor” Statement Under the Private Securities Litigation Reform Act of 1995

*Certain statements contained in this communication, which are not statements of historical fact, constitute forward-looking statements within the meaning of the federal securities law. Such statements include, but are not limited to, certain plans, expectations, goals, projections and benefits relating to the proposed merger between Nicolet and Mackinac, which are subject to numerous assumptions, risks and uncertainties. Words or phrases such as “anticipate,” “believe,” “aim,” “can,” “conclude,” “continue,” “could,” “estimate,” “expect,” “foresee,” “goal,” “intend,” “may,” “might,” “outlook,” “possible,” “plan,” “predict,” “project,” “potential,” “seek,” “should,” “target,” “will,” “will likely,” “would,” or the negative of these terms or other comparable terminology, as well as similar expressions, are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.*

*Forward-looking statements are not historical facts but instead express only management’s beliefs regarding future results or events, many of which, by their nature, are inherently uncertain and outside of management’s control. It is possible that actual results and outcomes may differ, possibly materially, from the anticipated results or outcomes indicated in these forward-looking statements. In addition to factors disclosed in reports filed by Nicolet and Mackinac with the SEC, risks and uncertainties for Nicolet, Mackinac and the combined company that may cause actual results or outcomes to differ materially from those anticipated include, but are not limited to: (1) the possibility that any of the anticipated benefits of the proposed merger will not be realized or will not be realized within the expected time period; (2) the risk that integration of Mackinac’s operations with those of Nicolet will be materially delayed or will be more costly or difficult than expected; (3) the parties’ inability to meet expectations regarding the timing of the proposed merger; (4) changes to tax legislation and their potential effects on the accounting for the merger; (5) the inability to complete the proposed merger due to the failure of Nicolet’s or Mackinac’s shareholders to adopt the Merger Agreement; (6) the failure to satisfy other conditions to completion of the proposed merger, including receipt of required regulatory and other approvals; (7) the failure of the proposed merger to close for any other reason; (8) diversion of management’s attention from ongoing business operations and opportunities due to the proposed merger; (9) the challenges of integrating and retaining key employees; (10) the effect of the announcement of the proposed merger on Nicolet’s, Mackinac’s or the combined company’s respective customer and employee relationships and operating results; (11) the possibility that the proposed merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events; (12) dilution caused by Nicolet’s issuance of additional shares of Nicolet common stock in connection with the merger; (13) the magnitude and duration of the COVID-19 pandemic and its impact on the global economy and financial market conditions and the business, results of operations and financial condition of Nicolet, Mackinac and the combined company; (14) changes in consumer demand for financial services; and (15) general competitive, economic, political and market conditions and fluctuations. Please refer to each of Nicolet’s and Mackinac’s Annual Report on Form 10-K for the year ended December 31, 2020, as well as their other filings with the SEC, for a more detailed discussion of risks, uncertainties and factors that could cause actual results to differ from those discussed in the forward-looking statements.*

*All forward-looking statements included in this communication are made as of the date hereof and are based on information available to management at that time. Except as required by law, neither Nicolet nor Mackinac assumes any obligation to update any forward-looking statement to reflect events or circumstances that occur after the date the forward-looking statements were made.*



# Securities Legend

## Important Information and Where to Find It

*This communication relates to the proposed merger transaction involving Nicolet and Mackinac. In connection with the proposed merger, Nicolet and Mackinac will file a joint proxy statement/prospectus on Form S-4 and other relevant documents concerning the merger with the Securities and Exchange Commission (the "SEC"). **BEFORE MAKING ANY VOTING OR INVESTMENT DECISION, INVESTORS ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER DOCUMENTS TO BE FILED WITH THE SEC IN CONNECTION WITH THE PROPOSED MERGER OR INCORPORATED BY REFERENCE IN THE JOINT PROXY STATEMENT/PROSPECTUS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT NICOLET, MACKINAC AND THE PROPOSED MERGER.** When available, the joint proxy statement/prospectus will be delivered to shareholders of Nicolet and Mackinac. Investors may obtain copies of the joint proxy statement/prospectus and other relevant documents (as they become available) free of charge at the SEC's website ([www.sec.gov](http://www.sec.gov)). Copies of the documents filed with the SEC by Nicolet will be available free of charge on Nicolet's website at [www.nicoletbank.com](http://www.nicoletbank.com). Copies of the documents filed with the SEC by Mackinac will be available free of charge on Mackinac's website at [www.bankmbank.com](http://www.bankmbank.com).*

*Nicolet, Mackinac and certain of their directors, executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the shareholders of Nicolet and the shareholders of Mackinac in connection with the proposed merger. Information about the directors and executive officers of Nicolet and Mackinac will be included in the joint proxy statement/prospectus for the proposed transaction filed with the SEC. Information about the directors and executive officers of Nicolet is also included in the proxy statement for its 2021 annual meeting of shareholders, which was filed with the SEC on March 2, 2021. Information about the directors and executive officers of Mackinac is also included in the proxy statement for its 2020 annual meeting of shareholders, which was filed with the SEC on April 22, 2020. Additional information regarding the interests of such participants and other persons who may be deemed participants in the transaction will be included in the joint proxy statement/prospectus and the other relevant documents filed with the SEC when they become available.*

## No Offer or Solicitation

*This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.*

# Transaction Highlights & Rationale

## Strategic Rationale

- Establishes Nicolet as the largest community bank in Michigan's Upper Peninsula
- Builds additional scale by creating a \$6.1 billion community banking franchise (#2 in Wisconsin) with a \$1.0 billion+ market capitalization<sup>(2)</sup>
- Complementary loan portfolio, retail focus, backend systems, and overall like-minded commitment to serve customers, shareholders, and communities across Northern Wisconsin and Michigan

## Positive Financial Impacts

- EPS accretion over 14% in 2022
- Tangible book value dilution of approximately 5%, with an earnback of 1.9 years<sup>(2)</sup>
- Internal rate of return > 20%
- Identified, but no modeled revenue enhancements

## Revenue Opportunities & Efficiencies

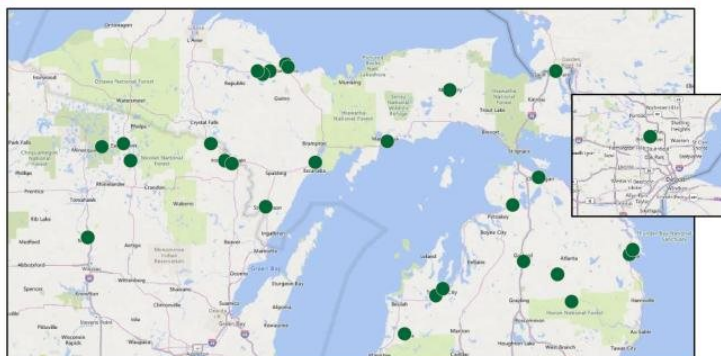
- Larger geographical commercial market will provide for more lending opportunities across Northern Michigan with Nicolet's higher lending limits
- Significant opportunity to drive efficiency through additional branch rationalization of both footprints
- Longer-term opportunity to expand Nicolet's wealth management capabilities across Mackinac's markets

# Mackinac Financial Highlights & Market Overview

## Mackinac Market Overview<sup>(1)</sup>

- Creates the #1 community bank in the Upper Peninsula, as ranked by total pro forma deposits
- Solid market positions in several commercial hubs in the UP, including Marquette, Manistique, Sault Saint Marie, and Escanaba
- Northern Lower Peninsula: Lead local community bank in Alpena (47% market share) with opportunities to grow into the dynamic Traverse City market
- Southeast Michigan: \$171 million in loans adds to geographic diversity of the entire portfolio<sup>(3)</sup>

## Mackinac Financial Branch Map



## Upper Peninsula Deposit Market Share<sup>(1)</sup>

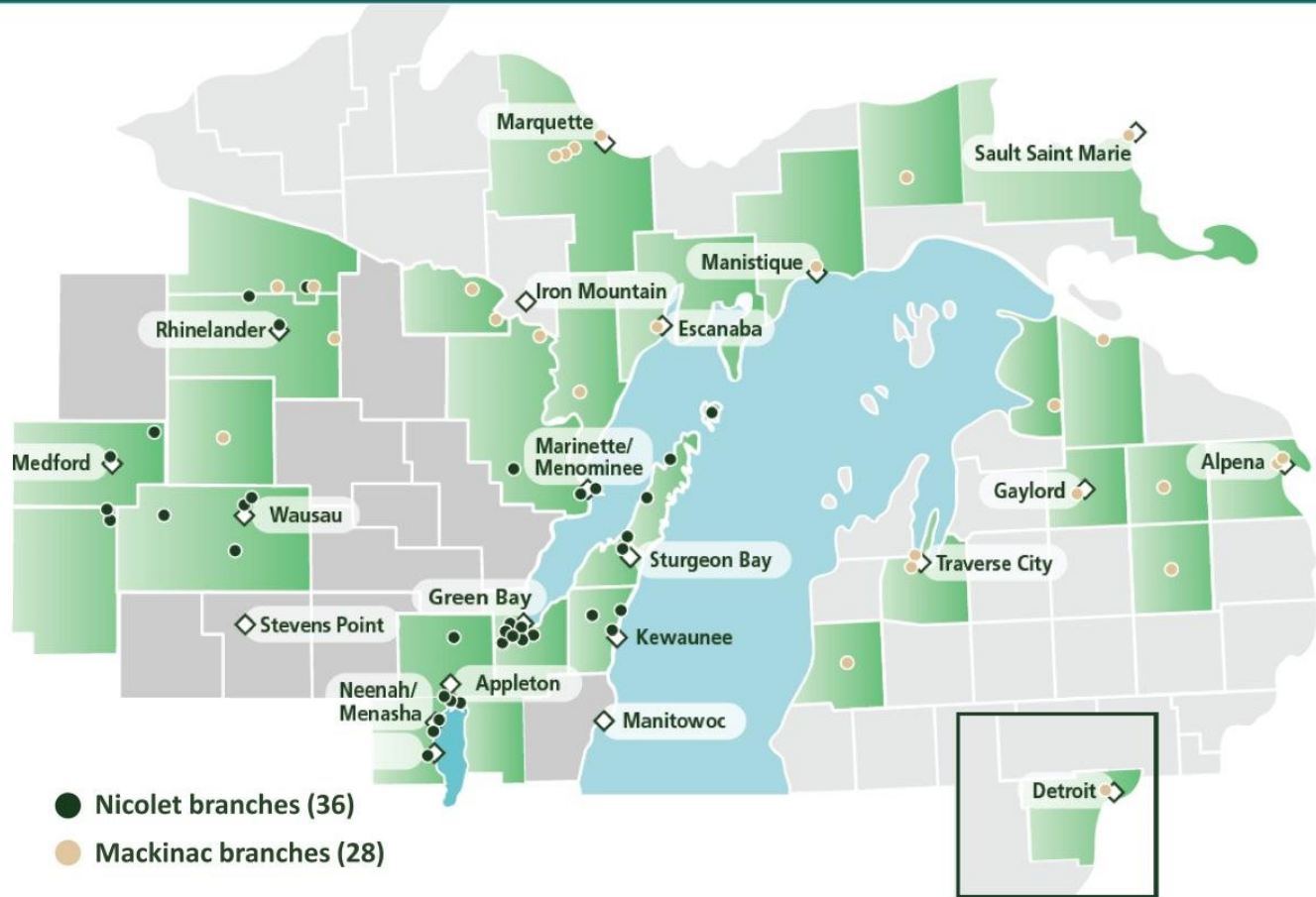
Rank	Institution	Branches	Deposits In Market (\$M)	Market Share
1	<b>Nicolet (Pro Forma)</b>	<b>10</b>	<b>\$597</b>	<b>11.6%</b>
2	Superior National Bank	10	\$563	10.9%
3	Flagstar Bank, FSB	14	\$463	9.0%
4	First Bank, Upper Michigan	9	\$434	8.4%
5	Incredible Bank	6	\$386	7.5%
6	Range Bank	8	\$381	7.4%
7	First National B&T of Iron Mountain	8	\$339	6.6%
8	Central Savings Bank	9	\$276	5.3%
9	First National Bank of St. Ignace	7	\$259	5.0%
10	Huntington National Bank	7	\$231	4.5%
	All others (11)	38	\$1,240	24.0%
	<b>Total For Institutions In Market</b>	<b>116</b>	<b>\$5,168</b>	

## Mackinac Summary Financials<sup>(2)</sup>

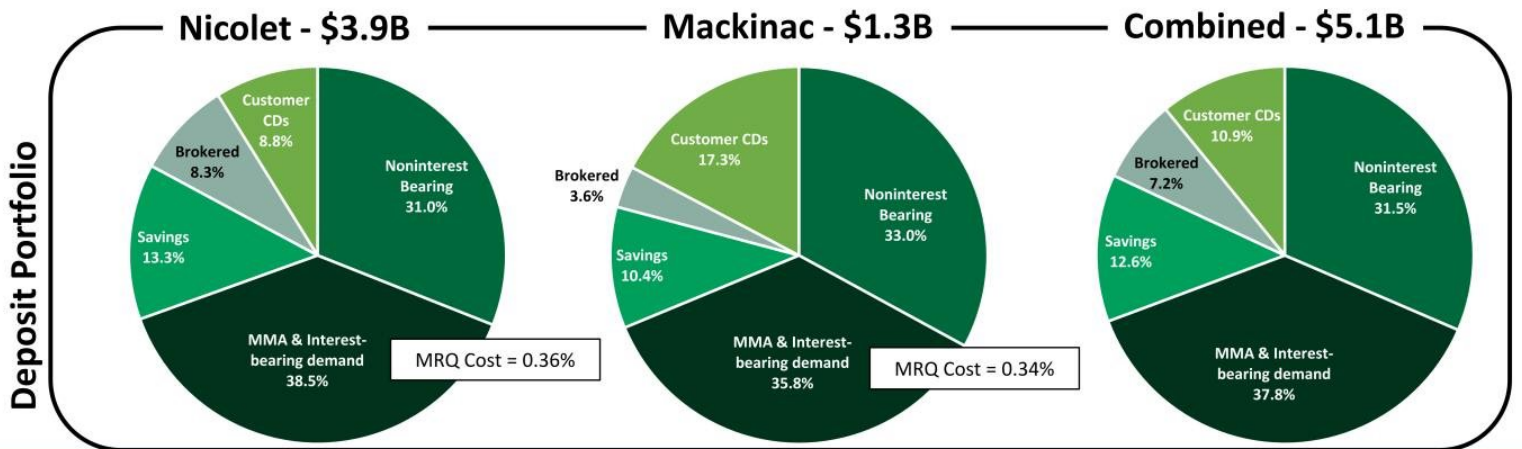
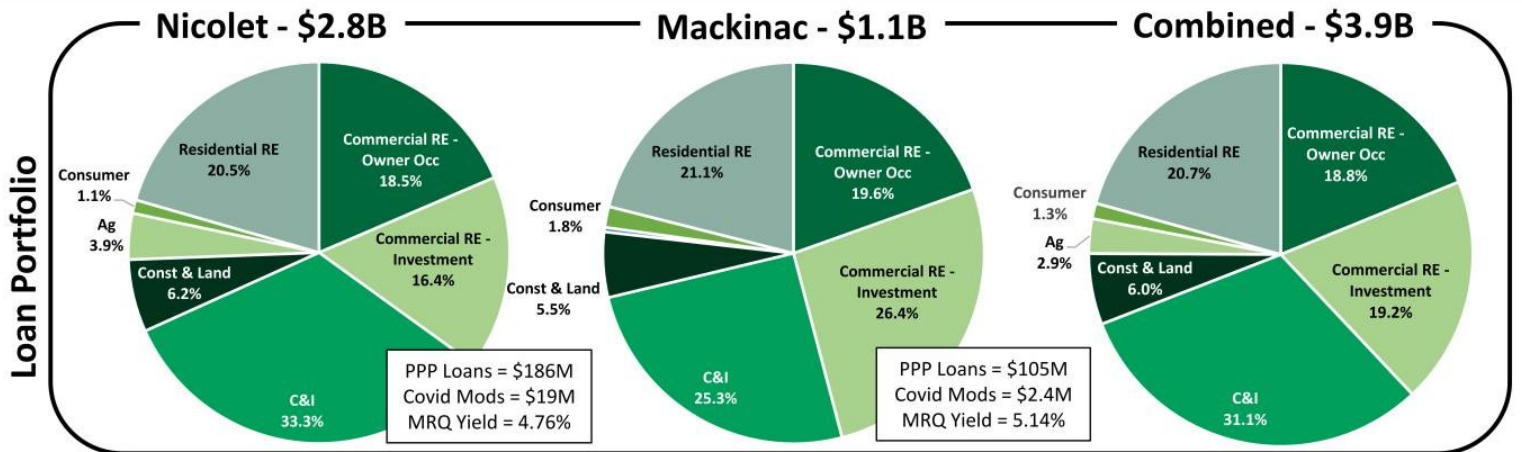
	2017	2018	2019	2020
Total Assets	\$985,367	\$1,318,040	\$1,320,069	\$1,501,730
Asset Growth	0.2%	33.8%	0.2%	13.8%
Total Net Loans	\$805,999	\$1,033,681	\$1,053,468	\$1,071,776
Loan Growth	3.8%	28.2%	1.9%	1.7%
Total Deposits	\$817,998	\$1,097,537	\$1,075,677	\$1,258,776
Deposit Growth	-0.7%	34.2%	-2.0%	17.0%
Loans / Deposits	99%	95%	98%	85%
Equity / Assets	7.55%	9.64%	10.60%	9.74%
Net Income	\$5,479	\$8,367	\$13,850	\$13,473
ROAA	0.55%	0.71%	1.04%	0.92%
ROAE	6.74%	6.94%	8.78%	8.19%
Net Interest Margin	4.23%	4.46%	4.60%	4.40%
Efficiency Ratio	70.7%	70.8%	68.2%	70.5%
NPA's / Assets	1.15%	0.99%	1.03%	0.87%
NCO's / Avg Loans	0.07%	0.04%	0.02%	0.04%
LLR / Loans	0.63%	0.50%	0.50%	0.54%



# Pro Forma Branch Map



# Complimentary Loan & Deposit Franchises



# Transaction Overview and Assumptions

## Deal Structure

- Mackinac shareholders will receive 0.22x shares of Nicolet and \$4.64 in cash for each share owned
- Aggregate deal value of \$248 million<sup>(1)</sup>
- Mackinac to merge with and into Nicolet; mBank to merge with and into Nicolet National Bank

## Valuation Multiples<sup>(2)</sup>

- Price-to-Tangible Book Value: 169%
- Price-to-2020 EPS: 18.3x
- Price-to-EPS after Cost Savings: 9.8x
- Tangible Book Value Earnback Period: 1.9 years (crossover method)

## Key Assumptions

- Cost Savings of 30% of Mackinac's 2020 expense base (100% realized in 2022)
- \$20 million in estimated pretax deal expenses
- Loan credit mark of 1.8% on gross loans comprised of:
  - 0.55% PCD mark
  - 0.54% non-PCD mark (accreted back through earnings over the 3 year life of loans)
- Additional Day 2 CECL reserve of 0.70% of gross loans
- Core deposit intangible of \$4.8 million, amortized on an accelerated basis over 10 years

## Management & Board

- Paul Tobias (Mackinac Chairman & CEO) expected to join the Boards of Directors of Nicolet Bankshares and Nicolet National Bank
- Key Mackinac management to support Nicolet in ensuring a successful integration and client continuity

## Target Closing

- Anticipated close in third quarter 2021
- Subject to regulatory approvals, shareholder approvals by both Nicolet and Mackinac, and customary closing conditions

**Nicolet**  
BANKSHARES, INC.

(1) Deal value equals a NCBS price of \$84.40 (4/9 closing price) multiplied by the exchange ratio plus \$4.64 in cash consideration, and then by outstanding shares of approximately 10.7 million as of 3/31/21 (inclusive of Mackinac's restricted stock awards), but excludes Nicolet's existing ownership of 30,000 shares

(2) Deal value, EPS, and TBV accretion/dilution estimates reflect Nicolet's pre-existing ownership; TBV Earnback inclusive of Day 2 CECL impact

# Due Diligence Process

## Disciplined Acquirer

- Nicolet is an experienced acquirer having completed six bank acquisitions since 2013
- Long track record of earnings and tangible book value growth
- Historically out-performed initial cost savings estimates

## Comprehensive Diligence Approach

- Collaborative process lasting approximately 30 days
- Engagement of third party advisors
- Key focus areas: Credit Quality, Operations, IT, Legal, Compliance, HR, and Regulatory
- Nicolet's experienced credit diligence team reviewed a significant portion of the loan portfolio, including:
  - 77% of all commercial relationships (supported by Nicolet's familiarity with Northern Wisconsin portfolio)
  - 100% of adversely classified assets and Watch List credits
  - 100% of ABL credits
  - Particular focus on southeast Michigan portfolio
  - The retail loan portfolio based on payment performance
- Preliminary review of personnel at both institutions



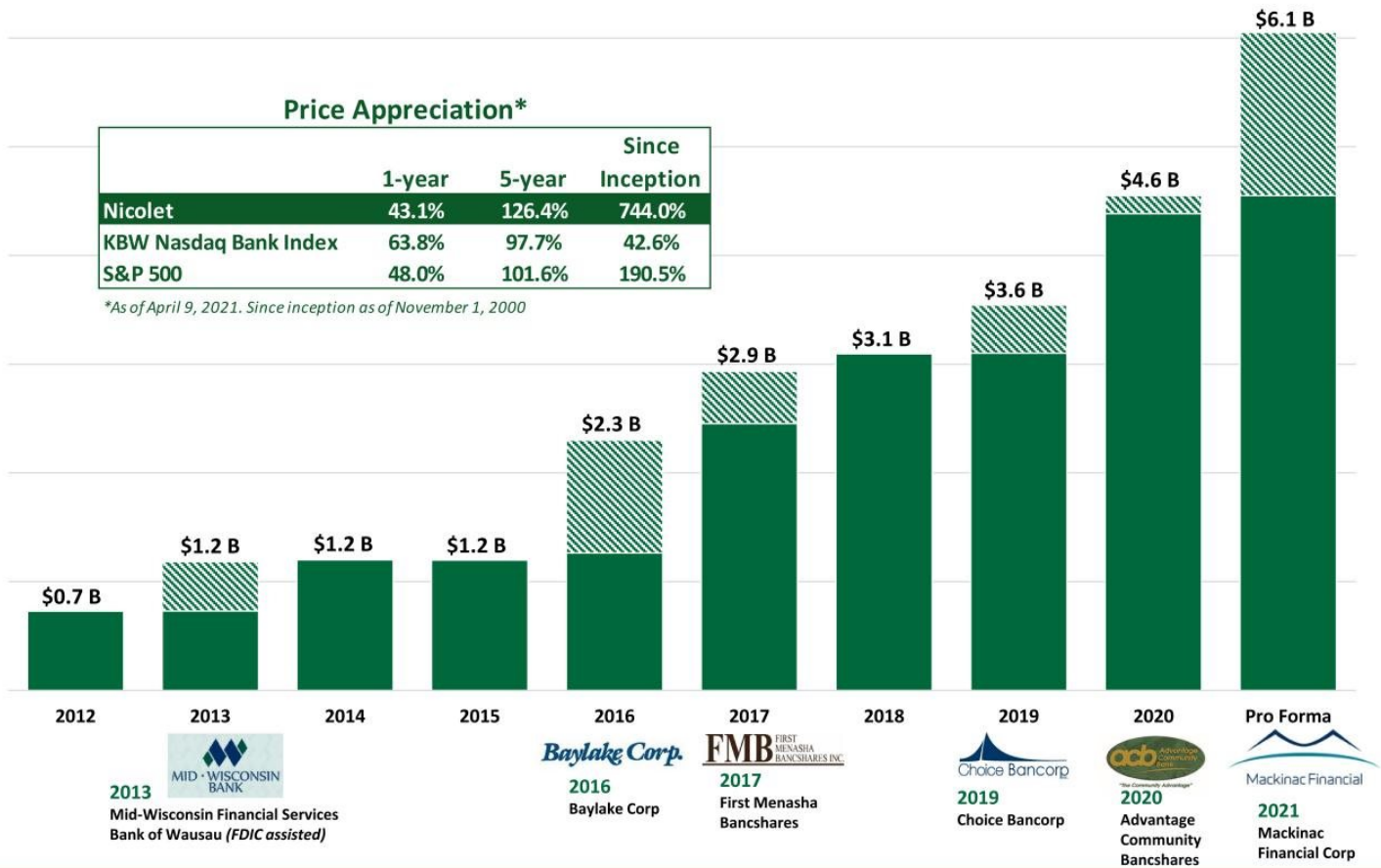
# Experienced & Seasoned M&A Leader in the Upper Midwest

## Price Appreciation\*

	1-year	5-year	Since Inception
Nicolet	43.1%	126.4%	744.0%
KBW Nasdaq Bank Index	63.8%	97.7%	42.6%
S&P 500	48.0%	101.6%	190.5%

\*As of April 9, 2021. Since inception as of November 1, 2000

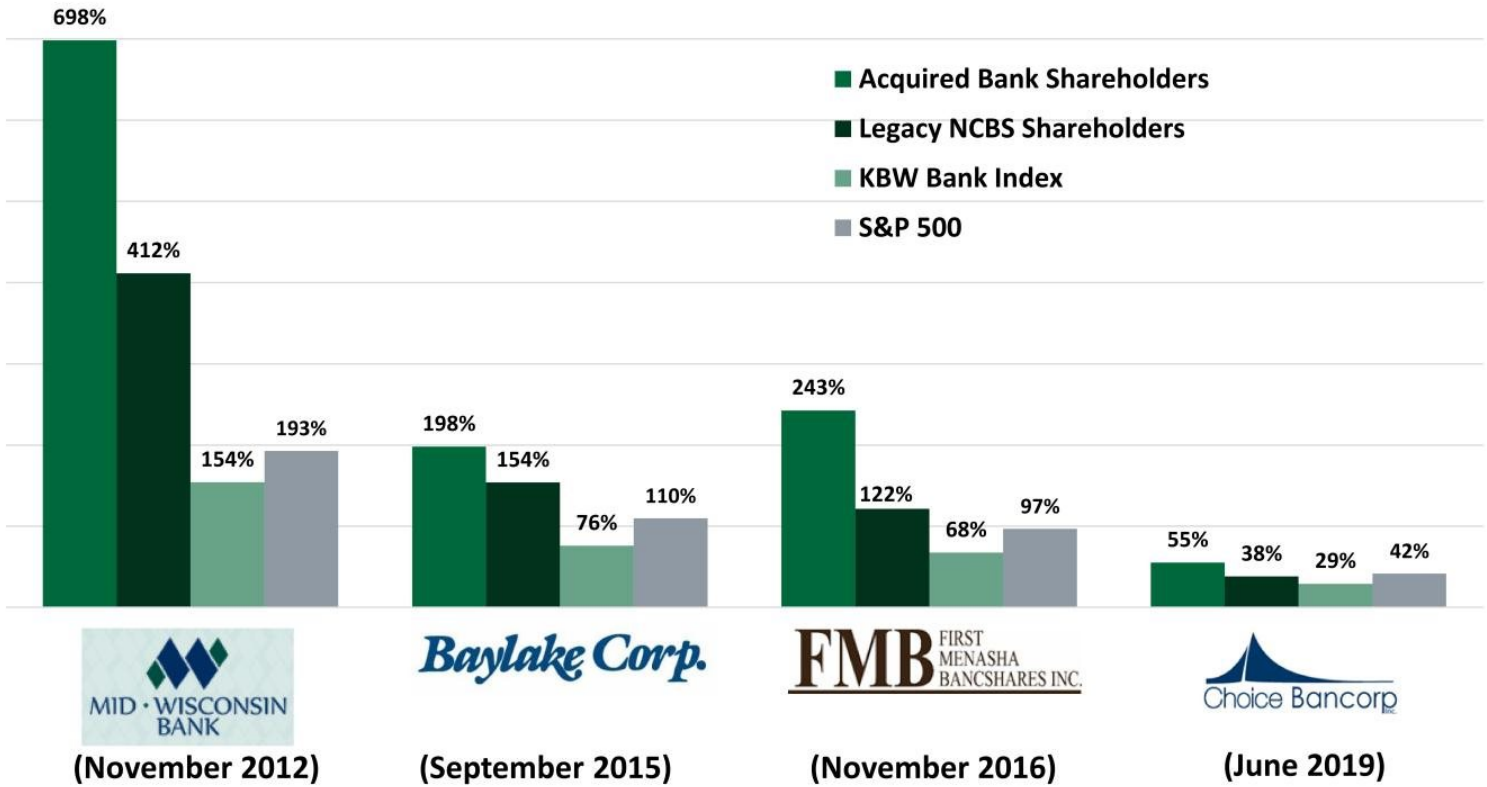
Assets





# Creating Superior Value for our Partners and Shareholders

## Shareholder Return Since Announcement (including Day 1 Premium)



## Transaction Highlights

- ✓ **Natural extension of Nicolet’s northern market strategy, with the opportunity to be the “lead local” bank across several markets similar to our own**
- ✓ **Mackinac’s strong retail presence throughout its markets builds upon Nicolet’s already low-cost core deposit base**
- ✓ **Attractive financial returns with strong EPS accretion in the first full year and short tangible book value earnback**
- ✓ **Minimal credit risk and further diversifies loan portfolio across a greater geography**
- ✓ **Accelerates ability to drive further efficiencies throughout both organizations**
- ✓ **Builds upon Nicolet’s current strengths and enhances scale, profitability, and performance**
- ✓ **Does not impact Nicolet’s interest or ability to pursue additional M&A in 2021**



# Nicolet

BANKSHARES, INC.

**Bob Atwell**

*Chairman, President & Chief  
Executive Officer*  
(920) 430-7317  
batwell@nicoletbank.com

**Mike Daniels**

*President & CEO  
Nicolet National Bank*  
(920) 430-7318  
mdaniels@nicoletbank.com

**Ann Lawson**

*Chief Financial Officer*  
(920) 617-5325  
ann.lawson@nicoletbank.com

**Eric Radzak**

*Corporate Development  
Officer / Investor Relations*  
(920) 617-4540  
eradzak@nicoletbank.com

