UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2017

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

Commission file number 0-15950

FIRST BUSEY CORPORATION

(Exact name of registrant as specified in its charter)

Nevada	**37-1078406**
(State or other jurisdiction of incorporation of organization)	(I.R.S. Employer Identification No.)

100 W. University Avenue
Champaign, Illinois 61820
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code **(217) 365-4544**

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

Title of each class	Name of each exchange on which registered
Common Stock ($0.001 par value)	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes x No o

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
Yes x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definition of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer x	Accelerated filer o
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o
Emerging growth company o	

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. o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).
Yes o No x

The aggregate market value of the voting and non-voting common equity held by non-affiliates on the last business day of the registrant's most recently completed second fiscal quarter was $1.0 billion, determined using a per share closing price for the registrant's common stock on that date of $29.32, as quoted on The Nasdaq Global Select Market.

As of February 28, 2018, there were 48,691,633 shares of the registrant's common stock, $0.001 par value, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement for the 2018 Annual Meeting of Stockholders of First Busey Corporation to be held May 23, 2018, are incorporated by reference in this Form 10-K in response to Part III.

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FIRST BUSEY CORPORATION
Form 10-K Annual Report

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Part I

Item 1. Business

Introduction

First Busey Corporation ("First Busey" or the "Company"), a Nevada Corporation, initially organized in 1980, is a $7.9 billion financial holding company conducting a broad range of financial services through its banking and non-banking subsidiaries. First Busey consists of two wholly-owned bank subsidiaries, Busey Bank, with banking centers in Illinois, Missouri, Florida and Indiana and South Side Trust & Savings Bank of Peoria ("South Side Bank"), with banking centers in Illinois (Busey Bank and South Side Bank are collectively referred to in this Annual Report on Form 10-K as the "Banks" or "subsidiary banks"). First Busey is headquartered in Champaign, Illinois, and its common stock is traded on The Nasdaq Global Select Market under the symbol "BUSE."

Throughout 2017, the Company continued to execute its strategy of organically growing loans and deposits within its market footprint. To supplement this organic growth, in 2017, the Company closed on two bank acquisitions which added approximately $2.0 billion in banking assets to the Company's balance sheet and approximately $700.0 million in wealth management assets under care. These acquisitions strengthened the Company's position within its existing footprint and into a new market, expanding the Company's retail and loan origination network and the Company's wealth management line of business.

During 2017, the Company focused on successfully integrating the acquired banks. As part of its integration process, the Company evaluated the acquired banks' product offerings, markets and delivery systems and processes in order to select the best of these aspects to incorporate within the combined Company. Consistent with this approach, First Busey determined its mortgage origination activity should be within its market footprint. Therefore, in December 2017, the Company executed a transaction to transfer personnel and associated mortgage loan production outside of the First Busey footprint to an independent third party which allows the Company to efficiently focus on its markets.

Acquisitions

On January 8, 2015, First Busey acquired Herget Financial Corp., a Delaware corporation ("Herget Financial"), and its wholly-owned bank subsidiary, Herget Bank, National Association ("Herget Bank"). First Busey operated Herget Bank as a separate banking subsidiary from January 9, 2015 until March 13, 2015, when it was merged with and into Busey Bank. At that time, Herget Bank's banking centers became banking centers of Busey Bank.

On April 30, 2016, First Busey acquired Pulaski Financial Corp., a Missouri corporation ("Pulaski"), and its wholly-owned bank subsidiary, Pulaski Bank, National Association ("Pulaski Bank"). First Busey operated Pulaski Bank as a separate bank subsidiary from May 1, 2016 until November 4, 2016, when it was merged with and into Busey Bank. At that time, Pulaski Bank's banking centers became banking centers of Busey Bank. The acquisition of Pulaski expanded the Company into the St. Louis, Missouri metropolitan area.

On July 2, 2017, First Busey acquired First Community Financial Partners, Inc., an Illinois corporation ("First Community"), and its wholly-owned bank subsidiary, First Community Financial Bank. First Busey operated First Community Financial Bank as a separate bank subsidiary from July 3, 2017 until November 3, 2017, when it was merged with and into Busey Bank. At that time, First Community Financial Bank's banking centers became banking centers of Busey Bank. The First Community acquisition provided the Company entrance into the demographically and economically attractive southwest suburban markets of the greater Chicagoland area and is part of the Company's strategy of expanding into markets with both population and commercial density in the Midwest.

On October 1, 2017, First Busey acquired Mid Illinois Bancorp, Inc., an Illinois corporation ("Mid Illinois") and its wholly-owned bank subsidiary, South Side Bank. It is anticipated that South Side Bank will be merged with and into Busey Bank in the first quarter of 2018. At the time of the bank merger, South Side Bank's banking centers will become banking centers of Busey Bank.

See "*Note 2. Acquisitions*" in the Notes to the Consolidated Financial Statements for further information relating to these acquisitions.

Subsidiaries of First Busey

First Busey conducts the business of banking and related services through Busey Bank and South Side Bank; asset management, brokerage and fiduciary services through Busey Wealth Management, Inc. ("Busey Wealth Management"), Trevett Capital Partners ("Trevett") and South Side Bank; and retail payment processing through FirsTech, Inc. ("FirsTech").

Busey Bank is an Illinois state-chartered bank organized in 1868 with its headquarters in Champaign, Illinois. Busey Bank has 37 banking centers in Illinois, 13 in Missouri, five in southwest Florida and one in Indianapolis, Indiana. South Side Bank is an Illinois state-chartered bank organized in 1922 with its headquarters in Peoria, Illinois. South Side Bank has 13 banking centers in the greater Peoria, Illinois area.

The Banks offer a range of diversified financial products and services for consumers and businesses, including innovative online and mobile banking capabilities to conveniently serve our customers' needs. Services include commercial, agricultural and real estate loans, and retail banking services, including home equity lines of credit, residential real estate and consumer loans, customary types of demand and savings deposits, money transfers, safe deposit services, and IRA and other fiduciary services through our banking center, ATM and technology-based networks. In addition, our professional farm management and brokerage services are entrusted to care and maximize value for landowners of prime farmland in Illinois.

The Banks' principal sources of income are interest and fees on loans and investments and service fees. Principal expenses are interest paid on deposits and general operating expenses. The Banks' primary markets are Illinois, the St. Louis, Missouri metropolitan area, southwest Florida, and central Indiana.

The Banks' portfolio loans are comprised of commercial, commercial real estate, real estate construction, retail real estate, and retail other. As of December 31, 2017, commercial loans comprised approximately 25.6%, commercial real estate comprised approximately 42.7%, real estate construction comprised approximately 4.7%, retail real estate comprised approximately 26.5% and retail other loans comprised approximately 0.5%.

Trevett, operating as a division of Busey Bank, is a private wealth management boutique created to serve clientele in southwest Florida through a tenured team of sophisticated wealth management professionals. Trevett builds upon our established presence in Florida and the broad capabilities of our existing Wealth Management operation to provide concierge service and tailored solutions for the accumulation and preservation of capital and generational legacies.

Busey Wealth Management, which is headquartered in Urbana, Illinois, provides asset management, investment and fiduciary services to individuals, businesses and foundations through its subsidiary, Busey Trust Company. As of December 31, 2017, Busey Trust Company had $6.0 billion in assets under care. For individuals, Busey Trust Company provides investment management, trust and estate advisory services and financial planning. For businesses, it provides investment management, business succession planning and employee retirement plan services. For foundations, Busey Trust Company provides investment management, investment strategy consulting and fiduciary services.

Brokerage related services are offered by Busey Investment Services, a division of Busey Trust Company, and South Side Bank through a third-party arrangement with Raymond James Financial Services.

FirsTech, which has offices in Decatur, Illinois and Clayton, Missouri, offers the following pay processing solutions: walk-in payment processing for payments delivered by customers to retail pay agents; online bill payment solutions for payments made by customers on a billing company's website; customer service payments for payments accepted over the telephone; mobile bill pay; direct debit services; electronic concentration of payments delivered by the Automated Clearing House network; money management software and credit card networks; and lockbox remittance processing of payments delivered by mail. FirsTech had approximately 4,000 agent locations in 43 states as of December 31, 2017.

First Busey Corporation also has various other subsidiaries that are not significant to the consolidated entity.

The Company's operations are managed through three operating segments consisting of Banking, Remittance Processing and Wealth Management. See "*Note 23. Operating Segments and Related Information*" in the Notes to the Consolidated Financial Statements for an analysis of segment operations.

Economic Conditions of Markets

As of December 31, 2017, Busey Bank had 37 banking centers serving Illinois and South Side Bank had 13 banking centers serving Illinois. Our downstate Illinois markets of Champaign, Macon, McLean and Peoria Counties are anchored by several strong, well-recognized and stable organizations. Champaign County is home to the University of Illinois — Urbana/Champaign ("U of I"), the University's primary campus. U of I has in excess of 44,000 students. Additionally, Champaign County healthcare providers serve a significant area of downstate Illinois and western Indiana. Macon County is home to the North American headquarters for Archer Daniels Midland ("ADM"), a Fortune 100 company and one of the largest agricultural processors in the world. ADM's presence in Macon County supports many derivative businesses in the agricultural processing arena. Additionally, Macon County is home to Millikin University, and its healthcare providers serve a significant role in the market. McLean County is home to State Farm, Country Financial, Illinois State University and Illinois Wesleyan University. State Farm, a Fortune 100 company, is the largest employer in McLean County, and Country Financial and the universities provide additional stability to a growing area of downstate Illinois. Peoria County is home to Caterpillar Inc. operations, a Fortune 100 company, and Bradley University, in addition to a large healthcare presence serving much of the western portion of downstate Illinois. The institutions noted above, coupled with a large agricultural sector, anchor the communities in which they are located, and have provided a comparatively stable foundation for housing, employment and small business.

The State of Illinois, where a large portion of the Company's customer base is located, continues to be one of the most troubled of any state in the United States with pension under-funding, continued budget deficits and a declining credit outlook. Additionally, the Company is located in markets with significant universities and healthcare companies, which rely heavily on state funding and contracts. Any possible payment lapses by the State of Illinois to its vendors and government sponsored entities may have negative effects on our primary market areas.

St. Louis, Missouri is the largest metropolitan area in Missouri and the twentieth largest in the United States. The bi-state metropolitan area includes seven counties in Missouri and eight counties in Illinois. The area is home to 17 Fortune 1000 companies, including Express Scripts, Emerson Electric, Centene and Monsanto. St. Louis has a diverse economy with its major employment sectors including health care, financial services, professional and business services, and retail. Busey Bank has 13 banking centers serving the St. Louis metropolitan area, all of which are located in the city of St. Louis, or the adjacent counties of St. Louis County and St. Charles County. St. Charles County has been one of the fastest-growing counties in the country for decades and features a cross-section of industry, as well as extensive retail and some agriculture. The Company's geographic concentration in only three of the 15 counties included in the St. Louis metropolitan area gives the Company tremendous expansion opportunities into neighboring counties.

Busey Bank has five banking centers in southwest Florida. Southwest Florida has shown continuing signs of improvement in areas such as job growth and the housing market over the last several years.

Busey Bank has one banking center in the Indianapolis, Indiana area, which is the most populous city of Indiana with a diverse economy. Many large corporations are headquartered in Indianapolis and it is host to numerous conventions and sporting events annually.

Competition

The Banks compete actively with national and state banks, savings and loan associations and credit unions for deposits and loans mainly in Illinois (primarily Champaign, DuPage, Ford, Grundy, Livingston, Macon, McLean, Peoria, Shelby, Tazewell and Will Counties), the St. Louis, Missouri metropolitan area (primarily St. Louis (City), St. Louis and St. Charles Counties), southwest Florida (primarily Charlotte, Lee and Sarasota Counties), and central Indiana (primarily Hamilton County). In addition, First Busey and its non-bank subsidiaries compete with other financial institutions, including asset management and trust companies, security broker/dealers, personal loan companies, insurance companies, finance companies, leasing companies, mortgage companies, remittance processing companies, and certain governmental agencies, all of which actively engage in marketing various types of loans, deposit accounts, and other products and services. The Banks compete for real estate and other loans primarily on the basis of the interest rates and loan fees they charge, the types of loans they originate and the quality of services they provide to borrowers.

The Banks face substantial competition in attracting deposits from other commercial banks, savings institutions, money market and mutual funds, credit unions, insurance agencies, brokerage firms, and other investment vehicles. Customers for banking services are generally influenced by convenience, quality of service, personal contacts, price of services and availability of products. The Banks attract a significant amount of deposits through their banking centers, primarily from the communities in which those banking centers are located; therefore, competition for those deposits is principally from other commercial banks, savings institutions, and credit unions located in the same communities. The Banks compete for these deposits by offering a variety of deposit accounts at competitive rates, high-quality customer service, convenient business hours, internet and mobile banking, and convenient banking centers with interbranch deposit and withdrawal privileges at each.

Based on information obtained from the Federal Deposit Insurance Corporation ("FDIC") Summary of Deposits dated June 30, 2017, First Busey ranked in the top 10 in total deposits in 10 Illinois counties: first in Champaign County; fifth in Ford County; sixth in Grundy County; seventh in Livingston County; second in Macon County; fifth in McLean County; second in Peoria County; second in Shelby County; third in Tazewell County; and fifth in Will County. Although the market share of First Busey varies in different markets, First Busey believes that it effectively competes with other banks, thrifts and financial institutions in the relevant market areas.

Supervision, Regulation and Other Factors

General

FDIC-insured institutions, like Busey Bank and South Side Bank, as well as their holding company and their affiliates are extensively regulated under federal and state law. As a result, the Company's growth and earnings performance may be affected not only by management decisions and general economic conditions, but also by the requirements of federal and state statutes and by the regulations and policies of various bank regulatory agencies, including the Illinois Department of Financial and Professional Regulation (the "DFPR"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the FDIC and the Consumer Financial Protection Bureau ("CFPB"). Furthermore, taxation laws administered by the Internal Revenue Service and state taxing authorities, accounting rules developed by the Financial Accounting Standards Board ("FASB"), securities laws administered by the Securities and Exchange Commission ("SEC") and state securities authorities, and anti-money laundering laws enforced by the U.S. Department of the Treasury ("Treasury") have an impact on the Company's business. The effect of these statutes, regulations, regulatory policies and accounting rules are significant to the Company's operations and results.

Federal and state banking laws impose a comprehensive system of supervision, regulation and enforcement on the operations of FDIC-insured institutions, their holding companies and affiliates that is intended primarily for the protection of the FDIC-insured deposits and depositors of banks, rather than stockholders. These laws, and the regulations of the bank regulatory agencies issued under them, affect, among other things, the scope of the Company's business, the kinds and amounts of investments we may make, reserve requirements, required capital levels relative to the Company's assets, the nature and amount of collateral for loans, the establishment of branches, the Company's ability to merge, consolidate and acquire, dealings with the Company's insiders and affiliates and the Company's payment of dividends. In reaction to the global financial crisis and particularly following passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), we experienced heightened regulatory requirements and scrutiny. Although the reforms primarily targeted systemically important financial service providers, their influence filtered down in varying degrees to community banks over time and caused the Company's compliance and risk management processes, and the costs thereof, to increase. After the 2016 federal elections, momentum to decrease the regulatory burden on community banks gathered strength. Although these deregulatory trends continue to receive much discussion among the banking industry, lawmakers and the bank regulatory agencies, little substantive progress has yet been made. The true impact of proposed reforms remains difficult to predict with any certainty.

The supervisory framework for U.S. banking organizations subjects banks and bank holding companies to regular examination by their respective regulatory agencies, which results in examination reports and ratings that are not publicly available and that can impact the conduct and growth of their business. These examinations consider not only compliance with applicable laws and regulations, but also capital levels, asset quality and risk, management ability and performance, earnings, liquidity, and various other factors. The regulatory agencies generally have broad discretion to impose restrictions and limitations on the operations of a regulated entity where the agencies determine, among other things, that such operations are unsafe or unsound, fail to comply with applicable law or are otherwise inconsistent with laws and regulations or with the supervisory policies of these agencies.

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The following is a summary of the material elements of the supervisory and regulatory framework applicable to the Company and its subsidiary banks, beginning with a discussion of the continuing regulatory emphasis on the Company's capital levels. This summary does not describe all of the statutes, regulations and regulatory policies that apply, nor does it restate all of the requirements of those that are described. The descriptions are qualified in their entirety by reference to the particular statutory and regulatory provision.

Regulatory Emphasis on Capital

Regulatory capital represents the net assets of a banking organization available to absorb losses. Because of the risks attendant to their business, FDIC-insured institutions are generally required to hold more capital than other businesses, which directly affects the Company's earnings capabilities. While capital has historically been one of the key measures of the financial health of both bank holding companies and banks, its role became fundamentally more important in the wake of the global financial crisis, as the banking regulators recognized that the amount and quality of capital held by banks prior to the crisis was insufficient to absorb losses during periods of severe stress. Certain provisions of the Dodd-Frank Act and Basel III, discussed below, establish strengthened capital standards for banks and bank holding companies, require more capital to be held in the form of common stock and disallow certain funds from being included in capital determinations. These standards represent regulatory capital requirements that are meaningfully more stringent than those in place previously.

Minimum Required Capital Levels

Banks have been required to hold minimum levels of capital based on guidelines established by the bank regulatory agencies since 1983. The minimums have been expressed in terms of ratios of capital divided by total assets. As discussed below, bank capital measures have become more sophisticated over the years and have focused more on the quality of capital and the risk of assets. Bank holding companies have historically had to comply with less stringent capital standards than their bank subsidiaries and have been able to raise capital with hybrid instruments such as trust preferred securities. The Dodd-Frank Act mandated the Federal Reserve to establish minimum capital levels for holding companies on a consolidated basis as stringent as those required for FDIC-insured institutions. A result of this change is that the proceeds of hybrid instruments, such as trust preferred securities, are being excluded from capital over a phase-out period. However, if such securities were issued prior to May 19, 2010 by bank holding companies with less than $15.0 billion of assets, they may be retained, subject to certain restrictions. Because we have assets of less than $15.0 billion, we are able to maintain our trust preferred proceeds as capital but we have to comply with new capital mandates in other respects and will not be able to raise capital in the future through the issuance of trust preferred securities.

The Basel International Capital Accords

The risk-based capital guidelines for U.S. banks since 1989 were based upon the 1988 capital accord known as “Basel I” adopted by the international Basel Committee on Banking Supervision, a committee of central banks and bank supervisors that acts as the primary global standard-setter for prudential regulation, as implemented by the U.S. bank regulatory agencies on an interagency basis. The accord recognized that bank assets for the purpose of the capital ratio calculations needed to be risk-weighted (the theory being that riskier assets should require more capital) and that off-balance sheet exposures needed to be factored in the calculations. Basel I had a very simple formula for assigning risk weights to bank assets from 0% to 100% based on four categories. In 2008, the banking agencies collaboratively began to phase-in capital standards based on a second capital accord, referred to as “Basel II,” for large or “core” international banks (generally defined for U.S. purposes as having total assets of $250.0 billion or more, or consolidated foreign exposures of $10.0 billion or more) known as “advanced approaches” banks. The primary focus of Basel II was on the calculation of risk weights based on complex models developed by each advanced approaches bank. As most banks were not subject to Basel II, the U.S. bank regulators worked to improve the risk sensitivity of Basel I standards without imposing the complexities of Basel II. This “standardized approach” increased the number of risk weight categories and recognized risks well above the original 100% risk-weighting. It is institutionalized by the Dodd-Frank Act for all banking organizations, even for the advanced approaches banks, as a floor.

On September 12, 2010, the Group of Governors and Heads of Supervision, the oversight body of the Basel Committee on Banking Supervision, announced agreement on a strengthened set of capital requirements for banking organizations around the world, known as Basel III, to address deficiencies recognized in connection with the global financial crisis.

The Basel III Rule

In July 2013, the U.S. federal banking agencies approved the implementation of the Basel III regulatory capital reforms in pertinent part, and, at the same time, promulgated rules effecting certain changes required by the Dodd-Frank Act (the “Basel III Rule”). In contrast to historical capital guidelines, Basel III was released as regulation by each of the regulatory agencies. The Basel III Rule is applicable to all banking organizations that are subject to minimum capital requirements, including federal and state banks and savings and loan associations, as well as to bank and savings and loan holding companies, other than “small bank holding companies” (generally bank holding companies with consolidated assets of less than $1.0 billion).

The Basel III Rule requires higher capital levels, increases the required quality of capital, and requires more detailed categories of risk-weighting. For nearly every class of assets, the Basel III Rule requires a more complex, detailed and calibrated assessment of credit risk and calculation of risk weightings.

The Basel III Rule increases most of the required minimum capital ratios in effect prior to January 1, 2015 and introduces the concept of Common Equity Tier 1 Capital, which consists primarily of common stock, related surplus (net of Treasury stock), retained earnings, and Common Equity Tier 1 minority interests subject to certain regulatory adjustments. The Basel III Rule also changes the definition of capital by establishing more stringent criteria that instruments must meet to be considered Additional Tier 1 Capital (primarily non-cumulative perpetual preferred stock that meets certain requirements) and Tier 2 Capital (primarily other types of preferred stock and subordinated debt, subject to limitations). A number of instruments that qualified as Tier 1 Capital under Basel I do not qualify, or have changed qualifications under the Basel III Rule. For example, noncumulative perpetual preferred stock, which qualified as simple Tier 1 Capital under Basel I, does not qualify as Common Equity Tier 1 Capital, but qualifies as Additional Tier 1 Capital. The Basel III Rule also constrains the inclusion of minority interests, mortgage-servicing assets, and deferred tax assets in capital and requires deductions from Common Equity Tier 1 Capital in the event that such assets exceed a certain percentage of a banking institution’s Common Equity Tier 1 Capital.

The Basel III Rule requires **minimum** capital ratios as of January 1, 2015, as follows:

- A ratio of minimum Common Equity Tier 1 Capital equal to 4.5% of risk-weighted assets;
- An increase in the minimum required amount of Tier 1 Capital from 4% to 6% of risk-weighted assets;
- A continuation of the minimum required amount of Total Capital (Tier 1 plus Tier 2) at 8% of risk-weighted assets; and
- A minimum leverage ratio of Tier 1 Capital to total quarterly average assets equal to 4% in all circumstances.

In addition, institutions that seek the freedom to make capital distributions (including for dividends and repurchases of stock) and pay discretionary bonuses to executive officers without restriction must also maintain 2.5% in Common Equity Tier 1 Capital attributable to a capital conservation buffer being phased in over three years beginning in 2016 (as of January 1, 2018, it had phased in to 1.875%). The purpose of the conservation buffer is to ensure that banking institutions maintain a buffer of capital that can be used to absorb losses during periods of financial and economic stress. Factoring in the fully phased-in conservation buffer increases the minimum ratios depicted above to 7% for Common Equity Tier 1 Capital, 8.5% for Tier 1 Capital and 10.5% for Total Capital.

Banking organizations (except for large, internationally active banking organizations) became subject to the new rules on January 1, 2015. However, there are separate phase-in/phase-out periods for: (i) the capital conservation buffer; (ii) regulatory capital adjustments and deductions; (iii) nonqualifying capital instruments; and (iv) changes to the prompt corrective action rules discussed below. The phase-in periods commenced on January 1, 2016 and extend until January 1, 2019.

Well-Capitalized Requirements

The ratios described above are minimum standards in order for banking organizations to be considered “adequately capitalized.” Bank regulatory agencies uniformly encourage banks to hold more capital and, to that end, federal law and regulations provide various incentives for banking organizations to maintain regulatory capital at levels in excess of minimum regulatory requirements. For example, a banking organization that is well-capitalized may: (i) qualify for exemptions from prior notice or application requirements otherwise applicable to certain types of activities; (ii) qualify for expedited processing of other required notices or applications; and (iii) accept, roll-over or renew brokered deposits. Higher capital levels could also be required based on particular circumstances or risk profiles of individual banking organizations. For example, the Federal Reserve's capital guidelines contemplate that additional capital may be required to take adequate account of, among other things, interest rate risk, or the risks posed by concentrations of credit,

nontraditional activities or securities trading activities. Further, any banking organization experiencing or anticipating significant growth would be expected to maintain capital ratios, including tangible capital positions (*i.e.*, Tier 1 Capital less all intangible assets), well above the minimum levels.

Under the capital regulations of the FDIC and Federal Reserve, in order to be well-capitalized, a banking organization must maintain:

- A Common Equity Tier 1 Capital ratio to risk-weighted assets of 6.5% or more;
- A ratio of Tier 1 Capital to total risk-weighted assets of 8% or more (6% under Basel I);
- A ratio of Total Capital to total risk-weighted assets of 10% or more (the same as Basel I); and
- A leverage ratio of Tier 1 Capital to total adjusted average quarterly assets of 5% or greater.

It is possible under the Basel III Rule to be well-capitalized while remaining out of compliance with the capital conservation buffer discussed above.

As of December 31, 2017: (i) neither Busey Bank nor South Side Bank was subject to a directive from the FDIC to increase its capital and (ii) each of Busey Bank and South Side Bank was well-capitalized, as defined by FDIC regulations. As of December 31, 2017, the Company had regulatory capital in excess of the Federal Reserve's requirements and met the Basel III Rule requirements to be well-capitalized.

Prompt Corrective Action

An FDIC-insured institution's capital plays an important role in connection with regulatory enforcement as well. Federal law provides the federal banking regulators with broad power to take prompt corrective action to resolve the problems of undercapitalized institutions. The extent of the regulators' powers depends on whether the institution in question is "adequately capitalized," "undercapitalized," "significantly undercapitalized" or "critically undercapitalized," in each case as defined by regulation. Depending upon the capital category to which an institution is assigned, the regulators' corrective powers include: (i) requiring the institution to submit a capital restoration plan; (ii) limiting the institution's asset growth and restricting its activities; (iii) requiring the institution to issue additional capital stock (including additional voting stock) or to sell itself; (iv) restricting transactions between the institution and its affiliates; (v) restricting the interest rate that the institution may pay on deposits; (vi) ordering a new election of directors of the institution; (vii) requiring that senior executive officers or directors be dismissed; (viii) prohibiting the institution from accepting deposits from correspondent banks; (ix) requiring the institution to divest certain subsidiaries; (x) prohibiting the payment of principal or interest on subordinated debt; and (xi) ultimately, appointing a receiver for the institution.

Regulation and Supervision of the Company

General

The Company, as the sole stockholder of the Banks, is a bank holding company. As a bank holding company, we are registered with, and subject to regulation by, the Federal Reserve under the Bank Holding Company Act of 1956, as amended (the "BHCA"). We are legally obligated to act as a source of financial and managerial strength to each of the Banks and to commit resources to support them in circumstances where we might not otherwise do so. Under the BHCA, we are subject to periodic examination by the Federal Reserve and are required to file with the Federal Reserve periodic reports of our operations and such additional information regarding us and each of the Banks as the Federal Reserve may require.

Acquisitions, Activities and Change in Control

The primary purpose of a bank holding company is to control and manage banks. The BHCA generally requires the prior approval of the Federal Reserve for any merger involving a bank holding company or any acquisition by a bank holding company of another bank or bank holding company. Subject to certain conditions (including deposit concentration limits established by the BHCA), the Federal Reserve may allow a bank holding company to acquire banks located in any state of the United States. In approving interstate acquisitions, the Federal Reserve is required to give effect to applicable state law limitations on the aggregate amount of deposits that may be held by the acquiring bank holding company and its FDIC-insured institution affiliates in the state in which the target bank is located (provided that those limits do not discriminate against out-of-state institutions or their holding companies) and state laws that require that the target bank have been in existence for a minimum period of time (not to exceed five years) before being acquired by an out-of-state bank holding company.

In addition, in accordance with the Dodd-Frank Act, bank holding companies must be well-capitalized and well-managed in order to effect interstate mergers or acquisitions. For a discussion of the capital requirements, see "Regulatory Emphasis on Capital" above.

The BHCA generally prohibits the Company from acquiring direct or indirect ownership or control of more than 5% of the voting shares of any company that is not a bank and from engaging in any business other than that of banking, managing and controlling banks or furnishing services to banks and their subsidiaries. This general prohibition is subject to a number of exceptions. The principal exception allows bank holding companies to engage in, and to own shares of companies engaged in, certain businesses found by the Federal Reserve prior to November 11, 1999 to be "so closely related to banking ... as to be a proper incident thereto." This authority would permit us to engage in a variety of banking-related businesses, including the ownership and operation of a savings association, or any entity engaged in consumer finance, equipment leasing, the operation of a computer service bureau (including software development) and mortgage banking and brokerage services. The BHCA does not place territorial restrictions on the domestic activities of nonbank subsidiaries of bank holding companies.

Additionally, bank holding companies that meet certain eligibility requirements prescribed by the BHCA and elect to operate as financial holding companies may engage in, or own shares in companies engaged in, a wider range of nonbanking activities, including securities and insurance underwriting and sales, merchant banking and any other activity that the Federal Reserve, in consultation with the Secretary of the Treasury, determines by regulation or order is financial in nature or incidental to any such financial activity or that the Federal Reserve determines by order to be complementary to any such financial activity and does not pose a substantial risk to the safety or soundness of FDIC-insured institutions or the financial system generally. In 2006, the Company elected to operate as a financial holding company. In order to maintain our status as a financial holding company, the Company and each of the Bank must be well-capitalized, well-managed, and have a least a satisfactory Community Reinvestment Act ("CRA") rating. If the Federal Reserve determines that we are not well-capitalized or well-managed, we will have a period of time in which to achieve compliance, but during the period of noncompliance, the Federal Reserve may place any limitations on us it believes to be appropriate. Furthermore, if the Federal Reserve determines that the Banks have not received satisfactory CRA ratings, we will not be able to commence any new financial activities or acquire a company that engages in such activities.

Federal law also prohibits any person or company from acquiring "control" of an FDIC-insured depository institution or its holding company without prior notice to the appropriate federal bank regulator. "Control" is conclusively presumed to exist upon the acquisition of 25% or more of the outstanding voting securities of a bank or bank holding company, but may arise under certain circumstances between 10% and 24.99% ownership.

Capital Requirements

Bank holding companies are required to maintain capital in accordance with Federal Reserve capital adequacy requirements. For a discussion of capital requirements, see "—Regulatory Emphasis on Capital" above.

Dividend Payments

The Company's ability to pay dividends to its stockholders may be affected by both general corporate law considerations and the policies of the Federal Reserve applicable to bank holding companies. As a Nevada corporation, the Company is subject to the limitations of Nevada law, which allows the Company to pay dividends unless, after such dividend, (i) the Company would not be able to pay its debts as they become due in the usual course of business or (ii) the Company's total assets would be less than the sum of its total liabilities plus any amount that would be needed, if the Company were to be dissolved at the time of the dividend payment, to satisfy the preferential rights upon dissolution of stockholders whose rights are superior to the rights of the stockholders receiving the distribution.

As a general matter, the Federal Reserve has indicated that the board of directors of a bank holding company should eliminate, defer or significantly reduce dividends to stockholders if: (i) the company's net income available to stockholders for the past four quarters, net of dividends previously paid during that period, is not sufficient to fully fund the dividends; (ii) the prospective rate of earnings retention is inconsistent with the company's capital needs and overall current and prospective financial condition; or (iii) the company will not meet, or is in danger of not meeting, its minimum regulatory capital adequacy ratios. The Federal Reserve also possesses enforcement powers over bank holding companies and their non-bank subsidiaries to prevent or remedy actions that represent unsafe or unsound practices or violations of applicable statutes and regulations. Among these powers is the ability to proscribe the payment of dividends by banks and bank holding companies. In addition, under the Basel III Rule, institutions that seek the freedom to pay dividends will have to maintain 2.5% in Common Equity Tier 1 Capital attributable to the capital conservation buffer to be phased in over three years beginning in 2016. See "—Regulatory Emphasis on Capital" above.

Incentive Compensation

There have been a number of developments in recent years focused on incentive compensation plans sponsored by bank holding companies and banks, reflecting recognition by the bank regulatory agencies and Congress that flawed incentive compensation practices in the financial industry were one of many factors contributing to the global financial crisis. Layered on top of that are the abuses in the headlines dealing with product cross-selling incentive plans. The result is interagency guidance on sound incentive compensation practices and proposed rulemaking by the agencies required under Section 956 of the Dodd-Frank Act.

The interagency guidance recognized three core principles. Effective incentive plans should: (i) provide employees incentives that appropriately balance risk and reward; (ii) be compatible with effective controls and risk-management; and (iii) be supported by strong corporate governance, including active and effective oversight by the organization's board of directors. Much of the guidance addresses large banking organizations and, because of the size and complexity of their operations, the regulators expect those organizations to maintain systematic and formalized policies, procedures, and systems for ensuring that the incentive compensation arrangements for all executive and non-executive employees covered by this guidance are identified and reviewed, and appropriately balance risks and rewards. Smaller banking organizations like the Company that use incentive compensation arrangements are expected to be less extensive, formalized, and detailed than those of the larger banks.

Section 956 of the Dodd-Frank Act required the banking agencies, the National Credit Union Administration, the SEC and the Federal Housing Finance Agency to jointly prescribe regulations that prohibit types of incentive-based compensation that encourages inappropriate risk taking and to disclose certain information regarding such plans. On June 10, 2016, the agencies released an updated proposed rule for comment. Section 956 will only apply to banking organizations with assets of greater than $1 billion. We have consolidated assets greater than $1 billion and less than $50 billion and we are considered a Level 3 banking organization under the proposed rules. The proposed rules contain mostly general principles and reporting requirements for Level 3 institutions so there are no specific prescriptions or limits, deferral requirements or claw-back mandates. Risk management and controls are required, as is board or committee level approval and oversight. Management expects to review its incentive plans in light of the proposed rulemaking and guidance and implement policies and procedures that mitigate unreasonable risk. As of December 31, 2017, these rules remain in proposed form.

Monetary Policy

The monetary policy of the Federal Reserve has a significant effect on the operating results of financial or bank holding companies and their subsidiaries. Among the tools available to the Federal Reserve to affect the money supply are open market transactions in U.S. government securities, changes in the discount rate on bank borrowings and changes in reserve requirements against bank deposits. These means are used in varying combinations to influence overall growth and distribution of bank loans, investments and deposits, and their use may affect interest rates charged on loans or paid on deposits.

Federal Securities Regulation

The Company's common stock is registered with the SEC under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Consequently, we are subject to the information, proxy solicitation, insider trading and other restrictions and requirements of the SEC under the Exchange Act.

Corporate Governance

The Dodd-Frank Act addressed many investor protection, corporate governance and executive compensation matters that will affect most U.S. publicly traded companies. The Dodd-Frank Act increased stockholder influence over boards of directors by requiring companies to give stockholders a non-binding vote on executive compensation and so-called "golden parachute" payments, and authorizing the SEC to promulgate rules that would allow stockholders to nominate and solicit voters for their own candidates using a company's proxy materials. The legislation also directed the Federal Reserve to promulgate rules prohibiting excessive compensation paid to executives of bank holding companies, regardless of whether such companies are publicly traded.

Regulation and Supervision of the Banks

General

The Banks are Illinois-chartered banks. The deposit accounts of each of the Banks is insured by the FDIC's Deposit Insurance Fund ("DIF") to the maximum extent provided under federal law and FDIC regulations, currently $250,000 per insured depositor category. As Illinois-chartered FDIC-insured banks, the Banks are subject to the examination, supervision, reporting and enforcement requirements of the DFPR, the chartering authority for Illinois banks. The Banks are also regulated by the FDIC, designated by federal law as the primary federal regulator of insured state banks that, like the Banks, are not members of the Federal Reserve System.

Deposit Insurance

As FDIC-insured institutions, the Banks are each required to pay deposit insurance premium assessments to the FDIC. The FDIC has adopted a risk-based assessment system whereby FDIC-insured institutions pay insurance premiums at rates based on their risk classification. For institutions like the Banks that are not considered large and highly complex banking organizations, assessments are now based on examination ratings and financial ratios. The total base assessment rates currently range from 1.5 basis points to 30 basis points. At least semi-annually, the FDIC updates its loss and income projections for the DIF and, if needed, increases or decreases the assessment rates, following notice and comment on proposed rulemaking. The assessment base against which an FDIC-insured institution's deposit insurance premiums paid to the DIF are calculated is based on its average consolidated total assets less its average tangible equity. This method shifts the burden of deposit insurance premiums toward those large depository institutions that rely on funding other than U.S. deposits.

The reserve ratio is the DIF balance divided by estimated insured deposits. The Dodd-Frank Act altered the minimum reserve ratio of the DIF, increasing the minimum from 1.15% to 1.35% of the estimated amount of total insured deposits, and eliminating the requirement that the FDIC pay dividends to FDIC-insured institutions when the reserve ratio exceeds certain thresholds. The reserve ratio reached 1.28% on September 30, 2017. If the reserve ratio does not reach 1.35% by December 31, 2018 (provided it is at least 1.15%), the FDIC will impose a shortfall assessment on March 31, 2019 on insured depository institutions with total consolidated assets of $10.0 billion or more. The FDIC will provide assessment credits to insured depository institutions, like the Banks, with total consolidated assets of less than $10.0 billion for the portion of their regular assessments that contribute to growth in the reserve ratio between 1.15% and 1.35%. The FDIC will apply the credits each quarter that the reserve ratio is at least 1.38% to offset the regular deposit insurance assessments of institutions with credits.

FICO Assessments

In addition to paying basic deposit insurance assessments, FDIC-insured institutions must pay Financing Corporation ("FICO") assessments. FICO is a mixed-ownership governmental corporation chartered by the former Federal Home Loan Bank Board pursuant to the Competitive Equality Banking Act of 1987 to function as a financing vehicle for the recapitalization of the former Federal Savings and Loan Insurance Corporation. FICO issued 30-year noncallable bonds of approximately $8.1 billion that mature in 2017 through 2019. FICO's authority to issue bonds ended on December 12, 1991. Since 1996, federal legislation has required that all FDIC-insured institutions pay assessments to cover interest payments on FICO's outstanding obligations. The FICO assessment rate is adjusted quarterly and for the fourth quarter of 2017 was 54 cents per $100 dollars of assessable deposits.

Supervisory Assessments

All Illinois-chartered banks are required to pay supervisory assessments to the DFPR to fund the operations of that agency. The amount of the assessment is calculated on the basis of each Bank's total assets. During the year ended December 31, 2017, Busey Bank paid supervisory assessments to the DFPR totaling $0.4 million and South Side Bank paid $0.1 million.

Capital Requirements

Banks are generally required to maintain capital levels in excess of other businesses. For a discussion of capital requirements, see "—Regulatory Emphasis on Capital" above.

Liquidity Requirements

Liquidity is a measure of the ability and ease with which bank assets may be converted to cash. Liquid assets are those that can be converted to cash quickly if needed to meet financial obligations. To remain viable, FDIC-insured institutions must have enough liquid assets to meet their near-term obligations, such as withdrawals by depositors. Because the global financial crisis was in part a liquidity crisis, Basel III also includes a liquidity framework that requires FDIC-insured institutions to measure their liquidity against specific liquidity tests. One test, referred to as the Liquidity Coverage Ratio ("LCR"), is designed to ensure that the banking entity has an adequate stock of unencumbered high-quality liquid assets that can be converted easily and immediately in private markets into cash to meet liquidity needs for a 30-calendar day liquidity stress scenario. The other test, known as the Net Stable Funding Ratio ("NSFR"), is designed to promote more medium- and long-term funding of the assets and activities of FDIC-insured institutions over a one-year horizon. These tests provide an incentive for banks and holding companies to increase their holdings in Treasury securities and other sovereign debt as a component of assets, increase the use of long-term debt as a funding source and rely on stable funding like core deposits (in lieu of brokered deposits).

In addition to liquidity guidelines already in place, the federal bank regulatory agencies implemented the Basel III LCR in September 2014, which requires large financial firms to hold levels of liquid assets sufficient to protect against constraints on their funding during times of financial turmoil, and in 2016 proposed implementation of the NSFR. While these tests only apply to the largest banking organizations in the country, certain elements are expected to filter down to all FDIC-insured institutions.

Stress Testing

A stress test is an analysis or simulation designed to determine the ability of a given FDIC insured institution to deal with an economic crisis. In October 2012, U.S. bank regulators unveiled the Dodd-Frank Act that requires banks with over $10.0 billion in assets to conduct stress testing. The Company is evaluating Dodd-Frank and other regulations effective for banks $10.0 billion in total assets to understand the impact as the Company approaches $10.0 billion. Currently, Busey Bank conducts quarterly commercial portfolio stress testing.

Dividend Payments

The primary source of funds for the Company is dividends from each of the Banks. Under Illinois banking law, Illinois-chartered banks generally may pay dividends only out of undivided profits. The DFPR may restrict the declaration or payment of a dividend by an Illinois-chartered bank, such as each of the Banks. The payment of dividends by any FDIC-insured institution is affected by the requirement to maintain adequate capital pursuant to applicable capital adequacy guidelines and regulations, and a FDIC-insured institution generally is prohibited from paying any dividends if, following payment thereof, the institution would be undercapitalized. Notwithstanding the availability of funds for dividends, the Federal Reserve and the DFPR may prohibit the payment of dividends by the Banks if either or both determine such payment would constitute an unsafe or unsound practice. In addition, under the Basel III Rule, institutions that seek the freedom to pay dividends will have to maintain 2.5% in Common Equity Tier 1 Capital attributable to the capital conservation buffer to be phased in over three years beginning in 2016. See "Regulatory Emphasis on Capital" above.

As described above, each of the Banks exceeded its capital requirements under applicable guidelines as of December 31, 2017. However, as of December 31, 2017, Busey Bank was in an accumulated deficit position and no amount was available to be paid as dividends by Busey Bank. With prior approval from its regulators, however, an Illinois state-chartered bank in this situation may be able to reduce its capital stock, by amending its charter to decrease the authorized number of shares, and then make a subsequent distribution to its holding company. Using this approach, and with the approval of its regulators, Busey Bank has distributed funds to the Company, the most recent of which was $40.0 million on October 12, 2017. The Company expects to seek regulatory approval for additional capital distributions from Busey Bank in future periods until such time as Busey Bank is no longer in an accumulated deficit. South Side Bank had positive retained earnings and is able to pay dividends to the Company prior to the bank merger.

State Bank Investments and Activities

The Banks are permitted to make investments and engage in activities directly or through subsidiaries as authorized by Illinois law. However, under federal laws and regulations, FDIC-insured state banks are prohibited, subject to certain exceptions, from making or retaining equity investments of a type, or in an amount, that are not permissible for a national bank. Federal laws and regulations also prohibit FDIC-insured state banks and their subsidiaries, subject to certain exceptions, from engaging as principal in any activity that is not permitted for a national bank unless either Bank meets, and continues to meet, its minimum regulatory capital requirements and the FDIC determines that the activity would not pose a significant risk to the DIF. These restrictions have not had, and are not currently expected to have, a material impact on the operations of either of the Banks.

Insider Transactions

The Banks are subject to certain restrictions imposed by federal law on "covered transactions" between a Bank and its "affiliates." The Company is an affiliate of each of the Banks for purposes of these restrictions, and covered transactions subject to the restrictions include extensions of credit to the Company, investments in the stock or other securities of the Company and the acceptance of the stock or other securities of the Company as collateral for loans made by either of the Banks. The Dodd-Frank Act enhanced the requirements for certain transactions with affiliates, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered transactions must be maintained.

Certain limitations and reporting requirements are also placed on extensions of credit by either of the Banks to its directors and officers, to directors and officers of the Company and its subsidiaries, to principal stockholders of the Company and to "related interests" of such directors, officers and principal stockholders. In addition, federal law and regulations may affect the terms upon which any person who is a director or officer of the Company or either of the Banks, or a principal stockholder of the Company, may obtain credit from banks with which either Bank maintains a correspondent relationship.

Safety and Soundness Standards/Risk Management

The federal banking agencies have adopted guidelines that establish operational and managerial standards to promote the safety and soundness of FDIC-insured institutions. The guidelines set forth standards for internal controls, information systems, internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth, compensation, fees and benefits, asset quality and earnings.

In general, the safety and soundness guidelines prescribe the goals to be achieved in each area, and each institution is responsible for establishing its own procedures to achieve those goals. If an institution fails to comply with any of the standards set forth in the guidelines, the FDIC-insured institution's primary federal regulator may require the institution to submit a plan for achieving and maintaining compliance. If an FDIC-insured institution fails to submit an acceptable compliance plan, or fails in any material respect to implement a compliance plan that has been accepted by its primary federal regulator, the regulator is required to issue an order directing the institution to cure the deficiency. Until the deficiency cited in the regulator's order is cured, the regulator may restrict the FDIC-insured institution's rate of growth, require the FDIC-insured institution to increase its capital, restrict the rates the institution pays on deposits or require the institution to take any action the regulator deems appropriate under the circumstances. Noncompliance with the standards established by the safety and soundness guidelines may also constitute grounds for other enforcement action by the federal bank regulatory agencies, including cease and desist orders and civil money penalty assessments.

During the past decade, the bank regulatory agencies have increasingly emphasized the importance of sound risk management processes and strong internal controls when evaluating the activities of the FDIC-insured institutions they supervise. Properly managing banking risks has been identified as critical to the conduct of safe and sound banking activities and has become even more important as new technologies, product innovation, and the size and speed of financial transactions have changed the nature of banking markets. The agencies have identified a spectrum of risks facing a banking institution including, but not limited to, credit, market, liquidity, operational, legal, and reputational risk. In particular, recent regulatory pronouncements have focused on operational risk, which arises from the potential that inadequate information systems, operational problems, breaches in internal controls, fraud, or unforeseen catastrophes will result in unexpected losses. New products and services, third-party risk and cybersecurity are critical sources of operational risk that FDIC-insured institutions must address in the current environment. The Banks are expected to have active board and senior management oversight; adequate policies, procedures, and limits; adequate risk measurement, monitoring, and management information systems; and comprehensive internal controls.

Branching Authority

Illinois banks, such as the Banks, have the authority under Illinois law to establish branches anywhere in the State of Illinois, subject to receipt of all required regulatory approvals. Federal law permits state and national banks to merge with banks in other states subject to: (i) regulatory approval; (ii) federal and state deposit concentration limits; and (iii) state law limitations requiring the merging bank to have been in existence for a minimum period of time (not to exceed five years) prior to the merger. The establishment of new interstate branches has historically been permitted only in those states the laws of which expressly authorize such expansion. The Dodd-Frank Act permits well-capitalized and well-managed banks to establish new interstate branches or the acquisition of individual branches of a bank in another state (rather than the acquisition of an out-of-state bank in its entirety) without impediments. The Company expects to merge South Side Bank with and into Busey Bank in the first quarter of 2018.

Transaction Account Reserves

Federal Reserve regulations require FDIC-insured institutions to maintain reserves against their transaction accounts (primarily NOW and regular checking accounts). For 2018, the first $16.0 million of otherwise reservable balances are exempt from reserves and have a zero percent reserve requirement; for transaction accounts aggregating more than $16.0 million to $122.3 million, the reserve requirement is 3% of total transaction accounts; and for net transaction accounts in excess of $122.3 million, the reserve requirement is 3% up to $122.3 million plus 10% of the aggregate amount of total transaction accounts in excess of $122.3 million. These reserve requirements are subject to annual adjustment by the Federal Reserve.

Community Reinvestment Act Requirements

The CRA requires each of the Banks to have a continuing and affirmative obligation in a safe and sound manner to help meet the credit needs of its entire community, including low- and moderate-income neighborhoods. Federal regulators regularly assess each Bank's record of meeting the credit needs of its communities. Applications for additional acquisitions would be affected by the evaluation of each of the Bank's effectiveness in meeting its CRA requirements.

Anti-Money Laundering

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act") is designed to deny terrorists and criminals the ability to obtain access to the U.S. financial system and has significant implications for FDIC-insured institutions, brokers, dealers and other businesses involved in the transfer of money. The Patriot Act mandates financial services companies to have policies and procedures with respect to measures designed to address any or all of the following matters: (i) customer identification programs; (ii) money laundering; (iii) terrorist financing; (iv) identifying and reporting suspicious activities and currency transactions; (v) currency crimes; and (vi) cooperation between FDIC-insured institutions and law enforcement authorities.

Concentrations in Commercial Real Estate

Concentration risk exists when FDIC-insured institutions deploy too many assets to any one industry or segment. A concentration in commercial real estate is one example of regulatory concern. The interagency Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices guidance ("CRE Guidance") provides supervisory criteria, including the following numerical indicators, to assist bank examiners in identifying banks with potentially significant commercial real estate loan concentrations that may warrant greater supervisory scrutiny: (i) commercial real estate loans exceeding 300% of capital and increasing 50% or more in the preceding three years; or (ii) construction and land development loans exceeding 100% of capital. The CRE Guidance does not limit banks' levels of commercial real estate lending activities, but rather guides institutions in developing risk management practices and levels of capital that are commensurate with the level and nature of their commercial real estate concentrations. On December 18, 2015, the federal banking agencies issued a statement to reinforce prudent risk-management practices related to CRE lending, having observed substantial growth in many CRE asset and lending markets, increased competitive pressures, rising CRE concentrations in banks, and an easing of CRE underwriting standards. The federal bank agencies reminded FDIC-insured institutions to maintain underwriting discipline and exercise prudent risk-management practices to identify, measure, monitor, and manage the risks arising from CRE lending. In addition, FDIC-insured institutions must maintain capital commensurate with the level and nature of their CRE concentration risk. Based on each of the Bank's loan portfolio as of December 31, 2017, neither exceeded the 100% guideline for construction and land development loans or 300% guideline for commercial real estate loans.

Consumer Financial Services

The historical structure of federal consumer protection regulation applicable to all providers of consumer financial products and services changed significantly on July 21, 2011, when the CFPB commenced operations to supervise and enforce consumer protection laws. The CFPB has broad rulemaking authority for a wide range of consumer protection laws that apply to all providers of consumer products and services, including the Banks, as well as the authority to prohibit "unfair, deceptive or abusive" acts and practices. The CFPB has examination and enforcement authority over providers with more than $10.0 billion in assets. FDIC-insured institutions with $10.0 billion or less in assets, like the Banks, continue to be examined by their applicable bank regulators.

Busey Wealth Management

Busey Wealth Management is an Illinois corporation that operates under a certificate of authority to exercise trust powers issued by the DFPR. As such, Busey Wealth Management is subject to the examination, supervision, reporting and enforcement requirements established for trust companies by the DFPR. Additionally, because Busey Wealth Management is a wholly-owned subsidiary of First Busey, the Federal Reserve, as the primary federal regulator of First Busey, has the authority to conduct such examinations of Busey Wealth Management as the Federal Reserve deems necessary. Busey Wealth Management is required to maintain capital at the level determined by the DFPR to be necessary for the safe and sound operation of Busey Wealth Management. Like the Banks, Busey Wealth Management is required to pay supervisory assessments to the DFPR, which, for the year ended December 31, 2017, was insignificant.

Executive Officers

Following is a description of the business experience for at least the past five years of our executive officers.

Van A. Dukeman. Mr. Dukeman, age 59, has served as a Director, Chief Executive Officer and President of First Busey since August 2007. Effective February 28, 2009 through March 31, 2010, Mr. Dukeman also served as the Chief Executive Officer and President of Busey Bank. Prior to August 2007, Mr. Dukeman served as a Director, Chief Executive Officer and President of Main Street Trust, Inc. ("Main Street Trust") until its merger with First Busey.

Curt A. Anderson. Mr. Anderson, age 62, was appointed President and Chief Executive Officer of Busey Wealth Management in February 2016. Prior to that appointment, he had served as Executive Vice President and Senior Managing Director at Busey Wealth Management since 2007.

Robin N. Elliott. Mr. Elliott, age 41, was appointed Chief Operating Officer of First Busey in February 2016. He will continue to serve as Chief Financial Officer of First Busey, which he has served since January 1, 2014, as the Company conducts a search to name a new Chief Financial Officer. Mr. Elliott had previously served as Director of the Business Banking Group of Busey Bank since November 2011. Prior to that appointment, he had served as Director of Finance & Treasury since joining the organization in 2006.

Barbara J. Harrington. Mrs. Harrington, age 58, has served as Chief Risk Officer of First Busey since March 2010, prior to which she had served as Chief Financial Officer of First Busey since March 1999. She also served as Controller and Senior Vice President of Busey Bank from December 1994 to March 1999, and has served in various financial and accounting positions since joining the organization in 1991.

Howard F. Mooney II. Mr. Mooney, age 53, has served as President and Chief Executive Officer of FirsTech Inc., our payment processing subsidiary, since 2000. In addition, Mr. Mooney has served as Chief Information Officer of First Busey since January 1, 2014. Prior to our August 2007 merger, FirsTech was a subsidiary of Main Street Trust.

Robert F. Plecki, Jr. Mr. Plecki, age 57, has served as Chief Credit Officer of First Busey since March 2010. Mr. Plecki previously served as President & Chief Executive Officer of Busey Wealth Management from October 2013 until February 2016 and Chief Operating Officer of First Busey from October 2012 until February 2016. Prior to March 2010, he had served as Executive Vice President of our southwest Florida market since early 2009. Prior to that he served as Executive Vice President of our Champaign-Urbana market following First Busey's merger with Main Street Trust in 2007, and, prior to the merger, had served as President of Main Street Bank & Trust Retail Banking since 2004.

John J. Powers. Mr. Powers, age 62, has served as General Counsel of First Busey since December 2011. Prior to that, he was a shareholder of Meyer Capel, P.C., a law firm based in Champaign, Illinois, since 1998.

Amy L. Randolph. Mrs. Randolph, age 43, was appointed Executive Vice President and Chief Brand Officer in March 2014. Prior to that appointment, she served as Senior Vice President of Growth Strategies since 2008.

Christopher M. Shroyer. Mr. Shroyer, age 52, has served as President and Chief Executive Officer of Busey Bank since March 2010, prior to which he had served as Executive Vice President of our East Region since early 2009. Prior to 2009, he served as Executive Vice President of our Decatur market following First Busey's merger with Main Street Trust in 2007, and, prior to the merger, had served as Executive Vice President of Main Street Bank & Trust Commercial Banking since 2004.

Employees

As of December 31, 2017, First Busey and its subsidiaries had a total of 1,347 employees (full-time equivalents).

Securities and Exchange Commission Reporting and Other Information

First Busey's website address is www.busey.com. We make available on this website our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments thereto, as soon as reasonably practicable after such reports are filed or furnished with the SEC, and in any event, on the same day as such filing with the SEC. Reference to this website does not constitute incorporation by reference of the information contained on the website and should not be considered part of this document.

First Busey has adopted a code of ethics applicable to our employees, officers, and directors. The text of this code of ethics may be found under "Investor Relations" on our website.

Non-GAAP Financial Information

This Annual Report on Form 10-K contains certain financial information determined by methods other than in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"). These measures include adjusted net income, adjusted return on assets ("ROA"), adjusted net interest margin, adjusted efficiency ratio, tangible common equity, tangible common equity to tangible assets and return on average common equity. Management uses these non-GAAP measures, together with the related GAAP measures, to analyze the Company's performance and to make business decisions. Management also uses these measures for peer comparisons.

A reconciliation to what management believes to be the most direct compared GAAP financial measures, specifically net income in the case of adjusted net income and adjusted ROA, total net interest income, total non-interest income and total non-interest expense in the case of adjusted efficiency ratio and total stockholders' equity in the case of the tangible book value per share, appears below *(dollars in thousands, except per share data)*. The Company believes each of the adjusted measures is useful for investors and management to understand the effects of certain non-interest items and provides additional perspective on the Company's performance over time as well as comparison to the Company's peers.

These non-GAAP disclosures have inherent limitations and are not audited. They should not be considered in isolation or as a substitute for the results reported in accordance with GAAP, nor are they necessarily comparable to non-GAAP performance measures that may be presented by other companies. Tax effected numbers included in these non-GAAP disclosures are based on estimated statutory rates.

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Reconciliation of Non-GAAP Financial Measures — Adjusted Net Income and ROA

	Year Ended December 31, 2017
Net income	$ 62,726
Acquisition expenses	
Salaries, wages, and employee benefits	840
Data processing	2,616
Other (includes professional and legal)	3,617
Other restructuring costs	
Salaries, wages, and employee benefits	711
Other	66
Related tax benefit	(3,012)
Tax Cuts and Jobs Act (the "TCJA") related adjustment	8,098
Adjusted net income	$ 75,662
Average assets	$ 6,294,105
Reported: ROA	1.00%
Adjusted: ROA	1.20%

Reconciliation of Non-GAAP Financial Measures — Adjusted Net Interest Margin

	Year Ended		
	December 31, 2017	December 31, 2016	December 31, 2015
Reported: Net interest income	$ 203,366	$ 154,660	$ 111,815
Tax-equivalency adjustment	3,656	3,493	2,182
Less: Purchase accounting amortization	(12,458)	(8,123)	(1,200)
Adjusted: Net interest income	$ 194,564	$ 150,030	$ 112,797
Average earning assets	$ 5,784,408	$ 4,630,768	$ 3,676,588
Reported: Net interest margin	3.58%	3.42%	3.10%
Adjusted: Net Interest margin	3.36%	3.24%	3.07%

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Reconciliation of Non-GAAP Financial Measures — Adjusted Efficiency Ratio

	Year Ended December 31, 2017
Reported: Net Interest income	$ 203,366
Tax-equivalency adjustment	3,656
Tax equivalent interest income	$ 207,022
Reported: Non-interest income	84,474

Less: Security gains, net	(1,143)
Adjusted: Non-interest income	$ 83,331
Reported: Non-interest expense	174,426
Less:	
Amortization	(5,245)
Non-operating adjustments:	
Salaries, wages, and employee benefits	(1,551)
Data processing	(2,616)
Other	(3,683)
Adjusted: Non-interest expense	$ 161,331
Reported: Efficiency ratio	58.3%
Adjusted: Efficiency ratio	55.6%

Reconciliation of Non-GAAP Financial Measures — Tangible common equity to tangible assets, Tangible book value per share, Return on average tangible common equity

	As of	
	December 31, 2017	December 31, 2016
Total Assets	$ 7,860,640	$ 5,425,170
Less:		
Goodwill and other intangible assets, net	(308,073)	(121,276)
Tax effect of goodwill and other intangible assets, net	11,039	7,392
Tangible assets	$ 7,563,606	$ 5,311,286
Total stockholders' equity	935,003	594,314
Less:		
Goodwill and other intangible assets, net	(308,073)	(121,276)
Tax effect of goodwill and other intangible assets, net	11,039	7,392
Tangible stockholders' equity	$ 637,969	$ 480,430
Tangible common equity to tangible assets(1)	8.43%	9.05%
Tangible book value per share	$ 12.88	$ 12.37
Average stockholders' common equity	$ 932,179	$ 592,980
Less: Average goodwill and other intangible assets, net	(309,227)	(121,792)
Average tangible stockholders' common equity	$ 622,952	$ 471,188
Reported: Return on average tangible common equity	7.83%	9.67%
Adjusted: Return on average tangible common equity(2)	14.35%	NR(3)
Return on average common equity	5.23%	7.69%

(1) Tax effected measure
(2) Calculated using adjusted net income available to common stockholders
(3) Not reported

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Special Cautionary Note Regarding Forward-Looking Statements

Statements contained in or incorporated by reference into this Annual Report on Form 10-K that are not historical facts may constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Exchange Act. These forward-looking statements are covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. These statements, which are based on certain assumptions and estimates and describe our future plans, strategies and expectations, can generally be identified by the use of the words "may," "will," "should," "could," "would," "goal," "plan," "potential," "estimate," "project," "believe," "intend," "anticipate," "expect," "target," "aim" and similar expressions. These forward-looking statements include statements relating to our projected growth, anticipated future financial performance, financial condition, credit quality and management's long-term performance goals, as well as statements relating to the anticipated effects on results of operations and financial condition from expected developments or events, our business and growth strategies and any other statements that are not historical facts.

These forward-looking statements are subject to significant risks, assumptions and uncertainties, and could be affected by many factors. Factors that could have a material adverse effect on our financial condition, results of operations and future prospects can be found under Item 1A "Risk Factors" in this Annual Report on Form 10-K and elsewhere in our periodic and current reports filed with the SEC. These factors include, but are not limited to, the following:

· the strength of the local, national and international economy;
· changes in state and federal laws, regulations and governmental policies concerning First Busey's general business;
· changes in interest rates and prepayment rates of First Busey's assets;
· increased competition in the financial services sector and the inability to attract new customers;

· changes in technology and the ability to develop and maintain secure and reliable electronic systems;
· the loss of key executives or employees;
· changes in consumer spending;
· unexpected results of current and/or future acquisitions, which may include failure to realize the anticipated benefits of the acquisition and the possibility that the transaction costs may be greater than anticipated;
· unexpected outcomes of existing or new litigation involving First Busey;
· the economic impact of any future terrorist threats or attacks;
· the economic impact of exceptional weather occurrences such as tornadoes, hurricanes, floods, and blizzards;
· changes in accounting policies and practices; and
· other factors and risks described under "Risk Factors" herein.

Because of those risks and other uncertainties, our actual future results, performance or achievement, or industry results, may be materially different from the results indicated by these forward-looking statements. In addition, our past results of operations are not necessarily indicative of our future results.

You should not place undue reliance on any forward-looking statements, which speak only as of the dates on which they were made. We are not undertaking an obligation to update these forward-looking statements, even though circumstances may change in the future, except as required under federal securities law. We qualify all of our forward-looking statements by these cautionary statements.

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Item 1A. Risk Factors

This section highlights the risks management believes could adversely affect our financial performance. Additional possible risks that could affect the Company adversely and cannot be predicted may arise at any time. Other risks that are immaterial at this time may also have an adverse impact on our future financial condition.

Economic and Market Risks

Conditions in the financial market and economic conditions, including conditions in the states in which it operates, generally may adversely affect the Company's business.

The Company's general financial performance is highly dependent upon the business environment in the markets where it operates and, in particular, the ability of borrowers to pay interest on and repay principal of outstanding loans and the value of collateral securing those loans, as well as demand for loans and other products and services it offers. A favorable business environment is generally characterized by, among other factors, economic growth, efficient capital markets, low inflation, low unemployment, high business and investor confidence, and strong business earnings. Unfavorable or uncertain economic and market conditions can be caused by declines in economic growth, business activity or investor or business confidence; limitations on the availability or increases in the cost of credit and capital; increases in inflation or interest rates; high unemployment, natural disasters, or a combination of these or other factors.

While economic conditions have improved considerably since the 2008-2009 recession, there can be no assurance that this improvement will continue. Uncertainty regarding continuing economic improvement may result in changes in consumer and business spending, borrowing, and savings habits. Such conditions could adversely affect the credit quality of the Company's loans, our financial condition and results of operations.

The Company's financial performance is also affected by the condition of the markets in which it conducts business. The Company currently conducts its banking operations primarily in downstate Illinois, the Southwest suburbs of Chicago, Illinois, the St. Louis, Missouri metropolitan area, and southwest Florida. The financial condition of the State of Illinois, in which the largest portion of the Company's customer base resides, is among the most troubled of any state in the United States with credit downgrade concerns, pension under-funding, budget deficits and political standoffs. In addition, the Company operates in markets with significant university and healthcare presence, which rely heavily on state and federal funding and contracts. Payment delays by the State of Illinois to its vendors and government-sponsored entities as well as potential federal changes to healthcare laws could affect the Company's primary market areas, which could in turn adversely affect its financial condition and results of operations. Downturns in markets where banking operations occur could result in a decrease in demand for the Company's products and services, an increase in loan delinquencies and defaults, high or increased levels of problem assets and foreclosures and reduced wealth management fees resulting from lower asset values.

Market volatility and changes in interest rates could have an adverse effect on the Company.

In certain recent periods, the capital and credit markets experienced heightened volatility and disruption. In some cases, the markets produced downward pressure on stock prices and credit availability for certain issuers without regard to those issuers' underlying financial condition or performance. Conversely, significant increases in the stock markets can also have destabilizing effects. If the capital and credit markets experience these heightened levels of disruption and volatility again, both the Company and its customers' ability to maintain or access capital could be adversely affected which could have an impact on the Company's business, financial condition and results of operations.

Changes in interest rates could affect the level of assets and liabilities held on the Company's balance sheet and the revenue that the Company earns from net interest income, as earnings and profitability depend significantly on our net interest income. Net interest income represents the difference between interest income and fees earned on interest-earning assets such as loans and investment securities and interest expense incurred on interest-bearing liabilities such as deposits and borrowed funds. Interest rates are sensitive to many factors that are beyond the Company's control, including general economic conditions and policies of various governmental and regulatory agencies, including the Federal Open Market Committee. Changes in monetary policy, including changes in interest rates, could influence not only the interest the Company receives on loans and investment securities and the amount of interest it pays on deposits and borrowings, but such changes could also affect the Company's ability to originate loans and obtain deposits and the fair value of the Company's financial assets and liabilities. In addition, a rise in interest rates could result in decreased demand for first mortgages as well as mortgage refinancing, activities which have historically contributed to a significant portion of the Company's mortgage revenue. Furthermore, if the interest rates paid on deposits and other borrowings increase at a faster rate than the interest rates received on loans and investment securities, the Company's net interest income, and therefore earnings, could be adversely affected. Earnings could also be adversely affected if the interest rates received on loans and

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other investments fall more quickly than the interest rates paid on deposits and other borrowings. Any substantial, unexpected, prolonged change in market interest rates could have a material adverse effect on the Company's business, financial condition, and results of operation. Interest rates paid on deposit products declined significantly in recent years and while interest rates increased slightly during 2015 through 2017, future increases, if they occur, could create uncertainty in financial markets, as could an escalation in the pace of rate increases. Such uncertainty or market fluctuations could negatively affect customer's financial stability and ultimately, their ability to repay loan commitments.

The Company's wealth management business may also be negatively impacted by changes in general economic conditions and the conditions in the financial and securities markets, which could affect the values of assets held under care. Management contracts generally provide for fees payable for wealth management services based on the market value of assets under care. Because most of the Company's contracts provide for a fee based on market values of securities, declines in securities prices may have an adverse effect on the Company's results of operations from this business. Market declines and reductions in the value of customers' wealth management accounts, could also result in the loss of wealth management customers, including those who are also banking customers.

The Company could recognize losses on securities held in its securities portfolio, particularly if interest rates increase or economic and market conditions deteriorate.

Factors beyond the Company's control may significantly influence the fair value of securities in its portfolio and may cause potential adverse changes to the fair value of these securities. For example, fixed-rate securities acquired by the Company are generally subject to decreases in market value when interest rates rise. A change in the fair value of securities could cause an other-than-temporary impairment ("OTTI") in future periods and result in realized losses.

The process for determining whether impairment is an OTTI usually requires difficult, subjective judgments about the future financial performance of the issuer and any collateral underlying the security in order to assess the probability of receiving all contractual principal and interest payments on the security. Because of changing economic and market conditions affecting interest rates, the financial condition of issuers of the securities and the performance of the underlying collateral, we may recognize realized and/or unrealized losses in future periods, which could have an adverse effect on our financial condition and results of operations.

Downgrades in the credit ratings of one or more insurers that provide credit enhancements for the Company's state and municipal securities portfolio may have an adverse impact on the market for and valuation of these types of securities.

The Company invests in tax-exempt state and local municipal securities, some of which are insured by monoline insurers. In recent years, several of these insurers have come under scrutiny by rating agencies. Even though management generally purchases municipal securities on the overall credit strength of the issuer, the reduction in the credit rating of an insurer may negatively impact the market for and valuation of the Company's investment securities. A downgrade or a default by an issuer could adversely affect the Company's liquidity, financial condition and results of operations.

Regulatory and Legal Risks

The financial services industry, as well as the broader economy, may be subject to new legislation, regulation, and government policy.

At this time, it is difficult to predict future legislative and regulatory changes. Although both the President and senior members of Congress have advocated for reductions of financial services regulation, including amendments to the Dodd-Frank Act and structural changes to the CFPB, exactly which regulatory changes will be pursued, as well as the timing and extent of regulatory changes that could be successfully enacted, remains uncertain. New appointments to the Board of Governors of the Federal Reserve may affect monetary policy and interest rates, and changes in fiscal policy could affect broader patterns of trade and economic growth. Future legislation, regulation, and government policy could affect the banking industry as a whole, including our business and results of operations, in ways that are difficult to predict. In addition, our results of operations also could be adversely affected by changes in the way in which existing statutes and regulations are interpreted or applied by courts and government agencies.

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Legislative and regulatory reforms applicable to the financial services industry, as well as heightened focus on particular regulations, may have a significant impact on the Company's business, financial condition and results of operations.

The laws, regulations, rules, policies and regulatory interpretations governing the Company continue to evolve and may change significantly over time as Congress and various regulatory agencies react to adverse economic conditions or other matters. The global financial crisis of 2008-2009 served as a catalyst for a number of significant changes in the financial services industry, including the Dodd-Frank Act, which reformed the regulation of financial institutions in a comprehensive manner, and the Basel III regulatory capital reforms, which increase both the amount and quality of capital that financial institutions must hold. The implementation of these provisions, as well as any other aspects of current or proposed regulatory or legislative changes to laws applicable to the financial industry, may impact the profitability of the Company's business activities and may change certain business practices, including the ability to offer new products, obtain financing, attract deposits, make loans, and achieve satisfactory interest spreads, and could expose the Company to additional expense, including increased compliance costs.

These rule and regulatory changes may also require the Company to invest significant management attention and resources so as to make necessary changes to operations in order to comply. Legislative and regulatory changes may limit our ability to promote our objectives through compensation and incentive programs and could materially and adversely affect our business, financial condition and results of operations. The Company's management has reviewed the provisions of the Dodd-Frank Act, the Basel III Rule, and other regulatory mandated changes, many of which have become effective or are to be phased-in over the next several years, and assessed the probable impact on operations. However, the long-term cumulative effect of these changes on the financial services industry, in general, and the Company in particular, is uncertain at this time.

In addition to the expense and uncertainty related to increased regulation, the financial services industry in recent years has faced more intense scrutiny from regulatory agencies in the examination process and more aggressive enforcement of regulations on both the federal and state levels, particularly with respect to mortgage-related practices and other consumer compliance matters, and compliance with Bank Secrecy Act, anti-money laundering laws, and the Patriot Act, which focuses on money laundering in the form of terrorist financing. Federal law grants substantial enforcement powers to financial services' regulators including, among other things, the ability to assess significant civil or criminal monetary penalties, fines or restitution; to issue cease and desist orders; and to initiate injunctive actions against banking organizations. These enforcement actions may be initiated for violations of laws or regulations and for unsafe or unsound practices. If the Company were the subject of an enforcement action, it could have an adverse impact on the Company.

The Company may be required to repurchase mortgage loans as a result of breaches in contractual representations and warranties.

When the Company sells mortgage loans that it has originated to various parties, it is required to make customary representations and warranties to the purchaser about the mortgage loans and the manner in which they were originated. The Company may be required to repurchase mortgage loans in the event of a breach of a contractual representation or warranty that is not remedied within a certain period. Contracts for residential mortgage loan sales include various types of specific remedies and penalties that could be applied to inadequate responses to repurchase requests. If economic conditions and the housing market deteriorate, the Company could have increased repurchase obligations and increased losses on repurchases, requiring material increases to its repurchase reserve.

Credit and Lending Risks

Heightened credit risk associated with lending activities may result in insufficient loan loss provisions, which could have material adverse effect on the Company's results of operations and financial condition.

There are risks in making any loan, including risks inherent in dealing with individual borrowers, risks of nonpayment, risks resulting from uncertainties as to the future value of collateral and cash flows available to service debt and risks resulting from economic and market conditions. The Company attempts to reduce its credit risk through loan application approval procedures, monitoring the concentration of loans within specific industries and geographic location, and periodic independent reviews of outstanding loans by its loan review and audit departments as well as external parties. However, while such procedures help reduce risks, they cannot be expected to completely eliminate the Company's credit risks. Borrowers may experience difficulties in repaying their loans for any of a variety of reasons resulting in a rise in the level of nonperforming loans, charge-offs and delinquencies and/or a need for increases in the provision for loan losses.

The Company establishes an allowance for loan losses and maintains it at a level considered adequate by management to absorb probable loan losses based on a continual analysis of the Company's portfolio and market environment. The allowance for loan losses represents the Company's estimate of probable losses in the portfolio at each balance sheet date and is based upon other relevant information available. The allowance contains provisions for probable losses that have been identified relating to specific borrowing relationships, as well as probable losses inherent in the loan portfolio and credit undertakings that are not specifically identified. Changes to the allowance for loan losses, which are charged to earnings through the provision for loan losses, are determined based on a variety of factors, including an analysis of the loan portfolio, historical loss experience and an evaluation of current economic conditions in the relevant market areas. The actual amount of loan losses is affected by changes in economic, operating and other market conditions, which may be beyond the Company's control, and such losses may exceed current estimates.

Although management believes the allowance for loan losses is adequate to absorb losses on existing loans that may become uncollectible, management cannot guarantee that additional provisions for loan losses will not be required in the future. Additional provision could be recorded, either as a result of management's decision or as a requirement by regulators, to further supplement the allowance for loan losses, particularly if economic conditions unfold in a manner which differs significantly from what management currently expects. Additional provisions to the allowance for loan losses and loan losses in excess of the Company's allowance for loan losses may adversely affect its business, financial condition and results of operations.

Non-performing assets take significant time to resolve and adversely affect the Company's results of operations and financial condition, and could result in further losses in the future.

The Company's non-performing assets adversely affect its net income in various ways. While the Company pays interest expense to fund non-performing assets, it does not record interest income on non-accrual loans or other real estate owned, thereby adversely affecting its income and returns on assets and equity. In addition, loan administration costs increase and the Company's efficiency ratio is adversely affected. When the Company takes collateral in foreclosures and similar proceedings, it is required to mark the collateral to its then-fair market value, which, when compared to the outstanding balance of the loan, may result in a loss. Non-performing loans and other real estate owned also increase the Company's risk profile and the capital its regulators believe is appropriate in light of such risks. The resolution of non-performing assets requires significant time commitments from management, which can be detrimental to the performance of their other responsibilities. The Company cannot guarantee that it will not experience increases in non-performing loans in the future, and its non-performing assets may result in further losses in the future.

Concentrations of credit and market risk could increase the potential for significant losses.

The Company may have higher credit risk, or experience higher credit losses, to the extent its loans are concentrated by loan type, industry segment, borrower type, or geographic location of the borrower or collateral. A significant portion of the Company's loan portfolio is made up of mortgage, commercial and industrial loans, and secured by real estate. Thus, deterioration in economic conditions or real estate values could result in higher credit costs and losses to the Company.

The Company's commercial loans are primarily made based on the identified cash flow of the borrower and secondarily on the underlying collateral provided by the borrower. Most often, this collateral is accounts receivable, inventory, machinery or real estate. Credit support provided by the borrower for most of these loans and the probability of repayment is based on the liquidation of the pledged collateral and enforcement of a personal guarantee, which the Company requires whenever appropriate on commercial loans. As a result, in the case of loans secured by accounts receivable, the availability of funds for the repayment of these loans may be substantially dependent on the ability of the borrower to collect amounts due from its customers. The collateral securing other loans may depreciate over time, may be difficult to appraise and may fluctuate in value based on the success of the business. As a result of the larger average size of each commercial loan as well as collateral that is generally less readily-marketable, losses incurred on a small number of commercial loans could have a material adverse impact on the Company's financial condition and results of operations.

As previously noted, a significant portion of the Company's loans are collateralized by real estate. The market value of real estate can fluctuate significantly in a short period of time as a result of market conditions in the area in which the real estate is located. Adverse changes affecting real estate values and the liquidity of real estate in one or more markets could increase the credit risk associated with the Company's loan portfolio, and could result in losses which would adversely affect profitability. Mortgage loans in the Company' portfolio with high loan-to-value ratios are more sensitive to declining property values and may experience a higher incident of default and severity of losses. Adverse changes in the economy affecting real estate values and liquidity generally, and in markets in which the Company has banking operations, could significantly impair the value of property pledged as collateral on loans and affect the Company's ability to sell the collateral upon foreclosure without a loss or additional losses. Collateral may have to be sold for less than the outstanding balance of the loan which would result in losses.

Credit risk associated with concentration of securities in the Company's investment portfolio may increase the potential for loss.

The Company's investment portfolio consists, in part, of securities issued by government or government sponsored agencies and non-government entities. A downturn in the financial condition of the issuers, the performance of the underlying collateral, or the financial condition of the individual mortgagors with respect to the underlying securities could create results such as rating agency downgrades of the securities and default by issuers or individual mortgagors. Any of the foregoing factors could cause an OTTI in future periods and result in realized losses, which could adversely affect the Company's financial condition and results of operations.

Real estate construction, land acquisition and development loans are based upon estimates of costs and values associated with the complete project. These estimates may be inaccurate, and the Company may be exposed to significant losses on loans for these projects.

Construction, land acquisition, and development loans involve additional risks because funds are advanced upon the security of the project, which is of uncertain value prior to its completion, and costs may exceed realizable values in declining real estate markets. Because of the uncertainties inherent in estimating construction costs and the realizable market value of the completed project and the effects of governmental regulation on real property, it is relatively difficult to evaluate accurately the total funds required to complete a project and the related loan-to-value ratio. As a result, construction loans often involve the disbursement of substantial funds with repayment dependent, in part, on the success of the ultimate project and the ability of the borrower to sell or lease the property, rather than the ability of the borrower or guarantor to repay principal and interest. If the Company's appraisal of the value of the completed project proves to be overstated or market values or rental rates decline, there may be inadequate security for the repayment of the loan upon completion of construction of the project. If the Company is forced to foreclose on a project prior to or at completion due to a default, there can be no assurance that it will be able to recover all of the unpaid balance of, and accrued interest on, the loan as well as related foreclosure and holding costs. In addition, the Company may be required to fund additional amounts to complete the project and may have to hold the property for an unspecified period of time while it attempts to dispose of it.

The Company's exposure to home equity lines of credit may increase the potential for loss.

The Company's mortgage loan portfolio consists, in part, of home equity lines of credit. A large portion of home equity lines of credit are originated in conjunction with the origination of first mortgage loans eligible for sale in the secondary market, which the Company typically does not service if the loan is sold. By not servicing the first mortgage loans, the Company is unable to track the delinquency status which may indicate whether such loans are at risk of foreclosure by others. In addition, home equity lines of credit are initially offered as "revolving" lines of credit whereby the borrowers are only required to make scheduled interest payments during the initial terms of the loans, which is generally five years. Thereafter, the borrowers no longer have the ability to make principal draws from the lines and the loans convert to a fully-amortizing basis, requiring scheduled principal and interest payments sufficient to repay the loans within a certain period of time, which is generally 10 years. The conversion of a home equity line of credit to a fully amortizing basis presents an increased level of default risk to us since the borrower no longer has the ability to make principal draws on the line, and the amount of the required monthly payment could substantially increase to provide for scheduled repayment of principal and interest.

Capital and Liquidity Risks

The Company is required to maintain capital to meet regulatory requirements, and if it fails to maintain sufficient capital, whether as a result of losses, inability to raise additional capital or otherwise, its financial condition, liquidity, and results of operations, as well as its ability to maintain regulatory compliance would be adversely affected.

First Busey, the Banks and Busey Wealth Management must meet regulatory capital requirements and maintain sufficient liquidity. The Company's ability to raise additional capital, when and if needed, will depend on conditions in the capital markets, economic conditions and a number of other factors, including investor perceptions regarding the banking industry and market condition, and governmental activities, many of which are outside the Company's control, and on its financial condition and performance. Accordingly, the Company cannot guarantee that it will be able to raise additional capital if needed or on terms acceptable to the Company. If it fails to meet these capital and other regulatory requirements, its financial condition, liquidity and results of operations would be materially and adversely affected.

The Company's failure to continue to maintain capital ratios in excess of the amounts necessary to be considered "well-capitalized" for bank regulatory purposes could affect customer confidence, its ability to grow, its costs of funds and FDIC insurance costs, its ability to pay dividends to its stockholders or on outstanding stock, its ability to make acquisitions, and its business, results of operations and financial condition. Furthermore, under FDIC rules, if the Company ceases to meet the requirements to be considered a "well-capitalized" institution for bank regulatory purposes, the interest rates it pays on deposits and its ability to accept, renew or rollover deposits, particularly brokered deposits, may be restricted.

Liquidity risks could affect operations and jeopardize the Company's business, financial condition and results of operations.

Liquidity is essential to the Company's business. An inability to raise funds through deposits, borrowings, the sale of loans and other sources could have a substantial negative effect on liquidity. The Company's primary sources of funds consist of deposits and funds from sales of investment securities, investment maturities and sales, and cash from operations. Additional liquidity is available through repurchase agreements, brokered deposits, and the ability to borrow from the Federal Reserve Bank and the FHLB. Access to funding sources in amounts adequate to finance or capitalize the Company's activities or on terms that are acceptable to the Company could be impaired by factors that affect it directly or the financial services industry or economy in general, such as disruptions in the financial markets or negative views and expectations about the prospects for the financial services industry.

During periods of economic turmoil, the financial services industry and the credit markets generally may be materially and adversely affected by significant declines in asset values and depressed levels of liquidity. These and other factors could negatively affect the Company's ability to engage in routine funding and other transactions with other financial institutions, lead to market-wide liquidity problems, loss of depositor, creditor, and counterparty confidence which could lead to losses or defaults by the Company or by other institutions. Furthermore, regional and community banks generally have less access to the capital markets than do the national and super-regional banks because of their smaller size, limited analyst coverage, and lack of credit rating resulting from significant expense required to obtain it.

Any decline in available funding and/or capital could adversely impact the Company's ability to originate loans, invest in securities, meet its expenses, pay dividends to its stockholders, or meet deposit withdrawal demands, any of which could have a material adverse impact on its liquidity, business, financial condition and results of operations.

The soundness of other financial institutions could negatively affect the Company.

The Company's ability to engage in routine funding and other transactions could be negatively affected by the actions and commercial soundness of other financial institutions. Financial services institutions are interrelated as a result of trading, clearing, counterparty or other relationships. Defaults by, or even rumors or questions about, one or more financial services institutions, or the financial services industry generally, have led to market-wide liquidity problems and losses of depositor, creditor and counterparty confidence and could lead to losses or defaults by the Company or by other institutions. The Company could experience growth as a result of the difficulties or failures of other banks or government-sponsored financial institutions, which would increase its funding needs.

In addition, a prolonged period of illiquidity in the secondary mortgage market, and an increase in interest rates, could reduce the demand for residential mortgage loans and increase investor yield requirements for those loans. As a result, the Company may be at higher risk of retaining a larger portion of mortgage loans than in other environments until they are sold to investors. The Company's ability to retain fixed-rate residential mortgage loans is limited and could result in a reduction of loan production volumes, which could have a material adverse effect on our financial condition and results of operations.

Competitive and Strategic Risks

The Company faces strong competition from financial service companies and other companies that offer banking and wealth management services, which could harm its business.

The Company currently conducts its banking operations primarily in downstate Illinois, the Southwest suburbs of Chicago, Illinois, St. Louis, Missouri metropolitan area, and southwest Florida. In addition, the Company currently offers fiduciary and wealth management services through Trevett, South Side Bank and Busey Wealth Management, which account for an important portion of its non-interest income. Many competitors offer the same, or a wider variety of, banking and wealth management services within the Company's market areas. These competitors include national banks, regional banks and other community banks. The Company also faces competition from many other types of financial institutions, including savings and loan institutions, finance companies, brokerage firms, insurance companies, credit unions, mortgage banks and online lenders, and other financial intermediaries. In addition, a number of out-of-state financial intermediaries have

opened production offices or otherwise solicit deposits in the Company's market areas. Also, technology and other changes have lowered barriers to entry and made it possible for non-banks, or financial technology companies, to offer products and services traditionally provided by banks. For example, customers can maintain funds that would have historically been held as bank deposits in brokerage accounts or mutual funds. Customers can also complete transactions such as paying bills and/or transferring funds directly without the assistance of banks. The process of eliminating banks as intermediaries, known as "disintermediation," could result in the loss of fee income, as well as the loss of customer deposits and the related income generated from those deposits. Increased competition in the Company's markets may result in reduced loans, deposits and commissions and brokers' fees, as well as reduced net interest margin and profitability. Ultimately, the Company may not be able to compete successfully against current and future competitors. If the Company is unable to attract and retain banking and wealth management customers, it may be unable to grow its loan and deposit portfolios or its wealth management commissions, which could adversely affect its business, results of operations and financial condition.

Our strategy of pursuing acquisitions exposes us to financial, execution and operational risks that could negatively affect us.

To help us fulfill our strategic objectives and enhance our earnings, part of our strategy is to supplement organic growth by acquiring other financial institutions in our market areas and in nearby markets. As our capital position and asset quality allow, we may again supplement organic growth through acquisitions, as we did with recent acquisitions. There are risks associated with an acquisition strategy, including the following:

- We are exposed to potential asset and credit quality risks and unknown or contingent liabilities of the banks or businesses we acquire. If these issues or liabilities exceed our estimates, our earnings and financial condition may be materially and adversely affected.

- Prices at which acquisitions can be made fluctuate with market conditions. We have experienced times during which acquisitions could not be made in specific markets at prices our management considered acceptable and expect that we will experience this condition in the future in one or more markets.

- The acquisition of other entities generally requires integration of systems, procedures and personnel of the acquired entity in order to make the transaction economically feasible. This integration process is complicated and time consuming and can also be disruptive to the customers of the acquired business. If the integration process is not conducted successfully and with minimal effect on the acquired business and its customers, we may not realize the anticipated economic benefits of particular acquisitions within the expected time frame, and we may lose customers or employees of the acquired business. We may also experience greater than anticipated customer losses even if the integration process is successful.

- We are subject to due diligence expenses which may not result in an acquisition.

- To finance an acquisition, we may borrow funds, thereby increasing our leverage and diminishing our liquidity, or issue capital stock to the sellers in an acquisition or to third-parties to raise capital, which could dilute the interests of our existing stockholders.

- The time period in which anticipated benefits of a merger are fully realized may take longer than anticipated, or we may be unsuccessful in realizing the anticipated benefits from mergers and future acquisitions.

Accounting and Tax Risks

Financial statements are created, in part, by assumptions and methods used by management, which, if incorrect, could cause unexpected losses in the future.

The Company's financial performance is impacted by accounting principles, policies and guidelines. Some of these policies require the use of estimates and assumptions that may affect the value of assets or liabilities and financial results. Certain accounting policies are critical and require management to make difficult, subjective and complex judgments about matters that are inherently uncertain, and materially different amounts could be reported under different conditions or using different assumptions. If such estimates or assumptions underlying the Company's Consolidated Financial Statements are incorrect, the Company may experience material losses.

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One such assumption and estimate is the valuation analysis of its goodwill. Although the Company's analysis does not indicate impairments exist; the Company is required to perform additional goodwill impairment assessments on at least an annual basis, and perhaps more frequently, which could result in further goodwill impairment charges. Any future goodwill impairment charge, based on the current goodwill balance or future goodwill arising out of acquisitions could have a material adverse effect on the results of operations by reducing net income or increasing net losses.

The Company is subject to changes in accounting principles, policies or guidelines.

Periodically, agencies such as the FASB or the SEC change the financial accounting and reporting standards or the interpretation of those standards that govern the preparation of the Company's Financial Statements. These changes are beyond the Company's control, can be difficult to predict and could materially impact how the Company reports its financial condition and results of operations. Changes in these standards are continuously occurring and the implementation of such changes could have a material adverse effect on the Company's financial condition and results of operations.

In 2016, the FASB published new Current Expected Credit Loss impairment standards ("CECL") which requires recording loss estimates for the life of the instrument for loans and held-to-maturity investment securities. This is a change from the 40-year standard in which losses are recorded under the "incurred loss" concept. The CECL methodology estimates losses in consideration of a reasonably foreseeable economic forecast. Implementing this change in accounting involves compliance and operational challenges and the results may decrease capital and increase volatility in the estimate of losses. The Company will make changes to its policies, procedures and technology systems to properly account for and comply with the new methodology. CECL is not set to take effect until 2020.

The Company is subject to changes in tax law and may not realize tax benefits which could adversely affect our results of operations.

Changes in tax laws at national or state levels could have an effect on the Company's short-term and long-term earnings. Tax law changes are both difficult to predict and are beyond the Company's control. Changes in tax laws could affect the Company's earnings as well as its customers' financial positions, or both. On December 22, 2017, the President signed into law the TCJA which, effective January 2018, reduced the corporate tax rate as well as adjusted tax rates, deductions and exemptions for individuals and businesses alike. While the reduction in the corporate tax rate could benefit the Company long-term, the Company took a one-time, non-cash charge of $8.1 million in the fourth quarter of 2017 as a result of the revaluation of the Company's net deferred tax position following the enactment of the TCJA.

Deferred tax assets are designed to reduce subsequent period's income tax expense and arise, in part, as a result of net loss carry-overs, and other book accounting to tax accounting differences including the allowance for loan losses, stock-based compensation, and deferred compensation. Such items are recorded as assets when it is anticipated the tax consequences will be recorded in future periods. A valuation allowance is established against a deferred tax asset when it is unlikely the future tax effects will be realized. Significant judgment by management about matters that are by nature uncertain is required to record a deferred tax asset and establish a valuation allowance.

In evaluating the need for a valuation allowance, the Company estimated future taxable income based on management forecasts and tax planning strategies that may be available to us. If future events differ significantly from our current forecasts, it may need to establish a valuation allowance against its net deferred tax assets, which would have a material adverse effect on its results of operations and financial condition. In addition, current portions of the net deferred tax assets relate to tax effected state net operating loss carry-forward, the utilization of which may be further limited in the event of certain material changes in the Company's ownership.

In addition, changes in ownership could further limit the Company's realization of deferred tax assets. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods prior to the expiration of the related net operating losses and the limitation of Section 382 of the Internal Revenue Code. Section 382 of the Code contains rules that limit the ability of a company that undergoes an ownership change to utilize its net operating loss carry-forwards and certain built-in losses recognized in years after the ownership change. The Company issued a significant amount of common stock in connection with the acquisition of Pulaski in 2016 and the acquisitions of First Community and Mid Illinois in 2017. While the issuance of stock does not affect an ownership change under Section 382, it may make it more likely that an ownership change under Section 382 will occur in the future. If the Company undergoes an ownership change for purposes of Section 382 as a result of future transactions involving its common stock, its ability to use net operating loss carry-forwards, tax credit carry-forwards or net unrealized built-in losses at the time of ownership change would be subject to the limitations of Section 382. The limitation may affect the amount of the Company's deferred income tax asset and, depending on the limitation, a portion of its built-in losses. Net operating loss carry-forwards or tax credit carry-forwards could expire before the Company would be able to use them. This could adversely affect the Company's financial position, results of operations and cash flow.

Operational Risks

The Company relies on the integrity of its operating systems and employees, and those of third-parties and certain failures of such systems or error by employees or customers could materially and adversely affect the Company's operations.

Communications and information systems are essential to conduct the Company's business, as it uses such systems to manage customer transactions and relationships, the general ledger, and deposits, loans, and investments. However, the computer systems and network infrastructure the Company uses could be vulnerable to unforeseen problems as operations are dependent upon the protection of computer equipment against damage from physical theft, fire, power loss, telecommunications failure or a similar catastrophic event, as well as from security breaches, cybersecurity attacks, viruses and other disruptive problems caused by hackers. The termination of a third party software license or service agreement on which any of these systems is based could also interrupt our operations.

In addition, the Company outsources certain processing functions to third-party providers. If third-party providers encounter difficulties or if the Company has difficulty in communicating with them, the ability to adequately process and account for customer transactions may be affected and business operations may be adversely impacted. If third-party providers are unable to meet service expectations, experience system or processing failure, or incur disruptions affecting operations, results could adversely impact the Company. Moreover, it may be difficult for the Company to replace third party vendors, particularly vendors providing core banking and information services, in a timely manner if they are unwilling or unable to provide the Company with these services in the future or for any reason and, even if the Company is able to replace them, it may be at higher cost or result in the loss of customers. The Company follows certain due diligence procedures in reviewing and vetting its third-parties, however, it cannot control their actions.

Although the Company has procedures in place to prevent or limit the effects of any of these potential problems and intends to continue to implement security technology and establish operational procedures to prevent such occurrences, technology-related disruptions, failures and cybersecurity risks are a constant threat, both for the Company and for the third-parties it works with. Therefore, it cannot guarantee that these measures will be successful. Any failure, interruption in, or breach in security of, its computer systems and network infrastructure, as well as those of its customers engaging in internet banking activities or electronic funds transfers, could damage its reputation, result in a loss of customer business, subject it to additional regulatory scrutiny, or expose it to civil litigation and possible financial liability, any of which could have a material adverse effect on its financial condition and results of operations.

Similarly, the Company is reliant upon its employees. Such dependencies create risks for potential losses resulting from employee errors, breakdowns in process or control, failures to properly execute change management, negligence, or a number of other factors outside the Company's control. The Company maintains a system of internal controls and insurance coverage to mitigate operational risks, including data processing system failures and errors, customer or employee fraud and other disruptions which might impact its business. In addition, the Company's Internal Audit department routinely reviews operations and high risk areas for error, deficient controls, and failure to adhere to policy.

Potential legal actions, fines and civil money penalties could arise as results of an operational deficiency or as a result of noncompliance with applicable regulatory standards, adverse business decisions or their implementation, and customer attrition due to potential negative publicity.

A breach in the security of the Company's systems could disrupt its businesses, result in the disclosure of confidential information, damage its reputation and create significant financial and legal exposure for the Company.

Although the Company devotes significant resources to maintain and regularly upgrade systems and processes designed to protect the security of its computer systems, software, networks and other technology assets, these measures do not provide absolute security. In fact, several financial services institutions, government agencies, retailers and other companies have reported breaches in the security of their websites or other systems, some of which have involved sophisticated and targeted attacks intended to obtain unauthorized access to confidential information, destroy data, disable or degrade service, or sabotage systems, often through the introduction of computer viruses or malware, cyber-attacks and other means.

Some companies in the United States have experienced well-publicized attacks from technically sophisticated and well-resourced third-parties that were intended to disrupt normal business activities by making internet banking systems inaccessible to customers for extended periods. These "denial-of-service" attacks may not have breached data security systems, but require substantial resources to defend, and may affect customer satisfaction and behavior. Furthermore, even if not directed at the Company, attacks on financial or other institutions important to the overall functioning of the financial system could adversely affect, directly or indirectly, aspects of the Company's businesses.

Threats to security also exist in the processing of customer information through various other third-parties, their personnel, and their use of subcontractors. Furthermore, advances in computer capabilities, new discoveries in the field of cryptography or other developments could result in a compromise or breach of the algorithms the Company and its third-party service providers use to encrypt and protect customer transaction data. Such cyber incidents may go undetected for a period of time. An inability by our third-party providers to anticipate, or failure to adequately mitigate, breaches of security could result in a number of negative events, including losses to us or our clients, loss of business or clients, damage to our reputation, the incurrence of additional expenses, additional regulatory scrutiny or penalties or exposure to civil litigation and possible financial liability, any of which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

The Company also faces risks related to cyber-attacks and other security breaches in connection with credit card and debit card transactions that typically involve the transmission of sensitive information regarding the Company's customers through various third-parties, including merchant acquiring banks, payment processors, payment card networks and its processors. Because card transactions involve third-parties and environments such as the point of sale that the Company does not control or secure, future security breaches or cyber-attacks affecting any of these third-parties could impact the Company through no fault of its own, and in some cases it may have exposure and suffer losses for breaches or attacks relating to them. Further cyber-attacks or other breaches in the future, whether affecting the Company or others, could intensify consumer concern and regulatory focus and result in reduced use of payment cards and increased costs, all of which could have a material adverse effect on the Company's business.

Penetration or circumvention of the Company's security systems could result in serious negative consequences for the Company, including significant disruption of the Company's operations, misappropriation of confidential information of the Company or that of its customers or employees, or damage to computers or systems of the Company and those of its customers and counterparties. Such events could result in violations of applicable privacy and other laws, financial loss to the Company or its customers, loss of confidence in the Company's security measures, customer dissatisfaction, significant litigation exposure and harm to the Company's reputation, all of which would adversely affect the Company.

These risks have increased for all financial institutions globally as new technologies, the use of the Internet and telecommunications technologies, including mobile devices, to conduct financial and other business transactions and the increased sophistication and activities of organized crime, perpetrators of fraud, hackers, terrorists and others. Despite the Company's efforts to prevent or limit the effects of potential threats, it is possible that the Company may not be able to anticipate or implement effective preventative measures against all security breaches of these types, especially because the techniques used change frequently or are not recognized until launched, and because security-related attacks can originate from a wide variety of sources, including organized crime, hackers, terrorists, activists, and other external parties, including parties sponsored by hostile foreign governments. Those parties may also attempt to fraudulently induce employees, customers, third-party service providers or other users of the Company's systems to disclose sensitive information in order to gain access to the Company's data or that of its customers. These risks may increase in the future as the Company increases its mobile payments, internet-based product offerings, and expand its internal usage of web-based products and applications.

Customer or employee fraud may affect operations, result in significant financial loss, and have an adverse impact on the Company's reputation.

Misconduct could subject the Company to financial losses or regulatory sanctions and seriously harm its reputation. Misconduct by employees and customers could include hiding unauthorized activities, improper or unauthorized activities or improper use of confidential information. It is not possible to prevent all errors and misconduct, and the precautions the Company takes to prevent and detect this activity may not be effective in all cases.

Customer or other outsiders may also attempt to perpetuate fraud or scams in the form of identity theft, money laundering, fraudulent or altered deposits, or use of counterfeit instruments, as a few examples. The Company also faces fraud risk associated with the origination of loans, including the intentional misstatement of information in property appraisals or other underwriting documentation provided to it by customers or by third-parties. Customers may expose the Company to certain fraud risks associated with the compromise of their computing systems or accounts, as well.

Should the Company's internal controls fail to prevent or detect an occurrence, or if any resulting loss is not insured or exceeds applicable insurance limits, such failures could adversely affect its business, results of operations and financial condition. Both the number and sophistication level of attempted fraudulent transactions are increasing. Should our internal controls fail to prevent or detect an occurrence of fraud, or if any resulting loss is not insured or exceeds applicable insurance limits, it could have a material adverse effect on the Company's business, results of operations and financial condition.

The Company's ability to attract and retain management and key personnel may affect future growth and earnings and legislation imposing new compensation restrictions could adversely affect its ability to do so.

Much of the Company's success and growth has been influenced strongly by its ability to attract and retain management experienced in banking and financial services and familiar with the communities in its market areas. The Company's ability to retain executive officers, current management teams, lending and retail banking officers, and administrative staff of its subsidiaries continues to be important to the successful implementation of its strategy. In addition, the Company's ability to retain key personnel at acquired financial institutions is vitally important to the Company's strategy to grow through mergers and acquisitions. Also critical is the Company's ability to attract and retain qualified staff with the appropriate level of experience and knowledge about its market areas so as to implement its community-based operating strategy. The unexpected loss of services of key personnel, or the inability to recruit and retain qualified personnel in the future, could have an adverse effect on the Company's business, financial condition, and results of operation.

Damage resulting from negative publicity could harm the Company's reputation and adversely impact its business and financial condition.

The Company's ability to attract and maintain customers, investors, and employees is contingent upon maintaining trust. Negative public opinion could result from the Company's actual or alleged conduct in a number of activities, including, but not limited to, employee misconduct, a failure or perceived failure to deliver appropriate standards of service and quality or to treat customers fairly, faulty lending practices, compliance failures, security breaches, corporate governance, sharing or inadequate protection of customer information, failure to comply with laws or regulations, and actions taken by government regulators and community organizations in response to that conduct. The results of such actual or alleged misconduct could include customer dissatisfaction, inability to attract potential acquisition prospects, litigation, and heightened regulatory scrutiny, all of which could lead to lost revenue, higher operating costs and harm to the Company's reputation. No assurance can be made, despite the cost or efforts made by the Company to address the issues arising from reputational harm, that results could not adversely affect the Company's business, financial condition, and results of operations.

Severe weather, natural disasters, acts of terrorism or war or other adverse external events could significantly impact the Company's business.

Severe weather, natural disasters, acts of terrorism or war and other adverse external events could have a significant impact on the Company's ability to conduct business. In addition, such events could affect the stability of the Company's deposit base; impair the ability of borrowers to repay outstanding loans, impair the value of collateral securing loans, cause significant property damage, result in loss of revenue and/or cause the Company to incur additional expenses. The occurrence of any such event in the future could have a material adverse effect on the Company's business, which in turn, could have a material adverse effect on the financial condition and results of operation.

The Company's framework for managing risks may not be effective in mitigating risk and loss.

The Company's risk management framework seeks to mitigate risk and loss. It has established processes and procedures intended to identify, measure, monitor, report, and analyze the types of risk to which it is subject, compliance risk and reputational risk, among others. However, as with any risk management framework, there are inherent limitations. Risks may exist, or emerge in the future, that have not been appropriately identified or anticipated. The Company's ability to successfully identify and manage the risks it faces is an important factor that can significantly impact results. If its risk management framework proves ineffective, the Company could suffer unexpected losses and could be materially adversely affected.

If securities or industry analysts do not publish or cease publishing research reports about us, if they adversely change their recommendations regarding our stock or if our operating results do not meet their expectations, the price of our stock could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If there is limited or no securities or industry analyst coverage of us, the market price for our stock would be negatively impacted. Moreover, if any of the analysts who elect to cover us downgrade our common stock, provide more favorable relative recommendations about our competitors or if our operating results or prospects do not meet their expectations, the market price of our common stock may decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

New lines of business or new products and services may subject us to additional risks.

From time to time, we may seek to implement new lines of business or offer new products and services within existing lines of business in our current markets or new markets. There are substantial risks and uncertainties associated with these efforts, particularly in instances where the markets are not fully developed. In developing and marketing new lines of business and/or new products and services, we may invest significant time and resources. Initial timetables for the introduction and development of new lines of business and/or new products or services may not be achieved and price and profitability targets may not prove feasible, which could in turn have a material negative effect on our operating results.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

First Busey and Busey Bank's headquarters are located at 100 West University Avenue, Champaign, Illinois. South Side Bank's headquarters are located at 2119 Southwest Adams Street, Peoria, Illinois. Busey Wealth Management's headquarters are located at 201 West Main Street, Urbana, Illinois. FirsTech's headquarters are located at 130 North Water Street, Decatur, Illinois. These facilities, which are owned by the Company, house the executive and primary administrative offices of each respective entity. The Company also owns or leases other facilities, such as banking centers of the Banks, for business operations.

First Busey and its subsidiaries own or lease all of the real property and/or buildings on which each respective entity is located. From time to time, the Company will initiate construction projects related to the Company's facilities. The Company considers its properties to be suitable and adequate for its present needs.

Item 3. Legal Proceedings

As part of the ordinary course of business, First Busey and its subsidiaries are parties to litigation that is incidental to their regular business activities.

There is no material pending litigation, other than ordinary routine litigation incidental to its business, in which First Busey or any of its subsidiaries is involved or of which any of their property is the subject. Furthermore, there is no pending legal proceeding that is adverse to First Busey in which any director, officer or affiliate of First Busey, or any associate of any such director or officer, is a party, or has a material interest.

Item 4. Mine Safety Disclosures

Not applicable.

Part II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Common Stock Prices and Dividends

The following table presents for the periods indicated the high and low sales price for First Busey common stock as reported on The Nasdaq Global Select Market.

	2017		2016	
Market Prices of Common Stock	**High**	**Low**	**High**	**Low**
First Quarter	$ 31.91	$ 28.11	$ 21.02	$ 17.68
Second Quarter	$ 32.22	$ 27.78	$ 22.91	$ 19.00

Third Quarter	$ 31.60	$ 27.33	$ 24.02	$ 20.94
Fourth Quarter	$ 32.88	$ 29.04	$ 31.01	$ 21.80

During 2017 and 2016 First Busey declared cash dividends per share of common stock as follows:

	2017	2016
January	$ 0.18	$ 0.17
April	$ 0.18	$ 0.17
July	$ 0.18	$ 0.17
October	$ 0.18	$ 0.17

The Company's board of directors and management are currently committed to continue paying regular cash dividends; however, no guarantee can be given with respect to future dividends, as they are dependent on certain regulatory restrictions, future earnings, capital requirements and financial condition of the Company and its subsidiaries. See "Item 1. Business—Supervision, Regulation and Other Factors—Regulation and Supervision of Company—Dividend Payments and Regulation" and "Item 1. Business—Supervision, Regulation and Other Factors—Regulation and Supervision of the Banks—Dividend Payments" for further discussion of these matters.

As of February 28, 2018, First Busey Corporation had 48,691,633 shares of common stock outstanding held by 2,194 holders of record. Additionally, there were an estimated 7,772 beneficial holders whose stock was held in street name by brokerage houses and nominees as of that date.

Stock Repurchases

On February 3, 2015, First Busey's board of directors authorized the Company to repurchase up to an aggregate of 666,667 shares of its common stock. The repurchase plan has no expiration date and replaced the prior repurchase plan originally approved in 2008. There were no purchases made by or on behalf of First Busey of its common stock shares during the quarter ended December 31, 2017. At December 31, 2017, the Company had 333,334 shares that may still be purchased under the plan.

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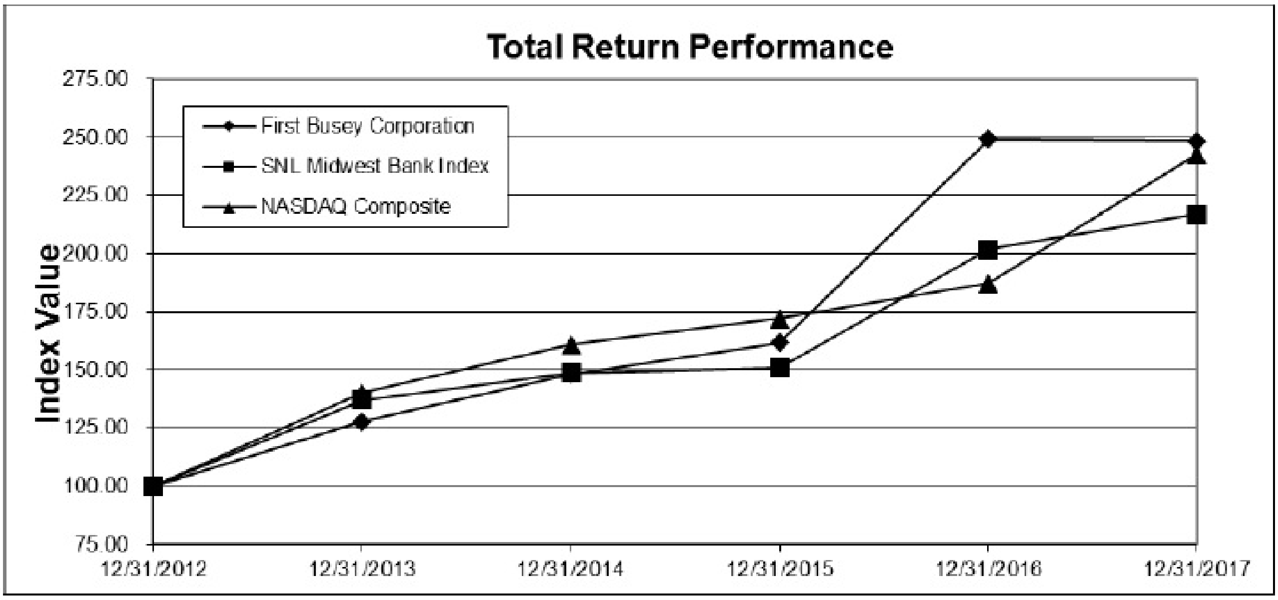
Performance Graph

The following graph compares First Busey's performance, as measured by the change in price of its common stock plus reinvested dividends, with the Nasdaq Composite and the SNL Midwest Bank Index for the five years ended December 31, 2017.

First Busey Corporation
Stock Price Performance



Index	12/31/12	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17
First Busey Corporation	$ 100.00	$ 127.91	$ 148.37	$ 161.82	$ 249.24	$ 248.32
SNL Midwest Bank Index	100.00	136.91	148.84	151.10	201.89	216.95
Nasdaq Composite	100.00	140.12	160.79	171.98	187.23	242.73

The banks in the SNL Midwest Bank Index represent all publicly traded banks, thrifts or financial service companies located in Iowa, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota and Wisconsin.

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Item 6. Selected Financial Data

Selected Consolidated Financial Information

The following selected financial data (adjusted to reflect a reverse stock split of the Company's common stock at a ratio of one-for-three (the "Reverse Stock Split") which became effective on September 8, 2015) as of year-end and for each of the five years in the period ended December 31, 2017, have been derived from First Busey's audited Consolidated Financial Statements and the results of operations for each period. This financial data should be read in conjunction with the Consolidated Financial Statements and the related Notes to the Consolidated Financial Statements included in this Annual Report *(dollars in thousands, except per share data)*.

	2017	2016	2015	2014	2013
Balance Sheet Items					
Securities available for sale	$ 878,060	$ 759,811	$ 834,838	$ 759,065	$ 841,310
Securities held to maturity	443,550	47,820	49,832	2,373	834
Loans held for sale	94,848	256,319	9,351	10,400	13,840
Portfolio loans	5,519,500	3,878,900	2,627,739	2,405,290	2,281,460
Allowance for loan losses	53,582	47,795	47,487	47,453	47,567
Total assets	7,860,640	5,425,170	3,998,976	3,665,607	3,539,575
Tangible assets(1)	7,552,567	5,303,894	3,966,034	3,638,234	3,509,318
Total deposits	6,125,965	4,374,298	3,289,106	2,900,848	2,869,138
Short-term debt(2)	524,566	264,157	172,972	198,893	172,348
Long-term debt	50,000	80,000	80,000	50,000	—
Senior notes, net of unamortized issuance costs	39,404	—	—	—	—
Subordinated notes, net of unamortized issuance costs	64,715	—	—	—	—
Junior subordinated debt owed to unconsolidated trusts	71,008	70,868	55,000	55,000	55,000
Stockholders' equity	935,003	594,314	373,186	433,639	415,364
Common stockholders' equity	935,003	594,314	373,186	360,975	342,700
Tangible common stockholders' equity(3)	637,969	480,415	343,211	336,271	316,351
Results of Operations					
Interest income	$ 224,302	$ 164,889	$ 118,022	$ 108,075	$ 108,696
Interest expense	20,936	10,229	6,207	6,499	8,631
Net interest income	203,366	154,660	111,815	101,576	100,065
Provision for loan losses	5,303	5,550	1,600	2,000	7,500
Net income available for common stockholders	62,726	49,694	38,306	32,047	25,093
Per Share Data					
Diluted earnings	$ 1.45	$ 1.40	$ 1.32	$ 1.10	$ 0.86
Cash dividends	0.72	0.68	0.62	0.57	0.36
Book value(4)	19.21	15.54	13.01	12.47	11.84
Tangible book value(5)	12.88	12.37	11.86	11.52	10.80
Closing stock price	29.94	30.78	20.63	19.53	17.40
Other Information					
Return on average assets	1.00%	1.00%	0.98%	0.91%	0.71%
Return on average common equity	8.48%	9.59%	10.41%	9.11%	7.39%
Net interest margin(6)	3.58%	3.42%	3.10%	3.15%	3.15%
Equity to assets ratio(7)	11.75%	10.42%	9.39%	9.94%	9.61%
Dividend payout ratio(8)	49.66%	48.57%	46.97%	51.82%	41.86%

(1)Total assets less goodwill and intangible assets, non-GAAP.
(2)Includes federal funds purchased, securities sold under agreements to repurchase, and short-term borrowings.
(3)Common equity less tax effected goodwill and intangible assets.
(4)Total common equity divided by shares outstanding as of period end.
(5)Total common equity less goodwill and intangible assets divided by shares outstanding as of period end.
(6)Tax-equivalent net interest income divided by average earning assets.
(7)Average common equity divided by average total assets.
(8)Ratio calculated using only common stock.

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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following is management's discussion and analysis of the financial condition as of December 31, 2017 and 2016 and results of operations for the years ended December 31, 2017, 2016, and 2015 of First Busey and its subsidiaries. It should be read in conjunction with "Item 1. Business," "Item 6. Selected Financial Data," the Consolidated Financial Statements and the related Notes to the Consolidated Financial Statements included in this Annual Report.

Critical Accounting Estimates

First Busey has established various accounting policies that govern the application of GAAP in the preparation of its Consolidated Financial Statements. Significant accounting policies are described in *"Note 1. Significant Accounting Policies*" in the Notes to the Consolidated Financial Statements.

Critical accounting estimates are those that are critical to the portrayal and understanding of First Busey's financial condition and results of operations and require management to make assumptions that are difficult, subjective or complex. These estimates involve judgments, assumptions and uncertainties that are susceptible to change. In the event that different assumptions or conditions were to prevail, and depending on the severity of such changes, the possibility of a materially different financial condition or materially different results of operations is a reasonable likelihood. Further, changes in accounting standards could impact the Company's critical accounting estimates. The following policies could be deemed critical:

Fair Value of Investment Securities. Securities are classified as held to maturity when First Busey has the ability and management has the intent to hold those securities to maturity. Accordingly, they are stated at cost, adjusted for amortization of premiums and accretion of discounts. At December 31, 2017, First Busey held $443.6 million of securities classified as held to maturity and had no securities classified as trading at December 31, 2017. Securities are classified as available for sale when First Busey determines it is possible the securities could be sold in the future due to changes in market interest rates, liquidity needs, changes in yields on alternative investments, and for other reasons. Securities classified as available for sale are carried at fair value with unrealized gains and losses, net of taxes, reported in other comprehensive income (loss). As of December 31, 2017, First Busey held $878.0 million of securities classified as available for sale. For equity securities, fair value at the measurement date is determined by unadjusted quoted prices in active markets for identical assets. For all other securities, fair value measurements from an independent pricing service are based on observable data that may include dealer quotes, market spreads, cash flows, the U.S. Treasury yield curve, live trading levels, trade execution data, market consensus prepayment speeds, credit information and the security's terms and conditions, among other things.

Realized securities gains or losses are reported in security gains (losses), net in the Consolidated Statements of Income. The cost of securities sold is based on the specific identification method. Declines in the fair value of securities below their amortized cost are evaluated to determine whether they are temporary or OTTI. If the Company (a) has the intent to sell a debt security or (b) will more likely than not be required to sell the debt security before its anticipated recovery, then the Company recognizes the entire decline in fair value as an OTTI loss. If neither of these conditions are met, the Company evaluates whether a credit loss exists. The decline in fair value is separated into the amount of impairment related to the credit loss and the amount of impairment related to all other factors. The amount of the impairment related to credit loss is recognized in earnings, and the amount of impairment related to all other factors is recognized in other comprehensive income (loss).

The Company also evaluates whether the decline in fair value of an equity security is temporary or OTTI. In determining whether an unrealized loss on an equity security is temporary or OTTI, management considers various factors including the magnitude and duration of the impairment, the financial condition and near-term prospects of the issuer, and the intent and ability of the Company to hold the equity security to forecasted recovery.

Fair Value of Assets Acquired and Liabilities Assumed in Business Combinations. Business combinations are accounted for using the acquisition method of accounting. Under the acquisition method of accounting, assets acquired and liabilities assumed are recorded at their estimated fair value on the date of acquisition. Fair values are determined based on the definition of fair value defined in FASB Accounting Standards Codification ("ASC") Topic 820 — *Fair Value Measurement* as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."

The fair value of a loan portfolio acquired in a business combination generally requires greater levels of management estimates and judgment than other assets acquired or liabilities assumed. At the date of acquisition, when loans have evidence of credit deterioration since origination and it is probable that the Company will not collect all contractually required principal and interest payments, the difference between contractually required payments and the cash flows expected to be collected at acquisition is referred to as the non-accretable difference. At each future reporting date, the Company re-estimates the expected cash flows of the loans. Subsequent decreases in the expected cash flows will generally result in a provision for loan losses. Subsequent increases in the expected cash flows will generally be offset against the allowance for loan losses to the extent an allowance has been established or will be recognized as interest income prospectively.

Allowance for Loan Losses. First Busey has established an allowance for loan losses which represents its estimate of the probable losses inherent in the loan portfolio as of the date of the Consolidated Financial Statements and reduces the total loans outstanding by an estimate of uncollectible loans. Loans deemed uncollectible are charged against and reduce the allowance. A provision for loan losses is charged to current expense and acts to replenish the allowance for loan losses in order to maintain the allowance at a level that management deems adequate. Acquired loans from business combinations with uncollected principal balances are carried net of a fair value adjustment for credit and interest rates. These loans are only included in the allowance calculation to the extent that the reserve requirement exceeds the fair value adjustment. However, as the acquired loans renew, it is generally necessary to establish an allowance which represents an amount that, in management's opinion, will be adequate to absorb probable credit losses in such loans.

To determine the adequacy of the allowance for loan losses, a formal analysis is completed quarterly to assess the risk within the loan portfolio. This assessment is reviewed by the Company's senior management. The analysis includes a review of historical performance, dollar amount and trends of past due loans, dollar amount and trends in non-performing loans, certain impaired loans, and loans identified as sensitive assets. Sensitive assets include non-accrual loans, past-due loans, loans on First Busey's watch loan reports and other loans identified as having probable potential for loss.

The allowance consists of specific and general components. The specific component considers loans that are classified as impaired. For such loans that are classified as impaired, an allowance is established when the discounted cash flows (or collateral value or observable market price) of the impaired loan is lower than the carrying amount of that loan. The general component covers non-classified loans and classified loans not considered impaired, and is based on historical loss experience adjusted for qualitative factors. Other adjustments may be made to the allowance for pools of loans after an assessment of internal or external influences on credit quality that are not fully reflected in the historical loss experience.

A loan is considered to be impaired when, based on current information and events, it is probable First Busey will not be able to collect all principal and interest amounts due according to the contractual terms of the loan agreement. When a loan becomes impaired, management generally calculates the impairment based on the present value of expected future cash flows discounted at the loan's effective interest rate. If the loan is collateral dependent, the fair value of the collateral is used to measure the amount of impairment. The amount of impairment and any subsequent changes are recorded through a charge to the provision for loan losses. For collateral dependent loans, First Busey has determined the required allowance on these loans based upon the estimated fair value, net of selling costs, of the applicable collateral. The required allowance or actual losses on these impaired loans could differ significantly if the ultimate fair value of the collateral is significantly different from the fair value estimates used by First Busey in estimating such potential losses.

Executive Summary

Operating Results *(dollars in thousands)*

	Years Ended December 31, 2017	2016
Net income by operating segment:		
Banking	$ 65,704	$ 48,691
Remittance Processing	2,007	1,758
Wealth Management	6,229	4,388
Other	(11,214)	(5,143)
Net income	$ 62,726	$ 49,694

Operating Performance

The Company continued its steady earnings expansion with net income of $62.7 million, or $1.45 per diluted common share, compared to net income of $49.7 million, or $1.40 per diluted common share, for the year ended December 31, 2016. 2017 net income was impacted by a one-time, non-cash charge of $8.1 million in the fourth quarter of 2017, or $0.19 per diluted common share for the year, due to the revaluation of the Company's net deferred tax position following the enactment of the TCJA. Adjusted net income(1) for 2017 was $75.7 million, or $1.75 per diluted common share. ROA was 1.00% for the year ended December 31, 2017 and ROA based on adjusted net income*(1)* was 1.20% for the year ended December 31, 2017. In addition to the Company's organic growth, the year-end results benefitted from the acquisition of First Community, since the closing of the transaction on July 2, 2017, and Mid Illinois since the closing of the transaction on October 1, 2017.

The Company views certain non-operating items including, but not limited to, acquisition and restructuring charges and the tax adjustment related to the TCJA as adjustments to net income. Non-operating adjustments for 2017 include $7.1 million of pre-tax acquisition costs; $0.8 million in pre-tax other restructuring costs, and $8.1 million related to the revaluation of the Company's net deferred tax position as a result of TCJA. The reconciliation of non-GAAP measures (including adjusted net income, adjusted efficiency ratio, adjusted ROA, tangible book value and tangible book value per share), which the Company believes facilitates the assessment of its banking operations and peer comparability, is included in tabular form in this Annual Report on Form 10-K in the Non-GAAP Financial Information.

Revenues from trust fees, commissions and brokers' fees, and remittance processing activities represented 45.5% of the Company's non-interest income for 2017, providing a balance to revenue from traditional banking activities. Two of the Company's acquisitions, Pulaski and First Community, had no legacy fee income in these businesses; therefore, the addition of these fee-based service offerings in these acquired bank markets is expected to provide attractive growth opportunities in future periods.

Positive momentum from new partnerships with talented bankers in St. Louis, Peoria and the Chicagoland area bring an expanding pool of business opportunities to generate value and diversity across new markets. Our priorities continue to focus around balance sheet strength, profitability and growth, in that order. Commercial loans remain a driver of balance sheet growth, while credit costs remain low. Favorable mix changes continue to occur across our deposit base as our relationship model builds ongoing efficiency into funding sources. Net income in the banking, remittance processing and wealth management segments expanded on a comparative basis to the year ended December 31, 2016. With our strong capital position, an attractive core funding base, a sound credit foundation, and an active growth plan, the Company is well poised for growth in 2018 and beyond.

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(1) For a reconciliation of adjusted net income, a non-GAAP financial measure, see Non-GAAP Financial Information.

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Asset Quality

While much internal focus has been directed toward growth, the Company's commitment to credit quality remains strong. The asset metrics below reflect post-combination results with each of First Community and Mid Illinois since the date of their respective acquisition. As of December 31, 2017, the Company reported non-performing loans of $27.4 million compared to $21.6 million as of December 31, 2016. Non-performing loans were 0.50% of total portfolio loans as of December 31, 2017 compared to 0.56% as of December 31, 2016. With a continued commitment to asset quality and the strength of our balance sheet, near-term loan losses are expected to remain generally low. While these results are encouraging, asset quality metrics can be generally influenced by market-specific economic conditions, and specific measures may fluctuate from period to period. The key metrics are as follows *(dollars in thousands)*:

	As of and for the Years Ended December 31, 2017	December 31, 2016
Portfolio loans	$ 5,519,500	$ 3,878,900
Allowance for loan losses	53,582	47,795
Non-performing loans		
Non-accrual loans	24,624	21,423
Loans 90+ days past due	2,741	131
Loans 30-89 days past due	12,897	4,090
Other non-performing assets	1,283	2,518
Allowance as a percentage of non-performing loans	195.80%	221.75%
Allowance for loan losses to portfolio loans	0.97%	1.23%

Results of Operation — Three Years Ended December 31, 2017

Net Interest Income

Net interest income is the difference between interest income and fees earned on earning assets and interest expense incurred on interest-bearing liabilities. Interest rate levels and volume fluctuations within earning assets and interest-bearing liabilities impact net interest income. Net interest margin is tax-equivalent net interest income as a percent of average earning assets.

Certain assets with tax favorable treatment are evaluated on a tax-equivalent basis. Tax-equivalent basis assumes a federal income tax rate of 35%. Tax favorable assets generally have lower contractual pre-tax yields than fully taxable assets. A tax-equivalent analysis is performed by adding the tax savings to the earnings on tax favorable assets. After factoring in the tax favorable effects of these assets, the yields may be more appropriately evaluated against alternative earning assets.

The following tables show our Consolidated Average Balance Sheets, detailing the major categories of assets and liabilities, the interest income earned on interest-earning assets, the interest expense paid for interest-bearing liabilities, and the related interest rates for the periods shown. The tables also show, for the periods indicated, a summary of the changes in interest earned and interest expense resulting from changes in volume and rates for the major components of interest-earning assets and interest-bearing liabilities. For purposes of this table, changes attributable to both rate and volume, which cannot be segregated, have been allocated proportionately, based on changes due to rate and changes due to volume. All average information is provided on a daily average basis.

Average Balance Sheets and Interest Rates *(dollars in thousands)*

	Years Ended December 31,								
	2017			2016			2015		
	Average Balance	Income/ Expense	Yield/ Rate	Average Balance	Income/ Expense	Yield/ Rate	Average Balance	Income/ Expense	Yield/ Rate
Assets									
Interest-bearing bank deposits and federal funds sold	$ 132,464	$ 1,444	1.09%	$ 233,804	$ 1,093	0.47%	$ 237,819	$ 622	0.26%
Investment securities:									
U.S. Government obligations	148,116	2,112	1.43%	185,855	2,143	1.15%	220,848	2,580	1.17%
Obligations of states and political subdivisions(1)	243,403	7,219	2.97%	212,559	6,102	2.87%	238,129	6,574	2.76%
Other securities	573,230	12,960	2.26%	439,470	9,397	2.14%	447,333	9,625	2.15%
Loans held for sale	119,936	4,479	3.73%	164,728	5,997	3.64%	14,131	703	4.97%
Portfolio loans(1), (2), (3)	4,567,259	199,744	4.37%	3,394,352	143,650	4.23%	2,518,328	100,100	3.97%
Total interest-earning assets(1), (4)	$ 5,784,408	$ 227,958	3.94%	$ 4,630,768	$ 168,382	3.64%	$ 3,676,588	$ 120,204	3.27%
Cash and due from banks	92,184			70,785			86,942		
Premises and equipment	93,025			74,919			64,891		
Allowance for loan losses	(50,924)			(47,294)			(47,756)		
Other assets	375,412			244,735			140,838		
Total assets	$ 6,294,105			$ 4,973,913			$ 3,921,503		
Liabilities and Stockholders' Equity									
Interest-bearing transaction deposits	$ 1,103,245	$ 1,980	0.18%	$ 924,078	$ 810	0.09%	$ 769,530	$ 496	0.06%
Savings and money market deposits	1,729,492	3,805	0.22%	1,392,335	2,233	0.16%	1,180,881	1,673	0.14%
Time deposits	927,736	7,147	0.77%	721,124	4,022	0.56%	500,296	2,587	0.52%
Short-term borrowings:									
Federal funds purchased and repurchase agreements	213,531	978	0.46%	181,644	393	0.22%	179,662	182	0.10%
Other(5)	84,201	1,096	1.30%	99,294	641	0.65%	14	6	42.86%
Long-term debt(6)	128,417	3,404	2.65%	80,000	220	0.28%	52,145	46	0.09%
Junior subordinated debt issued to unconsolidated trusts	70,922	2,526	3.56%	65,540	1,910	2.91%	55,000	1,217	2.21%
Total interest-bearing liabilities	$ 4,257,544	$ 20,936	0.49%	$ 3,464,015	$ 10,229	0.30%	$ 2,737,528	$ 6,207	0.23%
Net interest spread(1)			3.45%			3.34%			3.04%
Noninterest-bearing deposits	1,252,363			949,271			717,854		
Other liabilities	44,373			42,375			28,168		
Stockholders' equity	739,825			518,252			437,953		
Total liabilities and stockholders' equity	$ 6,294,105			$ 4,973,913			$ 3,921,503		
Interest income / earning assets(1)	$ 5,784,408	$ 227,958	3.94%	$ 4,630,768	$ 168,382	3.64%	$ 3,676,588	$ 120,204	3.27%
Interest expense / earning assets	$ 5,784,408	$ 20,936	0.36%	$ 4,630,768	$ 10,229	0.22%	$ 3,676,588	$ 6,207	0.17%
Net interest margin(1)		$ 207,022	3.58%		$ 158,153	3.42%		$ 113,997	3.10%

(1)On a tax-equivalent basis, assuming a federal income tax rate of 35%.
(2)Non-accrual loans have been included in average portfolio loans.
(3)Interest income includes loan fee (amortization) income of ($0.6) million, $3.0 million and $2.2 million for 2017, 2016 and 2015, respectively.
(4)Interest income includes a tax-equivalent adjustment of $3.7 million, $3.5 million and $2.2 million for 2017, 2016 and 2015, respectively.
(5)Includes FHLB advances and revolving loan. Interest expense includes a non-usage fee on the revolving loan.
(6)Includes FHLB long-term debt, senior notes and subordinated notes.

Average Balance Sheets and Interest Rates (continued)

Changes in Net Interest Income *(dollars in thousands)*:

	Years Ended December 31, 2017, 2016 and 2015					
	Year 2017 vs. 2016 Change due to			Year 2016 vs. 2015 Change due to		
	Average Volume	Average Yield/Rate	Total Change	Average Volume	Average Yield/Rate	Total Change
Increase (decrease) in interest income:						
Interest-bearing bank deposits and federal funds sold	$ (630)	$ 981	$ 351	$ (11)	$ 482	$ 471

Investment securities:						
U.S. Government obligations	(483)	452	(31)	(404)	(33)	(437)
Obligations of state and political subdivisions	909	208	1,117	(727)	255	(472)
Other securities	2,998	565	3,563	(168)	(60)	(228)
Loans held for sale	(1,669)	151	(1,518)	5,532	(238)	5,294
Portfolio loans	88,186	(32,092)	56,094	36,720	6,830	43,550
Change in interest income	$ 89,311	$ (29,735)	$ 59,576	$ 40,942	$ 7,236	$ 48,178
Increase (decrease) in interest expense:						
Interest-bearing transaction deposits	$ 183	$ 987	$ 1,170	$ 112	$ 202	$ 314
Savings and money market deposits	574	998	$ 1,572	322	238	560
Time deposits	1,341	1,784	3,125	1,218	217	1,435
Short-term borrowings:						
Federal funds purchased and repurchase agreements	79	506	585	2	209	211
Other	(110)	565	455	647	(12)	635
Long-term debt	208	2,976	3,184	35	139	174
Junior subordinated debt owed to unconsolidated trusts	166	450	616	261	432	693
Change in interest expense	$ 2,441	$ 8,266	$ 10,707	$ 2,597	$ 1,425	$ 4,022
Increase (decrease) in net interest income	$ 86,870	$ (38,001)	$ 48,869	$ 38,345	$ 5,811	$ 44,156
Percentage increase in net interest income over prior period			30.9%			38.7%

Earning Assets, Sources of Funds, and Net Interest Margin

Total average interest-earning assets increased $1.2 billion, or 24.9%, to $5.8 billion in 2017, as compared to $4.6 billion in 2016. Total average interest-earning assets increased $954.2 million, or 26.0%, to $4.6 billion in 2016, as compared to $3.7 billion in 2015. Average loans increased in 2017 due to the acquisitions of First Community and Mid Illinois, along with organic growth. Average loans for the year ended December 31, 2016 were impacted by the acquisition of Pulaski. Loans generally have notably higher yields compared to interest-bearing bank deposits and investment securities and our loan growth contributed to a positive effect on net interest margin.

Total average interest-bearing liability balances increased $793.5 million, or 22.9%, to $4.3 billion in 2017 as compared to $3.5 billion in 2016. Total average interest-bearing liability balances increased $726.5 million, or 26.5%, to $3.5 billion in 2016, as compared to $2.7 billion in 2015. Average noninterest-bearing deposits increased $303.1 million, or 31.9%, to $1.3 billion in 2017, as compared to $949.3 million in 2016. Average noninterest-bearing deposits increased $231.4 million, or 32.2%, to $949.3 million in 2016, as compared to $717.9 million in 2015. Average non-interest bearing deposits represented 25.0% of total average deposits in 2017. The Company remains strongly core deposit funded with total average deposits in 2017 representing 90.3% of total average liabilities, with solid liquidity and significant market share in the communities we serve.

Interest income, on a tax-equivalent basis, increased $59.6 million, or 35.4%, to $228.0 million in 2017, from $168.4 million in 2016. Interest income, on a tax-equivalent basis, increased $48.2 million, or 40.1%, to $168.4 million in 2016, from $120.2 million in 2015. The interest income increase for both years related primarily to the increase in loan volumes.

Interest expense increased during 2017 by $10.7 million to $20.9 million from $10.2 million in 2016. Interest expense increased during 2016 by $4.0 million to $10.2 million from $6.2 million in 2015. The increase in 2017 was primarily the result of the increase in deposits and borrowings related to the 2017 acquisitions. The increase in 2016 was primarily the result of the deposits and borrowings acquired from Pulaski.

Net interest income, on a tax-equivalent basis, increased $48.9 million, or 30.9%, in 2017 as compared to 2016. Net interest income, on a tax-equivalent basis, increased $44.2 million, or 38.7%, in 2016 as compared to 2015. The Federal Open Market Committee announced on March 15, 2017 that the federal funds rate increased from 0.75% to 1.00%, on June 15, 2017 that the federal funds rate increased from 1.00% to 1.25%, and on December 14, 2017 that the federal funds rate increased from 1.25% to 1.50%. These increases in interest rates were modestly favorable to net interest income in 2017. Future federal funds rate increases could be favorable to net interest income; however, rising interest rates could also result in decreased demand for first mortgages as well as mortgage refinancing, activities which contribute to a portion of the Company's mortgage revenue.

Net interest margin, our net interest income expressed as a percentage of average earning assets stated on a tax-equivalent basis, increased to 3.58% in 2017, which included a tax-equivalent adjustment of $3.7 million, compared to 3.42% in 2016, which included a tax-equivalent adjustment of $3.5 million, and 3.10% in 2015, with a tax-equivalent adjustment of $2.2 million. Net of purchase accounting accretion and amortization(2), the net interest margin for the year 2017 was 3.36%, an increase from 3.24% for the year 2016 and 3.07% for the year 2015.

The net interest spread, which represents the difference between the average rate earned on earning assets and the average rate paid on interest-bearing liabilities was 3.45% in 2017 compared to 3.34% in 2016 and 3.04% in 2015, each on a tax-equivalent basis.

The quarterly net interest margins were as follows:

	2017	2016	2015
First Quarter	3.53%	3.10%	3.03%
Second Quarter	3.47%	3.32%	3.05%
Third Quarter	3.60%	3.51%	3.10%
Fourth Quarter	3.68%	3.63%	3.23%

Management attempts to mitigate the effects of an unpredictable interest-rate environment through effective portfolio management, prudent loan underwriting and operational efficiencies.

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(2) For a reconciliation of net interest margin net of purchase accounting accretion and amortization, see Non-GAAP Financial Information.

Non-interest Income *(dollars in thousands)*

	As of December 31,							
	2017	2016	$ Change	% Change	2016	2015	$ Change	% Change
Trust fees	$ 23,665	$ 20,302	$ 3,363	16.6%	$ 20,302	$ 20,363	$ (61)	(0.3)%
Commissions and brokers' fees, net	3,372	2,839	533	18.8%	2,839	3,096	(257)	(8.3)%
Remittance processing	11,427	11,255	172	1.5%	11,255	11,120	135	1.2%
Fees for customer services	25,841	23,253	2,588	11.1%	23,253	19,083	4,170	21.9%
Mortgage revenue	11,140	11,952	(812)	(6.8)%	11,952	7,165	4,787	66.8%
Security gains, net	1,143	1,232	(89)	(7.2)%	1,232	380	852	224.2%
Other income	7,886	4,336	3,550	81.9%	4,336	3,585	751	20.9%
Total non-interest income	$ 84,474	$ 75,169	$ 9,305	12.4%	$ 75,169	$ 64,792	$ 10,377	16.0%

Total non-interest income of $84.5 million increased $9.3 million from $75.2 million in 2016. Total non-interest income of $75.2 million increased $10.4 million from $64.8 million in 2015. The 2017 results were inclusive of First Community since July 2, 2017 and Mid Illinois since October 1, 2017. The 2016 results were inclusive of Pulaski since April 30, 2016.

Combined wealth management revenue, consisting of trust fees and commissions and broker's fees, net, increased to $27.0 million in 2017 compared to $23.1 million in 2016. The 2017 increase was a result of new assets under care and market performance. Combined wealth management revenue, consisting of trust fees and commissions and broker's fees, net, of $23.1 million in 2016 decreased slightly from $23.5 million in 2015. The 2016 decrease was primarily a result of market performance in the beginning of the year, as well as a reduction in retirement plan based revenue. Two of the Company's acquisitions, Pulaski and First Community, had no legacy fee income in these businesses; therefore, the addition of these fee-based service offerings in these acquired bank markets is expected to provide attractive growth opportunities in future periods. Furthermore, the Company believes the boutique services offered by Trevett within its suite of wealth services broadens its business base and enhances its ability to further develop revenue sources. In addition, our professional farm management and brokerage services are entrusted to care and maximize value for landowners of prime farmland in Illinois.

Remittance processing revenue relates to our payment processing company, FirsTech. Remittance processing revenue of $11.4 million in 2017 increased 1.5% compared to $11.3 million in 2016. Remittance processing revenue of $11.3 million in 2016 increased 1.2% compared to $11.1 million in 2015. The 2017 increase was due to growth in various remittance processes, including lockbox and continued growth in the online and mobile service revenues while the 2016 increase was primarily due to growth in online and mobile service revenues, with some offset to growth based on customers lost through consolidation with other companies in the normal course of business. Remittance processing adds important diversity to our revenue stream while widening our array of service offerings to larger commercial clients within our footprint and nationally.

Fees for customer services were impacted by acquisition activity and increased to $25.8 million in 2017 as compared to $23.3 million in 2016, and as compared to $19.1 million in 2015. Evolving regulation, product changes and changing behaviors by our client base may impact the revenue derived from charges on deposit accounts.

Mortgage revenue of $11.1 million in 2017 decreased $0.8 million compared to $12.0 million in 2016 due to lower mortgage volumes. Mortgage revenue of $12.0 million in 2016 increased $4.8 million compared to $7.2 million in 2015 principally from the additional mortgage activity contributed by the operations acquired from Pulaski.

Security gains, net, of $1.1 million in 2017 decreased slightly compared to $1.2 million in 2016. Security gains, net, of $1.2 million in 2016 increased compared to $0.4 million in 2015. Security gains, net, vary based on the Company's decisions around selling securities. In the first quarter of 2017, the Company sold 100% risk weighted investments and reinvested in 20% risk weighted investments at higher yields to produce higher future returns. The 2016 increase primarily related to a first quarter 2016 strategic bond trade that repositioned the investment portfolio to maintain future net interest margin strength and simultaneously elevated the current economic value to stockholders through non-interest income. The Company sold $31.1 million of seasoned To-Be-Announced eligible residential mortgage-backed securities to take advantage of a price floor phenomenon, with related gains of $1.1 million on the sale. The sales proceeds were reinvested within normal investment parameters at similar yields to the securities sold.

Other income of $7.9 million in 2017 increased as compared to $4.3 million in 2016 and as compared to $3.6 million in 2015, across multiple revenue sources, including commercial loan sales gains, swap origination fee income, and fluctuations on private equity investments.

Non-interest Expense *(dollars in thousands)*

	As of December 31,							
	2017	2016	$ Change	% Change	2016	2015	$ Change	% Change
Salaries, wages and employee	$ 95,633	$ 78,397	$ 17,236	22.0%	$ 78,397	$ 63,516	$ 14,881	23.4%

benefits								
Net occupancy expense of premises	13,830	11,633	2,197	18.9%	11,633	8,704	2,929	33.7%
Furniture and equipment expenses	7,089	6,591	498	7.6%	6,591	4,958	1,633	32.9%
Data processing	19,295	20,645	(1,350)	(6.5)%	20,645	12,940	7,705	59.5%
Amortization of intangible assets	5,245	4,438	807	18.2%	4,438	3,192	1,246	39.0%
Regulatory expense	2,535	2,859	(324)	(11.3)%	2,859	2,357	502	21.3%
Other expense	30,799	23,299	7,500	32.2%	23,299	19,638	3,661	18.6%
Total non-interest expense	$ 174,426	$ 147,862	$ 26,564	18.0%	$ 147,862	$ 115,305	$ 32,557	28.2%
Income taxes	$ 45,385	$ 26,723	$ 18,662	69.8%	$ 26,723	$ 20,696	$ 6,027	29.1%
Effective rate on income taxes	42.0%	35.0%			35.0%	34.7%		
Efficiency ratio	58.3%	61.8%			61.8%	62.8%		
Full-time equivalent employees as of period-end	1,347	1,295			1,295	795		

Total non-interest expense of $174.4 million in 2017 increased by $26.5 million as compared to $147.9 million in 2016 and increased by $32.6 million in 2016 as compared to $115.3 million in 2015. Pre-tax acquisition expenses of $7.1 million impacted 2017 while pre-tax acquisition expenses of $10.0 million impacted 2016. We continue to examine all areas of the Company and remain focused on expense discipline.

Salaries, wages and employee benefits increased to $95.6 million in 2017 as compared to $78.4 million in 2016 and $63.5 million in 2015. For 2017, the increase in salaries, wages and employee benefits was due to an increased number of employees resulting from the First Community and Mid Illinois acquisitions and $1.6 million in restructuring costs. The 2016 increase over 2015 was primarily due to an increased number of employees resulting from the Pulaski acquisition and $2.6 million in restructuring costs. By the end of 2017, full-time equivalent employees totaled 1,347, up from 1,295 at December 31, 2016 and 795 at December 31, 2015.

Combined net occupancy expense of premises and furniture and equipment expenses of $20.9 million in 2017 increased as compared to $18.2 million in 2016 and increased in 2016 as compared to $13.7 million in 2015. Acquisitions in 2017 and 2016 have added a combined 35 banking centers. The Company continues to evaluate its banking center network and the Company has determined five banking centers will be closed in the first quarter of 2018.

Data processing expense decreased 6.5% in 2017 to $19.3 million as compared to $20.6 million in 2016 and increased 59.5% in 2016 as compared to $12.9 million in 2015. Variances are largely related to payment of deconversion expenses related to acquisitions.

Amortization of intangible assets increased in 2017 to $5.2 million as compared to $4.4 million in 2016 as a result of the First Community and Mid Illinois acquisitions. Amortization of intangible assets increased in 2016 to $4.4 million as compared to $3.2 million in 2015 as a result of the Pulaski acquisition.

Regulatory expense decreased 11.3% in 2017 to $2.5 million as compared to $2.9 million in 2016. Regulatory expense increased 21.3% in 2016 to $2.9 million as compared to $2.4 million in 2015.

Other expense of $30.8 million in 2017 increased $7.5 million as compared to $23.3 million in 2016 and increased $3.7 million in 2016 as compared to $19.6 million in 2015. Variances are across multiple expense categories, including professional and legal fees around acquisitions.

The effective rate on income taxes, or income taxes divided by income before taxes, was 42.0%, 35.0% and 34.7% for the years ended December 31, 2017, 2016 and 2015, respectively. The 2017 rate was impacted by a one-time, non-cash charge of $8.1 million, due to the revaluation of the Company's net deferred tax position following the enactment of the TCJA.

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In general and not including the 2017 TCJA impact, rates were lower than the combined federal and state statutory rate of approximately 40% in 2017, 2016 and 2015 due to fairly stable amounts of tax preferred interest income, such as municipal bond interest and bank owned life insurance income. The Company continues to monitor evolving federal and state tax legislation and its potential impact on operations on an ongoing basis. Effective July 1, 2017, the combined Illinois corporate income tax rate and replacement tax rate increased from 7.75% to 9.50%, which will have a negative impact on the Company's tax expense in future periods. Effective January 1, 2018 in connection with the TCJA, the corporate federal tax rate was reduced from 35.0% to 21.0%, which will have a positive impact on the Company's tax expense in future periods.

The efficiency ratio represents total non-interest expense, less amortization charges, as a percentage of tax-equivalent net interest income plus non-interest income, less security gains and losses. The efficiency ratio, which is a non-GAAP financial measure commonly used by management and the investment community in the banking industry, measures the amount of expense that is incurred to generate a dollar of revenue. The efficiency ratio improved in 2017 to 58.3% as compared to 61.8% in 2016 and 62.8% in 2015. Operating costs have been influenced by acquisitions and the adjusted efficiency ratio(3), excluding the impact of such acquisition costs among other items, was 55.6% for the year ended December 31, 2017. While acquisition expenses may have a negative impact on the efficiency ratios, the Company expects to realize operating efficiencies creating a positive impact in future years. We will continue to examine appropriate avenues to improve efficiency.

Balance Sheet

Significant Balance Sheet Items *(dollars in thousands)*

	December 31, 2017	December 31, 2016	$ Change	% Change

Assets				
Securities available for sale	$ 878,060	$ 759,811	$ 118,249	15.6%
Securities held to maturity	443,550	47,820	395,730	827.5%
Loans held for sale	94,848	256,319	(161,471)	(63.0)%
Portfolio loans, net	5,465,918	3,831,105	1,634,813	42.7%
Total assets	$ 7,860,640	$ 5,425,170	$ 2,435,470	44.9%
Liabilities				
Deposits:				
Noninterest-bearing	$ 1,597,421	$ 1,134,133	$ 463,288	40.8%
Interest-bearing	4,528,544	3,240,165	1,288,379	39.8%
Total deposits	$ 6,125,965	$ 4,374,298	$ 1,751,667	40.0%
Securities sold under agreements to repurchase	$ 304,566	$ 189,157	$ 115,409	61.0%
Short-term borrowings	220,000	75,000	145,000	193.3%
Long-term debt	50,000	80,000	(30,000)	(37.5)%
Senior notes, net of unamortized issuance costs	39,404	—	39,404	100%
Subordinated notes, net of unamortized issuance costs	64,715	—	64,715	100%
Junior subordinated debt owed to unconsolidated trusts	71,008	70,868	140	0.2%
Total liabilities	$ 6,925,637	$ 4,830,856	$ 2,094,781	43.4%
Stockholders' equity	$ 935,003	$ 594,314	$ 340,689	57.3%

(3) For a reconciliation of adjusted efficiency ratio, a non-GAAP financial measure, see Non-GAAP Financial Information.

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Investment Securities

The Company has classified the majority of its investment securities as available for sale. Securities available for sale are carried at fair value. Securities held to maturity are carried at cost, adjusted for amortization of premiums and accretion of discounts. As of December 31, 2017, the fair value of securities available for sale was $878.1 million and the amortized cost was $882.8 million. There were $1.9 million of gross unrealized gains and $6.7 million of gross unrealized losses for a net unrealized loss of $4.8 million. The net unrealized loss, net of tax, has been included in stockholders' equity. As of December 31, 2017, the amortized cost of securities held to maturity was $443.6 million and the fair value was $441.1 million.

The composition of securities available for sale was as follows *(dollars in thousands):*

	As of December 31,				
	2017	2016	2015	2014	2013
U.S. Treasury securities	$ 60,348	$ 74,944	$ 65,191	$ 50,606	$102,640
Obligations of U.S. government corporations and agencies	103,665	79,127	132,605	167,010	257,411
Obligations of states and political subdivisions	280,199	154,938	178,612	220,161	272,152
Residential mortgage-backed securities	397,436	302,249	307,549	235,636	177,735
Corporate debt securities	31,034	143,343	148,805	79,307	25,506
Mutual funds and other equity securities	5,378	5,210	2,076	6,345	5,866
Fair value of securities available for sale	$ 878,060	$ 759,811	$ 834,838	$ 759,065	$841,310
Amortized cost	$ 882,837	$ 759,751	$ 830,935	$ 749,364	$833,735
Fair value as a percentage of amortized cost	99.46%	100.01%	100.47%	101.29%	100.91%

The composition of securities held to maturity was as follows *(dollars in thousands):*

	As of December 31,				
	2017	2016	2015	2014	2013
Obligations of states and political subdivisions	41,464	44,295	49,250	1,371	831
Commercial mortgage-backed securities	60,218	3,388	1,021	1,054	—
Residential mortgage-backed securities	339,370	—	—	—	—
Fair value of securities held to maturity	$ 441,052	$ 47,683	$ 50,271	$ 2,425	$ 831
Amortized cost	$ 443,550	$ 47,820	$ 49,832	$ 2,373	$ 834
Fair value as a percentage of amortized cost	99.44%	99.71%	100.88%	102.19%	99.64%

The primary purposes of the investment portfolio include providing a source of liquidity, providing collateral for pledging purposes against public monies and repurchase agreements, serving as a tool for interest rate risk positioning and providing a source of earnings by deploying funds which are not needed to fulfill loan demand, deposit redemptions or other liquidity purposes. Pledged securities totaled $638.2 million, or 48.4% of total securities, and $547.2 million, or 67.8% of total securities, at December 31, 2017 and 2016, respectively.

The maturities, fair values and weighted average yields of securities available for sale and held to maturity as of December 31, 2017 were *(dollars in thousands)*:

	Due in 1 year or less		Due after 1 year through 5 years		Due after 5 years through 10 years		Due after 10 years	
Available for sale(1) (2)	**Fair Value**	**Weighted Average Yield(3)**	**Fair Value**	**Weighted Average Yield(3)**	**Fair Value**	**Weighted Average Yield(3)**	**Fair Value**	**Weighted Average Yield(3)**
U.S. Treasury securities	$ 14,934	1.44%	$ 45,340	1.70%	$ 74	2.00%	$ —	—%
Obligations of U.S. government corporations and agencies	15,117	1.31%	72,218	1.50%	16,330	2.11%	—	—%
Obligations of states and political subdivisions(4)	49,670	2.58%	107,519	2.54%	83,036	3.28%	39,974	3.52%
Residential mortgage-backed securities	182	1.48%	4,663	3.27%	74,658	2.34%	317,933	2.27%
Corporate debt securities	782	4.72%	24,808	2.67%	5,444	3.84%	—	—%
Total	$ 80,685	2.15%	$ 254,548	2.12%	$ 179,542	2.80%	$ 357,907	2.41%

	Due in 1 year or less		Due after 1 year through 5 years		Due after 5 years through 10 years		Due after 10 years	
Held to maturity(1)	**Fair Value**	**Weighted Average Yield(3)**	**Fair Value**	**Weighted Average Yield(3)**	**Fair Value**	**Weighted Average Yield(3)**	**Fair Value**	**Weighted Average Yield(3)**
Obligations of states and political subdivisions(4)	$ 4,410	2.20%	$ 20,073	2.82%	$ 15,092	3.25%	$ 1,889	3.29%
Commercial mortgage-backed securities	—	—%	41,428	2.19%	18,790	2.63%	—	—%
Residential mortgage-backed securities	—	—%	—	—%	—	—%	339,370	2.55%
Total	$ 4,410	2.20%	$ 61,501	2.40%	$ 33,882	2.91%	$ 341,259	2.56%

(1) Securities are presented based upon final contractual maturity or pre-refunded date.
(2) Excludes mutual funds and other equity securities.
(3) Securities with floating rates are assumed to remain constant at their rates as of December 31, 2017.
(4) Weighted average yield calculated on a tax-equivalent basis, assuming a federal income tax rate of 35%.

We consider many factors in determining the composition of our investment portfolio including, but not limited to, credit quality, duration, interest rate risk, liquidity, tax-equivalent yield, regulatory and overall portfolio allocation. As of December 31, 2017, the Company did not have any non-U.S. Treasury securities or obligations of U.S. government corporations and agencies issued securities that exceeded 10% of the Company's total stockholders' equity.

Loans Held for Sale

Loans held for sale totaled $94.8 million and $256.3 million at December 31, 2017 and 2016, respectively. The amount of loans held for sale decreased from December 31, 2016, due to lower mortgage volumes and increased delivery efficiency. During the fourth quarter of 2017, the Company closed on an agreement with MB Financial Bank to transfer approximately 165 residential mortgage lenders and their associated loan portfolios located in Kansas, Missouri, Nebraska, Iowa and Colorado, which the Company acquired in the Pulaski acquisition. The sale resulted in a net gain of $0.9 million, partially mitigating the lower mortgage volumes experienced during the transition. Mortgage lending continues to remain an important part of the Company's business. This transaction aligned the Company's mortgage origination resources to its current market footprint.

Loans held for sale generate net interest income until loans are delivered to investors, at which point mortgage revenue will be recognized.

Portfolio Loans

The composition of our portfolio loans as of the dates indicated was as follows *(dollars in thousands):*

	As of December 31,				
	2017	**2016**	**2015**	**2014**	**2013**
Commercial	$ 1,414,631	$ 959,888	$ 656,576	$ 601,760	$ 580,612
Commercial real estate	2,354,684	1,654,164	1,208,429	1,104,151	1,092,273
Real estate construction	261,506	182,078	96,568	107,054	78,855
Retail real estate	1,460,801	1,069,060	651,191	582,073	520,653
Retail other	27,878	13,710	14,975	10,252	9,067
Portfolio loans	$ 5,519,500	$ 3,878,900	$ 2,627,739	$ 2,405,290	$ 2,281,460

Geographic distributions of portfolio loans by category were as follows *(dollars in thousands)*:

	December 31, 2017				
	Illinois	**Missouri**	**Florida**	**Indiana**	**Total**
Commercial	$ 974,392	$ 378,424	$ 19,005	$ 42,810	$ 1,414,631
Commercial real estate	1,505,819	547,200	147,360	154,305	2,354,684
Real estate construction	87,084	74,662	26,209	73,551	261,506
Retail real estate	835,287	509,500	98,112	17,902	1,460,801
Retail other	26,230	685	961	2	27,878
Portfolio loans	$ 3,428,812	$ 1,510,471	$ 291,647	$ 288,570	$ 5,519,500

Less allowance for loan losses	53,582
Net portfolio loans	$ 5,465,918

	December 31, 2016				
	Illinois	Missouri	Florida	Indiana	Total
Commercial	$ 565,853	$ 346,204	$ 19,207	$ 28,624	$ 959,888
Commercial real estate	878,018	470,126	150,940	155,080	1,654,164
Real estate construction	53,142	71,430	12,789	44,717	182,078
Retail real estate	479,026	468,212	105,620	16,202	1,069,060
Retail other	12,250	565	895	—	13,710
Portfolio loans	$ 1,988,289	$ 1,356,537	$ 289,451	$ 244,623	$ 3,878,900
Less allowance for loan losses					47,795
Net portfolio loans					$ 3,831,105

Portfolio loans increased $1.6 billion, or 42.3%, as of December 31, 2017 compared to December 31, 2016 as a result of the First Community and Mid Illinois acquisitions and organic growth. Commercial balances (consisting of commercial, commercial real estate and real estate construction loans) increased $1.2 billion from December 31, 2016. Retail real estate and retail other loans increased $405.9 million from December 31, 2016. Busey Bank saw growth in its Missouri and Indiana markets where active growth efforts are underway.

Commitments to extend credit and standby letters of credit totaled $1.3 billion and $895.2 million as of December 31, 2017 and 2016, respectively.

Relationship banking, rather than transactional banking, remains a focus for the Company. Relationship banking implies a primary banking relationship with the borrower that includes, at minimum, an active deposit banking relationship in addition to the lending relationship.

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The following table sets forth remaining maturities of selected loans (excluding loan accretion and certain real estate-mortgage loans and installment loans to individuals) at December 31, 2017 *(dollars in thousands)*:

	1 Year or Less	1 to 5 Years	Over 5 Years	Total
Commercial	$ 772,868	$ 498,896	$ 146,014	$ 1,417,778
Commercial real estate	567,005	1,367,383	433,934	2,368,322
Real estate construction	186,335	50,051	26,201	262,587
Total	$ 1,526,208	$ 1,916,330	$ 606,149	$ 4,048,687
Interest rate sensitivity of selected loans				
Fixed rate	$ 851,506	$ 1,607,221	$ 569,435	$ 3,028,162
Adjustable rate	674,702	309,109	36,714	1,020,525
Total	$ 1,526,208	$ 1,916,330	$ 606,149	$ 4,048,687

Allowance for Loan Losses

The following table shows activity affecting the allowance for loan losses *(dollars in thousands)*:

	Years ended December 31,				
	2017	2016	2015	2014	2013
Average portfolio loans outstanding during period	$ 4,567,259	$ 3,394,352	$ 2,518,328	$ 2,290,441	$ 2,105,769
Allowance for loan losses:					
Balance at beginning of period	$ 47,795	$ 47,487	$ 47,453	$ 47,567	$ 48,012
Loans charged-off:					
Commercial	$ (994)	$ (6,598)	$ (1,333)	$ (1,990)	$ (964)
Commercial real estate	(1,965)	(470)	(1,462)	(1,173)	(3,904)
Real estate construction	(48)	(24)	—	(726)	(1,268)
Retail real estate	(2,691)	(2,106)	(1,534)	(3,052)	(4,015)
Retail other	(541)	(458)	(365)	(430)	(518)
Total charge-offs	$ (6,239)	$ (9,656)	$ (4,694)	$ (7,371)	$ (10,669)
Recoveries:					
Commercial	$ 3,561	$ 1,266	$ 391	$ 410	$ 213
Commercial real estate	716	123	1,491	2,379	563
Real estate construction	458	441	284	1,612	706
Retail real estate	1,563	2,317	729	644	875
Retail other	425	267	233	212	367
Total recoveries	$ 6,723	$ 4,414	$ 3,128	$ 5,257	$ 2,724
Net loan recoveries (charge-offs)	$ 484	$ (5,242)	$ (1,566)	$ (2,114)	$ (7,945)
Provision for loan losses	$ 5,303	$ 5,550	$ 1,600	$ 2,000	$ 7,500
Balance at end of period	$ 53,582	$ 47,795	$ 47,487	$ 47,453	$ 47,567
Ratios:					
Net (recoveries) charge-offs to average portfolio loans	(0.01)%	0.15%	0.06%	0.09%	0.38%
Allowance for loan losses to portfolio loans at period end	0.97%	1.23%	1.81%	1.97%	2.08%

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Our allowance for loan losses was $53.6 million, or 1.0% of portfolio loans, and $47.8 million, or 1.2% of portfolio loans, at December 31, 2017 and 2016, respectively. As a result of acquisitions, the Company is holding $1.8 billion of acquired loans that are carried net of a fair value adjustment of $23.6 million for credit and interest rate marks and are only included in the allowance calculation to the extent that the reserve requirement exceeds the fair value adjustment. The following table sets forth the allowance for loan losses by loan categories as of December 31 for each of the years indicated *(dollars in thousands):*

	2017		2016		2015		2014		2013	
	Amount	% of Loans to Total Loans	Amount	% of Loans to Total Loans	Amount	% of Loans to Total Loans	Amount	% of Loans to Total Loans	Amount	% of Loans to Total Loans
Commercial	$ 14,779	25.6%	$ 13,303	24.7%	$ 13,115	24.9%	$ 10,041	24.9%	$ 10,378	25.3%
Commercial real estate	21,813	42.7%	20,623	42.6%	18,604	45.8%	20,639	45.8%	22,112	47.6%
Real estate construction	2,861	4.7%	1,870	4.7%	1,763	3.6%	2,795	4.4%	3,708	3.4%
Retail real estate	13,783	26.5%	11,648	27.6%	13,714	25.1%	13,662	24.5%	11,149	23.3%
Retail other	346	0.5%	351	0.4%	291	0.6%	316	0.4%	220	0.4%
Total	$ 53,582	100.0%	$ 47,795	100.0%	$ 47,487	100.0%	$ 47,453	100.0%	$ 47,567	100.0%

As of December 31, 2017, management believed the level of the allowance and coverage of non-performing loans to be appropriate based upon the information available. However, additional losses may be identified in our loan portfolio as new information is obtained. We may need to provide for additional loan losses in the future as management continues to identify potential problem loans and gains further information concerning existing problem loans.

Provision for Loan Losses

The provision for loan losses is a current charge against income and represents an amount which management believes is sufficient to maintain an appropriate allowance for known and probable losses in the loan portfolio. In assessing the appropriateness of the allowance for loan losses, management considers the size and quality of the loan portfolio measured against prevailing economic conditions, regulatory guidelines, historical loan loss experience and credit quality of the portfolio. When a determination is made by management to charge-off a loan balance, a write-off is charged against the allowance for loan losses. We continue to attempt to identify problem loan situations on a proactive basis. Once problem loans are identified, adjustments to the provision for loan losses are made based upon all information available at that time.

The provision for loan losses was $5.3 million in 2017, $5.6 million in 2016 and $1.6 million in 2015. As a result of acquisitions, the Company is holding acquired loans that are carried net of a fair value adjustment for credit and interest rate marks and are only included in the allowance calculation to the extent that the reserve requirement exceeds the fair value adjustment. However, as the acquired loans renew and as the Company originates new loan production, it is necessary to establish an allowance for losses, which represents an amount that, in management's opinion, will be adequate to absorb probable credit losses.

Sensitive assets include non-accrual loans, loans on our classified loan reports and other loans identified as having more than reasonable potential for loss. Management reviews sensitive assets on at least a quarterly basis for changes in each applicable customer's ability to pay and changes in valuation of underlying collateral in order to estimate probable losses. The majority of these loans are being repaid in conformance with their contracts.

Non-performing Loans

Loans are considered past due if the required principal and interest payments have not been received as of the date such payments were due. Loans are placed on non-accrual status when, in management's opinion, the borrower may be unable to meet payment obligations as they become due, as well as when required by regulatory provisions. Loans may be placed on non-accrual status regardless of whether or not such loans are considered past due. Loans are returned to accrual status when all the principal and interest amounts contractually due are brought current and future payments are reasonably assured.

Typically, loans are collateral dependent. When a collateral dependent loan is classified as non-accrual it is charged down through the allowance for loan losses to the fair value of our interest in the underlying collateral less estimated costs to sell. Our loan portfolio is collateralized primarily by real estate.

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The following table sets forth information concerning non-performing loans and performing restructured loans at December 31 for each year indicated *(dollars in thousands)*:

	2017	2016	2015	2014	2013
Non-accrual loans	$ 24,624	$ 21,423	$ 12,748	$ 9,000	$ 17,164
Loans 90+ days past due and still accruing	2,741	131	15	10	195
Total non-performing loans	$ 27,365	$ 21,554	$ 12,763	$ 9,010	$ 17,359
Repossessed assets	$ 1,282	$ 2,517	$ 779	$ —	$ 1,732
Other assets acquired in satisfaction of debts previously contracted	1	1	4	216	401
Total other real estate owned ("OREO")	$ 1,283	$ 2,518	$ 783	$ 216	$ 2,133
Total non-performing loans and OREO	$ 28,648	$ 24,072	$ 13,546	$ 9,226	$ 19,492

Non-performing loans to portfolio loans, before allowance for loan losses		0.50%		0.56%		0.49%		0.37%		0.76%
Non-performing loans and OREO to portfolio loans, before allowance for loan losses		0.52%		0.62%		0.52%		0.38%		0.85%
Performing restructured loans not included above	$	9,981	$	10,652	$	8,830	$	11,866	$	11,891

Total non-performing loans and OREO were $28.6 million at December 31, 2017, compared to $24.1 million at December 31, 2016. Asset quality metrics remain dependent upon market-specific economic conditions, and specific measures may fluctuate from quarter to quarter.

Potential Problem Loans

Potential problem loans are those loans which are not categorized as impaired, restructured, non-accrual or 90+ days past due, but where current information indicates that the borrower may not be able to comply with present loan repayment terms. Management assesses the potential for loss on such loans as it would with other problem loans and has considered the effect of any potential loss in determining its provision for probable loan losses. Potential problem loans totaled $70.4 million at December 31, 2017, compared to $50.2 million at December 31, 2016. Management continues to monitor these credits and anticipates that restructurings, guarantees, additional collateral or other planned actions will result in full repayment of the debts. As of December 31, 2017, management identified no other loans that represent or result from trends or uncertainties which management reasonably expected to materially impact future operating results, liquidity or capital resources.

Deposits

Deposit balances increased as a result of the First Community and Mid Illinois acquisitions. As we continue to focus on deepening our relationship value with customers, we expect to foster deposit growth. As indicated in the following table, average noninterest-bearing deposits as a percentage of average total deposits increased to 25.0% for the year ended December 31, 2017, from 23.8% for the year ended December 31, 2016, and 22.7% for the year ended December 31, 2015 *(dollars in thousands)*:

	Years Ended December 31,								
	2017			2016			2015		
	Average Balance	% Total	Average Rate	Average Balance	% Total	Average Rate	Average Balance	% Total	Average Rate
Demand deposits, noninterest- bearing	$ 1,252,363	25.0%	0.00%	$ 949,271	23.8%	0.00%	$ 717,854	22.7%	0.00%
Interest-bearing transaction deposits	1,103,245	22.0%	0.18%	924,078	23.2%	0.09%	769,530	24.3%	0.06%
Saving deposits and money market deposits	1,729,492	34.5%	0.22%	1,392,335	34.9%	0.16%	1,180,881	37.2%	0.14%
Time deposits	927,736	18.5%	0.77%	721,124	18.1%	0.56%	500,296	15.8%	0.52%
Total	$ 5,012,836	100.0%	0.26%	$ 3,986,808	100.0%	0.18%	$ 3,168,561	100.0%	0.15%

Borrowings

Securities sold under agreements to repurchase, which are classified as secured borrowings, generally mature daily. Short-term borrowings include FHLB advances which mature in less than one year from date of origination.

On May 5, 2017, the Company entered into an amendment to a credit agreement with a correspondent bank to extend a revolving loan facility to the Company in the maximum principal amount of $40.0 million. The loan has an annual interest rate of 2.50% plus the one-month LIBOR rate and has a maturity date of April 30, 2018. The loan also bears a non-usage fee calculated based on the average daily principal balance of the loan outstanding during the prior fiscal quarter. The Company had no outstanding amount on December 31, 2017 and 2016.

The following table sets forth the distribution of short-term borrowings and weighted average interest rates thereon as of December 31, 2017, 2016 and 2015 *(dollars in thousands)*.

		December 31, 2017		December 31, 2016		December 31, 2015
Securities sold under agreements to repurchase						
Balance at end of period	$	304,566	$	189,157	$	172,972
Weighted average interest rate at end of period		0.57%		0.30%		0.18%
Maximum outstanding at any month end in year-to-date period	$	304,566	$	216,293	$	202,376
Average daily balance for the year-to-date period	$	213,527	$	181,474	$	179,662
Weighted average interest rate during period(1)		0.46%		0.22%		0.10%
Short-term borrowings, FHLB advances						
Balance at end of period	$	220,000	$	75,000	$	—
Weighted average interest rate at end of period		1.42%		0.63%		—%
Maximum outstanding at any month end in year-to-date period	$	234,600	$	236,700	$	—
Average daily balance for the year-to-date period	$	84,201	$	96,698	$	—
Weighted average interest rate during period(1)		1.20%		0.53%		—%
Short-term borrowings, revolving loan						
Balance at end of period	$	—	$	—	$	—
Weighted average interest rate at end of period		—%		—%		—%
Maximum outstanding at any month end in year-to-date period	$	—	$	10,000	$	—

Average daily balance for the year-to-date period	$	—	$	2,596	$	—
Weighted average interest rate during period(1) (2)		—%		4.78%		—%

(1)The weighted average interest rate is computed by dividing total interest for the period by the average daily balance outstanding.
(2)Includes interest and non-usage fee.

Long-term debt includes funds borrowed from the FHLB and totaled $50.0 million and $80.0 million at December 31, 2017 and 2016, respectively.

On May 25, 2017, the Company issued $40.0 million of 3.75% senior notes that mature on May 25, 2022. The senior notes are payable semi-annually on each May 25 and November 25, commencing on November 25, 2017. Additionally, on May 25, 2017, the Company issued $60.0 million of fixed-to-floating rate subordinated notes that mature on May 25, 2027. The subordinated notes, which qualify as Tier 2 capital for First Busey, are at an initial rate of 4.75% for five years and thereafter at an annual floating rate equal to three-month LIBOR plus a spread of 2.919%. The subordinated notes are payable semi-annually on each May 25 and November 25, commencing on November 25, 2017 during the five year fixed-term and thereafter each February 25, May 25, August 25 and November 25 of each year, commencing on August 25, 2022. The subordinated notes have an optional redemption in whole or in part on any interest payment date on or after May 25, 2022. The senior notes and subordinated notes are unsecured obligations of the Company. Unamortized debt issuance costs related to the senior notes and subordinated notes totaled $0.6 million and $1.0 million, respectively, at December 31, 2017. The Company used the net proceeds from the offering to finance a portion of the cash consideration for its acquisition of First Community, to redeem a portion of First Community subordinated debentures in July 2017, and to finance a portion of the cash consideration for its acquisition of Mid Illinois in October 2017, with the remaining proceeds to be used for general corporate purposes.

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In relation to the First Community acquisition, the Company assumed $15.3 million in subordinated debt, of which $9.8 million was simultaneously redeemed. The remaining $5.5 million was issued on September 30, 2013, matures on September 30, 2021 and bears interest payable quarterly, at an annual interest rate of 8.625%. Beginning on September 30, 2018, the Company may, at its option, redeem the subordinated debt at a redemption price equal to the principal amount outstanding plus accrued but unpaid interest. A $0.3 million purchase accounting premium was recorded on the remaining subordinated debt.

Liquidity

Liquidity management is the process by which we ensure that adequate liquid funds are available to meet the present and future cash flow obligations arising in the daily operations of our business. These financial obligations consist of needs for funds to meet commitments to borrowers for extensions of credit, fund capital expenditures, honor withdrawals by customers, pay dividends to stockholders and pay operating expenses. Our most liquid assets are cash and due from banks, interest-bearing bank deposits and federal funds sold. The balances of these assets are dependent on the Company's operating, investing, lending, and financing activities during any given period.

Average liquid assets are summarized in the table below *(dollars in thousands)*:

	Years Ended December 31,		
	2017	2016	2015
Cash and due from banks	$ 92,184	$ 70,785	$ 86,942
Interest-bearing bank deposits	130,805	232,460	237,819
Federal funds sold	1,659	1,344	—
Total	$ 224,648	$ 304,589	$ 324,761
Percent of average total assets	3.6%	6.1%	8.3%

First Busey's primary sources of funds consist of deposits, investment maturities and sales, loan principal repayments, and capital funds. Additional liquidity is provided by the ability to borrow from the FHLB, the Federal Reserve or brokered deposits.

As of December 31, 2017, management believed that adequate liquidity existed to meet all projected cash flow obligations. We seek to achieve a satisfactory degree of liquidity by actively managing both assets and liabilities. Asset management guides the proportion of liquid assets to total assets, while liability management monitors future funding requirements and prices liabilities accordingly.

The ability of the Company to pay cash dividends to its stockholders and to service its debt was historically dependent on the receipt of cash dividends from its subsidiaries. Under applicable regulatory requirements, Illinois state-chartered banks such as Busey Bank and South Side Bank may not pay dividends in excess of their net profits. Because Busey Bank has been in an accumulated deficit position since 2009, it has not been able to pay dividends since that time. With prior approval from its regulators, however, an Illinois state-chartered bank in this situation may be able to reduce its capital stock, by amending its charter to decrease the authorized number of shares, and then make a subsequent distribution to its holding company. Using this approach, and with the approval of its regulators, Busey Bank has distributed funds to the Company, the most recent of which was $40.0 million on October 12, 2017. The Company expects to seek regulatory approval for additional capital distributions from Busey Bank in future periods until such time as Busey Bank is no longer in an accumulated deficit position. South Side Bank had positive retained earnings and is able to pay dividends to the Company prior to the bank merger.

Off-Balance-Sheet Arrangements

The Banks routinely enter into commitments to extend credit and standby letters of credit in the normal course of their businesses. As of December 31, 2017 and 2016, we had outstanding loan commitments and standby letters of credit of $1.3 billion and $895.2 million, respectively. The balance of commitments to extend credit represents future cash requirements and some of these commitments may expire without being drawn upon. We anticipate we will have sufficient funds available to meet current loan commitments, including loan applications received and in process prior to the issuance of firm commitments.

Contractual Obligations

We have entered into certain contractual obligations and other commitments. Such obligations generally relate to funding of operations through deposits, debt issuance, and property and equipment leases.

The following table summarizes significant contractual obligations and other commitments as of December 31, 2017 *(dollars in thousands)*:

	Certificates of Deposit	Operating Leases	Junior Subordinated Debt Owed to Unconsolidated Trusts	Long-term Debt	Senior and Subordinated Notes, net of unamortized issuance costs	Total
2018	$ 915,514	$ 1,817	$ —	$ —	$ —	$ 917,331
2019	271,023	1,503	—	20,000	—	292,526
2020	63,931	1,306	—	—	—	65,237
2021	37,949	825	—	18,000	5,670	62,444
2022	47,734	640	—	—	39,404	99,778
Thereafter	11	1,540	71,008	12,000	59,045	131,604
Total	$ 1,336,162	$ 7,631	$ 71,008	$ 50,000	$ 104,119	$ 1,568,920

Commitments to extend credit and standby letters of credit	$ 1,337,525

Cash Flows

Net cash flows provided by operating activities totaled $253.4 million in 2017 compared to cash flows used in operating activities of $20.9 million in 2016 and compared to cash flows provided by operating activities of $61.5 million in 2015. Significant items affecting the cash flows provided by operating activities include net income, depreciation, amortization expenses, the provision for loan losses, deferred income taxes, gain on sales of mortgage loans, net of origination costs and activities related to the origination and sales of loans held for sale. Net cash provided in loan originations was $205.9 million in 2017, compared to cash used in loan originations of $54.8 million in 2016 and compared to cash provided by loan originations of $8.6 million in 2015. Fluctuations in sales are also a function of changes in market rates for mortgage loans, which influence refinance activity.

Net cash used in investing activities was $293.9 million in 2017, compared to cash provided by investment activities of $149.7 million in 2016 and compared to cash used by investment activities of $134.2 million in 2015. Significant items affecting cash flows from investing activities are those activities associated with managing the Company's investment and loan portfolios and cash received in acquisitions. The Company experienced a net increase in loans of $169.2 million in 2017, $1.3 million in 2016, excluding acquired loans and $118.4 million in 2015.

Net cash provided by financing activities totaled $227.1 million in 2017, compared to cash used in financing activities of $281.4 million in 2016 and compared to cash provided by financial activities of $52.6 million in 2015. Significant items affecting cash flows from financing activities are debt issuance, deposits, short-term borrowings, long-term debt, payment of dividends and proceeds and redemption from stock issuances. Deposits, which represent the Company's primary funding source, increased by $111.8 million in 2017, excluding acquired deposits, compared to a decrease of $142.1 million in 2016, excluding acquired deposits, compared to an increase of $146.4 million in 2015. Securities sold under agreements to repurchase increased $28.9 million in 2017, but decrease $6.7 million in 2016 and $25.9 million in 2015. In 2015, the Company redeemed all of the 72,664 shares of its Senior Non-Cumulative Perpetual Preferred Stock, Series C ("Series C Preferred Stock") that had been issued to the Treasury pursuant to the Small Business Lending Fund ("SBLF") program.

Capital Resources

Our capital ratios are in excess of those required to be considered "well-capitalized" pursuant to applicable regulatory guidelines. The Federal Reserve Board uses capital adequacy guidelines in its examination and regulation of bank holding companies and their subsidiary banks. Risk-based capital ratios are established by allocating assets and certain off-balance-sheet commitments into risk-weighted categories. These balances are then multiplied by the factor appropriate for that risk-weighted category. For 2017, the guidelines, including the capital conservation buffer, required bank holding companies and their subsidiary banks to maintain a total capital to total risk-weighted asset ratio of not less than 9.25%, Tier 1 capital to total risk-weighted asset ratio of not less than 7.25%, Common Equity Tier 1 capital to total risk-weighted asset ratio of not less than 5.75% and a Tier 1 leverage ratio of not less than 4.00%. These minimum capital requirements will increase annually until the Basel III Rule is fully phased-in on January 1, 2019. As of December 31, 2017, First Busey had a total capital to total risk-weighted asset ratio of 14.15%, a Tier 1 capital to risk-weighted asset ratio of 12.14%, Common Equity Tier 1 capital to risk-weighted asset ratio of 10.90% and a Tier 1 leverage ratio of 9.78%; Busey Bank had ratios of 12.78%, 11.82%, 11.82% and 9.80%, respectively; and South Side Bank had ratios of 22.61%, 22.55%, 22.55% and 12.75%, respectively.

Redemption of Preferred Stock Under the Small Business Lending Fund

On August 25, 2011, the Company entered into the Purchase Agreement with the Treasury, pursuant to which the Company issued and sold to the Treasury 72,664 shares of its Series C Preferred Stock, having a liquidation preference of $1,000 per share, for aggregate proceeds of $72,664,000. On December 18, 2015, the Company redeemed all of the 72,664 shares of its Series C Preferred Stock that had been issued to the Treasury pursuant to the SBLF program. The shares were redeemed at their liquidation value of $1,000 per share plus accrued and unpaid dividends to, but excluding December 18, 2015. The redemption was approved by the Company's primary federal regulator and terminated the Company's participation in the SBLF program. Before redemption, the Series C Preferred Stock qualified as Tier 1 capital for the Company. Non-cumulative dividends were payable quarterly on the Series C Preferred Stock, which began October 1, 2011.

CPP Warrant

In connection with the Company's participation in the Capital Purchase Program ("CPP"), the Company issued to Treasury a warrant to purchase 382,555 shares of the Company's common stock. Subsequent to the date of the Company's participation in the CPP, it raised additional capital through a public offering of common stock and, as a result of that offering, the number of shares of common stock subject to the warrant were reduced by 50% to 191,278. On November 23, 2011 the Treasury completed an auction to sell its warrant in a private transaction. At December 31, 2017, this warrant to purchase 191,278 shares of the Company's common stock, at an exercise price of $39.21, remained outstanding.

New Accounting Pronouncements

The Company reviews new accounting standards as issued. *Accounting Standards Update ("ASU") 2018-02, "Income Statement—Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income"* was issued in February 2018. ASU 2018-02 allows companies to make a one-time reclassification from accumulated other comprehensive income (loss) to retained earnings for the effects of remeasuring deferred tax liabilities and assets originally recorded in other comprehensive income as a result of the change in the federal tax rate by the TCJA. The Company will adopt this guidance in the first quarter of 2018 with no impact on total stockholders' equity or net income. Information relating to accounting pronouncements issued and applicable to the Company in 2017 appears in *"Note 1. Significant Accounting Policies"* in the Notes to the Consolidated Financial Statements.

Effects of Inflation

The effect of inflation on a financial institution differs significantly from the effect on an industrial company. While a financial institution's operating expenses, particularly salaries, wages and employee benefits, are affected by general inflation, the asset and liability structure of a financial institution consists largely of monetary items. Monetary items, such as cash, loans and deposits, are those assets and liabilities which are or will be converted into a fixed number of dollars regardless of changes in prices. As a result, changes in interest rates have a more significant impact on a financial institution's performance than does general inflation. For additional information regarding interest rates and changes in net interest income see Average Balance Sheets and Interest Rates and Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Market risk is the risk of changes in asset values due to movements in underlying market rates and prices. Interest rate risk is a type of market risk to earnings and capital arising from movements in interest rates. Interest rate risk is the most significant market risk affecting First Busey as other types of market risk, such as foreign currency exchange rate risk and commodity price risk, have minimal impact or do not arise in the normal course of First Busey's business activities.

First Busey has an asset-liability committee, whose policy is to meet at least quarterly, to review current market conditions to attempt to structure the Consolidated Balance Sheets to ensure stable net interest income despite potential changes in interest rates.

As interest rate changes do not impact all categories of assets and liabilities equally or simultaneously, the asset-liability committee primarily relies on balance sheet and income simulation analysis to determine the potential impact of changes in market interest rates on net interest income. In these standard simulation models, the balance sheet is projected over a year-one time horizon and a year-two time horizon, and net interest income is calculated under current market rates and then assuming permanent instantaneous shifts of +/-100, +200, +300 and +400 basis points. Management measures such changes assuming immediate and sustained shifts in the federal funds rate and other market rate indices and the corresponding shifts in other non-market rate indices based on their historical changes relative to changes in the federal funds rate and other market indices. The model assumes assets and liabilities remain constant at the measurement date balances. The model uses repricing frequency on all variable-rate assets and liabilities. Prepayment speeds on loans have been adjusted to incorporate expected prepayment speeds in both a declining and rising rate environment.

Utilizing this measurement concept, the interest rate risk of First Busey due to an immediate and sustained change in interest rates, expressed as a change in net interest income as a percentage of the net interest income calculated in the constant base model, was as follows (As of December 31, 2016, due to the interest rate environment, a downward adjustment in federal fund rates was not meaningful):

	Year-One: Basis Point Changes				
	-100	+100	+200	+300	+400
December 31, 2017	0.34%	(0.72)%	(1.61)%	(2.56)%	(3.52)%
December 31, 2016	NA	(0.29)%	(1.20)%	(2.42)%	(3.86)%

	Year-Two: Basis Point Changes				
	-100	+100	+200	+300	+400
December 31, 2017	(2.65)%	1.53%	2.91%	4.14%	5.22%
December 31, 2016	NA	2.17%	3.12%	3.63%	3.56%

Interest rate risk is monitored and managed within approved policy limits. The calculation of potential effects of hypothetical interest rate changes is based on numerous assumptions and should not be relied upon as indicative of actual results. Actual results will likely differ from simulated results due to timing, magnitude and frequency of interest rate changes as well as changes in market conditions and management strategies. The above results do not take into account any management action to mitigate potential risk.

Item 8. Financial Statements and Supplementary Data

The Consolidated Financial Statements are presented beginning on page 70, and incorporated herein by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

An evaluation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act was carried out as of December 31, 2017, under the supervision and with the participation of our Chief Executive Officer, Chief Financial Officer and several other members of our senior management. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2017, our disclosure controls and procedures were effective in ensuring that the information we are required to disclose in the reports we file or submit under the Exchange Act was (i) accumulated and communicated to our management (including the Chief Executive Officer and Chief Financial Officer) to allow timely decisions regarding required disclosure, and (ii) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms.

Management's Report on Internal Control Over Financial Reporting

First Busey's management is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's Consolidated Financial Statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

As of December 31, 2017, management assessed the effectiveness of the Company's internal control over financial reporting based on the criteria for effective internal control over financial reporting established in "*Internal Control — Integrated Framework*," issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in 2013. As permitted, management excluded from its assessment of internal control over financial reporting South Side Bank which was acquired on October 1, 2017 and accounted for approximately 9 percent of consolidated total assets and 3 percent of net income as of the year ended December 31, 2017. Based on this assessment, management determined that the Company maintained effective internal control over financial reporting as of December 31, 2017, based on the COSO criteria.

RSM US LLP, an independent registered public accounting firm that audited the Consolidated Financial Statements of the Company included in this Annual Report on Form 10-K, has issued an audit opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2017. The report, which expresses an unqualified opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2017, is included in this Item under the heading "*Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting.*"

Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting

To the Stockholders and the Board of Directors of First Busey Corporation

Opinion on the Internal Control Over Financial Reporting

We have audited First Busey Corporation and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2017, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2017, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Consolidated Financial Statements of the Company and our report dated February 28, 2018 expressed an unqualified opinion.

As described in Management's Report on Internal Control over Financial Reporting, management has excluded South Side Trust & Savings Bank of Peoria from its assessment of internal control over financial reporting as of December 31, 2017, because it was acquired by the Company in a purchase business combination in the fourth quarter of 2017. We have also excluded South Side Trust & Savings Bank of Peoria from our audit of internal control over financial reporting. South Side Trust & Savings Bank of Peoria is a wholly owned subsidiary whose total assets and net income represent approximately 9 percent and 3 percent, respectively, of the related Consolidated Financial Statement amounts as of and for the year ended December 31, 2017.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of Financial Statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of Financial Statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the Financial Statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ RSM US LLP

Champaign, Illinois
February 28, 2018

Changes in Internal Control Over Financial Reporting

During the quarter ended December 31, 2017, no change occurred in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other information

None.

Part III

Item 10. Directors, Executive Officers and Corporate Governance

(a) Directors of the Registrant and Corporate Governance. Information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the captions "Proposal 1: Election of Directors," "Section 16(a) Beneficial Ownership Reporting Compliance," and "Corporate Governance and Board of Directors Matters."

(b) Executive Officers of the Registrant. The information required by this Item is incorporated herein by reference to Part I, Item I of this Form 10-K under the caption "Executive Officers."

Item 11. Executive Compensation

The information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the captions "Director Compensation," "Compensation Discussion and Analysis," "Executive Management Compensation and Succession Committee Report," "Compensation of Named Executive Officers," and "Executive Management Compensation and Succession Committee Interlocks and Insider Participation."

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Stock Incentive Plans

The following table discloses the number of outstanding options, warrants and rights granted by First Busey to participants in equity compensation plans, as well as the number of securities remaining available for future issuance under these plans as of December 31, 2017. The table provides this information separately for equity compensation plans that have and have not been approved by security holders. Additional information regarding stock incentive plans is presented in *"Note 17. Share-based Compensation"* in the Notes to the Consolidated Financial Statements included pursuant to Item 8.

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights(1)	(c) Number of securities remaining for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by stockholders(2)	921,176(3)	$ 16.97	1,297,666(4)
Equity compensation plans not approved by stockholders	—	—	—
Total	921,176	$ 16.97	1,297,666

(1)The weighted average exercise price only relates to 213,428 stock options.

(2)Includes outstanding awards under the First Busey Corporation 2010 Equity Incentive Plan, as amended, the First Busey Corporation 2004 Stock Option Plan, the Pulaski Financial Corp. 2006 Long-Term Incentive Plan, the Pulaski Financial Corp. 2002 Stock Option Plan, the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan and the First Community Financial Partners, Inc. 2016 Equity Incentive Plan.
(3)Includes 103,963 stock options with a weighted average exercise price of $21.51 assumed in connection with the acquisition of First Community Financial Partners, Inc. and 74,465 stock options with a weighted average exercise price of $10.15 assumed in the acquisition of Pulaski Financial Corporation.
(4)Includes 895,253 shares reserved under the First Busey Corporation 2010 Equity Incentive Plan, 90,502 shares reserved under the First Busey Corporation Employee Stock Purchase Plan and 311,911 shares reserved under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan.

Other information required by Item 12 is incorporated herein by reference to First Busey's Proxy Statement for its 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the caption "Stock Ownership of Certain Beneficial Owners and Management."

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the captions "Certain Relationships and Related-Person Transactions" and "Corporate Governance and Board of Directors Matters."

Item 14. Principal Accountant Fees and Services

The information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2018 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the caption "Audit and Related Fees."

Part IV

Item 15. Exhibits and Financial Statement Schedules

Exhibits

A list of exhibits to this Form 10-K is set forth on the Exhibit Index immediately following the signature page hereto and is incorporated into this report by reference. Our Consolidated Financial Statements can be found immediately following the Exhibit Index.

Stockholders may obtain a copy of any of the exhibits by writing to First Busey Corporation, Corporate Secretary, at 100 W. University, Champaign, IL 61820, or by visiting the SEC's EDGAR database at http://www.sec.gov. The Company's SEC file number is 0-15950.

Item 16. Summary

None.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 28, 2018

FIRST BUSEY CORPORATION
BY /s/ VAN A. DUKEMAN
Van A. Dukeman
President and Chief Executive Officer
(Principal Executive Officer)

BY /s/ ROBIN N. ELLIOTT
Robin N. Elliott
Chief Financial Officer
(Principal Financial Officer)

BY /s/ JENNIFER L. SIMONS
Jennifer L. Simons
Chief Accounting Officer
(Principal Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ VAN A. DUKEMAN Van A. Dukeman	President and Chief Executive Officer; Director (Principal Executive Officer)	February 28, 2018
/s/ ROBIN N. ELLIOTT Robin N. Elliott	Chief Financial Officer (Principal Financial Officer)	February 28, 2018
/s/ JENNIFER L. SIMONS Jennifer L. Simons	Chief Accounting Officer (Principal Accounting Officer)	February 28, 2018
/s/ GREGORY B. LYKINS Gregory B. Lykins	Chairman	February 28, 2018
/s/ JOSEPH M. AMBROSE Joseph M. Ambrose	Director	February 28, 2018
/s/ GEORGE BARR George Barr	Director	February 28, 2018
/s/ STANLEY J. BRADSHAW Stanley J. Bradshaw	Director	February 28, 2018
/s/ DAVID J. DOWNEY David J. Downey	Director	February 28, 2018
/s/ STEPHEN V. KING Stephen V. King	Director	February 28, 2018
/s/ E. PHILLIPS KNOX E. Phillips Knox	Director	February 28, 2018
/s/ V. B. LEISTER, JR. V. B. Leister, Jr.	Director	February 28, 2018
/s/ AUGUST C. MEYER, JR. August C. Meyer, Jr.	Director	February 28, 2018
/s/ GEORGE T. SHAPLAND George T. Shapland	Director	February 28, 2018
/s/ THOMAS G. SLOAN Thomas G. Sloan	Director	February 28, 2018
/s/ JON D. STEWART Jon D. Stewart	Director	February 28, 2018
/s/ PHYLLIS M. WISE Phyllis M. Wise	Director	February 28, 2018

Exhibit Index

Exhibit Number	Description of Exhibit
2.1**	Agreement and Plan of Merger by and between First Busey Corporation and First Community Financial Partners, Inc., dated February 6, 2017 (filed as Exhibit 2.1 to the Company's Form 8-K filed with the Commission on February 6, 2017 (Commission No. 0-15950) and incorporated herein by reference)
2.2**	Agreement and Plan of Merger by and between First Busey Corporation and Mid Illinois Bancorp, Inc., dated March 13, 2017 (filed as Exhibit 2.1 to the Company's Form 8-K dated filed with the Commission on March 13, 2017 (Commission No. 0-15950) and incorporated herein by reference)
3.1	Amended and Restated Articles of Incorporation of First Busey Corporation, together with: (i) the Certificate of Amendment to Articles of Incorporation, dated July 31, 2007; (ii) the Certificate of Amendment to Articles of Incorporation, dated December 3, 2009; (iii) the Certificate of Amendment to Articles of Incorporation, dated May 21, 2010; and (iv) the Certificate of Change Pursuant to Nevada Revised Statutes Section 78.209, dated September 8, 2015, (filed as Exhibit 3.1 to First Busey's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed with the Commission on November 6, 2015 (Commission No. 0-15950), and incorporated herein by reference)
3.2	First Busey Corporation Amended and Restated By-Laws (filed as Exhibit 3.1 to First Busey's Form 8-K dated November 18, 2008, filed with the Commission on November 24, 2008 (Commission No. 0-15950), and incorporated herein by reference)

4.1	Certain instruments defining the rights of holders of long-term debt of the First Busey, none of which authorize a total amount of indebtedness in excess of 10% of the total assets of the First Busey and its subsidiaries on a consolidated basis, have not been filed as exhibits. First Busey hereby agrees to furnish a copy of any of these agreements to the SEC upon request.
*10.1†	First Busey Corporation Profit Sharing Plan and Trust (filed herewith)
*10.2†	First Busey Corporation Employee Stock Ownership Plan (filed herewith)
10.3†	First Busey Corporation 2004 Stock Option Plan (filed as Annex D to First Busey's definitive proxy statement filed with the Commission on March 12, 2004 (Commission No. 0-15950), and incorporated herein by reference)
10.4†	Employment agreement between First Busey Corporation and Barbara J. Harrington, dated September 20, 2006 (filed as Exhibit 99.6 to First Busey's Form 8-K dated September 20, 2006, filed with the Commission on September 21, 2006 (Commission No. 0-15950), and incorporated by reference herein)
10.5†	Employment agreement by and between Main Street Trust, Inc. and Van A. Dukeman, dated December 26, 2001 (filed as Exhibit 10.2 to Main Street Trust, Inc.'s Form 10-K for the year ended December 31, 2001, filed with the Commission on March 29, 2002 (Commission No. 000-30031), and incorporated by reference herein)
10.6†	Letter agreement between Main Street Trust, Inc. and Gregory B. Lykins, dated September 20, 2006 (filed as Exhibit 99.1 to Main Street Trust, Inc.'s Form 8-K dated September 20, 2006, filed with the Commission on September 21, 2006 (Commission No. 000-30031), and incorporated by reference herein)

10.7†	Letter agreement between Main Street Trust, Inc. and Van A. Dukeman, dated September 20, 2006 (filed as Exhibit 99.2 to Main Street Trust, Inc.'s Form 8-K dated September 20, 2006, filed with the Commission on September 21, 2006 (Commission No. 000-30031), and incorporated by reference herein)
10.8†	Van A. Dukeman Addendum to Employment Agreement (filed as Exhibit 10.1 to First Busey's Form 10-Q for the quarter ended March 31, 2010, filed with the Commission on May 13, 2010 (Commission No. 0-15950), and incorporated herein by reference)
10.9†	Barbara J. Harrington Addendum to Employment Agreement (filed as Exhibit 10.3 to First Busey's Form 10-Q for the quarter ended March 31, 2010, filed with the Commission on May 13, 2010 (Commission No. 0-15950), and incorporated herein by reference)
10.10†	Robert F. Plecki, Jr. Addendum to Employment Agreement (filed as Exhibit 10.4 to First Busey's Form 10-Q for the quarter ended March 31, 2010, filed with the Commission on May 13, 2010 (Commission No. 0-15950), and incorporated herein by reference)
10.11†	Christopher M. Shroyer Addendum to Employment Agreement (filed as Exhibit 10.5 to First Busey's Form 10-Q for the quarter ended March 31, 2010, filed with the Commission on May 13, 2010 (Commission No. 0-15950), and incorporated herein by reference)
10.12	Securities Purchase Agreement, dated August 25, 2011, between First Busey and the Secretary of the Treasury, with respect to the issuance and sale of the Warrant to Purchase Common Stock (filed as Exhibit 10.1 to First Busey's Form 8-K dated August 25, 2011, filed with the Commission on August 25, 2011 (Commission No. 0-15950), and incorporated herein by reference)
10.13†	Van A. Dukeman First Amendment to Employment Agreement, dated December 31, 2008 (filed as Exhibit 10.1 to First Busey's Form 10-Q for the quarter ended March 31, 2012, filed with the Commission on May 8, 2012 (Commission No. 0-15950), and incorporated herein by reference)
10.14†	Employment agreement by and between Main Street Trust, Inc. and Christopher M. Shroyer, dated July 31, 2007 (filed as Exhibit 10.2 to First Busey's Form 10-Q for the quarter ended March 31, 2012, filed with the Commission on May 8, 2012 (Commission No. 0-15950), and incorporated herein by reference)
10.15†	Christopher M. Shroyer First Amendment to Employment Agreement, dated December 23, 2008 (filed as Exhibit 10.3 to First Busey's Form 10-Q for the quarter ended March 31, 2012, filed with the Commission on May 8, 2012 (Commission No. 0-15950), and incorporated herein by reference)
10.16†	Employment agreement by and between Main Street Trust, Inc. and Robert F. Plecki, dated July 30, 2007 (filed as Exhibit 10.4 to First Busey's Form 10-Q for the quarter ended March 31, 2012, filed with the Commission on May 8, 2012 (Commission No. 0-15950), and incorporated herein by reference)
10.17†	Robert F. Plecki First Amendment to Employment Agreement, dated December 16, 2008 (filed as Exhibit 10.5 to First Busey's Form 10-Q for the quarter ended March 31, 2012, filed with the Commission on May 8, 2012 (Commission No. 0-15950), and incorporated herein by reference)
10.18†	First Busey Corporation 2010 Equity Incentive Plan, as amended (filed as Appendix C to First Busey's definitive proxy statement filed with the Commission on April 17, 2015 (Commission No. 0-15950). and incorporated herein by reference)
10.19†	Employment Agreement by and among First Busey Corporation, Busey Bank and John J. Powers, dated January 1, 2012 (filed as Exhibit 10.1 to First Busey's Form 10-Q for the quarter ended March 31, 2013, filed with the Commission on May 9, 2013 (Commission No. 0-15950), and incorporated herein by reference)
10.20†	Employment Agreement by and among First Busey Corporation, Busey Bank and Robin Elliott, dated February 1, 2014 (filed as

Exhibit 10.1 to Form 8-K dated May 22, 2014, filed with the Commission on May 27, 2014 (Commission No. 0-15950), and incorporated herein by reference)

10.21†	Employment Agreement by and among First Busey Corporation, FirsTech, Inc. and Howard Mooney, dated February 1, 2014 (filed as Exhibit 10.1 to First Busey's Form 10-Q for the quarter ended March 31, 2015, filed with the Commission on May 8, 2015 (Commission No. 0-15950), and incorporated herein by reference)
10.22	Credit Agreement between First Busey Corporation and U.S. Bank National Association dated as of November 20, 2015 (filed as Exhibit 10.1 to Form 8-K dated November 20, 2015, filed with the Commission on November 25, 2015 (Commission No. 0-15950), and incorporated herein by reference)
10.23†	Employment Agreement by and among First Busey Corporation, Busey Bank and Curt Anderson, dated February 1, 2014 (filed as Exhibit 10.1 to First Busey's Form 10-Q for the quarter ended September 30, 2016, filed with the Commission on November 8, 2016 (Commission No. 0-15950), and incorporated herein by reference)
10.24†	Employment Agreement by and among First Busey Corporation, Busey Bank and Amy Randolph, dated April 1, 2014 (filed as Exhibit 10.2 to First Busey's Form 10-Q for the quarter ended September 30, 2016, filed with the Commission on November 8, 2016 (Commission No. 0-15950), and incorporated herein by reference)
10.25	Amendment No. 1 to Credit Agreement between First Busey Corporation and U.S. Bank National Association dated as of November 18, 2016 (filed as Exhibit 10.1 to Form 8-K dated November 18, 2016, filed with the Commission on November 22, 2016 (Commission No. 0-15950), and incorporated herein by reference)
10.26†	First Busey Corporation Executive Deferred Compensation Plan (filed as Exhibit 10.2 to First Busey's Form 10-Q for the quarter ended March 31, 2015, filed with the Commission on May 8, 2015 (Commission No. 0-15950), and incorporated herein by reference)
*10.27†	Form of Restricted Stock Unit Award Agreement under the First Busey Corporation 2010 Equity Incentive Plan, as amended (filed herewith)
10.28†	First Busey Corporation Employee Stock Purchase Plan (filed as Exhibit 4.2 to First Busey's Form S-8 filed with the Commission on June 22, 2010 (Commission No. 333-167683), and incorporated herein by reference)
10.29†	Pulaski Financial Corp. 2002 Stock Option Plan (filed as Appendix A to Pulaski Financial Corp.'s definitive proxy statement filed with the Commission on December 17, 2001 (Commission No. 000-24571), and incorporated herein by reference)
10.30†	Pulaski Financial Corp. 2006 Long-Term Incentive Plan (filed as Appendix A to Pulaski Financial Corp.'s definitive proxy statement filed with the Commission on December 30, 2005 (Commission No. 000-24571), and incorporated herein by reference)
10.31†	John J. Powers Amendment to Employment Agreement, dated February 24, 2015 (filed as Exhibit 10.1 to First Busey's Form 10-Q for the quarter ended March 31, 2017, filed with the Commission on May 9, 2017 (Commission No. 0-15950), and incorporated herein by reference)
10.32	Amendment No. 2 to Credit Agreement between First Busey Corporation and U.S. Bank National Association dated as of May 5, 2017 (filed as Exhibit 10.2 to Form 10-Q dated March 31, 2017, filed with the Commission on May 9, 2017 (Commission No. 0-15950), and incorporated herein by reference)
10.33†	First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan (filed as Exhibit 10.11 to First Community's Form S-4 filed with the Commission on November 19, 2012 (Commission No. 333-185041) and incorporated herein by reference)
10.34†	First Amendment of the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan (filed as Exhibit 10.12 to First Community's Form S-4 filed with the Commission on November 19, 2012 (Commission No. 333-185041) and incorporated herein by reference)

10.35†	Second Amendment of the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan (filed as Exhibit 10.8 to First Community's Form 10-K for the year ended December 31, 2015, filed with the Commission on March 14, 2016 (Commission No. 001-37505) and incorporated herein by reference)
*10.36†	Third Amendment of the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan (filed herewith)
10.37†	First Community Financial Partners, Inc. 2016 Equity Incentive Plan (filed as Exhibit 4.4 to First Community's Form S-8 filed with the Commission on June 3, 2016 (Commission No. 333-211811) and incorporated herein by reference)
*10.38†	First Amendment of the First Community Financial Partners, Inc. 2016 Equity Incentive Plan (filed herewith)
10.39†	Form of Nonqualified Stock Option Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan (filed as Exhibit 4.7 to First Community's Form S-8 filed with the Commission on June 3, 2016 (Commission No. 333-211811) and incorporated herein by reference)

10.40†	Form of Incentive Stock Option Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan (filed as Exhibit 4.8 to First Community's Form S-8 filed with the Commission on June 3, 2016 (Commission No. 333-211811) and incorporated herein by reference)
*10.41†	Form of Restricted Stock Unit Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan (filed herewith)
*21.1	List of Subsidiaries of First Busey Corporation
*23.1	Consent of RSM US LLP
*31.1	Certification of Principal Executive Officer
*31.2	Certification of Principal Financial Officer
*32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, from First Busey's Chief Executive Officer
*32.2	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, from First Busey's Chief Financial Officer
*101	Interactive Data File
	Interactive data files pursuant to Rule 405 of Regulation S-T: (i) Consolidated Balance Sheets at December 31, 2017 and December 31, 2016; (ii) Consolidated Statements of Income for the years ended December 31, 2017, December 31, 2016 and December 31, 2015; (iii) Consolidated Statements of Comprehensive Income for the years ended December 31, 2017, December 31, 2016 and December 31, 2015; (iv) Consolidated Statements of Stockholders' Equity for the years ended December 31, 2017, December 31, 2016 and December 31, 2015; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2017, December 31, 2016 and December 31, 2015; and (vi) Notes to Consolidated Financial Statements.

* Filed herewith

** First Busey has omitted schedules and similar attachments to the subject agreement pursuant to Item 601(b) of Regulation S-K. First Busey hereby agrees to furnish a copy of any omitted schedule or similar attachment to the SEC upon request.

† Management contract or compensatory plan

FIRST BUSEY CORPORATION AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2017, 2016 AND 2015

CONTENTS

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of First Busey Corporation

Opinion on the Financial Statements

We have audited the accompanying Consolidated Balance Sheets of First Busey Corporation and subsidiaries (the Company) as of December 31, 2017 and 2016, the related Consolidated Statements of Income, Comprehensive Income, Stockholders' Equity, and Cash Flows for each of the three years in the period ended December 31, 2017, and the related notes to the Consolidated Financial Statements (collectively referred to as the "Financial Statements"). In our opinion, the Financial Statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2017, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), First Busey Corporation and subsidiaries internal control over financial reporting as of December 31, 2017, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013, and our report dated February 28, 2018 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

These Financial Statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's Financial Statements based on our audits. We are a public accounting firm registered with PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the Financial Statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the Financial Statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the Financial Statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Financial Statements. We believe that our audits provide a reasonable basis for our opinion.

/S/RSM US LLP

We or our predecessor firms have served as the Company's auditor since at least 1980.

Champaign, Illinois
February 28, 2018

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FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
December 31, 2017 and 2016

	2017	2016
	(dollars in thousands)	
Assets		
Cash and cash equivalents (interest-bearing 2017 $234,889; 2016 $75,006)	$ **353,272**	$ 166,706
Securities available for sale, at fair value	**878,060**	759,811
Securities held to maturity, at amortized cost	**443,550**	47,820
Loans held for sale	**94,848**	256,319
Portfolio loans (net of allowance for loan losses 2017 $53,582; 2016 $47,795)	**5,465,918**	3,831,105
Premises and equipment, net	**116,913**	77,861
Goodwill	**269,346**	102,814
Other intangible assets, net	**38,727**	18,462
Cash surrender value of bank owned life insurance	**126,737**	79,720
Deferred tax asset, net	**17,296**	20,224
Other assets	**55,973**	64,328
Total assets	$ **7,860,640**	$ 5,425,170
Liabilities and Stockholders' Equity		
Liabilities		
Deposits:		
Noninterest-bearing	$ **1,597,421**	$ 1,134,133
Interest-bearing	**4,528,544**	3,240,165
Total deposits	$ **6,125,965**	$ 4,374,298
Securities sold under agreements to repurchase	**304,566**	189,157
Short-term borrowings	**220,000**	75,000
Long-term debt	**50,000**	80,000
Senior notes, net of unamortized issuance costs	**39,404**	—
Subordinated notes, net of unamortized issuance costs	**64,715**	—
Junior subordinated debt owed to unconsolidated trusts	**71,008**	70,868
Other liabilities	**49,979**	41,533
Total liabilities	$ **6,925,637**	$ 4,830,856
Commitments and contingencies (see "*Note 19. Outstanding Commitments and Contingent Liabilities*")		
Stockholders' Equity		
Common stock, $.001 par value, authorized 66,666,667 shares; shares issued 2017 49,185,581; 2016 38,869,519	**49**	39
Additional paid-in capital	**1,084,889**	781,716
Accumulated deficit	**(132,122)**	(163,689)
Accumulated other comprehensive (loss) income	**(2,810)**	36
Total stockholders' equity before treasury stock	$ **950,006**	$ 618,102

Common stock shares held in treasury at cost, 2017 500,638; 2016 633,232		**(15,003)**		(23,788)
Total stockholders' equity	**$**	**935,003**	$	594,314
Total liabilities and stockholders' equity	**$**	**7,860,640**	$	5,425,170
Common shares outstanding at period end		**48,684,943**		38,236,287

See accompanying Notes to Consolidated Financial Statements.

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FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
Years Ended December 31, 2017, 2016 and 2015

	2017	2016	2015
	(dollars in thousands, except per share amounts)		
Interest income:			
Interest and fees on loans	**$ 202,643**	$ 147,816	$ 100,395
Interest and dividends on investment securities:			
Taxable interest income	**17,803**	13,987	14,330
Non-taxable interest income	**3,856**	3,086	3,297
Total interest income	**224,302**	164,889	118,022
Interest expense:			
Deposits	**12,932**	7,065	4,756
Federal funds purchased and securities sold under agreements to repurchase	**978**	393	182
Short-term borrowings	**1,096**	641	6
Long-term debt	**550**	220	46
Senior notes	**962**	—	—
Subordinated notes	**1,892**	—	—
Junior subordinated debt owed to unconsolidated trusts	**2,526**	1,910	1,217
Total interest expense	**20,936**	10,229	6,207
Net interest income	**203,366**	154,660	111,815
Provision for loan losses	**5,303**	5,550	1,600
Net interest income after provision for loan losses	**198,063**	149,110	110,215
Non-interest income:			
Trust fees	**23,665**	20,302	20,363
Commissions and brokers' fees, net	**3,372**	2,839	3,096
Remittance processing	**11,427**	11,255	11,120
Fees for customer services	**25,841**	23,253	19,083
Mortgage revenue	**11,140**	11,952	7,165
Security gains, net	**1,143**	1,232	380
Other income	**7,886**	4,336	3,585
Total non-interest income	**84,474**	75,169	64,792
Non-interest expense:			
Salaries, wages and employee benefits	**95,633**	78,397	63,516
Net occupancy expense of premises	**13,830**	11,633	8,704
Furniture and equipment expenses	**7,089**	6,591	4,958
Data processing	**19,295**	20,645	12,940
Amortization of intangible assets	**5,245**	4,438	3,192
Regulatory expense	**2,535**	2,859	2,357
Other expense	**30,799**	23,299	19,638
Total non-interest expense	**174,426**	147,862	115,305
Income before income taxes	**108,111**	76,417	59,702
Income taxes	**45,385**	26,723	20,696
Net income	**$ 62,726**	$ 49,694	$ 39,006
Preferred stock dividends	**—**	—	700
Net income available for common stockholders	**$ 62,726**	$ 49,694	$ 38,306
Basic earnings per common share	**$ 1.47**	$ 1.42	$ 1.32
Diluted earnings per common share	**$ 1.45**	$ 1.40	$ 1.32

See accompanying Notes to Consolidated Financial Statements.

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FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
Years Ended December 31, 2017, 2016 and 2015

	2017	2016	2015
		(dollars in thousands)	
Net income	**$ 62,726**	$ 49,694	$ 39,006
Other comprehensive loss, before tax:			
Securities available for sale:			
Unrealized net losses on securities:			
Unrealized net holding losses arising during period	**(3,694)**	(2,611)	(5,418)
Reclassification adjustment for gains included in net income	**(1,143)**	(1,232)	(380)
Other comprehensive loss, before tax	**(4,837)**	(3,843)	(5,798)
Income tax benefit related to items of other comprehensive income	**(1,991)**	(1,539)	(2,321)
Other comprehensive loss, net of tax	**(2,846)**	(2,304)	(3,477)
Comprehensive income	**$ 59,880**	$ 47,390	$ 35,529

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
Years Ended December 31, 2017, 2016 and 2015

(dollars in thousands, except shares and per share data)

	Preferred Stock	Common Stock	Additional Paid-in Capital	Accumulated (Deficit)	Accumulated Other Comprehensive Income (loss)	Treasury Stock	Total
Balance, December 31, 2014	$ 72,664	$ 29	$ 593,746	$ (210,384)	$ 5,817	$ (28,233)	$ 433,639
Net income	—	—	—	39,006	—	—	39,006
Other comprehensive loss	—	—	—	—	(3,477)	—	(3,477)
Issuance of 15,292 shares of treasury stock for employee stock purchase plan	—	—	(590)	—	—	881	291
Net issuance of 59,983 shares of treasury stock for restricted stock unit vesting and related tax benefit	—	—	(3,784)	—	—	3,643	(141)
Issuance of 612 shares of treasury stock	—	—	—	—	—	34	34
Cash dividends common stock at $0.62 per share	—	—	—	(17,919)	—	—	(17,919)
Stock dividend equivalents restricted stock units at $0.62 per share	—	—	268	(268)	—	—	—
Stock based employee compensation	—	—	1,418	—	—	—	1,418
Preferred stock dividends	—	—	—	(700)	—	—	(700)
Purchase of 333,333 shares of treasury stock	—	—	—	—	—	(6,296)	(6,296)
Cash paid in lieu of fractional shares in Reverse Stock Split	—	—	(5)	—	—	—	(5)
Redemption of SBLF	(72,664)	—	—	—	—	—	(72,664)
Balance, December 31, 2015	**$ —**	**$ 29**	**$ 591,053**	**$ (190,265)**	**$ 2,340**	**$ (29,971)**	**$ 373,186**

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (continued)
Years Ended December 31, 2017, 2016 and 2015

(dollars in thousands, except shares and per share data)

Accumulated

	Common Stock	Additional Paid-in Capital	Accumulated (Deficit)	Other Comprehensive Income (loss)	Treasury Stock	Total
Balance, December 31, 2015	$ 29	$ 591,053	$ (190,265)	$ 2,340	$ (29,971)	$ 373,186
Net income	—	—	49,694	—	—	49,694
Other comprehensive loss	—	—	—	(2,304)	—	(2,304)
Issuance of 14,749 shares of treasury stock for employee stock purchase plan	—	(616)	—	—	929	313
Net issuance of 43,396 shares of treasury stock for restricted stock unit vesting and related tax benefit	—	(3,477)	—	—	2,668	(809)
Net issuance of 41,771 shares of treasury stock for stock options exercised, net of shares redeemed	—	(2,587)	—	—	2,591	4
Stock issued for acquisition of Pulaski, net of stock issuance costs	10	195,188	—	—	—	195,198
Cash dividends on common stock of $0.68 per share	—	—	(22,748)	—	—	(22,748)
Stock dividend equivalents on restricted stock units of $0.68 per share	—	352	(352)	—	—	—
Stock dividend accrued on restricted stock awards assumed with the Pulaski acquisition at $0.34 per share	—	—	(18)	—	—	(18)
Stock based employee compensation	—	1,803	—	—	—	1,803
Return of 261 equity trust shares	—	—	—	—	(5)	(5)
Balance, December 31, 2016	**$ 39**	**$ 781,716**	**$ (163,689)**	**$ 36**	**$ (23,788)**	**$ 594,314**

See accompanying Notes to Consolidated Financial Statements.

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FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (continued)
Years Ended December 31, 2017, 2016 and 2015

(dollars in thousands, except shares and per share data)

	Common Stock	Additional Paid-in Capital	Accumulated (Deficit)	Accumulated Other Comprehensive Income (loss)	Treasury Stock	Total
Balance, December 31, 2016	$ 39	$ 781,716	$ (163,689)	$ 36	$ (23,788)	$ 594,314
Net income	—	—	62,726	—	—	62,726
Other comprehensive loss	—	—	—	(2,846)	—	(2,846)
Issuance of 16,842 shares of treasury stock for employee stock purchase plan	—	(540)	—	—	1,016	476
Net issuance of 79,459 shares of treasury stock for restricted stock unit vesting and related taxes	—	(5,521)	—	—	4,864	(657)
Net issuance of 64,941 shares of treasury stock for stock options exercised, net of shares redeemed	—	(3,139)	—	—	3,765	626
Stock issued for acquisition of First Community, net of stock issuance costs	7	211,575	—	—	—	211,582
Stock issued for acquisition of Mid Illinois, net of stock issuance costs	3	97,594	—	—	—	97,597
Cash dividends on common stock of $0.72 per share	—	—	(30,697)	—	—	(30,697)
Stock dividend equivalents on restricted stock units of $0.72 per share	—	452	(452)	—	—	—
Stock dividend accrued on restricted stock awards assumed with the Pulaski acquisition at $0.54 per share	—	—	(10)	—	—	(10)
Stock based employee compensation	—	2,752	—	—	—	2,752
Return of 28,648 equity trust shares	—	—	—	—	(860)	(860)
Balance, December 31, 2017	**$ 49**	**$ 1,084,889**	**$ (132,122)**	**$ (2,810)**	**$ (15,003)**	**$ 935,003**

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years Ended December 31, 2017, 2016 and 2015

	2017	2016	2015
		(dollars in thousands)	
Cash Flows from Operating Activities			
Net income	$ **62,726**	$ 49,694	$ 39,006
Adjustments to reconcile net income to net cash provided by operating activities:			
Stock-based and non-cash compensation	**2,752**	1,803	1,418
Depreciation	**8,577**	7,295	5,697
Amortization of intangible assets	**5,245**	4,438	3,192
Premises and equipment impairment	**99**	756	670
Provision for loan losses	**5,303**	5,550	1,600
Provision for deferred income taxes	**13,907**	2,953	2,985
Amortization of security premiums and discounts, net	**6,711**	6,877	8,360
Accretion of premiums and discounts on time deposits and trust preferred securities, net	**(226)**	(669)	—
Accretion of premiums and discounts on loans, net	**(12,205)**	(7,429)	(1,476)
Net security gains	**(1,143)**	(1,232)	(380)
Gain on sales of mortgage loans, net of origination costs	**(45,443)**	(28,299)	(5,843)
Mortgage loans originated for sale	**(1,487,726)**	(1,822,027)	(267,737)
Proceeds from sales of mortgage loans	**1,693,632**	1,767,220	276,377
Increase in cash surrender value of bank owned life insurance	**(1,997)**	(1,522)	(1,454)
Net (gains) losses on disposition of premises and equipment	**(327)**	251	355
(Decrease) increase in deferred compensation	**(757)**	142	201
Change in assets and liabilities:			
Decrease (increase) in other assets	**8,423**	(407)	(137)
Decrease in other liabilities	**(4,193)**	(6,288)	(1,329)
Net cash provided by (used in) operating activities	$ **253,358**	$ (20,894)	$ 61,505
Cash Flows from Investing Activities			
Purchases of securities classified available for sale	**(141,685)**	(180,447)	(235,291)
Purchases of securities classified held to maturity	**(352,679)**	(2,103)	(16,287)
Proceeds from sales of securities classified available for sale	**139,765**	52,587	25,068
Proceeds from maturities of securities classified available for sale	**193,294**	241,304	200,780
Proceeds from sales of securities classified held to maturity	**—**	399	—
Proceeds from maturities of securities classified held to maturity	**11,268**	3,811	480
Net increase in loans	**(169,150)**	(1,294)	(118,398)
Purchases of premises and equipment	**(14,980)**	(8,991)	(4,114)
Proceeds from disposition of premises and equipment	**2,224**	2,485	312
Proceeds from sale of OREO properties	**5,024**	4,498	1,090
Proceeds from the redemption of FHLB stock	**20,560**	35,397	—
Purchase of FHLB stock	**(14,470)**	(23,478)	—
Net cash received in acquisitions	**26,979**	25,575	12,114
Net cash (used in) provided by investing activities	$ **(293,850)**	$ 149,743	$ (134,246)

(continued)

FIRST BUSEY CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
Years Ended December 31, 2017, 2016 and 2015

	2017	2016	2015
		(dollars in thousands)	
Cash Flows from Financing Activities			
Net increase (decrease) in certificates of deposit	$ **100,600**	$ (173,385)	$ (86,574)
Net increase in demand deposits, money market and savings accounts	**11,188**	31,322	232,931
Net increase (decrease) in federal funds purchased and securities sold under agreements to repurchase	**28,898**	(6,655)	(25,921)
Proceeds from short-term borrowings, net	**60,300**	(104,000)	—
Proceeds from FHLB long term advances, net	**(30,000)**	(4,906)	30,000
Value of shares surrendered upon vesting to satisfy tax withholding obligations of stock-based compensation	**(2,274)**	(809)	(269)
Redemption of SBLF preferred stock	**—**	—	(72,664)
Cash dividends paid	**(30,707)**	(22,748)	(18,619)
Proceeds from subordinated debt, net	**49,186**	—	—
Proceeds from senior debt, net	**39,326**	—	—

Cash payment for fractional shares related to Reverse Stock Split	**—**	—	(5)
Proceeds from stock options exercised	**906**	4	—
Common stock issuance costs	**(365)**	(246)	—
Purchase of treasury stock	**—**	—	(6,296)
Net cash provided by (used in) financing activities	**227,058**	(281,423)	52,583
Net increase (decrease) in cash and cash equivalents	**186,566**	(152,574)	(20,158)
Cash and cash equivalents, beginning of period	**166,706**	319,280	339,438
Cash and cash equivalents, ending of period	**$ 353,272**	$ 166,706	$ 319,280
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION			
Cash Payments for:			
Interest	**$ 19,342**	$ 9,674	$ 6,282
Income taxes	**26,419**	20,186	17,170
Non-cash Investing and Financing Activities:			
Other real estate acquired in settlement of loans	**1,417**	2,775	1,251

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Significant Accounting Policies

Description of business

First Busey Corporation is a Nevada corporation and a financial holding company. The Company's subsidiaries provide retail and commercial banking services, remittance processing, and offer a full range of financial products and services, including depository, lending, security brokerage services, investment management and fiduciary services, to individual, corporate, institutional and governmental customers through its locations in Illinois, Missouri, southwest Florida and Indianapolis, Indiana. The Company and its subsidiaries are subject to the regulations of certain regulatory agencies and undergo periodic examinations by those regulatory agencies.

2015 share and per share information has been restated for this Annual Report on Form 10-K to give retroactive effect to the Reverse Stock Split.

The significant accounting and reporting policies for the Company and its subsidiaries follow:

Basis of consolidation

The Consolidated Financial Statements include the accounts of the Company and its subsidiaries: Busey Bank and its wholly-owned subsidiaries FirsTech, Inc. and Pulaski Service Corporation; South Side Bank and its wholly-owned subsidiary Mid Illinois Insurance Services Inc.; and Busey Wealth Management, Inc. and its wholly-owned subsidiaries Busey Trust Company and Busey Capital Management, Inc. The Company and its subsidiaries maintain various LLCs that hold specific assets for risk mitigation purposes and are consolidated into these Financial Statements. All significant intercompany balances and transactions have been eliminated in consolidation.

The Consolidated Financial Statements also exclude the following wholly-owned variable interest entities: First Busey Statutory Trust II, First Busey Statutory Trust III, First Busey Statutory Trust IV, Pulaski Financial Statutory Trust I and Pulaski Financial Statutory Trust II because the Company is not the primary beneficiary.

The Consolidated Financial Statements of the Company have been prepared in conformity with GAAP and conform to predominant practice within the banking industry.

Use of estimates

In preparing the accompanying Consolidated Financial Statements in conformity with GAAP, the Company's management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the date of the Financial Statements and the reported amounts of revenues and expenses for the reporting period. Actual results could differ from those estimates. Material estimates which are particularly susceptible to significant change in the near-term relate to the fair value of investment securities, fair value of assets acquired and liabilities assumed in business combinations and the determination of the allowance for loan losses.

Comprehensive income (loss)

Accounting principles generally require that recognized revenue, expenses, gains and losses be included in net income. Although certain changes in assets and liabilities, such as unrealized gains and losses on available for sale securities, are reported as a separate component of the equity section of the balance sheet, such items, along with net income, are components of comprehensive income (loss).

Trust assets

Assets held for customers in a fiduciary or agency capacity, other than trust cash on deposit at the Company's bank subsidiaries, are not assets of the Company and, accordingly, are not included in the accompanying Consolidated Financial Statements. Busey Trust Company had assets under care of $6.0 billion and $5.4 billion at December 31, 2017 and 2016, respectively.

Cash flows

For purposes of the Consolidated Statement of Cash Flows, cash and cash equivalents includes cash on hand, amounts due from banks and federal funds sold. Cash flows from federal funds purchased and sold, short-term borrowings, and securities sold under agreements to repurchase are reported net, since their original maturities are less than three months. Cash flows from loans and deposits are also reported net.

Securities

Securities classified as held to maturity are those debt securities that the Company intends to hold to maturity. Securities held to maturity are carried at cost, adjusted for amortization of premiums and accretion of discounts.

Securities classified as available for sale are those debt securities that the Company intends to hold for an indefinite period of time, but not necessarily to maturity, and marketable equity securities. Any decision to sell a security classified as available for sale would be based on factors including significant movements in interest rates, changes in the maturity mix of the Company's assets and liabilities, liquidity needs, regulatory capital considerations and other similar factors. Securities available for sale are carried at fair value, with temporary unrealized gains and losses excluded from earnings and reported in other comprehensive income (loss).

Declines in the fair value of debt securities below their amortized cost are evaluated to determine whether they are temporary or OTTI. If the Company (a) has the intent to sell a debt security or (b) it is more likely than not that the Company will be required to sell the debt security before its anticipated recovery, the Company recognizes the entire unrealized loss in earnings as an OTTI loss. If neither of these conditions are met, the Company evaluates whether a credit loss exists. The impairment is separated into (c) the amount of the total impairment related to the credit loss and (d) the amount of total impairment related to all other factors. The amount of the total OTTI related to the credit loss is recognized in earnings and the amount related to all other factors is recognized in other comprehensive income (loss).

The Company also evaluates whether the decline in fair value of an equity security is temporary or OTTI. In determining whether an unrealized loss on an equity security is temporary or OTTI, management considers various factors, including the magnitude and duration of the impairment, the financial condition and near-term prospects of the issuer, and the intent and ability of the Company to hold the equity security to forecasted recovery.

Purchase premiums and discounts are recognized in interest income using the interest method over the terms of the securities. Gains and losses on the sale of securities are recorded on the trade date and are determined using the specific identification method.

Loans held for sale

Loans held for sale consist of loans that management does not intend to hold until maturity. Loans held for sale include mortgage loans conforming to established guidelines which the Company intends to sell to investors and/or the secondary mortgage market. Loans held for sale are recorded at their fair values, as the Company has elected to apply the fair value method of accounting, with changes in fair value recognized in earnings, consistent with the provisions in ASC Topic 820, *Fair Value Measurement*. Fair value adjustments are recorded as an adjustment to mortgage revenues. The fair value of loans held for sale are measured using observable quoted market or contract prices or market price equivalents, consistent with those used by other market participants. Consistent with the fair value principles of ASC Topic 820, any direct loan origination fees and costs related to loans accounted for at fair value are recognized when earned or incurred rather than capitalized and accounted for as a part of the cost basis of loans held for sale.

Loan servicing

Servicing assets are recognized when servicing rights are acquired or retained through the sale of mortgage and government-guaranteed commercial loans. Servicing rights are initially recorded at fair value which is determined using a valuation model that calculates the present value of estimated future net servicing income. Capitalized servicing rights are reported in other assets and are amortized into non-interest income in proportion to, and over the period of, the estimated future net servicing income of the underlying financial assets. The amortization of mortgage servicing rights is included in mortgage revenue. The amortization of government-guaranteed commercial loans is included in other income.

Servicing rights are periodically evaluated for impairment based on the fair value of those rights as compared to book value. Fair values are estimated using discounted cash flows based on current expected future prepayment rates. For purposes of measuring impairment, the rights must be stratified by one or more predominant risk characteristics of the underlying loans. The Company stratifies its capitalized servicing rights based on the type of the underlying loans. The amount of impairment allowance recognized is the amount, if any, by which the amortized cost of the rights for each stratum exceeds its fair value. If the Company later determines that all or a portion of the impairment no longer exists for a particular group of loans, a reduction of the allowance may be recorded as an increase to income. The Company had no impairment recorded at December 31, 2017 and 2016.

Servicing fee income is recorded for fees earned for servicing loans. The fees are based on a contractual percentage of the outstanding principal and are recorded as income when earned.

Portfolio loans

Loan receivables that management has the intent and ability to hold for the foreseeable future or until maturity or pay-off are reported at the principal balance outstanding, net of purchase premiums and discounts, charge-offs, the allowance for loan losses, and any net deferred origination fees or costs on loans.

Loan origination fees, net of certain direct loan origination costs, are deferred and the net amount is amortized as an adjustment of the related loan's yield. The Company amortizes the net amount over the contractual life of the related loan. However, for long-term, fixed-rate residential mortgages, the Company has anticipated prepayments and assumes an estimated economic life for the amortization period.

Interest income is accrued daily on outstanding loan balances. Loans are placed on non-accrual status when, in management's opinion, the borrower may be unable to meet payment obligations as they become due, as well as when required by regulatory provisions. Loans may be placed on non-accrual status regardless of whether or not such loans are considered past due. Past due status is based on the contractual terms of the loan.

Interest accrued in the current year but not collected for loans that are placed on non-accrual status or charged-off is reversed against interest income. Interest accrued during the prior year but not collected for loans that are placed on non-accrual status or charged-off is charged against the allowance for loan losses. The interest on these loans is accounted for on the cash-basis or cost-recovery method, until qualifying for return to accrual status. Loans are returned to accrual status when all the principal and interest amounts contractually due are brought current and future payments are reasonably assured.

Purchased credit-impaired loans

In conjunction with business combinations, the Company purchased loans, some of which have shown evidence of credit deterioration since origination. These purchased credit-impaired ("PCI") loans are recorded at fair value at acquisition date, factoring in credit losses expected to be incurred over the life of the loan. Accordingly, the seller's allowance for loan losses is not carried over or recorded as of the acquisition date.

PCI loans are reviewed individually or are aggregated into pools of loans based on common risk characteristics. The Company estimates the amount and timing of expected cash flows and the excess of the cash flows expected to be collected over the recorded investment, if material, is considered to be the accretable yield and is recognized as interest income over the life. The excess of the contractual cash flows over the cash flows expected to be collected is considered to be the nonaccretable difference.

Over the life of the loans, expected cash flows continue to be estimated and any increases in expected cash flows over those expected at purchase date in excess of fair value that are significant and probable are adjusted through the accretable yield on a prospective basis. Any subsequent decreases in expected cash flows over those expected at purchase date that are probable are recognized by recording an allowance for loan losses.

Allowance for loan losses

The allowance for loan losses is established as losses are estimated to have occurred through a provision for loan losses charged to earnings. Loan losses are charged against the allowance for loan losses when management believes the uncollectibility of the loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance.

The allowance for loan losses is evaluated on a regular basis by management and is based upon management's periodic review of the collectibility of the loans in light of historical experience, the nature and volume of the loan portfolio, adverse situations that may affect the borrower's ability to repay, estimated value of any underlying collateral and prevailing economic conditions. This evaluation is inherently subjective as it requires estimates that are susceptible to revision as more information becomes available.

The allowance consists of specific and general components. The specific component considers loans that are classified as impaired. For such loans that are classified as impaired, an allowance is established when the discounted cash flows (or collateral value or observable market price) of the impaired loan is lower than the carrying amount of that loan. The general component covers non-classified loans and classified loans not considered impaired, and is based on historical loss experience adjusted for qualitative factors. Other adjustments may be made to the allowance for pools of loans after an assessment of internal or external influences on credit quality that are not fully reflected in the historical loss experience.

Premises and equipment, net

Land is stated at cost less accumulated depreciation of depreciable land improvements. Premises and equipment are stated at cost less accumulated depreciation. Depreciation is computed principally by the straight-line method over the estimated useful lives of the assets. The estimated useful lives for premises and equipment are:

Asset Description	Estimated Useful Life
Buildings and improvements	3 – 40 years
Furniture and equipment	3 – 10 years

Long-lived assets

Long-lived assets, including premises and equipment and intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. An impairment loss would be recognized when estimated undiscounted future cash flows from operations of the asset are less than the carrying value of the asset. The cash flows used for this analysis are those directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset. An impairment loss would be measured by the amount by which the carrying value of the asset exceeds its fair value.

Other real estate owned

OREO represents properties acquired through foreclosure or other proceedings in settlement of loans. OREO is held for sale and is recorded at the date of foreclosure at the fair value of the properties less estimated costs of disposal, which establishes a new cost basis. Any adjustment to fair value at the time of transfer to OREO is charged to the allowance for loan losses. Property is evaluated regularly to ensure the recorded amount is supported by its current fair value, and valuation allowances to reduce the carrying amount to fair value less estimated costs to dispose are recorded as necessary. Revenue, expense, gains and losses from the operations of foreclosed assets are included in operations.

Goodwill

Goodwill represents the excess of the cost of a business acquired over the fair value of the new assets acquired. Goodwill is not amortized, but is subject to at least annual impairment assessments. The Company has established December 31 as the annual impairment assessment date. As part of this analysis, the reporting unit's carrying value is compared to its fair value.

The Company estimates the fair value of its reporting units as of the measurement date utilizing valuation methodologies including the comparable transactions approach and the control premium approach. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value. There was no impairment determined at December 31, 2017 and 2016. See "*Note 10. Goodwill and Other Intangible Assets"* for further discussion.

Cash surrender value of bank-owned life insurance

The Company has purchased life insurance policies on certain executives and senior officers. Life insurance is recorded at its cash surrender value.

ASC Topic 715, "Compensation—Retirement Benefits" requires an employer to recognize a liability for post-employment benefits promised to an employee based on an arrangement between an employer and an employee. In an endorsement split-dollar arrangement, the employer owns and controls the policy, and the employer and employee split the life insurance policy's cash surrender value and/or death benefits. If the employer agrees to maintain a life insurance policy during the employee's retirement, the present value of the cost of maintaining the insurance policy would be accrued over the employee's active service period. Similarly, if the employer agrees to provide the employee with a death benefit, the present value of the death benefit would be accrued over the employee's active service period. The Company has an accrued liability, included in other liabilities, for this arrangement.

Transfers of financial assets

Transfers of financial assets are accounted for as sales only when control over the assets has been surrendered. Control over transferred assets is deemed to be surrendered when: (1) the assets have been isolated from the Company, (2) the transferee obtains the right to pledge or exchange the assets it received, and no condition both constrains the transferee from taking advantage of its right to pledge or exchange and provides more than a modest benefit to the transferor, and (3) the Company does not maintain effective control over the transferred assets through an agreement to repurchase them before their maturity or the ability to unilaterally cause the holder to return specific assets.

Income taxes

The Company is subject to income taxes in the U.S. federal and various state jurisdictions. The Company and its subsidiaries file consolidated federal and state income tax returns with each subsidiary computing its taxes on a separate entity basis. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. With few exceptions, the Company is no longer subject to U.S. federal, state or local tax examinations by tax authorities for the years before 2013.

The Company has maintained significant net deferred tax assets for deductible temporary differences, the largest of which relates to the allowance for loan losses. For income tax return purposes, only actual charge-offs are deductible, not the provision for loan losses. The Company took a one-time, non-cash charge of $8.1 million in the fourth quarter of 2017 as a result of the revaluation of the Company's net deferred tax position following the enactment of the TCJA.

Under GAAP, a valuation allowance is required to be recognized if it is more likely than not that the deferred tax assets will not be realized. The determination of the recoverability of the deferred tax assets is highly subjective and dependent upon judgment concerning management's evaluation of both positive and negative evidence, the forecasts of future income, applicable tax planning strategies, and assessments of the current and future economic and business conditions.

The Company evaluated the recoverability of its net deferred tax assets and established a valuation allowance for a state net operating loss carryforward that is not expected to be fully realized. Management believes that it is more likely than not that the deferred tax assets included in the accompanying Consolidated Financial Statements will be fully realized. The Company determined that no valuation allowance was required for any other deferred tax assets as of December 31, 2017.

Positions taken in tax returns may be subject to challenge upon examination by the taxing authorities. Uncertain tax positions are initially recognized in the Consolidated Financial Statements when it is more likely than not the position will be sustained upon examination by the tax authorities. Such tax positions are both initially and subsequently measured as the largest amount of tax benefit that has a greater than 50% likelihood of being realized upon settlement with the tax authority, assuming full knowledge of the position and all relevant facts. When applicable, the Company recognizes interest accrued related to unrecognized tax benefits and penalties in operating expenses. The Company had no accruals for payments of interest and penalties at December 31, 2017 and 2016.

At December 31, 2017, the Company was not under examination by any tax authority.

Treasury Stock

Treasury stock acquired is recorded at cost. Treasury stock issued is valued based on the "first-in, first-out" method. Gains and losses on issuance are recorded as increases or decreases to additional paid-in capital.

Stock-based employee compensation

During the first quarter of 2010, the Company adopted the First Busey Corporation 2010 Equity Incentive Plan ("2010 Equity Plan"), which was approved at the annual stockholders meeting on May 19, 2010. During the second quarter of 2015, the Company adopted an amendment to revise some technical terms to the 2010 Equity Plan, which was approved at the annual stockholders meeting on May 20, 2015, and can be found as Appendix C of the Company's Proxy Statement for the 2015 Annual Meeting of Stockholders. The Company will make all future grants under this plan.

The Company's equity incentive plans are designed to encourage ownership of its common stock by its employees and directors, to provide additional incentive for them to promote the success of the Company's business, and to attract and retain talented personnel. All of the Company's employees and directors and those of its subsidiaries are eligible to receive awards under the plans. See "*Note 17. Share-based Compensation*" for further discussion.

The Company calculates the compensation cost of its non-vested stock awards (restricted stock units) based on the Company's stock price on the grant date multiplied by the number of units granted. This cost is recorded over a specified requisite service period (i.e. vesting period) ranging from one to five years. As the restricted stock units cliff vest, the cost is recorded using straight-line amortization. No compensation cost is recognized for unvested awards that are forfeited.

Segment disclosure

Operating segments are components of a business that (i) engage in business activities from which the component may earn revenues and incur expenses; (ii) has operating results that are reviewed regularly by the entity's chief operating decision maker to make decisions about resources to be allocated to the segments and assess their performance; and (iii) for which discrete financial information is available. The Company's operations are managed along three operating segments consisting of Banking, Remittance Processing and Wealth Management.

Business Combinations

Business combinations are accounted for under *ASC Topic 805, Business Combinations,* using the acquisition method of accounting. The acquisition method of accounting requires an acquirer to recognize the assets acquired and the liabilities assumed at the acquisition date measured at their fair values as of that date. To determine the fair values, the Company may rely on third-party valuations, such as appraisals, or internal valuations based on discounted cash flow analyses or other valuation techniques. Under the acquisition method of accounting, the Company will identify the acquirer and the closing date and apply applicable recognition principles.

On January 8, 2015, First Busey completed its acquisition of Herget Financial, which was headquartered in Pekin, Illinois. On April 30, 2016, First Busey completed its acquisition of Pulaski, which was headquartered in St. Louis, Missouri. On July 2, 2017 First Busey completed its acquisition of First Community, which was headquartered in Joliet, Illinois and on October 1, 2017, First Busey completed its acquisition of Mid Illinois, which was headquartered in Peoria, Illinois. Operating results are included with the Company's results of operations since each date of acquisition. See "*Note 2. Acquisitions*" in the Notes to the Consolidated Financial Statements for further information relating to these acquisitions.

Acquisition related costs are costs the Company incurs to effect a business combination. Those costs may include legal, accounting, valuation, other professional or consulting fees, system conversions and marketing costs. The Company will account for acquisition related costs as expenses in the periods in which the costs are incurred and the services are received. Costs that the Company expects, but is not obligated to incur in the future, to effect its plan to exit an activity of an acquiree or to terminate the employment of an acquiree's employees are not liabilities at the acquisition date. Instead, the Company will recognize these costs in its post-combination Financial Statements in accordance with other applicable accounting guidance.

Derivative Financial Instruments

The Company enters into derivative financial instruments, including interest rate lock commitments issued to residential loan customers for loans that will be held for sale, forward sales commitments to sell residential mortgage loans to loan investors, interest rate swaps and foreign currency forward contracts. These instruments have certain interest rate risk characteristics that change in value based upon changes in the capital markets.

Interest Rate Lock Commitments. Commitments to originate loans held for sale (interest rate lock commitments), which primarily consist of commitments to originate fixed-rate residential mortgage loans, are recorded at their fair value in other assets or other liabilities in the Consolidated Financial Statements, with changes in the fair value of the corresponding derivative financial assets or liabilities recorded as either a charge or credit to mortgage revenues during the period in which the changes occurred. Such derivative financial instruments are recorded as an adjustment to the carrying value of the resulting loan once funded.

Forward Sales Commitments. As a general rule, the Company economically hedges loans held for sale and interest rate lock commitments issued to its residential loan customers related to loans that will be held for sale by obtaining corresponding best-efforts forward sales commitments with an investor to sell the loans at an agreed-upon price at the time the interest rate locks are issued to the customers. Forward sales commitments that meet the definition of derivative financial instruments under ASC Topic 815, Derivatives and Hedging, are carried at their fair value in other assets or other liabilities in the Consolidated Financial Statements. The Company does not designate these forward sales commitments for hedge accounting treatment, and accordingly, changes in fair value of the corresponding derivative financial asset or liability are recorded as either a charge or credit to mortgage revenue during the period in which the changes occur.

Interest Rate Swaps. The Company enters into derivative financial instruments to manage interest rate risk exposure associated with specific commercial loan relationships, at the time such loans are originated. The Company offsets each customer derivative with a bank counterparty. These derivatives are carried at their fair value in other assets or other liabilities in the Consolidated Financial Statements. The Company does not designate these interest rate swaps for hedge accounting treatment, and accordingly, changes in fair value of the corresponding derivative financial asset or liability are recorded in non-interest income and expense.

Foreign Currency Derivatives. The Company had entered into derivative financial instruments as part of its foreign currency risk management strategies until June 2017. These derivative financial instruments consisted of foreign currency forward contracts to accommodate the business needs of its customers. These derivatives were carried at their fair value in other assets or other liabilities in the Consolidated Financial Statements. The Company did not designate these foreign currency forward contracts for hedge accounting treatment, and accordingly, changes in fair value of the corresponding derivative financial asset or liability were recorded in non-interest income and expense.

Earnings per share

Basic earnings per share is computed by dividing net income available to common stockholders for the period by the weighted average number of common shares outstanding, which include deferred stock units that are vested but not delivered.

Diluted earnings per common share is computed using the treasury stock method and reflects the potential dilution that could occur if the Company's outstanding stock options were exercised and restricted stock units were vested. Stock options and restricted stock units for which the exercise or the grant price exceeds the average market price over the period have an anti-dilutive effect and are excluded from the calculation. At December 31, 2017, 75,387 outstanding options, 191,278 warrants and 9,425 restricted stock units were anti-dilutive and excluded from the calculation of common stock equivalents. At December 31, 2016, 28,350 outstanding options, 191,278 warrants and 132,017 restricted stock units were anti-dilutive and excluded from the calculation of common stock equivalents.

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Earnings per common share, adjusted to reflect the Reverse Stock Split, have been computed as follows *(dollars in thousands, except per share data)*:

	For the Years Ended December 31,		
	2017	2016	2015
Net income available to common stockholders	$ 62,726	$ 49,694	$ 38,306
Shares:			
Weighted average common shares outstanding	42,685	35,081	28,928
Dilutive effect of outstanding options, warrants and restricted stock units as determined by the application of the treasury stock method	441	332	175
Weighted average common shares outstanding, as adjusted for diluted earnings per share calculation	43,126	35,413	29,103
Basic earnings per common share	$ 1.47	$ 1.42	$ 1.32
Diluted earnings per common share	$ 1.45	$ 1.40	$ 1.32

Reclassifications

Reclassifications have been made to certain prior year account balances, with no effect on net income or stockholders' equity, to be consistent with the classifications adopted as of and for the year ended December 31, 2017.

Subsequent events

The Company has evaluated subsequent events for potential recognition and/or disclosure through the date the Consolidated Financial Statements included in this Annual Report on Form 10-K were issued. There were no significant subsequent events for the year ended December 31, 2017 through the filing date of these Consolidated Financial Statements.

Impact of new financial accounting standards

ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)." ASU 2014-09 outlines a single model for companies to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. ASU 2014-09 will require that companies recognize revenue based on the value of transferred goods or services as they occur in the contract and will also require additional disclosures. The new authoritative guidance was originally effective for reporting periods after December 15, 2016. In August 2015, *ASU 2015-14, "Revenue from Contracts with Customers (Topic 606)"* was issued to delay the effective date of ASU 2014-09 by one year. The FASB issued four subsequent ASUs in 2016 which are intended to improve and clarify the implementation guidance related to ASU 2014-09. The Company's revenue is comprised of net interest income, which is explicitly excluded from the scope of ASU 2014-09, and non-interest income. The Company is complete with its overall assessment of non-interest income and reviewing of related contracts potentially affected by the guidance. The Company's assessment indicates the adoption of this guidance will not materially change the method in which non-interest income is recognized. In addition, the Company is evaluating the expanded disclosure requirement. The Company adopted the guidance on January 1, 2018 and a cumulative effect adjustment to retained earnings was not necessary.

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ASU 2016-01, "Financial Instruments — Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities." ASU 2016-01 is intended to improve the recognition and measurement of financial instruments by, among other things, requiring: equity investments, with certain exceptions, to be measured at fair value with changes in fair value recognized in net income; to use the exit price notion when measuring the fair value of financial instruments for disclosure purposes; separate presentation of financial assets and financial liabilities by measurement category and form of financial assets; eliminating the requirement to disclose the method and significant assumptions used to estimate the fair value for financial instruments measured at amortized cost on the Balance Sheet; and requiring an entity to present separately in other comprehensive income (loss) the portion of the total change in fair value of a liability resulting from the change in the instrument-specific credit risk when the fair value option has been elected for the liability. ASU 2016-01 was effective on January 1, 2018 and the adoption of this guidance did not have a material impact on its Consolidated Financial Statements.

ASU 2016-02, "Leases (Topic 842)." ASU 2016-02 intends to increase transparency and comparability among organizations by recognizing all lease transactions (with terms in excess of 12 months) on the Consolidated Balance Sheet as a lease liability and a right-of-use asset. The guidance also requires qualitative and quantitative disclosures designed to assess the amount, timing and uncertainty of cash flows arising from leases. This guidance is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those fiscal years. Upon adoption, the lessee will apply the new standard retrospectively to all periods presented or retrospectively using a cumulative effect adjustment in the year of adoption. The Company is evaluating the impact this guidance will have on its Consolidated Financial Statements and related disclosures.

ASU 2016-13, "Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments." ASU 2016-13 implements a comprehensive change in estimating impairment from the current model of losses inherent in loans and securities held to maturity. This current expected credit loss model is expected to result in earlier recognition of losses. ASU 2016-13 will be effective in the first quarter of 2020. The Company's implementation team is analyzing the provisions of ASU 2016-13, including evaluating the impact this guidance will have on its Consolidated Financial Statements and related disclosures.

ASU 2016-15, "Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments." ASU 2016-15 provides clarification regarding how certain cash receipts and cash payments are presented and classified in the Consolidated Statements of Cash Flows. This update is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. The Company does not expect the adoption of this guidance to have a material impact to its Consolidated Financial Statements.

ASU 2016-16, "Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory." ASU 2016-16 is intended to improve the accounting for the income tax consequences of intra-entity transfers of assets other than inventory by requiring an entity to recognize the income tax consequences when a transfer occurs, instead of when an asset is sold to an outside party. This guidance is effective for annual reporting periods beginning after December 15, 2017, including interim periods within those fiscal years. The new standard will require adoption on a modified retrospective basis through a cumulative-effect adjustment to retained earnings, and early adoption is permitted. The Company does not expect the adoption of this guidance to have a material impact on its Consolidated Financial Statements.

ASU 2017-01, "Business Combinations (Topic 805): Clarifying the Definition of a Business." ASU 2017-01 clarifies the definition and provides a more robust framework to use in determining when a set of assets and activities constitutes a business. ASU 2017-01 is intended to provide guidance when evaluating whether transactions should be accounted for as acquisitions of assets or businesses. This guidance is effective for annual reporting periods beginning after December 15, 2017, including interim periods within those fiscal years, and is not expected to have a significant impact to the Company's Consolidated Financial Statements.

ASU 2017-04, "Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment." ASU 2017-04 is intended to simplify goodwill impairment testing by eliminating the second step of the analysis. ASU 2017-04 requires entities to compare the fair value of a reporting unit with its carrying amount and recognize an impairment charge for any amount by which the carrying amount exceeds the reporting unit's fair value, to the extent that the loss recognized does not exceed the amount of goodwill allocated to that reporting unit. This guidance is effective for annual and interim periods beginning after December 15, 2019, with early adoption permitted. The Company does not expect this guidance to have a material impact on its Consolidated Financial Statements.

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ASU 2017-08, "Receivables - Nonrefundable Fees and Other Costs (Subtopic 310-20), Premium Amortization on Purchased Callable Debt Securities." ASU 2017-08 shortens the amortization period for certain callable debt securities held at a premium, requiring the premium to be amortized to the earliest call date. ASU 2017-08 does not require an accounting change for securities held at a discount; the discount continues to be amortized to maturity. This guidance is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those fiscal years, with early adoption permitted. The Company does not expect this guidance to have a material impact on its Consolidated Financial Statements.

ASU 2017-09, "Compensation - Stock Compensation (Topic 718): Scope of Modification Accounting." ASU 2017-09 provides guidance on determining which changes to the terms and conditions of share-based payment awards, including stock options, require an entity to apply modification accounting under Topic 718. This guidance is effective for annual reporting periods beginning after December 15, 2017, including interim periods within those fiscal years, with early adoption permitted. The Company does not expect this guidance to have a material impact on its Consolidated Financial Statements.

ASU 2017-12, "Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities." ASU 2017-12 amends Topic 815 to reduce the cost and complexity of applying hedge accounting and expand the types of relationships that qualify for hedge accounting. The guidance eliminates the requirement to separately measure and report hedge ineffectiveness, requires all items that affect earnings to be presented in the same income statement line as the hedged item, provides new alternatives for applying hedge accounting to additional hedging strategies and measuring the hedged item in fair value hedges of interest rate risk, and expects to reduce the cost and complexity of applying hedge accounting by easing the requirements for effective testing, hedge documentation and application of the critical terms match method, and reducing the risk of material error corrections if a company applies the shortcut method incorrectly. This guidance is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those fiscal years, with early adoption permitted. The Company does not expect this guidance to have a material impact on its Consolidated Financial Statements.

Note 2. Acquisitions

Pulaski Financial Corp.

On April 30, 2016, First Busey completed its acquisition of Pulaski, which was headquartered in St. Louis, Missouri. Pulaski Bank, which was Pulaski's wholly-owned bank subsidiary prior to the acquisition, offered a full line of quality retail and commercial banking products through thirteen full-service banking centers in the St. Louis metropolitan area. The operating results of Pulaski are included with the Company's results of operations since the date of acquisition. First Busey operated Pulaski Bank as a separate subsidiary from May 1, 2016 until November 4, 2016, when it was merged with and into Busey Bank. At that time, Pulaski Bank's banking centers became banking centers of Busey Bank.

Under the terms of the definitive agreement, at the effective time of the acquisition, each share of Pulaski common stock issued and outstanding was converted into the right to receive 0.79 shares of First Busey common stock and cash in lieu of fractional shares. The market value of the 9.4 million shares of First Busey common stock issued at the effective time of the acquisition was approximately $193.0 million based on First Busey's closing stock price of $20.44 on April 29, 2016. In addition, all of the options to purchase shares of Pulaski common stock that were outstanding at the acquisition date were converted into options to purchase shares of First Busey common stock, adjusted for the 0.79 exchange ratio.

This transaction was accounted for using the acquisition method of accounting and, accordingly, assets acquired, liabilities assumed, and consideration exchanged were recorded at their estimated fair values on the date of acquisition. The total consideration paid, which was used to determine the amount of goodwill resulting from the transaction, also included the fair value of outstanding Pulaski stock options that were converted into options to purchase common shares of First Busey. As the total consideration paid for Pulaski exceeded the net assets acquired, goodwill of $77.3 million was recorded as a result of the acquisition. Goodwill recorded in the transaction, which reflected the synergies expected from the acquisition and the enhanced revenue opportunities from the Company's broader service capabilities in the St. Louis market, is not tax deductible, and was assigned to the Banking operating segment.

First Busey incurred an insignificant amount of expenses related to the acquisition of Pulaski for the twelve months ended December 31, 2017. First Busey incurred $10.0 million in pre-tax expenses related to the acquisition of Pulaski for the twelve months ended December 31, 2016, including professional and legal fees of $1.2 million to directly consummate the acquisition, all of which are reported as a component of non-interest expense in the accompanying Consolidated Financial Statements. The remainder of the expenses primarily related to data processing conversion expenses and restructuring expenses.

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The following table presents the assets acquired and liabilities assumed of Pulaski as of April 30, 2016 and their fair value estimates *(dollars in thousands)*:

	As Recorded by Pulaski (Unaudited)	Fair Value Adjustments	As Recorded by First Busey
Assets acquired:			
Cash and cash equivalents	$ 25,580	$ —	$ 25,580
Securities	47,895	105(a)	48,000
Loans held for sale	184,856	—	184,856
Portfolio loans	1,243,913	(14,452)(b)	1,229,461
Premises and equipment	17,236	(667)(c)	16,569
OREO	5,022	(2,534)(d)	2,488
Goodwill	3,939	(3,939)(e)	—
Other intangible assets	—	15,468(f)	15,468
Other assets	70,365	(122)(g)	70,243
Total assets acquired	1,598,806	(6,141)	1,592,665
Liabilities assumed:			
Deposits	1,226,906	1,102(h)	1,228,008
Other borrowings	205,840	906(i)	206,746
Trust preferred securities	19,589	(3,805)(j)	15,784
Other liabilities	24,594	(612)(k)	23,982
Total liabilities assumed	1,476,929	(2,409)	1,474,520
Net assets acquired	$ 121,877	$ (3,732)	$ 118,145
Consideration paid:			
Cash			$ 5
Common stock			192,990
Fair value of stock options assumed			2,454
Total consideration paid			195,449
Goodwill			$ 77,304

Explanation:

(a) Fair value adjustments of the securities portfolio as of the acquisition date.
(b) Fair value adjustments based on the Company's evaluation of the acquired loan portfolio and write-off of net deferred loan costs. In addition, the allowance for loan losses recorded by Pulaski was eliminated, but is not reflected in the table. $16.9 million is expected to be accreted over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method.
(c) Fair value adjustments based on the Company's evaluation of the acquired premises and equipment. The reduction in depreciation expense will be recorded using the straight-line method over the estimated useful life associated with each type of premises and equipment adjusted.
(d) Fair value adjustment based on the Company's evaluation of the acquired OREO portfolio.
(e) Eliminate Pulaski's existing goodwill.
(f) Recording of the core deposit intangible asset on the acquired core deposit accounts. Amount to be amortized using a sum of years digits method over a 14 year useful life.
(g) Fair value adjustment of other assets at the acquisition date.
(h) Fair value adjustment to time deposits. Amount to be amortized over two years in a manner that approximates the level yield method.
(i) Fair value adjustment to the FHLB borrowings. Such borrowings were repaid shortly after the acquisition date, so there was no premium amortization.
(j) Fair value adjustment to the trust preferred securities at the acquisition date. Amount to be accreted over the weighted average remaining life of 18

years in a manner that approximates the level yield method.
(k) Fair value adjustment of other liabilities at the acquisition date.

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The loans acquired in this transaction were recorded at fair value with no carryover of any existing allowance for loan losses. Loans that were not deemed to be credit-impaired at the acquisition date were accounted for under FASB ASC 310-20, Receivables-Nonrefundable Fees and Other Costs, and were subsequently considered as part of the Company's determination of the adequacy of the allowance for loan losses. PCI loans, which are loans with evidence of credit quality deterioration at the date of acquisition, were accounted for under ASC 310-30, Receivables — Loans and Debt Securities Acquired with Deteriorated Credit Quality. As of the acquisition date, the aggregate principal outstanding and aggregate fair value of the acquired performing loans, including loans held for sale, both rounded to $1.4 billion. The difference between the aggregate principal balance outstanding and aggregate fair value of $16.6 million is expected to be accreted over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method. As of the acquisition date, the aggregate principal balance outstanding of PCI loans totaled $21.2 million and the aggregate fair value of PCI loans totaled $9.7 million, which became such loans' new carrying value. At December 31, 2017, PCI loans related to this transaction with a carrying value of $1.0 million were outstanding. Material activity includes PCI loans with a carrying value of $6.2 million sold to outside parties in the third quarter of 2016 and a commercial PCI loan with a carrying value of $1.6 million collected in the fourth quarter of 2016. For PCI loans, the difference between contractually required payments at the acquisition date and the cash flow expected to be collected is referred to as the non-accretable difference. Further, the excess of cash flows expected at acquisition over the fair value is referred to as the accretable yield. The accretable yield, as of the acquisition date, of $0.3 million on PCI loans was expected to be recognized over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method; however, the majority was accelerated in 2016 as a result of the third quarter loan sale and fourth quarter collection.

The following table provides the unaudited pro forma information for the results of operations for the twelve months ended December 31, 2016, as if the acquisition had occurred January 1, 2016. The pro forma results combine the historical results of Pulaski in the Company's Consolidated Statements of Income, adjusted for the impact of the application of the acquisition method of accounting including loan discount accretion, intangible assets amortization, and deposit and trust preferred securities premium accretion, net of taxes. The pro forma results have been prepared for comparative purposes only and are not necessarily indicative of the results that would have been obtained had the acquisition actually occurred on January 1, 2016. No assumptions have been applied to the pro forma results of operations regarding possible revenue enhancements, expense efficiencies or asset dispositions. Only the acquisition related expenses that had been recognized are included in net income in the table below *(dollars in thousands)*:

	Pro Forma Twelve Months Ended December 31, 2016
Total revenues (net interest income plus non-interest income)	$ 245,861
Net income	46,276
Diluted earnings per common share	1.20

First Community Financial Partners, Inc.

On July 2, 2017, the Company completed its acquisition of First Community, which was headquartered in Joliet, Illinois. Founded in 2004, First Community operated nine banking centers in Will, DuPage and Grundy Counties, which encompass portions of the southwestern suburbs of Chicago. The operating results of First Community are included with the Company's results of operations since the date of acquisition. First Busey operated First Community Financial Bank as a separate subsidiary from July 3, 2017 until November 3, 2017, when it was merged with and into Busey Bank. At that time, First Community Financial Bank's banking centers became banking centers of Busey Bank.

Under the terms of the merger agreement with First Community, at the effective time of the acquisition, each share of First Community common stock issued and outstanding was converted into the right to receive 0.396 shares of the Company's common stock, cash in lieu of fractional shares and $1.35 cash consideration per share. The market value of the 7.2 million shares of First Busey common stock issued at the effective time of the acquisition was approximately $211.1 million based on First Busey's closing stock price of $29.32 on June 30, 2017. In addition, certain options to purchase shares of First Community common stock that were outstanding at the acquisition date were converted into options to purchase shares of First Busey common stock, adjusted for the 0.44 option exchange ratio, and the fair value was included in the purchase price. Further, the purchase price included cash payouts relating to unconverted stock options and restricted stock units outstanding as of the acquisition date.

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This transaction was accounted for using the acquisition method of accounting and, accordingly, assets acquired, liabilities assumed, and consideration exchanged were recorded at their estimated fair values on the date of acquisition. Fair values are subject to refinement for up to one year after the closing date of July 2, 2017 as additional information regarding the closing date fair values become available; however, the Company does not expect any further adjustments will be necessary. The total consideration paid, which was used to determine the amount of goodwill resulting from the transaction, also included the fair value of outstanding First Community stock options that were converted into options to purchase common shares of First Busey and cash paid out relating to stock options and restricted stock units not converted. As the total consideration paid for First Community exceeded the net assets acquired, goodwill of $116.0 million was recorded as a result of the acquisition. Goodwill recorded in the transaction, which reflected the synergies expected from the acquisition and the greater revenue opportunities from the Company's broader service capabilities in the Chicagoland area, is not tax deductible, and was assigned to the Banking operating segment.

First Busey incurred $4.5 million in pre-tax expenses related to the acquisition of First Community for the twelve months ended December 31, 2017, including professional and legal fees of $1.6 million to directly consummate the acquisition, all of which were reported as a component of non-interest expense in the accompanying Consolidated Financial Statements. The remainder of the expenses primarily related to data processing conversion expenses and restructuring expenses.

The following table presents the First Community assets acquired and liabilities assumed as of July 2, 2017 and their fair value estimates *(dollars in thousands)*:

	As Recorded by First Community (Unaudited)	Fair Value Adjustments	As Recorded by First Busey
Assets acquired:			
Cash and cash equivalents	$ 60,686	$ —	$ 60,686
Securities	166,046	(203)(a)	165,843
Loans held for sale	905	—	905
Portfolio loans	1,103,987	(7,404)(b)	1,096,583
Premises and equipment	21,682	(3,588)(c)	18,094
OREO	915	(193)(d)	722
Other intangible assets	701	13,278(e)	13,979
Other assets	41,644	111(f)	41,755
Total assets acquired	1,396,566	2,001	1,398,567
Liabilities assumed:			
Deposits	1,134,584	(229)(g)	1,134,355
Other borrowings	125,471	280(h)	125,751
Other liabilities	11,503	359(i)	11,862
Total liabilities assumed	1,271,558	410	1,271,968
Net assets acquired	$ 125,008	$ 1,591	$ 126,599
Consideration paid:			
Cash			$ 24,557
Cash payout of options and restricted stock units			6,182
Common stock			211,120
Fair value of stock options assumed			722
Total consideration paid			242,581
Goodwill			$ 115,982

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Explanation:

(a) Fair value adjustments of the securities portfolio as of the acquisition date.
(b) Fair value adjustments based on the Company's evaluation of the acquired loan portfolio and write-off of net deferred loan costs. In addition, the allowance for loan losses recorded by First Community was eliminated, but is not reflected in the table. $15.0 million is expected to be accreted over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method.
(c) Fair value adjustments based on the Company's evaluation of the acquired premises and equipment. The reduction in depreciation expense will be recorded using the straight-line method over the estimated useful life associated with each type of premises and equipment adjusted.
(d) Fair value adjustment based on the Company's evaluation of the acquired OREO portfolio.
(e) Elimination of First Community's existing core deposit intangible asset and recording of the core deposit intangible asset on the acquired core deposit accounts. Amount to be amortized using a sum of years digits method over a 14 year useful life.
(f) Fair value adjustment of other assets at the acquisition date.
(g) Fair value adjustment to time deposits. Amount to be accreted over two years in a manner that approximates the level yield method.
(h) Fair value adjustment to borrowings. Amount to be amortized over the 15 month remaining life of debt in a manner that approximates the level yield method.
(i) Fair value adjustment of other liabilities at the acquisition date.

The loans acquired in this transaction were recorded at fair value with no carryover of any existing allowance for loan losses. Loans that were not deemed to be credit-impaired at the acquisition date were accounted for under FASB ASC 310-20, Receivables-Nonrefundable Fees and Other Costs, and were subsequently considered as part of the Company's determination of the adequacy of the allowance for loan losses. PCI loans were accounted for under ASC 310-30, Receivables — Loans and Debt Securities Acquired with Deteriorated Credit Quality. As of the acquisition date, the aggregate principal outstanding and aggregate fair value of the acquired performing loans, including loans held for sale, both rounded to $1.1 billion. The difference between the aggregate principal balance outstanding and aggregate fair value of $14.4 million is expected to be accreted over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method. As of the acquisition date, the aggregate principal balance outstanding of PCI loans totaled $17.9 million and the aggregate fair value of PCI loans totaled $12.5 million, which became such loans' new carrying value. At December 31, 2017, PCI loans related to this transaction with a carrying value of $5.1 million were outstanding, with the decrease relating to collections. For PCI loans, the difference between contractually required payments at the acquisition date and the cash flow expected to be collected is referred to as the non-accretable difference. Further, the excess of cash flows expected at acquisition over the fair value is referred to as the accretable yield. The accretable yield, as of the acquisition date, of $0.6 million on PCI loans was expected to be recognized over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method; however, $0.2 million was accelerated in 2017 as a result of collections.

Since the acquisition date of July 2, 2017 and until November 3, 2017 when First Community Financial Bank merged into Busey Bank, First Community Financial Bank earned total revenues of $19.3 million and net income of $4.4 million, which is included in the Company's Consolidated Statements of Income for the year ended December 31, 2017. The following table provides the unaudited pro forma information for the results of operations for the twelve months ended December 31, 2017 and 2016, as if the acquisition had occurred January 1, 2016. The pro forma results combine the historical results of First Community into the Company's Consolidated Statements of Income, including the impact of purchase accounting adjustments including loan discount accretion, intangible assets amortization, deposit accretion and premises accretion, net of taxes. The 2016 pro forma results reflect Pulaski pro forma information as well, which is shown separately above. The pro forma results have been prepared for comparative purposes only and are not necessarily indicative of the results that would have been obtained had the acquisition actually occurred on January 1, 2016. No assumptions have been applied to the pro forma results of operations regarding possible revenue enhancements, expense efficiencies or asset dispositions. Only the merger related expenses that have been recognized are included in net income in the table below (*dollars in thousands)*:

	Pro Forma Twelve Months Ended December 31, 2017	2016
Total revenues (net interest income plus non-interest income)	$ 316,417	$ 293,190
Net income	67,413	59,326
Diluted earnings per common share	1.47	1.29

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Mid Illinois Bancorp, Inc.

On October 1, 2017, the Company completed its acquisition of Mid Illinois, under which each share of Mid Illinois common stock issued and outstanding as of the effective time was converted into, at the election of the stockholder the right to receive, either (i) $227.94 in cash, (ii) 7.5149 shares of the Company's common stock, or (iii) mixed consideration of $68.38 in cash and 5.2604 shares of the Company's common stock, subject to certain adjustments and proration. In the aggregate, total consideration consisted of 70% stock and 30% cash. Mid Illinois stockholders electing the cash consideration option were subject to proration under the terms of the merger agreement with Mid Illinois and ultimately received a mixture of cash and stock consideration. It is anticipated that South Side Bank will be merged with and into Busey Bank in the first quarter of 2018. At the time of the bank merger, South Side Bank's banking centers will become banking centers of Busey Bank. Founded in 1922, South Side Bank operates as a state chartered commercial and trust bank with thirteen banking centers located within the greater Peoria area. South Side Bank also owns Mid-Illinois Insurance Services, Inc.

This transaction was accounted for using the acquisition method of accounting and, accordingly, assets acquired, liabilities assumed, and consideration exchanged were recorded at their estimated fair values on the date of acquisition. Fair values are subject to refinement for up to one year after the closing date of October 1, 2017. As the total consideration paid for Mid Illinois exceeded the net assets acquired, goodwill of $50.6 million was recorded as a result of the acquisition. Goodwill recorded in the transaction, which reflected the synergies expected from the acquisition and expansion within the greater Peoria area, is not tax deductible, and was assigned to the Banking operating segment.

First Busey incurred $2.5 million in pre-tax expenses related to the acquisition of Mid Illinois for the twelve months ended December 31, 2017, including professional and legal fees of $1.3 million to directly consummate the acquisition, all of which were reported as a component of non-interest expense in the accompanying Consolidated Financial Statements.

The following table presents the Mid Illinois assets acquired and liabilities assumed as of October 1, 2017 and their fair value estimates *(dollars in thousands)*:

	As Recorded by Mid Illinois (Unaudited)	Fair Value Adjustments	As Recorded by First Busey
Assets acquired:			
Cash and cash equivalents	$ 39,444	$ (1)(a)	$ 39,443
Securities	208,247	(244)(b)	208,003
Loans held for sale	5,031	—	5,031
Portfolio loans	364,939	(8,288)(c)	356,651
Premises and equipment	11,061	5,490(d)	16,551
Goodwill	423	(423)(e)	—
Other intangible assets	—	11,531(f)	11,531
Other assets	33,239	(5,336)(g)	27,903
Total assets acquired	662,384	2,729	665,113
Liabilities assumed:			
Deposits	505,586	331(h)	505,917
Other borrowings	61,040	—	61,040
Other liabilities	10,017	480(i)	10,497
Total liabilities assumed	576,643	811	577,454
Net assets acquired	$ 85,741	$ 1,918	$ 87,659
Consideration paid:			
Cash			$ 40,507
Common stock			97,702
Total consideration paid			138,209
Goodwill			$ 50,550

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Explanation:

(a) Fair value adjustments of cash and cash equivalents as of the acquisition date.
(b) Fair value adjustments of the securities portfolio as of the acquisition date.
(c) Fair value adjustments based on the Company's evaluation of the acquired loan portfolio and write-off of net deferred loan fees and costs. In addition, the allowance for loan losses recorded by Mid Illinois was eliminated, but is not reflected in the table. $5.5 million is expected to be accreted over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method.
(d) Fair value adjustments based on the Company's evaluation of the acquired premises and equipment. The increase in depreciation expense will be recorded using the straight-line method over the estimated useful life associated with each type of premises and equipment adjusted.
(e) Eliminate Mid Illinois's existing goodwill.
(f) Recording of the core deposit intangible asset on the acquired core deposit accounts of $10.6 million. Amount to be amortized using a sum of years digits method over a 12 year useful life. Recording of the customer list intangible asset of $0.9 million. Amount to be amortized using a sum of years digits method over an 8 year useful life.
(g) Fair value adjustment of other assets at the acquisition date.
(h) Fair value adjustment to time deposits. Amount to be amortized over two years in a manner that approximates the level yield method.
(i) Fair value adjustment of other liabilities at the acquisition date.

The loans acquired in this transaction were recorded at fair value with no carryover of any existing allowance for loan losses. Loans that were not deemed to be credit-impaired at the acquisition date were accounted for under FASB ASC 310-20, Receivables-Nonrefundable Fees and Other Costs, and were subsequently considered as part of the Company's determination of the adequacy of the allowance for loan losses. PCI loans were accounted for under ASC 310-30, Receivables — Loans and Debt Securities Acquired with Deteriorated Credit Quality. As of the acquisition date, the aggregate principal outstanding was $362.4 million and aggregate fair value of the acquired performing loans was $357.0 million, including loans held for sale. The difference between the aggregate principal balance outstanding and aggregate fair value of $5.4 million is expected to be accreted over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method. As of the acquisition date, the aggregate principal balance outstanding of PCI loans totaled $7.6 million and the aggregate fair value of PCI loans totaled $4.7 million, which became such loans' new carrying value. At December 31, 2017, PCI loans related to this transaction with a carrying value of $4.5 million were outstanding. For PCI loans, the difference between contractually required payments at the acquisition date and the cash flow expected to be collected is referred to as the non-accretable difference. Further, the excess of cash flows expected at acquisition over the fair value is referred to as the accretable yield. The accretable yield, as of the acquisition date, of $0.1 million on PCI loans was expected to be recognized over the estimated four year remaining life of the respective loans in a manner that approximates the level yield method.

Since the acquisition date, South Side Bank earned total revenues of $6.5 million and net income of $2.0 million, which is included in the Company's Consolidated Statements of Income for the year ended December 31, 2017.

Note 3. Cash and Cash Equivalents

The Banks are required to maintain certain cash reserve balances with the Federal Reserve Bank of Chicago, which may be offset by cash on hand. The required reserve balances as of December 31, 2017 and 2016 were approximately $27.0 million and $22.5 million, respectively.

The Company maintains its cash in deposit accounts the balance of which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts. Management believes the Company is not exposed to any significant credit risk on cash and cash equivalents.

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Note 4. Securities

The amortized cost, unrealized gains and losses and fair values of securities are summarized as follows *(dollars in thousands)*:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
December 31, 2017:				
Available for sale				
U.S. Treasury securities	$ 60,829	$ 7	$ (488)	$ 60,348
Obligations of U.S. government corporations and agencies	104,807	1	(1,143)	103,665
Obligations of states and political Subdivisions	280,216	1,160	(1,177)	280,199
Residential mortgage-backed securities	400,661	612	(3,837)	397,436
Corporate debt securities	30,946	132	(44)	31,034
Total debt securities	877,459	1,912	(6,689)	872,682
Mutual funds and other equity securities	5,378	—	—	5,378
Total	$ 882,837	$ 1,912	$ (6,689)	$ 878,060
Held to maturity				
Obligations of states and political Subdivisions	$ 41,300	$ 228	$ (64)	$ 41,464
Commercial mortgage-backed securities	60,474	41	(297)	60,218
Residential mortgage-backed securities	341,776	25	(2,431)	339,370
Total	$ 443,550	$ 294	$ (2,792)	$ 441,052

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
December 31, 2016:				
Available for sale				
U.S. Treasury securities	$ 74,784	$ 185	$ (25)	$ 74,944
Obligations of U.S. government corporations and agencies	79,577	46	(496)	79,127

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Obligations of states and political Subdivisions	154,438	1,093	(593)	154,938
Residential mortgage-backed securities	303,641	1,390	(2,782)	302,249
Corporate debt securities	142,836	630	(123)	143,343
Total debt securities	755,276	3,344	(4,019)	754,601
Mutual funds and other equity securities	4,475	735	—	5,210
Total	$ 759,751	$ 4,079	$ (4,019)	$ 759,811
Held to maturity				
Obligations of states and political Subdivisions	$ 44,333	$ 122	$ (160)	$ 44,295
Commercial mortgage-backed securities	3,487	23	(122)	3,388
Total	$ 47,820	$ 145	$ (282)	$ 47,683

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The amortized cost and fair value of debt securities as of December 31, 2017, by contractual maturity or pre-refunded date, are shown below. Mutual funds and other equity securities do not have stated maturity dates and therefore are not included in the following maturity summary. Mortgages underlying mortgage-backed securities may be called or prepaid; therefore, actual maturities could differ from the contractual maturities. All mortgage-backed securities were issued by U.S. government agencies and corporations *(dollars in thousands)*.

	Available for sale		Held to maturity	
	Amortized Cost	**Fair Value**	**Amortized Cost**	**Fair Value**
Due in one year or less	$ 80,769	$ 80,685	$ 4,418	$ 4,410
Due after one year through five years	256,441	254,548	61,673	61,501
Due after five years through ten years	179,392	179,542	33,799	33,882
Due after ten years	360,857	357,907	343,660	341,259
Total	$ 877,459	$ 872,682	$ 443,550	$ 441,052

Realized gains and losses related to sales of securities available for sale are summarized as follows *(dollars in thousands)*:

	For the Years Ended December 31,		
	2017	**2016**	**2015**
Gross security gains	$ 1,259	$ 1,383	$ 401
Gross security (losses)	(116)	(151)	(21)
Net security gains	$ 1,143	$ 1,232	$ 380

The tax provision for these net realized gains and losses was $0.4 million for the years ended December 31, 2017 and 2016, and $0.1 million for the year ended December 31, 2015.

Investment securities with carrying amounts of $638.2 million and $547.2 million on December 31, 2017 and 2016, respectively, were pledged as collateral for public deposits, securities sold under agreements to repurchase and for other purposes as required or permitted by law.

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Information pertaining to securities with gross unrealized losses at December 31, 2017 and 2016 aggregated by investment category and length of time that individual securities have been in a continuous loss position follows *(dollars in thousands):*

	Continuous unrealized losses existing for less than 12 months, gross		Continuous unrealized losses existing for greater than 12 months, gross		Total, gross	
	Fair Value	**Unrealized Losses**	**Fair Value**	**Unrealized Losses**	**Fair Value**	**Unrealized Losses**
December 31, 2017:						
Available for sale						
U.S. Treasury securities	$ 59,773	$ (488)	$ —	$ —	$ 59,773	$ (488)
Obligations of U.S. government corporations and agencies	78,610	(636)	24,831	(507)	103,441	(1,143)
Obligations of states and political subdivisions	162,213	(1,027)	12,045	(150)	174,258	(1,177)
Residential mortgage-backed securities	223,261	(1,428)	90,930	(2,409)	314,191	(3,837)
Corporate debt securities	16,176	(44)	—	—	16,176	(44)
Total temporarily impaired securities	$ 540,033	$ (3,623)	$ 127,806	$ (3,066)	$ 667,839	$ (6,689)
Held to maturity						
Obligations of states and political subdivisions	$ 17,939	$ (64)	$ —	$ —	$ 17,939	$ (64)
Commercial mortgage-backed securities	44,514	(214)	2,374	(83)	46,888	(297)
Residential mortgage-backed securities	277,826	(2,431)	—	—	277,826	(2,431)
Total temporarily impaired securities	$ 340,279	$ (2,709)	$ 2,374	$ (83)	$ 342,653	$ (2,792)

	Continuous unrealized losses existing for less than 12 months, gross				Continuous unrealized losses existing for greater than 12 months, gross				Total, gross			
		Fair Value		Unrealized Losses		Fair Value		Unrealized Losses		Fair Value		Unrealized Losses
December 31, 2016:												
Available for sale												
U.S. Treasury securities	$	9,997	$	(25)	$	—	$	—	$	9,997	$	(25)
Obligations of U.S. government corporations and agencies		46,209		(496)		—		—		46,209		(496)
Obligations of states and political subdivisions		64,832		(585)		1,154		(8)		65,986		(593)
Residential mortgage-backed securities		168,898		(2,782)		—		—		168,898		(2,782)
Corporate debt securities		32,749		(123)		—		—		32,749		(123)
Total temporarily impaired securities	$	322,685	$	(4,011)	$	1,154	$	(8)	$	323,839	$	(4,019)
Held to maturity												
Obligations of states and political subdivisions	$	24,558	$	(160)	$	—	$	—	$	24,558	$	(160)
Commercial mortgage-backed securities		2,385		(122)		—		—		2,385		(122)
Total temporarily impaired securities	$	26,943	$	(282)	$	—	$	—	$	26,943	$	(282)

Securities are periodically evaluated for OTTI. The total number of securities in the investment portfolio in an unrealized loss position as of December 31, 2017 was 658, and represented a loss of 0.93% of the aggregate carrying value. As of December 31, 2017, the Company does not intend to sell such securities and it is more likely than not that the Company will recover the amortized cost prior to being required to sell the securities. Full collection of the amounts due according to the contractual terms of the securities is expected; therefore, the Company does not consider these investments to be OTTI at December 31, 2017.

The Company had available for sale obligations of state and political subdivisions with a fair value of $280.2 million and $154.9 million as of December 31, 2017 and 2016, respectively. In addition, the Company had held to maturity obligations of state and political subdivisions with a fair value of $41.5 million and $44.3 million at December 31, 2017 and 2016, respectively.

As of December 31, 2017, the fair value of the Company's obligations of state and political subdivisions portfolio was comprised of $271.7 million of general obligation bonds and $50.0 million of revenue bonds issued by 446 issuers, primarily consisting of states, counties, cities, towns, villages and school districts. The Company held investments in general obligation bonds in 36 states (including the District of Columbia), including nine states in which the aggregate fair value exceeded $5.0 million. The Company held investments in revenue bonds in 22 states, including three states where the aggregate fair value exceeded $5.0 million.

As of December 31, 2016, the fair value of the Company's obligations of state and political subdivisions portfolio was comprised of $163.6 million of general obligation bonds and $35.6 million of revenue bonds issued by 260 issuers, primarily consisting of states, counties, cities, towns, villages and school districts. The Company held investments in general obligation bonds in 29 states (including the District of Columbia), including seven states in which the aggregate fair value exceeded $5.0 million. The Company held investments in revenue bonds in 16 states, including two states where the aggregate fair value exceeded $5.0 million.

The amortized cost and fair values of the Company's portfolio of general obligation bonds are summarized in the following tables by the issuers' state:

December 31, 2017:

U.S. State	Number of Issuers		Amortized Cost		Fair Value		Average Exposure Per Issuer (Fair Value)
Illinois	97	$	95,340	$	95,344	$	983
Wisconsin	41		27,852		27,809		678
Texas	46		27,485		27,514		598
Michigan	34		19,641		19,849		584
Ohio	20		15,172		15,162		758
Pennsylvania	18		12,189		12,174		676
New Jersey	15		7,755		7,760		517
Missouri	10		5,759		5,747		575
Minnesota	8		5,657		5,667		708
Other	92		54,649		54,633		594
Total general obligations bonds	381	$	271,499	$	271,659	$	713

December 31, 2016:

U.S. State	Number of Issuers		Amortized Cost		Fair Value		Average Exposure Per Issuer (Fair Value)
Illinois	70	$	59,120	$	59,182	$	845
Wisconsin	31		21,390		21,479		693
Texas	16		10,731		10,702		669
Michigan	38		23,233		23,472		618
Ohio	10		11,009		11,005		1,100

Pennsylvania	10		10,242		10,235		1,023
Iowa	3		5,332		5,345		1,782
Other	43		22,028		22,192		516
Total general obligations bonds	221	$	163,085	$	163,612	$	740

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The general obligation bonds are diversified across many issuers, with $4.0 million and $3.4 million being the largest exposure to a single issuer at December 31, 2017 and 2016, respectively. Accordingly, as of December 31, 2017 and 2016, the Company did not hold general obligation bonds of any single issuer, the aggregate book or market value of which exceeded 10% of the Company's stockholders' equity. Of the general obligation bonds in the Company's portfolio, 99.3% had been rated by at least one nationally recognized statistical rating organization and 0.7% were unrated, based on the fair value as of December 31, 2017. Of the general obligation bonds in the Company's portfolio, 98.4% had been rated by at least one nationally recognized statistical rating organization and 1.6% were unrated, based on the fair value as of December 31, 2016.

The amortized cost and fair values of the Company's portfolio of revenue bonds are summarized in the following tables by the issuers' state:

December 31, 2017:

U.S. State	Number of Issuers		Amortized Cost		Fair Value		Average Exposure Per Issuer (Fair Value)
Indiana	14	$	12,001	$	12,054	$	861
Missouri	6		7,376		7,336		1,223
Illinois	7		6,477		6,456		922
Other	38		24,163		24,158		636
Total revenue bonds	65	$	50,017	$	50,004	$	769

December 31, 2016:

U.S. State	Number of Issuers		Amortized Cost		Fair Value		Average Exposure Per Issuer (Fair Value)
Indiana	10	$	11,207	$	11,244	$	1,124
Illinois	7		7,321		7,275		1,039
Other	22		17,158		17,102		777
Total revenue bonds	39	$	35,686	$	35,621	$	913

The revenue bonds are diversified across many issuers and revenue sources with $3.6 million and $3.5 million being the largest exposure to a single issuer at each of December 31, 2017 and 2016, respectively. Accordingly, as of December 31, 2017 and 2016, the Company did not hold revenue bonds of any single issuer, the aggregate book or market value of which exceeded 10% of the Company's stockholders' equity. Of the revenue bonds in the Company's portfolio, 99.4% had been rated by at least one nationally recognized statistical rating organization and 0.6% were unrated, based on the fair value as of December 31, 2017. Of the revenue bonds in the Company's portfolio, 97.1% had been rated by at least one nationally recognized statistical rating organization and 2.9% were unrated, based on the fair value as of December 31, 2016. Some of the primary types of revenue bonds held in the Company's portfolio include: primary education or government building lease rentals secured by ad valorem taxes, utility systems secured by utility system net revenues, housing authorities secured by mortgage loans or principal receipts on mortgage loans, secondary education secured by student fees/tuitions, and pooled issuances (i.e. bond bank) consisting of multiple underlying municipal obligors.

At December 31, 2017, substantially all of the Company's obligations of state and political subdivision securities are owned by its subsidiary banks**,** which have adopted First Busey's investment policy requiring that state and political subdivision securities purchased be investment grade. Such investment policy also limits the amount of rated state and political subdivision securities to an aggregate 100% of the subsidiary banks' total capital (as defined by federal regulations) at the time of purchase and an aggregate 15% of total capital for unrated state and political subdivision securities issued by municipalities having taxing authority or located in counties/micropolitan statistical areas/metropolitan statistical areas in which an office is located.

All securities in First Busey's obligations of state and political subdivision securities portfolio are subject to periodic review. Factors that may be considered as part of monitoring of state and political subdivision securities include credit rating changes by nationally recognized statistical rating organizations, market valuations, third-party municipal credit analysis, which may include indicative information regarding the issuer's capacity to pay, market and economic data and such other factors as are available and relevant to the security or the issuer such as its budgetary position and sources, strength and stability of taxes and/or other revenue.

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Note 5. Loans held for sale

Loans held for sale totaled $94.8 million and $256.3 million at December 31, 2017 and 2016, respectively. The amount of loans held for sale decreased from December 31, 2016, due to lower mortgage volumes and increased delivery efficiency. Loans held for sale generate net interest income until loans are delivered to investors, at which point mortgage revenue will be recognized.

The following is a summary of mortgage revenue *(dollars in thousands)*:

	December 31,	
	2017	2016

Premiums received on sales of mortgage loans, including fair value adjustments	$	42,598	$	43,119
Less direct origination costs		(33,363)		(32,793)
Less provisions to liability for loans sold		(225)		(175)
Mortgage servicing revenues		2,130		1,801
Mortgage revenue	$	11,140	$	11,952

For 2015, mortgage revenue was $7.2 million as a result of premiums received on sales of mortgage loans and mortgage servicing revenues.

Note 6. Mortgage Loan Servicing

The largest portion of the Company's servicing assets relate to mortgage loans. The unpaid principal balances of mortgage loans serviced by the Company for the benefit of others are not included in the accompanying Consolidated Balance Sheets. These unpaid principal balances were $1.5 billion and $1.4 billion as of December 31, 2017 and 2016, respectively. Servicing such loans for others generally consists of collecting mortgage payments, maintaining escrow accounts, disbursing payments to investors and collection and foreclosure processing. Mortgage servicing revenues, a component of mortgage revenue, is recorded on the accrual basis and includes servicing fees from investors and certain charges collected from borrowers, such as late payment fees, and is net of amortization of capitalized mortgage servicing rights.

The balance of capitalized mortgage servicing rights included in other assets in the accompanying Consolidated Balance Sheets at December 31, 2017 and 2016, was $3.7 million and $3.1 million, respectively. The fair values of these servicing rights were $8.6 million and $7.8 million, respectively, at December 31, 2017 and 2016. The following summarizes mortgage servicing rights capitalized, acquired and amortized *(dollars in thousands)*:

	For the Years Ended December 31,					
	2017		2016		2015	
Mortgage servicing rights capitalized	$	1,366	$	1,488	$	1,361
Mortgage servicing rights acquired	$	751	$	—	$	369
Mortgage servicing rights amortized	$	1,584	$	1,921	$	2,146

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Note 7. Portfolio loans

Distributions of portfolio loans were as follows *(dollars in thousands)*:

		December 31, 2017		December 31, 2016
Commercial	$	1,414,631	$	959,888
Commercial real estate		2,354,684		1,654,164
Real estate construction		261,506		182,078
Retail real estate		1,460,801		1,069,060
Retail other		27,878		13,710
Portfolio loans	$	5,519,500	$	3,878,900
Less allowance for loan losses		53,582		47,795
Net portfolio loans	$	5,465,918	$	3,831,105

Net portfolio loans increased $1.6 billion as of December 31, 2017 as compared to December 31, 2016 as a result of the First Community and Mid Illinois acquisitions and organic growth. Net deferred loan origination costs included in the tables above were $4.1 million and $2.5 million as of December 31, 2017 and 2016, respectively. Net accretable purchase accounting adjustments included in the table above reduced loans by $23.6 million and $12.7 million as of December 31, 2017 and 2016, respectively.

The Company believes that making sound loans is a necessary and desirable means of employing funds available for investment. Recognizing the Company's obligations to its stockholders, depositors, and to the communities it serves, authorized personnel are expected to seek to develop and make sound, profitable loans that resources permit and that opportunity affords. The Company maintains lending policies and procedures designed to focus lending efforts on the types, locations and duration of loans most appropriate for its business model and markets. While not specifically limited, the Company attempts to focus its lending on short to intermediate-term (0-7 years) loans in geographic areas within 125 miles of its lending offices. Loans might be originated outside of these areas, but such loans are generally residential mortgage loans originated for sale in the secondary market or are loans to existing customers of the Banks. The Company attempts to utilize government-assisted lending programs, such as the Small Business Administration and United States Department of Agriculture lending programs, when prudent. Generally, loans are collateralized by assets, primarily real estate, of the borrowers and guaranteed by individuals. The loans are expected to be repaid primarily from cash flows of the borrowers, or from proceeds from the sale of selected assets of the borrowers.

Management reviews and approves the Company's lending policies and procedures on a routine basis. The policies for legacy First Community and South Side Bank loans are similar in nature to Busey Bank's policies and the Company is migrating such loan production towards the Busey Bank policies. Management routinely (at least quarterly) reviews the Company's allowance for loan losses in conjunction with reports related to loan production, loan quality, concentrations of credit, loan delinquencies and non-performing and potential problem loans. The Company's underwriting standards are designed to encourage relationship banking rather than transactional banking. Relationship banking implies a primary banking relationship with the borrower that includes, at a minimum, an active deposit banking relationship in addition to the lending relationship. Additional significant underwriting factors beyond location, duration, a sound and profitable cash flow basis and the borrower's character include the quality of the borrower's financial history, the liquidity of the underlying collateral and the reliability of the valuation of the underlying collateral.

At no time is a borrower's total borrowing relationship permitted to exceed the Company's regulatory lending limit and the Company generally limits such relationships to amounts substantially less than the regulatory limit. Loans to related parties, including executive officers and directors of the Company and its subsidiaries, are reviewed for compliance with regulatory guidelines by the Company's board of directors at least annually.

The Company maintains an independent loan review department that reviews the loans for compliance with the Company's loan policy on a periodic basis. In addition, the loan review department reviews the risk assessments made by the Company's credit department, lenders and loan committees. Results of these reviews are presented to management and the audit committee at least quarterly.

The Company's lending can be summarized into five primary areas: commercial loans, commercial real estate loans, real estate construction loans, retail real estate loans, and retail other loans. The significant majority of the Company's portfolio lending activity occurs in its Illinois and Missouri markets, with the remainder in the Indiana and Florida markets.

Commercial Loans

Commercial loans typically comprise working capital loans or business expansion loans, including loans for asset purchases and other business loans. Commercial loans will generally be guaranteed in full or a significant amount by the primary owners of the business. Commercial loans are made based primarily on the historical and projected cash flow of the underlying borrower and secondarily on the underlying assets pledged as collateral by the borrower. The cash flows of the underlying borrower, however, may not perform consistently with historical or projected information. Further, the collateral securing loans may fluctuate in value due to individual economic or other factors. The Company has established minimum standards and underwriting guidelines for all commercial loan types.

Commercial Real Estate Loans

The commercial environment, along with the academic presence in some of the Company's markets, provides for the majority of the Company's commercial lending opportunities to be commercial real estate related, including multi-unit housing. As the majority of the Company's loan portfolio is within the commercial real estate class, the Company's goal is to maintain a high quality, geographically diverse portfolio of commercial real estate loans. Commercial real estate loans are subject to underwriting standards and guidelines similar to commercial loans. Commercial real estate loans will generally be guaranteed in full or a significant amount by the primary owners of the business. The repayment of these loans is primarily dependent on the cash flows of the underlying property. However, the commercial real estate loan generally must be supported by an adequate underlying collateral value. The performance and the value of the underlying property may be adversely affected by economic factors or geographical and/or industry specific factors. These loans are subject to other industry guidelines that are closely monitored by the Company.

Real Estate Construction Loans

Real estate construction loans are typically commercial in nature. The loan proceeds are monitored by the Company and advanced for the improvement of real estate in which the Company holds a mortgage. Real estate construction loans will generally be guaranteed in full or a significant amount by the developer or primary owners of the business. These loans are subject to underwriting standards and guidelines similar to commercial loans. The loan generally must be supported by an adequate "as completed" value of the underlying project. In addition to the underlying project, the financial history of the developer and business owners weighs significantly in determining approval. The repayment of these loans is typically through permanent financing following completion of the construction. Real estate construction loans are inherently more risky than loans on completed properties as the unimproved nature and the financial risks of construction significantly enhance the risks of commercial real estate loans. These loans are closely monitored and subject to other industry guidelines.

Retail Real Estate Loans

Retail real estate loans are comprised of direct consumer loans that include residential real estate, residential real estate construction loans, home equity lines of credit and home equity loans. In 2017, the Company sold substantially all of its originated fixed rate retail real estate loans to secondary market purchasers and intends to do the same in 2018. As retail real estate loan underwriting is subject to specific regulations, the Company typically underwrites its retail real estate loans to conform to widely accepted standards. Several factors are considered in underwriting including the value of the underlying real estate and the debt to income and credit history of the borrower.

Retail Other Loans

Retail other loans consist of installment loans to individuals, including automotive loans. These loans are centrally underwritten utilizing the borrower's financial history, including the Fair Isaac Corporation (FICO) credit scoring and information as to the underlying collateral. Repayment is expected from the cash flow of the borrower.

The Company utilizes a loan grading scale to assign a risk grade to all of its loans. A description of the general characteristics of each grade is as follows:

- *Pass*- This category includes loans that are all considered strong credits, ranging from investment or near investment grade, to loans made to borrowers who exhibit credit fundamentals that exceed industry standards and loan policy guidelines and loans that exhibit acceptable credit fundamentals.

- *Watch*- This category includes loans on management's "Watch List" and is intended to be utilized on a temporary basis for a pass grade borrower where a significant risk-modifying action is anticipated in the near future.

- *Special mention*- This category is for "Other Assets Specially Mentioned" loans that have potential weaknesses, which may, if not checked or corrected, weaken the asset or inadequately protect the Company's credit position at some future date.

- *Substandard*- This category includes "Substandard" loans, determined in accordance with regulatory guidelines, for which the accrual of interest has not been stopped. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the Company will sustain some loss if the deficiencies are not corrected.

- *Doubtful*- This category includes "Doubtful" loans that have all the characteristics of a "Substandard" loan with additional factors that make collection in full highly questionable and improbable. Such loans are placed on non-accrual status and may be dependent on collateral with a value that is difficult to determine.

All loans are graded at their inception. Most commercial lending relationships that are $1.0 million or less are processed through an expedited underwriting process. If the credit receives a pass grade, it is aggregated into a homogenous pool of either: $0.35 million or less, or $0.35 million to $1.0 million. These pools are monitored on a regular basis and reviewed annually. Most commercial loans greater than $1.0 million are included in a portfolio review at least annually. Commercial loans greater than $0.35 million that have a grading of special mention or worse are reviewed on a quarterly basis. Interim reviews may take place if circumstances of the borrower warrant a more timely review.

Portfolio loans in the highest grades, represented by the pass and watch categories, totaled $5.3 billion at December 31, 2017, compared to $3.7 billion at December 31, 2016. Portfolio loans in the lowest grades, represented by the special mention, substandard and doubtful categories, totaled $193.8 million at December 31, 2017, compared to $165.5 million at December 31, 2016.

The following table is a summary of risk grades segregated by category of portfolio loans (excluding accretable purchase accounting adjustments and non-posted and clearings) *(dollars in thousands*):

	December 31, 2017				
	Pass	Watch	Special Mention	Substandard	Doubtful
Commercial	$ 1,175,421	$ 141,776	$ 51,366	$ 43,933	$ 5,285
Commercial real estate	2,169,420	130,056	21,151	36,482	11,997
Real estate construction	212,952	41,292	3,880	3,071	608
Retail real estate	1,436,156	6,883	5,162	4,135	6,714
Retail other	28,300	9	—	7	20
Total	$ 5,022,249	$ 320,016	$ 81,559	$ 87,628	$ 24,624

	December 31, 2016				
	Pass	Watch	Special Mention	Substandard	Doubtful
Commercial	$ 826,163	$ 70,260	$ 26,951	$ 26,941	$ 11,685
Commercial real estate	1,507,513	69,145	40,775	35,385	5,154
Real estate construction	134,574	39,936	8,033	994	47
Retail real estate	1,050,671	6,586	2,793	2,158	4,484
Retail other	13,691	27	2	—	53
Total	$ 3,532,612	$ 185,954	$ 78,554	$ 65,478	$ 21,423

Loans are considered past due if the required principal and interest payments have not been received as of the date such payments were due. Loans are placed on non-accrual status when, in management's opinion, the borrower may be unable to meet payment obligations as they become due, as well as when required by regulatory provisions. Loans may be placed on non-accrual status regardless of whether or not such loans are considered past due.

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When interest accrual is discontinued, all unpaid accrued interest is reversed. Interest income is subsequently recognized only to the extent cash payments are received in excess of the principal due. Loans may be returned to accrual status when all of the principal and interest amounts contractually due are brought current and future payments are reasonably assured.

An analysis of portfolio loans that are past due and still accruing or on a non-accrual status is as follows (*dollars in thousands)*:

	December 31, 2017			
	Loans past due, still accruing			
	30-59 Days	60-89 Days	90+Days	Non-accrual Loans
Commercial	$ 1,615	$ 323	$ 1,808	$ 5,285
Commercial real estate	1,856	2,737	—	11,997
Real estate construction	—	—	—	608
Retail real estate	4,840	1,355	933	6,714
Retail other	166	5	—	20
Total	$ 8,477	$ 4,420	$ 2,741	$ 24,624

	December 31, 2016			
	Loans past due, still accruing			
	30-59 Days	60-89 Days	90+Days	Non-accrual Loans
Commercial	$ 165	$ 363	$ 37	$ 11,685
Commercial real estate	478	256	—	5,154
Real estate construction	—	—	—	47
Retail real estate	2,394	364	94	4,484
Retail other	55	15	—	53
Total	$ 3,092	$ 998	$ 131	$ 21,423

A loan is classified as impaired when, based on current information and events, it is probable the Company will be unable to collect scheduled principal and interest payments when due according to the terms of the loan agreement. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments when due. Loans that experience insignificant payment delays and payment shortfalls generally are not classified as impaired. Management determines the significance of payment delays and payment shortfalls on a case-by-case basis, taking into consideration all of the circumstances surrounding the loan and the borrower, including the length of the delay, the reasons for the delay, the borrower's prior payment record, and the amount of the shortfall in relation to the principal and interest owed. Loans graded substandard or doubtful and loans classified as a troubled debt restructuring ("TDR") are reviewed by the Company for potential impairment.

Impairment is measured on a loan-by-loan basis for commercial and construction loans based on the present value of the expected future cash flows discounted at the loan's effective interest rate, the loan's observable market price, or the fair value of the collateral if the loan is collateral dependent. PCI loans are considered impaired. Large groups of smaller balance homogenous loans are collectively evaluated for impairment. Accordingly, the Company does not separately identify individual consumer and residential loans for impairment unless such loans are the subject of a restructuring agreement.

The gross interest income that would have been recorded in the years ended December 31, 2017, 2016 and 2015 if impaired loans had been current in accordance with their original terms was approximately $1.4 million, $0.9 million, and $0.4 million, respectively. The amount of interest collected on impaired loans and recognized on a cash basis that was included in interest income was $0.3 million in 2017, insignificant in 2016 and $1.0 million in 2015.

The Company's loan portfolio includes certain loans that have been modified in a TDR, where concessions have been granted to borrowers who have experienced financial difficulties. The Company will restructure a loan for its customer after evaluating whether the borrower is able to meet the terms of the loan over the long term, though unable to meet the terms of the loan in the near term due to individual circumstances.

The Company considers the customer's past performance, previous and current credit history, the individual circumstances surrounding the customer's current difficulties and the customer's plan to meet the terms of the loan in the future prior to restructuring the terms of the loan. Generally, all five primary areas of lending are restructured through short-term interest rate relief, short-term principal payment relief, short-term principal and interest payment relief or forbearance (debt forgiveness). Once a restructured loan exceeds 90 days past due or is placed on non-accrual status, it is classified as non-performing. A summary of restructured loans as of December 31, 2017 and 2016 is as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
In compliance with modified terms	$ 9,873	$ 10,593
30 – 89 days past due	108	59
Included in non-performing loans	1,919	1,285
Total	$ 11,900	$ 11,937

All TDRs are considered to be impaired for purposes of assessing the adequacy of the allowance for loan losses and for financial reporting purposes. When the Company modifies a loan in a TDR, it evaluates any possible impairment similar to other impaired loans based on present value of the expected future cash flows discounted at the loan's effective interest rate, the loan's observable market price, or the fair value of the collateral if the loan is collateral dependent. If the Company determines that the fair value of the TDR is less than the recorded investment in the loan, impairment is recognized through an allowance estimate in the period of the modification and in periods subsequent to the modification.

Performing loans classified as a TDR during the three months ended December 31, 2017 included one retail real estate modification for short-term interest rate relief, with a recorded investment of $0.1 million. Performing loans classified as TDRs during the twelve months ended December 31, 2017 included three retail real estate modifications for short-term interest rate relief, with an aggregate recorded investment of $0.7 million.

Performing loans classified as TDRs during the three months ended December 31, 2016 included one commercial real estate modification for short-term principal payment relief, with a recorded investment of $3.0 million. Performing loans classified as TDRs during the twelve months ended December 31, 2016 included four commercial real estate modifications for short-term principal payment relief, with an aggregate recorded investment of $3.3 million and three retail real estate modifications for short-term principal payment relief, with an aggregate recorded investment of $0.4 million.

The gross interest income that would have been recorded in the three and twelve months ended December 31, 2017 and 2016 if performing TDRs had been in accordance with their original terms instead of modified terms was insignificant.

There were no TDRs that were entered into during the last twelve months that were subsequently classified as non-performing and had payment defaults (a default occurs when a loan is 90 days or more past due or transferred to non-accrual) during the three or twelve months ended December 31, 2017.

There were no TDRs that were entered into during the prior twelve months that were subsequently classified as non-performing and had payment defaults during the three months ended December 31, 2016. TDRs that were entered into during the prior twelve months that were subsequently classified as non-performing and had payment defaults during the twelve months ended December 31, 2016 consisted of one retail real estate modification totaling $0.1 million and one insignificant retail other modification.

The following tables provide details of impaired loans, segregated by category. The unpaid contractual principal balance represents the recorded balance prior to any partial charge-offs. The recorded investment represents customer balances net of any partial charge-offs recognized on the loan. The average recorded investment is calculated using the most recent four quarters *(dollars in thousands)*.

	December 31, 2017					
	Unpaid Contractual	Recorded Investment	Recorded Investment with Allowance	Total Recorded Investment	Related Allowance	Average Recorded Investment

	Principal Balance	with No Allowance				
Commercial	$ 10,604	$ 7,192	$ 191	$ 7,383	$ 138	$ 10,184
Commercial real estate	22,218	16,472	1,964	18,436	704	15,195
Real estate construction	1,040	1,016	—	1,016	—	692
Retail real estate	18,517	14,957	25	14,982	25	13,009
Retail other	40	20	—	20	—	44
Total	$ 52,419	$ 39,657	$ 2,180	$ 41,837	$ 867	$ 39,124

	December 31, 2016					
	Unpaid Contractual Principal Balance	Recorded Investment with No Allowance	Recorded Investment with Allowance	Total Recorded Investment	Related Allowance	Average Recorded Investment
Commercial	$ 16,955	$ 8,060	$ 3,835	$ 11,895	$ 1,535	$ 10,127
Commercial real estate	12,922	9,036	3,118	12,154	1,778	8,939
Real estate construction	518	483	11	494	11	793
Retail real estate	13,112	11,733	385	12,118	140	13,102
Retail other	139	53	3	56	3	171
Total	$ 43,646	$ 29,365	$ 7,352	$ 36,717	$ 3,467	$ 33,132

Management's evaluation as to the ultimate collectability of loans includes estimates regarding future cash flows from operations and the value of property, real and personal, pledged as collateral. These estimates are affected by changing economic conditions and the economic prospects of borrowers.

Allowance for Loan Losses

The allowance for loan losses represents an estimate of the amount of probable losses believed to be inherent in the Company's loan portfolio at the Consolidated Balance Sheet date. The allowance for loan losses is calculated geographically, by class of loans. The allowance calculation involves a high degree of estimation that management attempts to mitigate through the use of objective historical data where available. Loan losses are charged against the allowance for loan losses when management believes the uncollectibility of the loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance. Overall, the Company believes the allowance methodology is consistent with prior periods and the balance was adequate to cover the estimated losses in the Company's loan portfolio at December 31, 2017 and 2016.

The general portion of the Company's allowance contains two components: (i) a component for historical loss ratios, and (ii) a component for adversely graded loans. The historical loss ratio component is an annualized loss rate calculated using a sum-of-years digits weighted 20-quarter historical average.

The Company's component for adversely graded loans attempts to quantify the additional risk of loss inherent in the special mention and substandard portfolios. The substandard portfolio has an additional allocation of 3.00% placed on such loans, which is an estimate of the additional loss inherent in these loan grades based upon a review of overall historical charge-offs. As of December 31, 2017, the Company believed this reserve remained adequate. Special mention loans have an additional allocation of 1.0% placed on such loans, which is an estimate of the additional loss inherent in these loan grades. As of December 31, 2017, the Company believed this reserve remained adequate.

The specific portion of the Company's allowance relates to loans that are impaired, which includes non-performing loans, TDRs and other loans determined to be impaired. Impaired loans are excluded from the determination of the general allowance for non-impaired loans and are allocated specific reserves as discussed above.

Impaired loans are reported at the fair value of the underlying collateral, less estimated costs to sell, if repayment is expected solely from the collateral. Collateral values are estimated using a combination of observable inputs, including recent appraisals discounted for collateral specific changes and current market conditions, and unobservable inputs based on customized discounting criteria.

The general reserve quantitative allocation that is based upon historical charge off rates is adjusted for qualitative factors based on current general economic conditions and other qualitative risk factors both internal and external to the Company. In general, such valuation allowances are determined by evaluating, among other things: (i) Management & Staff; (ii) Loan Underwriting, Policy and Procedures; (iii) Internal/External Audit & Loan Review; (iv) Valuation of Underlying Collateral; (v) Macro and Local Economic Factors; (vi) Impact of Competition, Legal & Regulatory Issues; (vii) Nature and Volume of Loan Portfolio; (viii) Concentrations of Credit; (ix) Net Charge-Off Trends; and (x) Non-Accrual, Past Due and Classified Trends. Management evaluates the probable impact from the degree of risk that each one of these components has on the quality of the loan portfolio on a quarterly basis.

Based on each component's risk factor, a qualitative adjustment to the reserve may be applied to the appropriate loan categories. During the fourth quarter of 2017, the Company did not make adjustments to any qualitative factors. The Company will continue to monitor its qualitative factors on a quarterly basis.

The Company holds acquired loans from business combinations with uncollected principal balances. These loans are carried net of a fair value adjustment for credit risk and interest rates and are only included in the allowance calculation to the extent that the reserve requirement exceeds the fair value adjustment. However, as the acquired loans renew, it is generally necessary to establish an allowance, which represents an amount that, in management's opinion, will be adequate to absorb probable credit losses in such loans. The balance of all acquired loans which did not require a related allowance for loan losses as of December 31, 2017 totaled approximately $1.8 billion.

Changes in the allowance for loan losses were as follows *(dollars in thousands)*:

	Years Ended December 31,		
	2017	2016	2015
Balance, beginning of year	$ 47,795	$ 47,487	$ 47,453
Provision for loan losses	5,303	5,550	1,600

Loan balances charged-off	(6,239)	(9,656)	(4,694)
Recoveries applicable to loan balances previously charged-off	6,723	4,414	3,128
Balance, end of year	$ 53,582	$ 47,795	$ 47,487

The following table details activity in the allowance for loan losses. Allocation of a portion of the allowance to one category does not preclude its availability to absorb losses in other categories *(dollars in thousands)*.

	Year Ended December 31, 2017					
	Commercial	Commercial Real Estate	Real Estate Construction	Retail Real Estate	Retail Other	Total
Beginning balance	$ 13,303	$ 20,623	$ 1,870	$ 11,648	$ 351	$ 47,795
Provision for loan losses	(1,091)	2,439	581	3,263	111	5,303
Charged-off	(994)	(1,965)	(48)	(2,691)	(541)	(6,239)
Recoveries	3,561	716	458	1,563	425	6,723
Ending Balance	$ 14,779	$ 21,813	$ 2,861	$ 13,783	$ 346	$ 53,582

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	Year Ended December 31, 2016					
	Commercial	Commercial Real Estate	Real Estate Construction	Retail Real Estate	Retail Other	Total
Beginning balance	$ 13,115	$ 18,604	$ 1,763	$ 13,714	$ 291	$ 47,487
Provision for loan losses	5,520	2,366	(310)	(2,277)	251	5,550
Charged-off	(6,598)	(470)	(24)	(2,106)	(458)	(9,656)
Recoveries	1,266	123	441	2,317	267	4,414
Ending Balance	$ 13,303	$ 20,623	$ 1,870	$ 11,648	$ 351	$ 47,795

	Year Ended December 31, 2015					
	Commercial	Commercial Real Estate	Real Estate Construction	Retail Real Estate	Retail Other	Total
Beginning balance	$ 10,041	$ 20,639	$ 2,795	$ 13,662	$ 316	$ 47,453
Provision for loan losses	4,016	(2,064)	(1,316)	857	107	1,600
Charged-off	(1,333)	(1,462)	—	(1,534)	(365)	(4,694)
Recoveries	391	1,491	284	729	233	3,128
Ending Balance	$ 13,115	$ 18,604	$ 1,763	$ 13,714	$ 291	$ 47,487

The following table presents the allowance for loan losses and recorded investments in portfolio loans by category *(dollars in thousands)*:

	As of December 31, 2017					
	Commercial	Commercial Real Estate	Real Estate Construction	Retail Real Estate	Retail Other	Total
Amount allocated to:						
Loans individually evaluated for impairment	$ 138	$ 704	$ —	$ 25	$ —	$ 867
Loans collectively evaluated for impairment	14,641	21,109	2,861	13,758	346	52,715
Ending Balance	$ 14,779	$ 21,813	$ 2,861	$ 13,783	$ 346	$ 53,582
Loans:						
Loans individually evaluated for impairment	$ 6,572	$ 11,491	$ 435	$ 12,673	$ 20	$ 31,191
Loans collectively evaluated for impairment	1,407,248	2,336,248	260,490	1,445,819	27,858	5,477,663
PCI loans evaluated for impairment	811	6,945	581	2,309	—	10,646
Ending Balance	$ 1,414,631	$ 2,354,684	$ 261,506	$ 1,460,801	$ 27,878	$ 5,519,500

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	As of December 31, 2016					
	Commercial	Commercial Real Estate	Real Estate Construction	Retail Real Estate	Retail Other	Total
Amount allocated to:						
Loans individually evaluated for impairment	$ 1,535	$ 1,778	$ 11	$ 140	$ 3	$ 3,467
Loans collectively evaluated for impairment	11,786	18,845	1,859	11,508	348	44,328
Ending Balance	$ 13,303	$ 20,623	$ 1,870	$ 11,648	$ 351	$ 47,795
Loans:						
Loans individually evaluated for impairment	$ 11,834	$ 11,147	$ 494	$ 11,644	$ 56	$ 35,175

Loans collectively evaluated for impairment	947,993	1,642,010	181,584	1,056,942	13,654	3,842,183
PCI loans evaluated for impairment	61	1,007	—	474	—	1,542
Ending Balance	$ 959,888	$ 1,654,164	$ 182,078	$ 1,069,060	$ 13,710	$ 3,878,900

Note 8. OREO

OREO represents properties acquired through foreclosure or other proceedings in settlement of loans and is included in other assets in the accompanying Consolidated Balance Sheets. OREO is held for sale and is recorded at the date of foreclosure at the fair value of the properties less estimated costs of disposal, which establishes a new cost basis. Any adjustment to fair value at the time of transfer to OREO is charged to the allowance for loan losses. Properties are evaluated regularly to ensure each recorded amount is supported by its current fair value, and valuation allowances to reduce the carrying amount due to subsequent declines in fair value less estimated costs to dispose are recorded as necessary. Revenue, expense, gains and losses from the operations of foreclosed assets are included in operations. At December 31, 2017, the Company held $1.2 million in commercial OREO, $0.1 million in residential OREO and an insignificant amount of other repossessed assets. At December 31, 2016, the Company held $2.0 million in commercial OREO, $0.5 million in residential OREO and an insignificant amount of other repossessed assets. At December 31, 2017 the Company had $1.3 million of residential real estate in the process of foreclosure.

The following table summarizes activity related to OREO *(dollars in thousands)*:

	Year Ended December 31, 2017	Year Ended December 31, 2016
OREO:		
Beginning balance	$ 2,518	$ 783
Additions, transfers from loans	1,417	2,775
Additions, fair value from Pulaski acquisition	—	2,488
Additions, fair value from First Community acquisition	722	—
Additions, fair value from Mid Illinois acquisition	60	—
Proceeds from sales of OREO	(5,024)	(4,498)
Gain on sales of OREO	1,632	999
Valuation allowance for OREO	(42)	(29)
Ending balance	$ 1,283	$ 2,518

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Note 9. Premises and Equipment, net

Premises and equipment, net are summarized as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Land and improvements	$ 36,249	$ 26,484
Buildings and improvements	104,656	73,484
Furniture and equipment	42,323	37,543
	183,228	137,511
Less accumulated depreciation	66,315	59,650
Total premises and equipment, net	$ 116,913	$ 77,861

Premises and equipment, net was impacted by the First Community and Mid Illinois acquisitions in 2017. Depreciation expense was $8.6 million, $7.3 million, and $5.7 million for the years ended December 31, 2017, 2016 and 2015, respectively.

Note 10. Goodwill and Other Intangible Assets

Other than goodwill, the Company does not have any other intangible assets that are not amortized. The Company’s goodwill is associated with its three operating segments, Banking, Remittance Processing and Wealth Management. Goodwill is tested annually for impairment, and as part of this analysis, the reporting unit’s carrying value is compared to its fair value. Based on the impairment testing performed at December 31, 2017, there were no indicators of potential impairment based on the estimated fair value of those operating segments. All three operating segments have sustained quarterly and annual profits.

During 2017, the Company recorded, in the Banking segment, goodwill totaling $116.0 million and other intangible assets totaling $14.0 million in connection with the acquisition of First Community. During 2017, the Company recorded, in the Banking segment, goodwill totaling $50.6 million and other intangible assets totaling $10.5 million in connection with the acquisition of Mid Illinois. During 2017, the Company recorded $1.0 million of other intangible assets in the Wealth Management segment in connection with the acquisition of Mid Illinois. During 2016, the Company recorded, in the Banking segment, goodwill totaling $77.3 million and other intangible assets totaling $15.5 million in connection with the acquisition of Pulaski. The carrying amount of goodwill by operating segment, at December 31, 2017 and 2016 is as follows *(dollars in thousands)*:

	Balance at December 31, 2017	Balance at December 31, 2016
Goodwill:		
Banking	$ 248,660	$ 82,128
Remittance Processing	8,992	8,992
Wealth Management	11,694	11,694
Total goodwill	$ 269,346	$ 102,814

Core deposit and customer relationship intangible assets are amortized on an accelerated or straight-line basis over the estimated period benefited up to 14 years. Other intangible asset disclosures are as follows *(dollars in thousands)*:

	Balance at December 31, 2017	2017 Amortization	Balance at December 31, 2016	2016 Amortization
Amortized intangible assets:				
Core deposit intangible assets	$ 37,371	$ 4,529	$ 17,338	$ 3,361
Customer relationship intangible assets	1,356	716	1,124	1,077
	$ 38,727	$ 5,245	$ 18,462	$ 4,438

	Core deposit intangible	Customer relationship intangible
As of December 31, 2017:		
Gross carrying amount	$ 63,029	$ 13,168
Accumulated amortization	25,658	11,812
	$ 37,371	$ 1,356
Estimated amortization expense on balance at December 31, 2017:		
2018	$ 5,535	$ 319
2019	5,108	276
2020	4,680	234
2021	4,251	191
2022	3,820	148
Thereafter	13,977	188
	$ 37,371	$ 1,356

Note 11. Deposits

The composition of deposits is as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Demand deposits, noninterest-bearing	$ 1,597,421	$ 1,134,133
Interest-bearing transaction deposit	1,166,170	1,032,928
Saving deposits and money market deposits	2,026,212	1,421,037
Time deposits	1,336,162	786,200
Total	$ 6,125,965	$ 4,374,298

Deposit growth was impacted in 2017 by the First Community and Mid Illinois acquisitions. Interest-bearing transaction deposits included $45.4 million and $36.9 million of brokered transaction deposits, including reciprocal brokered, at December 31, 2017 and 2016, respectively. Savings deposits and money market deposits included $127.5 million and $22.2 million of brokered deposits, including reciprocal brokered, at December 31, 2017 and 2016, respectively.

The aggregate amount of time deposits with a minimum denomination of $100,000 was approximately $578.9 million and $350.7 million at December 31, 2017 and 2016, respectively. The aggregate amount of time deposits with a minimum denomination that meets or exceeds the FDIC insurance limit of $250,000 was approximately $197.9 million and $70.7 million at December 31, 2017 and 2016, respectively. The Company had no National deposits at December 31, 2017 and $0.1 million at December 31, 2016, which were included in the balance of time deposits. The Company held reciprocal brokered time deposits of $62.0 million and $93.4 million at December 31, 2017 and 2016, respectively, included in the balance of time deposits. Further, the Company held brokered deposits of $247.7 million and $5.0 million at December 31, 2017 and 2016, respectively, which are included in the balance of time deposits.

As of December 31, 2017, the scheduled maturities of time deposits are as follows *(dollars in thousands)*:

2018	$ 915,514
2019	271,023
2020	63,931
2021	37,949
2022	47,734
Thereafter	11
	$ 1,336,162

Note 12. Borrowings

Federal funds purchased are short-term borrowings that generally mature between one and ninety days. The Company had no federal funds purchased at December 31, 2017 and 2016; however, during both years the Company purchased federal funds to test operational availability to access funds if needed.

Securities sold under agreements to repurchase, which are classified as secured borrowings, generally mature daily. Securities sold under agreements to repurchase are reflected at the amount of cash received in connection with the transaction. The underlying securities are held by the Company's safekeeping agent. The Company may be required to provide additional collateral based on fluctuations in the fair value of the underlying securities.

Short-term borrowings include FHLB advances which mature in less than one year from date of origination.

On May 5, 2017, the Company entered into an amendment to a credit agreement with a correspondent bank to extend a revolving loan facility to the Company in the maximum principal amount of $40.0 million. The loan has an annual interest rate of 2.50% plus the one-month LIBOR rate and has a maturity date of April 30, 2018. The loan also bears a non-usage fee calculated based on the average daily principal balance of the loan outstanding during the prior fiscal quarter. The Company had no outstanding amount on December 31, 2017 and 2016.

The following table sets forth the distribution of securities sold under agreements to repurchase and short-term borrowings and weighted average interest rates *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Securities sold under agreements to repurchase		
Balance at end of period	$ 304,566	$ 189,157
Weighted average interest rate at end of period	0.57%	0.30%
Maximum outstanding at any month end in year-to-date period	$ 304,566	$ 216,293
Average daily balance for the year-to-date period	$ 213,527	$ 181,474
Weighted average interest rate during period(1)	0.46%	0.22%
Short-term borrowings, FHLB advances		
Balance at end of period	$ 220,000	$ 75,000
Weighted average interest rate at end of period	1.42%	0.63%
Maximum outstanding at any month end in year-to-date period	$ 234,600	$ 236,700
Average daily balance for the year-to-date period	$ 84,201	$ 96,698
Weighted average interest rate during period(1)	1.20%	0.53%
Short-term borrowings, revolving loan		
Balance at end of period	$ —	$ —
Weighted average interest rate at end of period	—%	—%
Maximum outstanding at any month end in year-to-date period	$ —	$ 10,000
Average daily balance for the year-to-date period	$ —	$ 2,596
Weighted average interest rate during period(1) (2)	—%	4.78%

(1)The weighted average interest rate is computed by dividing total interest for the period by the average daily balance outstanding.
(2)Includes interest and non-usage fee.

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Long-term debt is summarized as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Notes payable, FHLB, ranging in original maturity from nineteen months to ten years, collateralized by FHLB deposits, residential and commercial real estate loans and FHLB stock.	$ 50,000	$ 80,000

As of December 31, 2017, funds borrowed from the FHLB, listed above, consisted of variable-rate notes maturing through September 2024, with interest rates ranging from 1.10% to 1.32%. The weighted average rate on these long-term advances was 1.19% as of December 31, 2017. As of December 31, 2016, funds borrowed from the FHLB, listed above, consisted of variable-rate notes maturing through September 2024, with interest rates ranging from 0.35% to 0.54%. The weighted average rate on these long-term advances was 0.41% as of December 31, 2016.

On May 25, 2017, the Company issued $40.0 million of 3.75% senior notes that mature on May 25, 2022. The senior notes are payable semi-annually on each May 25 and November 25, commencing on November 25, 2017. Additionally, on May 25, 2017, the Company issued $60.0 million of fixed-to-floating rate subordinated notes that mature on May 25, 2027. The subordinated notes, which qualify as Tier 2 capital for First Busey, are at an initial rate of 4.75% for five years and thereafter at an annual floating rate equal to three-month LIBOR plus a spread of 2.919%. The subordinated notes are payable semi-annually on each May 25 and November 25, commencing on November 25, 2017 during the five year fixed-term and thereafter each February 25, May 25, August 25 and November 25 of each year, commencing on August 25, 2022. The subordinated notes have an optional redemption in whole or in part on any interest payment date on or after May 25, 2022. The senior notes and subordinated notes are unsecured obligations of the Company. Unamortized debt issuance costs related to the senior notes and subordinated notes totaled $0.6 million and $1.0 million, respectively, at December 31, 2017. The Company used the net proceeds from the offering to finance a portion of the cash consideration for its acquisition of First Community, to redeem a portion of First Community subordinated debentures in July 2017, and to finance a portion of the cash consideration for its acquisition of Mid Illinois in October 2017, with the remaining proceeds to be used for general corporate purposes.

In relation to the First Community acquisition, the Company assumed $15.3 million in subordinated debt, of which $9.8 million was simultaneously redeemed. The remaining $5.5 million was issued on September 30, 2013, matures on September 30, 2021 and bears interest payable quarterly, at an annual interest rate of 8.625%. Beginning on September 30, 2018, the Company may, at its option, redeem the note at a redemption price equal to the principal amount outstanding plus accrued but unpaid interest. A $0.3 million purchase accounting premium was recorded on the remaining subordinated debt.

Note 13. Junior Subordinated Debt Owed to Unconsolidated Trusts

First Busey maintains statutory trusts for the sole purpose of issuing and servicing trust preferred securities and related trust common securities. The proceeds from such issuances were used by the trusts to purchase junior subordinated notes of the Company, which are the sole assets of each trust. Concurrent with the issuance of the trust preferred securities, the Company issued guarantees for the benefit of the holders of the trust preferred securities. The trust preferred securities are instruments that qualify, and are treated by the Company, as Tier 1 regulatory capital. The Company owns all of the common securities of each trust. The trust preferred securities issued by each trust rank equally with the common securities in right of payment, except that if an event of default under the indenture governing the notes has occurred and is continuing, the preferred securities will rank senior to the common securities in right of payment. In connection with the Pulaski acquisition, the Company acquired similar statutory trusts maintained by Pulaski which were adjusted to fair value. The Company had $71.0 million and $70.9 million of junior subordinated debt owed to unconsolidated trusts at December 31, 2017 and 2016, respectively.

The trust preferred securities are subject to mandatory redemption, in whole or in part, upon repayment of the junior subordinated notes at par value at the stated maturity date or upon redemption. Each trust's ability to pay amounts due on the trust preferred securities is solely dependent upon the Company making payment on the related junior subordinated notes. The Company's obligations under the junior subordinated notes and other relevant trust agreements, in aggregate, constitute a full and unconditional guarantee by the Company of each trust's obligations under the trust preferred securities issued by each trust. The Company has the right to defer payment of interest on the notes, in which case the distributions on the trust preferred securities will also be deferred, for up to five years, but not beyond the stated maturity date.

Under current banking regulations, bank holding companies are allowed to include qualifying trust preferred securities in their Tier 1 Capital for regulatory capital purposes, subject to a 25% limitation to all core (Tier 1) capital elements, net of goodwill and other intangible assets less any associated deferred tax liability. As of September 30, 2017, 100% of the trust preferred securities qualified as Tier 1 capital under the final rule adopted in March 2005.

Note 14. Capital

Redemption of Preferred Stock Under the Small Business Lending Fund

On August 25, 2011, the Company entered into the Purchase Agreement with the Treasury, pursuant to which the Company issued and sold to the Treasury 72,664 shares of its Series C Preferred Stock, having a liquidation preference of $1,000 per share, for aggregate proceeds of $72,664,000. On December 18, 2015, the Company redeemed all of the 72,664 shares of its Series C Preferred Stock that had been issued to the Treasury pursuant to the SBLF program. The shares were redeemed at their liquidation value of $1,000 per share plus accrued and unpaid dividends to, but excluding December 18, 2015. The redemption was approved by the Company's primary federal regulator and terminates the Company's participation in the SBLF program. Before redemption, the Series C Preferred Stock qualified as Tier 1 capital for the Company. Non-cumulative dividends were payable quarterly on the Series C Preferred Stock, which began October 1, 2011.

CPP Warrant

In connection with the Company's participation in the CPP, the Company issued to Treasury a warrant to purchase 382,555 shares of the Company's common stock. Subsequent to the date of the Company's participation in the CPP, it raised additional capital through a public offering of common stock and, as a result of that offering, the number of shares of common stock subject to the warrant were reduced by 50% to 191,278. On November 23, 2011 the Treasury completed an auction to sell its warrant in a private transaction. At December 31, 2017, this warrant to purchase 191,278 shares of the Company's common stock, at an exercise price of $39.21, remained outstanding.

Regulatory Capital

The ability of the Company to pay cash dividends to its stockholders and to service its debt was historically dependent on the receipt of cash dividends from its subsidiaries. Under applicable regulatory requirements, an Illinois state-chartered bank such as Busey Bank and South Side Bank may not pay dividends in excess of its net profits. Because Busey Bank has been in an accumulated deficit position since 2009, it has not been able to pay dividends since that time. With prior approval from its regulators, however, an Illinois state-chartered bank in this situation may be able to reduce its capital stock, by amending its charter to decrease the authorized number of shares, and then make a subsequent distribution to its holding company. Using this approach, and with the approval of its regulators, Busey Bank has distributed funds to the Company, the most recent of which was $40.0 million on October 12, 2017. The Company expects to seek regulatory approval for additional capital distributions from Busey Bank in future periods until such time as Busey Bank is no longer in an accumulated deficit. South Side Bank had positive retained earnings and is able to pay dividends to the Company prior to the bank merger.

The Company and both of its subsidiary banks are subject to regulatory capital requirements administered by federal and/or state agencies that involve the quantitative measure of their assets, liabilities, and certain off-balance-sheet items, as calculated under regulatory accounting practices. Quantitative measures established by regulations to ensure capital adequacy require the Company and both of its subsidiary banks to maintain minimum dollar amounts and ratios of such to risk weighted assets (as defined in the regulations and set forth in the table below) of total capital, Tier 1 capital and Common Equity Tier 1 capital, and for the banks, Tier 1 capital to average assets. Failure to meet minimum capital requirements may cause regulatory bodies to initiate certain discretionary and/or mandatory actions that, if undertaken, could have a direct material effect on our Financial Statements. The Company, as a financial holding company, is required to be "well capitalized" in the capital categories shown in the table below. As of December 31, 2017, the Company and both of its subsidiary banks met all capital adequacy requirements to which they were subject, including the guidelines to be considered "well capitalized."

The Dodd-Frank Act established minimum capital levels for bank holding companies on a consolidated basis. The components of Tier 1 capital are restricted to capital instruments that, at the time of signing, were considered to be Tier 1 capital for insured depository institutions. Under this legislation, the Company is able to maintain its trust preferred securities as Tier 1 capital, but it will have to comply with new capital mandates in other respects, and it will not be able to raise Tier 1 capital through the issuance of trust preferred securities in the future.

In July 2013, the U.S. federal banking authorities approved the implementation of the Basel III Rule required by the Dodd-Frank Act. The Basel III Rule is applicable to all U.S. banks that are subject to minimum capital requirements, as well as to bank and savings and loan holding companies other than "small bank holding companies" (generally non-public bank holding companies with consolidated assets of less than $1.0 billion). The Basel III Rule not only increased most of the required minimum regulatory capital ratios, but they also introduced a new Common Equity Tier 1 Capital ratio and the concept of a capital conservation buffer.

The Basel III Rule also expanded the definition of capital as in effect currently by establishing criteria that instruments must meet to be considered Additional Tier 1 Capital (Tier 1 Capital in addition to Common Equity) and Tier 2 Capital. A number of instruments that generally qualified as Tier 1 Capital under the old guidelines no longer qualify, or their qualifications will change, as the Basel III Rule is being fully implemented.

The Basel III Rule also permitted banking organizations with less than $15.0 billion in assets to retain, through a one-time election, the past treatment for accumulated other comprehensive income (loss), which did not affect regulatory capital. First Busey and both of its subsidiary banks made this election in the first quarter of 2015 to avoid variations in the level of their capital depending on fluctuations in the fair value of their securities portfolio. The Basel III Rule maintained the general structure of the prompt corrective action framework, while incorporating increased requirements. The prompt corrective action guidelines were also revised to add the Common Equity Tier 1 Capital ratio. Under the final capital rules that became effective on January 1, 2015, there was a requirement for a Common Equity Tier 1 capital conservation buffer of 2.5% of risk weighted assets which is in addition to the other minimum risk based capital standards in the rule. Failure to maintain the buffer will result in restrictions on the Company's ability to make capital distributions, including the payment of dividends, and to pay discretionary bonuses to executive officers. The capital buffer requirement is being phased-in over three years beginning in 2016.

The table below includes the 1.25% increase as of January 1, 2017 in the minimum capital requirement ratios. The capital buffer requirement effectively raises the minimum required Common Equity Tier 1 Capital ratio to 7.0%, the Tier 1 Capital ratio to 8.5%, and the Total Capital ratio to 10.5% on a fully phased-in basis on January 1, 2019. As of December 31, 2017, the Company and both of its subsidiary banks were in compliance with the current phase of the Basel III Rule and management believes that the Company and both of its subsidiary banks would meet all capital adequacy requirements under the Basel III Rule on a fully phased-in basis as if such requirements had been in effect *(dollars in thousands)*.

	Actual		Minimum Capital Requirement with Capital Buffer		Minimum To Be Well Capitalized	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of December 31, 2017:						
Total Capital (to Risk Weighted Assets)						
Consolidated	$ 837,183	14.15%	$ 547,265	9.25%	$ 591,638	10.00%
Busey Bank	$ 704,807	12.78%	$ 509,978	9.25%	$ 551,327	10.00%
South Side Bank	$ 84,914	22.61%	$ 34,744	9.25%	$ 37,561	10.00%
Tier 1 Capital (to Risk Weighted Assets)						
Consolidated	$ 718,101	12.14%	$ 428,937	7.25%	$ 473,310	8.00%
Busey Bank	$ 651,432	11.82%	$ 399,713	7.25%	$ 441,062	8.00%
South Side Bank	$ 84,707	22.55%	$ 27,232	7.25%	$ 30,049	8.00%
Common Equity Tier 1 Capital (to Risk Weighted Assets)						
Consolidated	$ 644,633	10.90%	$ 340,192	5.75%	$ 384,565	6.50%
Busey Bank	$ 651,432	11.82%	$ 317,013	5.75%	$ 358,363	6.50%
South Side Bank	$ 84,707	22.55%	$ 21,598	5.75%	$ 24,415	6.50%
Tier 1 Capital (to Average Assets)						
Consolidated	$ 718,101	9.78%	$ 293,588	4.00%	N/A	N/A
Busey Bank	$ 651,432	9.80%	$ 265,847	4.00%	$ 332,309	5.00%
South Side Bank	$ 84,707	12.75%	$ 26,571	4.00%	$ 33,214	5.00%

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	Actual		Minimum Capital Requirement with Capital Buffer		Minimum To Be Well Capitalized	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of December 31, 2016:						
Total Capital (to Risk Weighted Assets)						
Consolidated	$ 605,988	14.04%	$ 372,342	8.625%	$ 431,701	10.00%
Busey Bank	$ 550,813	12.86%	$ 369,363	8.625%	$ 428,247	10.00%
Tier 1 Capital (to Risk Weighted Assets)						
Consolidated	$ 557,862	12.92%	$ 286,002	6.625%	$ 345,361	8.00%
Busey Bank	$ 502,687	11.74%	$ 283,714	6.625%	$ 342,598	8.00%
Common Equity Tier 1 Capital (to Risk Weighted Assets)						
Consolidated	$ 484,246	11.22%	$ 221,247	5.125%	$ 280,606	6.50%
Busey Bank	$ 502,687	11.74%	$ 219,477	5.125%	$ 278,361	6.50%
Tier 1 Capital (to Average Assets)						

Consolidated	$	557,862	10.45% $	213,578	4.00%		N/A	N/A
Busey Bank	$	502,687	9.45% $	212,766	4.00% $		265,957	5.00%

Note 15. Income Taxes

The components of income taxes consist of *(dollars in thousands)*:

	Years Ended December 31, 2017	2016	2015
Current	$ 31,285	$ 16,271	$ 17,839
Deferred	14,100	10,452	2,857
Total income tax expense	$ 45,385	$ 26,723	$ 20,696

A reconciliation of federal and state income taxes at statutory rates to the income taxes included in the statements of income is as follows:

	Years Ended December 31, 2017 % of Pretax Income	2016 % of Pretax Income	2015 % of Pretax Loss
Income tax at statutory rate	35.0%	35.0%	35.0%
Effect of:			
TCJA	7.5%	—%	—%
Tax-exempt interest, net	(2.1)%	(2.4)%	(2.3)%
Stock incentive	(0.5)%	—%	—%
State income taxes, net	4.0%	4.3%	4.2%
Income on bank owned life insurance	(0.9)%	(1.0)%	(1.2)%
Other, net	(1.0)%	(0.9)%	(1.0)%
	42.0%	35.0%	34.7%

On December 22, 2017, the President signed into law the TCJA which, effective January 2018, reduced the corporate tax rate as well as adjusted tax rates, deductions and exemptions for individuals and businesses alike. The Company took a one-time, non-cash charge of $8.1 million in the fourth quarter of 2017 as a result of the revaluation of the Company's net deferred tax position following the enactment of the TCJA.

Net deferred taxes at December 31, 2017 and 2016 in the accompanying Consolidated Balance Sheets, include the following amounts of deferred tax assets and liabilities *(dollars in thousands)*. Net deferred taxes at December 31, 2017 were impacted by the First Community and Mid Illinois acquisitions and enactment of the TCJA.

	2017	2016
Deferred tax assets:		
Investment securities:		
Unrealized losses on securities available for sale	$ 1,362	$ —
Other, net	923	—
Allowance for loan losses	15,751	19,988
Stock-based compensation	1,869	2,396
Deferred compensation	2,455	2,748
Affordable housing partnerships and other investments	970	929
Purchase accounting adjustments	7,712	7,186
Accrued vacation	604	729
Employee costs	759	2,044
Other	413	1,097
	$ 32,818	$ 37,117
Deferred tax liabilities:		
Investment securities:		
Unrealized gains on securities available for sale	$ —	$ (24)
Other, net	—	(639)
Basis in premises and equipment	(1,909)	(1,468)
Affordable housing partnerships and other investments	(1,769)	(2,110)
Purchase accounting adjustments	(1,262)	(2,242)
Mortgage servicing assets	(1,120)	(1,228)
Basis in core deposit and customer intangible assets	(10,955)	(7,377)
Deferred loan origination costs	(1,168)	(2,765)
	$ (18,183)	$ (17,853)
Net operating loss carryforward, net of valuation allowance	2,661	960
Net deferred tax assets	$ 17,296	$ 20,224

At December 31, 2017, the Company had a federal net operating loss carryforward of $2.7 million, or approximately $12.7 million pre-tax, in relation to the First Community acquisition, which is subject to limitations under Section 382 of the Internal Revenue Code. At December 31, 2016, the Company had an Illinois net operating loss carryforward of $1.0 million, or approximately $13.0 million pre-tax, which was utilized in 2017.

At December 31, 2017, the Company also had a Florida net operating loss carryforward of $0.1 million, which will begin to expire in 2030. Due to the uncertainty as to whether the Company will be able to fully realize the Florida carryforward, the Company has a full valuation allowance of $0.1 million related to this net operating loss carryforward. At December 31, 2016, the Company had a Florida net operating loss carryforward of $0.3 million with a full valuation allowance.

Management believes that it is more likely than not that the other deferred tax assets included in the accompanying Consolidated Balance Sheets will be fully realized. The Company has determined that no additional valuation allowance is required for any other deferred tax assets as of December 31, 2017 and 2016.

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Note 16. Employee Benefit Plans

Employees' Stock Ownership Plan

Prior to 2014, the First Busey Corporation Employees' Stock Ownership Plan ("ESOP") was available to all full-time employees who met certain age and length of service requirements. Effective in 2014, the ESOP was frozen, all shares were fully vested and there will be no new contributions under the ESOP. Dividends on allocated shares of common stock are distributed directly to the participants. All shares held by the ESOP, which were acquired prior to the issuance of ASC Topic 718-40, "Employee Stock Ownership Plans", are included in the computation of average common shares and common share equivalents. This accounting treatment is grandfathered under ASC Topic 718-40 for shares purchased prior to December 31, 1992.

All shares held in the ESOP which were acquired prior to December 31, 1992 were allocated as of December 31, 2006. The number of shares and associated fair values were 121,082 worth $3.6 million and 136,840 worth $4.2 million at December 31, 2017 and 2016, respectively.

Shares held in the ESOP which were acquired after December 31, 1992 and associated fair values were 42,439 worth $1.3 million and 48,222 worth $1.5 million at December 31, 2017 and 2016, respectively.

Profit Sharing Plan

All full-time employees who meet certain age and service requirements are eligible to participate in the Company's profit-sharing plan. The contributions, if any, are determined solely by the boards of directors of the Company and its subsidiaries, and in no case may the annual contributions be greater than the amounts deductible for federal income tax purposes for that year.

The rights of the participants vest ratably over a five-year period, except for the 401(k) match portion, which vests immediately. Expenses related to the employee benefit plans are $5.1 million, $4.3 million and $2.6 million at December 31, 2017, 2016 and 2015, respectively.

The Company sponsors deferred compensation plans for executive officers for deferral of compensation. While current participants in the deferred compensation plan are permitted to continue participating in the plan, it is not currently open to new participants. The deferred compensation expense reported was $0.3 million for the years ended December 31, 2017, 2016 and 2015. The deferred compensation liability was $10.2 million and $6.8 million at December 31, 2017 and 2016, respectively. The 2017 deferred compensation liability was impacted by the Mid Illinois acquisition and included $3.9 million which was distributed in January 2018. The 2016 deferred compensation liability included $1.1 million related to the Pulaski acquisition which was distributed in January 2017.

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Note 17. Share-based Compensation

Overview

During the first quarter of 2010, the Company adopted the 2010 Equity Plan, which was approved at the annual stockholders meeting on May 19, 2010. During the second quarter of 2015, the Company adopted an amendment to the 2010 Equity Plan, which was approved at the annual stockholders meeting on May 20, 2015.

Subject to permitted adjustments for certain corporate transactions, the maximum number of shares that may be delivered to participants, or their beneficiaries, under the 2010 Equity Plan is 1,333,333 shares of First Busey common stock. To the extent that any shares of stock covered by an award (including non-vested stock awards) under the 2010 Equity Plan, or the prior plans, are not delivered for any reason, including because the award is forfeited, canceled, settled in cash or shares are withheld to satisfy tax withholding requirements, such shares will not be deemed to have been delivered for purposes of determining the maximum number of shares of stock available for delivery and will again become available for usage under the 2010 Equity Plan. If any option granted under the 2010 Equity Plan is exercised by tendering shares of stock, only the number of shares of stock issued net of the shares of stock tendered shall be counted for purposes of these limitations. Any shares covered under the terms of a prior First Busey plan award that would otherwise become available for reuse under the terms of the prior plan will become available for issuance under the 2010 Equity Plan.

The 2010 Equity Plan's effective date was May 19, 2010. The 2010 Equity Plan will continue in effect until terminated by the board of directors; provided that no awards may be granted under the 2010 Equity Plan after the ten-year anniversary of the effective date. Any awards that are outstanding after the tenth anniversary of the effective date will remain subject to the terms of the 2010 Equity Plan.

The following additional limits apply to awards under the 2010 Equity Plan, however due to changes imposed by the TCJA, "performance-based compensation" only applies to arrangements subject to a written binding contract in effect on November 2, 2017, that has not subsequently been materially modified:

- the maximum number of shares of stock that may be covered by options that are intended to be "performance-based compensation" which are granted to any one participant during any calendar year is 133,333 shares;

- the maximum number of shares of stock that may be covered by stock awards that are intended to be "performance-based compensation" which are granted to any one participant during any calendar year is 66,667 shares; and

- the maximum dollar amount of cash incentive awards or cash-settled stock awards intended to be "performance-based compensation" payable to any one participant with respect to any calendar year is $1,000,000.

The Company grants share-based compensation awards to its employees and members of its board of directors as provided for under the Company's 2010 Equity Incentive Plan. Further, the Company registered 443,619 shares of its common stock issuable in the future pursuant to First Community 2016 Equity Incentive Plan to legacy employees and directors of First Community and its subsidiaries and upon the exercise of currently outstanding equity awards under the First Community 2016 Equity Incentive Plan and the First Community Amended and Restated 2008 Equity Incentive Plan held by former employees of First Community and its subsidiaries. Pursuant to the terms of the First Community 2016 Equity Incentive Plan, the Company may grant awards with respect to First Busey common stock to legacy employees and directors of First Community or its subsidiaries, including but not limited to non-qualified stock options, incentive stock options, stock appreciation rights, restricted stock and restricted stock units.

The Company currently grants share-based compensation in the form of restricted stock units ("RSUs") and deferred stock units ("DSUs"). The Company grants RSUs to members of management periodically throughout the year. Each RSU is equivalent to one share of the Company's common stock. These units have requisite service periods ranging from one to five years. The Company annually grants share-based awards in the form of DSUs, which are RSUs with a deferred settlement date, to its board of directors. Each DSU is equivalent to one share of the Company's common stock. The DSUs vest over a twelve-month period following the grant date or on the date of the next Annual Meeting of Stockholders, whichever is earlier. These units generally are subject to the same terms as RSUs under the Company's 2010 Equity Incentive Plan, except that, following vesting, settlement occurs within 30 days following the earlier of separation from the board or a change in control of the Company. Subsequent to vesting and prior to delivery, these units will continue to earn dividend equivalents. The Company also has outstanding stock options granted prior to 2011.

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Under the terms of the Company's 2010 Equity Incentive Plan and First Community 2016 Equity Incentive Plan, the Company is allowed, but not required, to source stock option exercises and grants of RSUs and DSUs from its inventory of treasury stock. As of December 31, 2017, the Company held 500,638 shares in treasury. On February 3, 2015, First Busey announced that its board of directors approved a repurchase plan under which the Company is authorized to repurchase up to an aggregate of 666,667 shares of its common stock. The repurchase plan has no expiration date and replaced the prior repurchase plan originally approved in 2008. During 2015, the Company purchased 333,333 shares under this repurchase plan. At December 31, 2017 the Company had 333,334 shares that may still be purchased under the plan.

Stock Option Plan

In relation to the First Community acquisition, the Company assumed stock options that were previously issued under First Community incentive plans. The First Community Amended and Restated 2008 Equity Incentive Plan was approved by First Community shareholders. This plan was subsequently amended without approval by First Community shareholders to increase the number of shares available for issuance. The First Community 2016 Equity Incentive Plan was approved by First Community shareholders. At the effective time of the merger, each outstanding and unexercised option to purchase shares of First Community common stock held by an employee, whether vested or unvested, was converted into an option to purchase First Busey common stock. The converted option is equal to the number of shares of such First Community stock option multiplied by the option exchange ratio (rounded down to the nearest whole share), at an exercise price per share equal to the exercise price for each share of First Community common stock subject to such First Community stock option divided by the option exchange ratio (rounded up to the nearest whole cent). The option exchange ratio is the sum of the exchange ratio (0.396) multiplied by the closing sales price of a share of First Busey common stock on the Nasdaq Global Select Market on June 30, 2017, plus the cash consideration ($1.35), divided by the closing sales price of a share of First Busey common stock on the Nasdaq Global Select Market on June 30, 2017. Each First Community stock option assumed and converted continues to be subject to the same terms and conditions (including vesting periods), as applicable immediately prior to the effective time of the merger.

In relation to the Pulaski acquisition, the Company assumed stock options that were previously issued under shareholder approved Pulaski incentive plans. At the effective time of the acquisition, each outstanding option to purchase shares of Pulaski common stock was converted automatically into a stock option exercisable for that number of shares of First Busey common stock equal to (i) the number of shares of Pulaski common stock subject to the Pulaski stock option immediately prior to the effective time multiplied by (ii) the exchange ratio (rounded down to the nearest whole share), with an exercise price per share equal to (A) the exercise price per share of Pulaski common stock subject to such Pulaski stock option immediately prior to the effective time divided by (B) the exchange ratio (rounded up to the nearest whole cent). Each Pulaski stock option assumed and converted continues to be subject to the same terms and conditions, as applicable immediately prior to the effective time of the merger. All Pulaski stock options are fully vested.

A summary of the status of the Company's stock option awards for the years ended December 31, 2017, 2016, and 2015, and the changes during the years ended on those dates is as follows:

	2017		2016		2015	
	Shares	**Weighted-Average Exercise Price**	**Shares**	**Weighted-Average Exercise Price**	**Shares**	**Weighted-Average Exercise Price**
Outstanding at beginning of year	209,382	$ 15.13	96,568	$ 43.64	170,026	$ 48.99
Converted options from Pulaski	—	—	309,700	13.29	—	—
Converted options from First Community	121,360	21.41	—	—	—	—
Exercised	(99,605)	13.74	(145,774)	15.09	—	—
Forfeited	(5,279)	23.53	(394)	13.87	(517)	58.23
Expired	(12,430)	52.40	(50,718)	58.23	(72,941)	55.99

Outstanding at end of year	213,428	$ 16.97	209,382	$ 15.13	96,568	$ 43.64
Exercisable at end of year	167,144	$ 15.16	209,382	$ 15.13	96,568	$ 43.64

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The following table summarizes information about stock options outstanding at December 31, 2017:

	Options Outstanding				Options Exercisable	
Range of Exercise Prices	Number	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life	Intrinsic Value	Number	Intrinsic Value
$ 6.89-14.05	103,055	$ 10.86	1.45		103,055	
16.01-19.50	11,634	18.19	4.62		11,634	
21.03-23.53	98,739	23.22	7.08		52,455	
	213,428	$ 16.97	4.23	$ 2,581	167,144	$ 2,284

The Company recorded $0.2 million stock option compensation expense for the twelve months ended December 31, 2017 related to the converted options from First Community. The Company did not record any stock option compensation expense during 2016 or 2015. As of December 31, 2017, the Company had $0.5 million of unrecognized stock option expense. This cost is expected to be recognized over a period of 1.9 years.

Restricted Stock Unit Plan

In relation to the Pulaski acquisition, the Company also assumed performance based restricted stock unit awards. At the effective time of the acquisition, the number of Pulaski common shares covered by each award was fixed at the target level under Pulaski's existing plan and automatically converted into a service-based restricted stock unit award of First Busey common stock that was equal to the number of shares of Pulaski common stock multiplied by the exchange ratio. Each assumed restricted stock unit award vested, without regard to any performance metrics, on September 30, 2017 or if applicable, the award holders' earlier involuntary termination of employment for reasons other than cause or voluntary termination of employment for good reason, as specified in the award agreement.

A summary of the changes in the Company's RSUs for the years ended December 31, 2017, 2016 and 2015 is as follows:

	2017		2016		2015	
	Shares	Weighted-Average Grant Date Fair Value	Shares	Weighted-Average Grant Date Fair Value	Shares	Weighted-Average Grant Date Fair Value
Outstanding at beginning of year	552,610	$ 18.45	424,930	$ 17.10	394,624	$ 15.67
Converted units from Pulaski	—	—	53,004	14.25	—	—
Granted	160,532	30.34	126,669	22.44	108,945	20.07
Dividend equivalents earned	13,479	30.14	14,935	21.09	13,089	19.31
Vested	(116,498)	14.73	(54,913)	14.61	(73,777)	14.48
Forfeited	(22,360)	19.20	(12,015)	15.19	(17,951)	16.21
Outstanding at end of year	587,763	$ 22.68	552,610	$ 18.45	424,930	$ 17.10

Recipients earn quarterly dividend equivalents on their respective units which entitle the recipients to additional units. Therefore, dividends earned each quarter compound based upon the updated unit balances. Upon vesting/delivery, shares are expected (though not required) to be issued from treasury. Dividends related to the converted Pulaski units were accumulated and paid in cash upon vesting.

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The Company issued 79,459, 43,396 and 59,983 treasury shares in conjunction with the vesting of RSUs in 2017, 2016 and 2015, respectively. The difference between the number of shares issued and the number of vested units is due to shares issued under a net share settlement option.

On January 25, 2017, under the terms of the 2010 Equity Incentive Plan, the Company granted 11,404 RSUs to a member of management. As the stock price on the grant date of January 25, 2017 was $30.69, total compensation cost to be recognized is $0.4 million. This cost will be recognized over a period of five years. Subsequent to the requisite service period, the award will vest 100%.

On June 13, 2017, under the terms of the 2010 Equity Incentive Plan, the Company granted 122,852 RSUs to executives and members of management. As the stock price on the grant date of June 13, 2017 was $30.33, total compensation cost to be recognized is $3.7 million. This cost will be recognized over a period of five years. Subsequent to the requisite service period, the awards will vest 100%.

On July 2, 2017, under the terms of the First Community 2016 Equity Incentive Plan, the Company granted 13,642 RSUs to members of management who were legacy First Community employees. As the stock price on the grant date of July 2, 2017 was $29.32, total compensation cost to be recognized is $0.4 million. This cost will be recognized over a period of five years. Subsequent to the requisite service period, the awards will vest 100%.

On August 1, 2017 under the terms of the 2010 Equity Incentive Plan, the Company granted 3,209 RSUs to members of management. As the stock price on the grant date of August 1, 2017 was $29.61, total compensation cost to be recognized is $0.1 million. This cost will be recognized over a period of five years. Subsequent to the requisite service period, the awards will vest 100%.

On October 2, 2017 under the terms of the 2010 Equity Incentive Plan, the Company granted 9,425 RSUs to a member of management. As the stock price on the grant date of October 2, 2017 was $31.83, total compensation cost to be recognized is $0.3 million. This cost will be recognized over a period of five years. Subsequent to the requisite service period, the awards will vest 100%.

A description of RSUs granted in 2016 and 2015 under the terms of the 2010 Equity Incentive Plan can be found in the Company's Annual Reports on Form 10-K for the years ended December 31, 2016 and 2015.

Deferred Stock Unit Plan

A summary of the changes in the Company's DSUs for the years ended December 31, 2017, 2016 and 2015 is as follows:

	2017		2016		2015	
	Shares	Weighted-Average Grant Date Fair Value	Shares	Weighted-Average Grant Date Fair Value	Shares	Weighted-Average Grant Date Fair Value
Non-vested at beginning of year	35,038	$ 21.04	24,763	$ 19.25	18,581	$ 17.31
Granted	24,100	29.61	22,428	22.44	17,899	20.07
Dividend equivalents earned	2,426	30.22	2,576	21.20	1,872	19.40
Vested	(19,153)	23.18	(14,729)	20.18	(13,589)	17.69
Non-vested at end of year	42,411	$ 25.47	35,038	$ 21.04	24,763	$ 19.25
Outstanding at end of year	119,985	$ 21.00	93,459	$ 18.54	68,456	$ 17.16

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On August 1, 2017, under the terms of the 2010 Equity Incentive Plan, the Company granted 17,080 DSUs to directors and under the terms of the First Community 2016 Equity Incentive Plan granted 1,250 DSUs to a director. As the stock price on the grant date of August 1, 2017 was $29.61, total compensation cost to be recognized is $0.5 million. These costs will be recognized over the requisite service period of one year from the date of grant or the next Annual Meeting of Stockholders; whichever is earlier. Further, the Company granted 5,770 DSUs, under the terms of the 2010 Equity Incentive Plan, to the Chairman of the Board. As the stock price on the grant date of June 13, 2017 was $30.33, total compensation cost to be recognized is $0.2 million. This cost will be recognized over a period of five years. Subsequent to the requisite service period, the awards will vest 100%.

A description of DSUs granted in 2016 and 2015 under the terms of the 2010 Equity Incentive Plan can be found in the Company's Annual Reports on Form 10-K for the years ended December 31, 201 6and 2015.

The Company recognized $2.6 million, $1.8 million and $1.4 million of compensation expense related to both non-vested RSUs and DSUs for the years ended December 31, 2017, 2016 and 2015, respectively. As of December 31, 2017, there was $8.4 million of total unrecognized compensation cost related to these non-vested stock awards. This cost is expected to be recognized over a period of 3.6 years.

Note 18. Transactions with Related Parties

The Company has had, and may be expected to have in the future, banking transactions in the ordinary course of business with related parties which include directors, executive officers, chief credit officers, their immediate families and affiliated companies in which they have 10% or more beneficial ownership, on the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with others.

The following is an analysis of the changes in loans to related parties during the year ended December 31, 2017 *(dollars in thousands)*:

Balance at beginning of year	$ 48,545
Addition due to change in relationship	5,933
New loans/advances	27,871
Repayments	(35,434)
Balance at end of year	$ 46,915

Total unused commitments to directors and executive officers were $25.9 million at December 31, 2017.

Note 19. Outstanding Commitments and Contingent Liabilities

Legal Matters

The Company is a party to legal actions which arise in the normal course of its business activities. In the opinion of management, the ultimate resolution of these matters is not expected to have a material effect on the financial position or the results of operations of the Company.

Credit Commitments and Contingencies

The Company is a party to credit-related financial instruments with off-balance-sheet risk in the normal course of business to meet the financing needs of its customers. These financial instruments include commitments to extend credit and standby letters of credit. Those instruments involve, to varying degrees, elements of credit and interest rate risk in excess of the amount recognized in the Consolidated Balance Sheets.

The Company's exposure to credit loss is represented by the contractual amount of those commitments. The Company uses the same credit policies in making commitments and conditional obligations as it does for on-balance-sheet instruments. A summary of the contractual amount of the Company's exposure to off-balance-sheet risk relating to the Company's commitments to extend credit and standby letters of credit follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Financial instruments whose contract amounts represent credit risk:		
Commitments to extend credit	$ 1,300,294	$ 875,077
Standby letters of credit	37,231	20,145

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Commitments to extend credit are agreements to lend to a customer as long as no condition established in the contract has been violated. These commitments are generally at variable interest rates and generally have fixed expiration dates or other termination clauses and may require payment of a fee. The commitments for equity lines of credit may expire without being drawn upon. Therefore, the total commitment amounts do not necessarily represent future cash requirements. The amount of collateral obtained, if it is deemed necessary by the Company upon extension of credit, is based on management's credit evaluation of the customer.

Standby letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer's obligation to a third-party. Those guarantees are primarily issued to support public and private borrowing arrangements, including bond financing and similar transactions and primarily have terms of one year or less. The credit risk involved in issuing letters of credit is essentially the same as that involved in extending loan facilities to customers. The Company holds collateral, which may include accounts receivable, inventory, property and equipment, and income producing properties, supporting those commitments if deemed necessary. In the event the customer does not perform in accordance with the terms of the agreement with the third-party, the Company would be required to fund the commitment. The maximum potential amount of future payments the Company could be required to make is represented by the contractual amount shown in the summary above. If the commitment is funded, the Company would be entitled to seek recovery from the customer. As of December 31, 2017 and 2016, no amounts were recorded as liabilities for the Company's potential obligations under these guarantees.

Other Commitments

From time to time, the Company will sign contracts for construction projects relating to the Company's facilities.

Lease Commitments

At December 31, 2017, the Company was obligated under noncancelable operating leases for office space and other commitments. Rent expense under operating leases, included in net occupancy and equipment expense, was $3.7 million, $2.7 million, and $1.5 million for the years ended December 31, 2017, 2016 and 2015, respectively.

Rent commitments before considering renewal options that generally are present, were as follows at December 31, 2017 *(dollars in thousands)*:

2018	$ 1,817
2019	1,503
2020	1,306
2021	825
2022	640
Thereafter	1,540
	$ 7,631

Note 20. Derivative Financial Instruments

The Company originates and purchases derivative financial instruments, including interest rate lock commitments issued to residential loan customers for loans that will be held for sale, forward sales commitments to sell residential mortgage loans to loan investors, interest rate swaps and foreign currency forward contracts. See "*Note 21. Fair Value Measurements*" for further discussion of the fair value measurement of such derivatives.

Interest Rate Lock Commitments. At December 31, 2017 and 2016, the Company had issued $51.7 million and $149.9 million, respectively, of unexpired interest rate lock commitments to loan customers. Such interest rate lock commitments that meet the definition of derivative financial instruments under ASC Topic 815, Derivatives and Hedging, are carried at their fair values in other assets or other liabilities in the Consolidated Financial Statements, with changes in the fair values of the corresponding derivative financial assets or liabilities recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Forward Sales Commitments. At December 31, 2017 and 2016, the Company had issued $139.7 million and $400.0 million, respectively, of unexpired forward sales commitments to mortgage loan investors. Typically, the Company economically hedges mortgage loans held for sale and interest rate lock commitments issued to its residential loan customers related to loans that will be held for sale by obtaining corresponding best-efforts forward sales commitments with an investor to sell the loans at an agreed-upon price at the time the interest rate locks are issued to the customers. Forward sales commitments that meet the definition of derivative financial instruments under ASC Topic 815, Derivatives and Hedging, are carried at their fair values in other assets or other liabilities in the Consolidated Financial Statements.

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While such forward sales commitments generally served as an economic hedge to the mortgage loans held for sale and interest rate lock commitments, the Company did not designate them for hedge accounting treatment. Consequently, changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred.

The fair values of derivative assets and liabilities related to interest rate lock commitments and forward sales commitments recorded in the Consolidated Balance Sheets are summarized as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Fair value recorded in other assets	$ 675	$ 6,403
Fair value recorded in other liabilities	2,148	3,098

The gross gains and losses on these derivative assets and liabilities related to interest rate lock commitments and forward sales commitments recorded in non-interest income and expense in the Consolidated Statements of Income for the twelve months ended December 31, 2017 and 2016 are summarized as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Gross gains	$ 14,724	$ 25,270
Gross (losses)	(13,250)	(24,783)
Net gains	$ 1,474	$ 487

The impact of the net gains or losses on derivative financial instruments related to interest rate lock commitments issued to residential loan customers for loans that will be held for sale and forward sales commitments to sell residential mortgage loans to loan investors are almost entirely offset by a corresponding change in the fair value of loans held for sale.

Interest Rate Swaps. Beginning in the second quarter of 2017, the Company entered into interest rate swap contracts to manage the interest rate risk exposure associated with specific commercial loan relationships, at the time such loans were originated. The Company offsets each customer derivative with a bank counterparty. With a notional value of $161.3 million at December 31, 2017 these contracts support variable rate, commercial loan relationships totaling $80.7 million. While these swap derivatives generally worked together as an economic interest rate hedge, the Company did not designate them for hedge accounting treatment. Consequently, changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred.

The fair values of derivative assets and liabilities related to interest rate swaps recorded in the Consolidated Balance Sheets are summarized as follows *(dollars in thousands)*:

	December 31, 2017
Fair value recorded in other assets	$ 262
Fair value recorded in other liabilities	262

The gross gains and losses on derivative assets and liabilities related to interest rate swaps recorded in non-interest income and expense in the Consolidated Statements of Income for the year ended December 31, 2017 are summarized as follows (dollars in thousands):

	December 31, 2017
Gross gains	$ 262
Gross losses	(262)
Net gains (losses)	$ —

First Busey had $2.0 million in cash and $0.4 million in securities pledged to secure its obligation under these contracts at December 31, 2017.

Foreign Currency Derivatives. The Company had originated certain loan agreements that settled in non-U.S. dollar denominations. At December 31, 2017, there were no outstanding gross balances of such loans. The Company had entered into foreign currency forward contracts to mitigate the economic effect of fluctuations in foreign currency exchange rates on non-U.S. dollar denominated loans, when balances were outstanding. While such forward contracts generally served as an economic hedge to certain loans, the Company did not designate them for hedge accounting treatment. Consequently, changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred. The gross gains and losses on

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these derivative assets and liabilities recorded in non-interest income and expense in the Consolidated Statements of Income for the twelve months ended December 31, 2017 and 2016 was insignificant.

The notional amount and fair values, denominated in U.S. dollars, of open foreign currency forward contracts were as follows *(dollars in thousands)*:

	December 31, 2017	December 31, 2016
Notional amount	$ —	$ 742
Fair value recorded in other liabilities	—	7

Note 21. Fair Value Measurements

The fair value of an asset or liability is the price that would be received by selling that asset or paid in transferring that liability in an orderly transaction occurring in the principal market (or most advantageous market in the absence of a principal market) for such asset or liability. In estimating fair value, the Company utilizes valuation techniques that are consistent with the market approach, the income approach and/or the cost approach. Such valuation techniques are consistently applied. Inputs to valuation techniques include the assumptions that market participants would use in pricing an asset or liability. ASC Topic 820, Fair Value Measurement, establishes a fair value hierarchy for valuation inputs that gives the highest priority to quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs. The fair value hierarchy is as follows:

Level 1 Inputs - Unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 Inputs - Inputs other than quoted prices included in level 1 that are observable for the asset or liability, either directly or indirectly. These might include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (such as interest rates, volatilities, prepayment speeds, credit risks, etc.) or inputs that are derived principally from or corroborated by market data by correlation or other means.

Level 3 Inputs - Unobservable inputs for determining the fair values of assets or liabilities that reflect the Company's own assumptions about the assumptions that market participants would use in pricing the assets or liabilities.

A description of the valuation methodologies used for instruments measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy, is set forth below. These valuation methodologies were applied to those Company assets and liabilities that are carried at fair value.

There were no transfers between levels during the year ended December 31, 2017 or 2016.

In general, fair value is based upon quoted market prices, when available. If such quoted market prices are not available, fair values are measured utilizing independent valuation techniques of identical or similar securities for which significant assumptions are derived primarily from or corroborated by observable data. Valuation adjustments may be made to ensure that financial instruments are recorded at fair value. These adjustments may include amounts to reflect, among other things, counterparty credit quality and the company's creditworthiness as well as unobservable parameters. Any such valuation adjustments are applied consistently over time. While management believes the Company's valuation methodologies are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date.

Securities Available for Sale. Securities classified as available for sale are reported at fair value utilizing level 1 and level 2 measurements. For mutual funds and other equity securities, unadjusted quoted prices in active markets for identical assets are utilized to determine fair value at the measurement date and have been classified as level 1 in ASC Topic 820. For all other securities, the Company obtains fair value measurements from an independent pricing service. The independent pricing service utilizes evaluated pricing models that vary by asset class and incorporate available trade, bid and other market information. Because many fixed income securities do not trade on a daily basis, the independent pricing service applies available information, focusing on observable market data such as benchmark curves, benchmarking of like securities, sector groupings, and matrix pricing, to prepare evaluations.

The independent pricing service uses model processes, such as the Option Adjusted Spread model, to assess interest rate impact and develop prepayment scenarios. The models and processes take into account market conventions. For each asset class, a team of evaluators gathers information from market sources and integrates relevant credit information, perceived market movements and sector news into the evaluated pricing applications and models.

The market inputs that the independent pricing service normally seeks for evaluations of securities, listed in approximate order of priority, include: benchmark yields, reported trades, broker/dealer quotes, issuer spreads, two-sided markets, benchmark securities, bids, offers and reference data including market research publications. The independent pricing service also monitors market indicators, industry and economic events. For certain security types, additional inputs may be used or some of the market inputs may not be applicable. Evaluators may prioritize inputs differently on any given day for any security based on market conditions, and not all inputs listed are available for use in the evaluation process for each security evaluation on a given day. Because the data utilized was observable, the securities have been classified as level 2 in ASC Topic 820.

Loans held for sale. Loans held for sale are reported at fair value utilizing level 2 measurements. The fair value of the mortgage loans held for sale are measured using observable quoted market or contract prices or market price equivalents and are classified as level 2 in ASC Topic 820.

Derivative Assets and Derivative Liabilities. Derivative assets and derivative liabilities are reported at fair value utilizing level 2 measurements. The fair value of derivative assets and liabilities is determined based on prices that are obtained from a third-party which uses observable market inputs. Derivative assets and liabilities are classified as level 2 in ASC Topic 820.

The following table summarizes financial assets and financial liabilities measured at fair value on a recurring basis as of December 31, 2017 and 2016, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value *(dollars in thousands)*:

	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
December 31, 2017				
Securities available for sale				
U.S. Treasury securities	$ —	$ 60,348	$ —	$ 60,348
Obligations of U.S. government corporations and agencies	—	103,665	—	103,665
Obligations of states and political subdivisions	—	280,199	—	280,199
Residential mortgage-backed securities	—	397,436	—	397,436
Corporate debt securities	—	31,034	—	31,034
Mutual funds and other equity securities	5,378	—	—	5,378
Loans				
Loans held for sale	—	94,848	—	94,848
Derivative assets				
Derivative financial assets	—	937	—	937
Derivative liabilities				
Derivative financial liabilities	—	2,410	—	2,410

	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
December 31, 2016				

Securities available for sale				
U.S. Treasury securities	$ —	$ 74,944	$ —	$ 74,944
Obligations of U.S. government corporations and agencies	—	79,127	—	79,127
Obligations of states and political subdivisions	—	154,938	—	154,938
Residential mortgage-backed securities	—	302,249	—	302,249
Corporate debt securities	—	143,343	—	143,343
Mutual funds and other equity securities	5,210	—	—	5,210
Loans				
Loans held for sale	—	256,319	—	256,319
Derivative assets				
Derivative financial assets	—	6,403	—	6,403
Derivative liabilities				
Foreign currency forward contracts	—	7	—	7
Derivative financial liabilities	—	3,098	—	3,098

Certain financial assets and financial liabilities are measured at fair value on a non-recurring basis; that is, the instruments are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances (for example, when there is evidence of impairment).

Impaired Loans. The Company does not record loans at fair value on a recurring basis. However, periodically, a loan is considered impaired and is reported at the fair value of the underlying collateral, less estimated costs to sell, if repayment is expected solely from the collateral. Impaired loans measured at fair value typically consist of loans on non-accrual status and restructured loans in compliance with modified terms. Collateral values are estimated using a combination of observable inputs, including recent appraisals, and unobservable inputs based on customized discounting criteria. Due to the significance of the unobservable inputs, all impaired loan fair values have been classified as level 3 in ASC Topic 820.

OREO. Non-financial assets and non-financial liabilities measured at fair value include OREO (upon initial recognition or subsequent impairment). OREO properties are measured using a combination of observable inputs, including recent appraisals, and unobservable inputs based on customized discounting criteria. Due to the significance of the unobservable inputs, all OREO fair values have been classified as level 3 in ASC Topic 820.

The following table summarizes assets and liabilities measured at fair value on a non-recurring basis as of December 31, 2017 and 2016, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value *(dollars in thousands)*:

	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
December 31, 2017				
Impaired loans	$ —	$ —	$ 1,313	$ 1,313
OREO(1)	—	—	—	—
December 31, 2016				
Impaired loans	$ —	$ —	$ 3,885	$ 3,885
OREO(1)	—	—	—	—

(1)OREO fair value was less than one thousand dollars.

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The following table presents additional quantitative information about assets measured at fair value on a non-recurring basis for which the Company has utilized level 3 inputs to determine fair value *(dollars in thousands)*:

	Quantitative Information about Level 3 Fair Value Measurements			
	Fair Value Estimate	Valuation Techniques	Unobservable Input	Range (Weighted Average)
December 31, 2017				
Impaired loans	$ 1,313	Appraisal of collateral	Appraisal adjustments	-20.3% to -100.0% (-30.8)%
OREO(1)	—	Appraisal of collateral	Appraisal adjustments	-100.0% (-100.0)%
December 31, 2016				
Impaired loans	$ 3,885	Appraisal of collateral	Appraisal adjustments	-19.2% to -100.0% (-38.4)%
OREO(1)	—	Appraisal of collateral	Appraisal adjustments	-100.0% (-100.0)%

(1)OREO fair value was less than one thousand dollars.

The carrying value for cash and cash equivalents approximates fair value and due to the short-term maturity is classified as level 1 in ASC Topic 820. The carrying value approximates fair value for accrued interest receivable and accrued interest payable and both are classified as level 2 in ASC Topic 820. The methodologies for other financial assets and financial liabilities are discussed below:

Securities held to maturity

Fair value measurements for securities held to maturity are from an independent pricing service. The independent pricing service evaluations are based on market data. Securities held to maturity are classified as level 2 in ASC Topic 820.

Portfolio loans, net

Our performing portfolio loans consist of variable rate, hybrid rate and fixed rate loans. For variable rate loans that reprice frequently with no significant change in credit risk, fair values are based on carrying amount. The fair value of hybrid rate and fixed rate loans are estimated by discounting the future cash flows using the current rates at which similar loans would be made to borrowers with similar credit ratings and for the same remaining maturities and are classified as level 3 in ASC Topic 820. Fair value of impaired loans is discussed above.

Mortgage servicing rights

The fair value of mortgage servicing rights is estimated by discounting the future cash flows at a market rate of return and classified as level 3 in ASC Topic 820.

Other servicing rights

The fair value of other servicing rights relates to servicing that First Busey provides on Small Business Association loans and is estimated by discounting the future cash flows at a market rate of return and classified as level 3 in ASC Topic 820.

Deposits and securities sold under agreements to repurchase

The fair value of demand deposits, savings accounts, interest-bearing transaction accounts, and certain money market deposits is defined as the amount payable on demand at the reporting date. The fair value of fixed-maturity certificates of deposit is estimated using a discounted cash flow calculation that applies interest rates currently offered for deposits of similar remaining maturities. The carrying amounts reported in the balance sheet for securities sold under agreements to repurchase approximate those liabilities' fair values. Deposits and securities sold under agreements to repurchase are classified as level 2 in ASC Topic 820.

Short-term borrowings

The fair value of short-term borrowings, which includes advances from the FHLB, is determined by discounting the future cash flows of existing advances using rates currently available on advances from the FHLB having similar characteristics and is classified as level 2 in ASC Topic 820.

Long-term debt

Rates currently available to the Company for debt with similar terms and remaining maturities are used to estimate fair value of existing debt and is classified as level 2 in ASC Topic 820.

Junior subordinated debt owed to unconsolidated trusts

For variable rate instruments, fair values are based on carrying values and are classified as level 2 in ASC Topic 820.

Senior and subordinated notes, net of unamortized issuance costs

The fair value of senior and subordinated notes, net of unamortized issuance costs, is estimated based on the rates currently available to the Company with similar terms, remaining maturity and credit spread and classified as level 3 in ASC Topic 820.

The estimated fair values of financial instruments that are reported at amortized cost in the Company's Consolidated Balance Sheets, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value, were as follows *(dollars in thousands)*:

	December 31, 2017		December 31, 2016	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Financial assets:				
Level 1 inputs:				
Cash and cash equivalents	$ 353,272	$ 353,272	$ 166,706	$ 166,706
Level 2 inputs:				
Securities held to maturity	443,550	441,052	47,820	47,683
Accrued interest receivable	22,591	22,591	15,562	15,562
Level 3 inputs:				
Portfolio loans, net	5,465,918	5,361,406	3,831,105	3,841,760
Mortgage servicing rights	3,680	8,635	3,074	7,803
Other servicing rights	280	901	—	—
Financial liabilities:				
Level 2 inputs:				
Deposits	$ 6,125,965	$ 6,119,135	$ 4,374,298	$ 4,368,891
Securities sold under agreements to repurchase	304,566	304,566	189,157	189,157
Short-term borrowings	220,000	220,000	75,000	75,000
Long-term debt	50,000	50,000	80,000	80,000
Junior subordinated debt owed to unconsolidated trusts	71,008	71,008	70,868	70,868
Accrued interest payable	2,581	2,581	987	987

Level 3 inputs:				
Senior notes, net of unamortized issuance Costs	39,404	39,104	—	—
Subordinated notes, net of unamortized issuance costs	64,715	64,350	—	—

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Note 22. Liability for Loans Sold

Under standard representations and warranties and early payment default clauses in the Company's mortgage sale agreements, the Company could be required to repurchase mortgage loans sold to investors or reimburse the investors for losses incurred on loans in the event of borrower default within a defined period after origination (generally 90 days), or in the event of breaches of contractual representations or warranties made at the time of sale that are not remedied within a defined period after the Company receives notice of such breaches (generally 90 days). In addition, the Company may be required to refund the profit received from the sale of a loan to an investor if the borrower pays off the loan within a defined period after origination, which is generally 120 days. The Company records an estimated liability for probable amounts due to the Company's loan investors under these obligations. This repurchase liability is determined based on a combination of factors including the volume of loans sold in current and previous periods; borrower default expectations; historical investor repurchase demand and appeals success rates; and estimated loss severity. Payments made to investors as reimbursement for losses incurred are charged against the mortgage repurchase liability. Loans repurchased from investors are initially recorded at fair value, which becomes the Company's new accounting basis. The difference between the loan's fair value and the payment made to investors as reimbursement for losses incurred is charged to the mortgage repurchase liability. Subsequent to repurchase, such loans are carried as portfolio loans on the Company's Consolidated Balance Sheets. Loans repurchased with deteriorated credit quality at the date of repurchase are accounted for under ASC Topic 310-30.

The liability for loans sold of $2.1 million and $2.2 million at December 31, 2017 and 2016, respectively, represents the Company's best estimate of the probable losses that the Company will incur for various early default provisions and contractual representations and warranties associated with the sales of mortgage loans and is included in other liabilities in the accompanying Consolidated Balance Sheets. Because the level of mortgage loan repurchase losses depends upon economic factors, investor demand strategies and other external conditions that may change over the life of the underlying loans, the level of the liability for mortgage loan repurchase losses is difficult to estimate and requires considerable management judgment. In addition, the Company generally does not service the loans that it has sold to investors and is generally unable to track the remaining unpaid balances or delinquency status after sale. As a result, there may be a range of possible losses in excess of the estimated liability that cannot be estimated. Management maintains regular contact with the Company's investors to monitor and address their repurchase demand practices and concerns.

Note 23. Operating Segments and Related Information

The Company has three reportable operating segments, Banking, Remittance Processing and Wealth Management. The Banking operating segment provides a full range of banking services to individual and corporate customers through its banking center network in Illinois, St. Louis, Missouri metropolitan area, southwest Florida and through its banking center in Indianapolis, Indiana. Banking services for Busey Bank and South Side Bank are aggregated into the Banking operating segment as they have similar operations and activities. The Remittance Processing operating segment provides for online bill payments, lockbox and walk-in payments. The Wealth Management operating segment provides a full range of asset management, investment and fiduciary services to individuals, businesses and foundations, tax preparation, philanthropic advisory services and farm and brokerage services.

The Company's three operating segments are strategic business units that are separately managed as they offer different products and services and have different marketing strategies. The "other" category consists of the Parent Company and the elimination of intercompany transactions.

The segment financial information provided below has been derived from information used by management to monitor and manage the financial performance of the Company. The accounting policies of the three segments are the same as those described in the summary of significant accounting policies in *"Note 1. Significant Accounting Policies*". The Company accounts for intersegment revenue and transfers at current market value.

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Following is a summary of selected financial information for the Company's operating segments *(dollars in thousands)*:

As of December 31,	Goodwill 2017	Goodwill 2016	Total Assets 2017	Total Assets 2016
Banking	$ 248,660	$ 82,128	$ 7,809,738	$ 5,369,669
Remittance Processing	8,992	8,992	34,646	32,379
Wealth Management	11,694	11,694	32,077	28,351
Other	—	—	(15,821)	(5,229)
Totals	$ 269,346	$ 102,814	$ 7,860,640	$ 5,425,170

	Years ended December 31, 2017	2016	2015
Net interest income:			
Banking	$ 208,184	$ 156,374	$ 112,712
Remittance Processing	60	55	53
Wealth Management	321	266	272
Other	(5,199)	(2,035)	(1,222)
Net interest income	$ 203,366	$ 154,660	$ 111,815
Non-interest income:			
Banking	$ 47,524	$ 41,816	$ 30,933
Remittance Processing	12,137	11,554	11,332

Wealth Management	27,270	23,563	23,651
Other	(2,457)	(1,764)	(1,124)
Total non-interest income	$ 84,474	$ 75,169	$ 64,792
Non-interest expense:			
Banking	$ 139,521	$ 117,293	$ 86,672
Remittance Processing	8,704	8,668	8,526
Wealth Management	17,079	16,484	16,003
Other	9,122	5,417	4,104
Total non-interest expense	$ 174,426	$ 147,862	$ 115,305
Income before income taxes:			
Banking	$ 110,884	$ 75,347	$ 55,374
Remittance Processing	3,493	2,941	2,859
Wealth Management	10,512	7,345	7,921
Other	(16,778)	(9,216)	(6,452)
Income before income taxes	$ 108,111	$ 76,417	$ 59,702
Net income:			
Banking	$ 65,704	$ 48,691	$ 36,026
Remittance Processing	2,007	1,758	1,709
Wealth Management	6,229	4,388	4,721
Other	(11,214)	(5,143)	(3,450)
Net income	$ 62,726	$ 49,694	$ 39,006

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Note 24. Parent Company Only Financial Information

Condensed financial data for First Busey Corporation is presented below *(dollars in thousands)*.

BALANCE SHEETS

	December 31, 2017	December 31, 2016
ASSETS		
Cash and due from subsidiary banks	$ 54,946	$ 27,507
Securities available for sale, at fair value	836	—
Investments in subsidiaries:		
Banks	1,012,396	602,197
Non-bank	26,319	25,017
Premises and equipment, net	41	301
Other assets	23,692	17,173
Total assets	$ 1,118,230	$ 672,195
LIABILITIES AND STOCKHOLDERS' EQUITY		
Liabilities:		
Senior notes, net of unamortized issuance costs	$ 39,404	$ —
Subordinated notes, net of unamortized issuance costs	64,715	—
Junior subordinated debentures owed to unconsolidated trusts	71,008	70,868
Other liabilities	8,100	7,013
Total liabilities	183,227	77,881
Total stockholders' equity	935,003	594,314
Total liabilities and stockholders' equity	$ 1,118,230	$ 672,195

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STATEMENTS OF INCOME

	Years Ended December 31, 2017	2016	2015
Operating income:			
Dividends from subsidiaries:			
Pulaski Bank before bank merger	$ —	$ 8,700	$ —
Non-bank	4,000	4,000	8,000
Interest and dividend income	264	—	—
Other income	6,890	5,664	5,633

Total operating income	11,154	18,364	13,633
Expense:			
Salaries, wages and employee benefits	11,398	8,879	7,658
Interest expense	5,464	2,035	1,223
Operating expense	7,060	3,967	3,203
Total expense	23,922	14,881	12,084
(Loss) income before income tax benefit and distributions (in excess of) less than net income of subsidiaries	(12,768)	3,483	1,549
Income tax benefit	5,553	4,073	3,001
(Loss) income before distributions less than (in excess of) net income of subsidiaries	(7,215)	7,556	4,550
Distributions less than (in excess of) net income of subsidiaries:			
Banks	68,635	41,980	37,878
Non-bank	1,306	158	(3,422)
Net income	$ 62,726	$ 49,694	$ 39,006

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STATEMENTS OF CASH FLOWS

	Years Ended December 31,		
	2017	2016	2015
Cash Flows from Operating Activities			
Net income	$ 62,726	$ 49,694	$ 39,006
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	428	198	114
Distributions less than net income of subsidiaries	(69,940)	(42,138)	(34,456)
Stock-based compensation	2,752	1,803	1,418
Changes in assets and liabilities:			
(Increase) decrease in other assets	(1,105)	1,057	(4,871)
Decrease in other liabilities	(2,703)	(3,690)	(361)
Net cash (used in) provided by operating Activities	(7,842)	6,924	850
Cash Flows from Investing Activities			
Proceeds from sales of securities classified available for sale	—	—	14
Net cash (outlay) received for business acquisition	(61,371)	602	(33,759)
Purchases of premises and equipment	—	(3)	(2)
Net cash (used in) provided by investing activities	(61,371)	599	(33,747)
Cash Flows from Financing Activities			
Proceeds from charter amendment with subsidiary bank	40,000	30,000	60,000
Redemption of SBLF preferred stock	—	—	(72,664)
Value of shares surrendered upon vesting to satisfy tax withholding obligations of stock based compensation	(1,414)	(809)	(269)
Cash dividends paid	(30,707)	(22,748)	(18,619)
Repayments of long-term debt	(9,800)	—	—
Proceeds from issuance of long-term debt	98,312	—	—
Proceeds from stock options exercised	626	—	—
Common stock issuance costs	(365)	(246)	—
Cash payment for fractional shares related to Reverse Stock Split	—	—	(5)
Purchase of treasury stock	—	—	(6,296)
Net cash provided by (used in) financing activities	96,652	6,197	(37,853)
Net increase (decrease) in cash and due from subsidiary banks	27,439	13,720	(70,750)
Cash and cash equivalents, beginning of period	27,507	13,787	84,537
Cash and cash equivalents, ending of period	$ 54,946	$ 27,507	$ 13,787

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Note 25. Unaudited Interim Financial Data

The following table reflects summarized unaudited quarterly data for the periods described *(dollars in thousands, except per share data)*:

	2017			
	December 31	September 30	June 30	March 31
Total interest income	$ 70,847	$ 62,519	$ 46,009	$ 44,927
Total interest expense	7,801	6,578	3,643	2,914
Net interest income	63,046	55,941	42,366	42,013
Provision for loan losses	2,809	1,494	500	500
Total non-interest income	23,561	20,837	20,062	20,014
Total non-interest expense	53,100	46,939	36,768	37,619
Income before income taxes	30,698	28,345	25,160	23,908
Income taxes	18,405	9,561	8,681	8,738
Net income	$ 12,293	$ 18,784	$ 16,479	$ 15,170
Basic earnings per share	$ 0.25	$ 0.41	$ 0.43	$ 0.40
Diluted earnings per share	$ 0.25	$ 0.41	$ 0.43	$ 0.39

	2016			
	December 31	September 30	June 30	March 31
Total interest income	$ 47,639	$ 47,188	$ 40,538	$ 29,524
Total interest expense	3,004	3,057	2,586	1,582
Net interest income	44,635	44,131	37,952	27,942
Provision for loan losses	1,500	1,950	1,100	1,000
Total non-interest income	19,001	20,745	18,577	16,846
Total non-interest expense	44,411	39,415	36,348	27,688
Income before income taxes	17,725	23,511	19,081	16,100
Income taxes	6,270	8,089	6,698	5,666
Net income	$ 11,455	$ 15,422	$ 12,383	$ 10,434
Basic earnings per share	$ 0.30	$ 0.40	$ 0.35	$ 0.36
Diluted earnings per share	$ 0.30	$ 0.40	$ 0.35	$ 0.36

Exhibit 10.1

BENEFIT PLANNING CONSULTANTS, INC.
DEFINED CONTRIBUTION VOLUME SUBMITTER PLAN AND TRUST

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BENEFIT PLANNING CONSULTANTS, INC.
DEFINED CONTRIBUTION VOLUME SUBMITTER PLAN AND TRUST
BASIC PLAN DOCUMENT #08

Benefit Planning Consultants, Inc., in its capacity as Prototype Plan Sponsor or as Volume Submitter Practitioner, establishes this Prototype Plan or this Volume Submitter Plan intended to conform to and qualify under §401 and §501 of the Internal Revenue Code of 1986, as amended. An Employer establishes a Plan and Trust under this Prototype Plan or this Volume Submitter Plan by executing an Adoption Agreement.

ARTICLE I
DEFINITIONS

1.01 **Account.** Account means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant.

1.02 **Account Balance or Accrued Benefit.** Account Balance or Accrued Benefit means the amount of a Participant's Account(s) as of any relevant date derived from Plan contributions and from Earnings.

1.03 **Accounting Date.** Accounting Date means the last day of the Plan Year. The Plan Administrator will allocate Employer Contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.04 **Adoption Agreement.** Adoption Agreement means the document executed by each Employer adopting this Plan. References to Adoption Agreement within this basic plan document are to the Adoption Agreement as completed and executed by a particular Employer unless the context clearly indicates otherwise. An adopting Employer's Adoption Agreement and this basic plan document together constitute a single Plan and Trust of the Employer. Each elective provision of the Adoption Agreement corresponds (by its parenthetical section reference) to the section of the Plan which grants the election. All "Section" references within an Adoption Agreement are to the basic plan document. All "Election" references within an Adoption Agreement are Adoption Agreement references. The Employer or Plan Administrator to facilitate Plan administration or to generate written policies or forms for use with the Plan may maintain one or more administrative checklists as an attachment to the Adoption Agreement or otherwise. Any such checklists are not part of the Plan.

(A) Prototype/Standardized Plan or Nonstandardized Plan. Each Adoption Agreement offered under this Prototype Plan is either a Standardized Plan or a Nonstandardized Plan, as identified in that Adoption Agreement, under Rev. Proc. 2011-41 §§4.09 and 4.10. The provisions of this Plan apply in the same manner to Nonstandardized Plans and to Standardized Plans unless otherwise specified. If the Employer maintains its Plan pursuant to a Nonstandardized Adoption Agreement or a Standardized Adoption Agreement, the Plan is a Prototype Plan and all provisions in this basic plan which expressly or by their context refer to a "Volume Submitter Plan" are not applicable.

(B) Volume Submitter Adoption Agreement. A Volume Submitter Adoption Agreement for purposes of this Volume Submitter Plan is subject to the same provisions as apply to a Nonstandardized Plan, except as the Plan or Volume Submitter Adoption Agreement otherwise indicates. If the Employer maintains its Plan pursuant to a Volume Submitter Adoption Agreement, the Plan is a Volume Submitter Plan and all provisions in this basic plan which expressly or by their context refer to a "Prototype Plan" are not applicable.

(C) Participation Agreement. Participation Agreement, in the case of a Standardized Plan means the Adoption Agreement page or pages executed by one or more Related Employers to become a Participating Employer. In the case of a Nonstandardized or Volume Submitter Plan, Participation Agreement means the Adoption Agreement page or pages executed by one or more Related Employers or, in the case of a Multiple Employer Plan, by one or more Employers which are not Related Employers (see Section 12.02(C)) to become a Participating Employer.

1.05 **Advisory Letter.** Advisory Letter means an IRS issued letter as to the acceptability in form of a Volume Submitter Plan as defined in Section 13.03 of Rev. Proc. 2005-16.

1.06 **Annuity Contract.** Annuity Contract means an annuity contract that the Trustee purchases with the Participant's Vested Account Balance. An Annuity Contract includes a QJSA, a QOSA, a QPSA and an Alternative Annuity. If the Plan Administrator elects or is required to provide an Annuity Contract, such annuity must be a Nontransferable Annuity and otherwise must comply with the Plan terms.

(A) Annuity Starting Date. A Participant's Annuity Starting Date means the first day of the first period for which the Plan pays an amount as an annuity or in any other form.

(B) Alternative Annuity. See Section 6.03(A)(5).

(C) Nontransferable Annuity. Nontransferable Annuity means an Annuity Contract which by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company. If the Plan distributes an Annuity Contract, the Annuity Contract must be a Nontransferable Annuity.

(D) QJSA. See Sections 6.04(A)(1) and (2).

(E) QPSA. See Section 6.04(B)(1).

(F) QOSA. See Section 6.04(A)(8)(a).

1.07 **Appendix.** Appendix means one of the Appendices to an Adoption Agreement designated as "A", "B", "C", or "D" which are expressly authorized by the Plan and as part of the Plan, are covered by the Advisory Letter or Opinion Letter.

1.08 **[RESERVED]**

1.09 **Beneficiary.** Beneficiary means a person designated by a Participant, a Beneficiary or by the Plan who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Trustee has fully distributed to the Beneficiary his/her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

(A) Designated Beneficiary. Designated Beneficiary means a Beneficiary described in Section 6.02(E)(1).

(B) Individual Beneficiary. Individual Beneficiary means a Beneficiary who is an individual.

1.10 **Code.** Code means the Internal Revenue Code of 1986, as amended and includes applicable Treasury regulations.

1.11 **Compensation.**

(A) Uses and Context. Any reference in the Plan to Compensation is a reference to the definition in this Section 1.11, unless the Plan reference, or the Employer in its Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. In the case of a Self-Employed Individual, Compensation means Earned Income as defined in Section 1.11(J). However, if the Plan must use an equivalent alternative compensation amount (pursuant to Treas. Reg. §1.414(s)-1(g)(1)(i)) in performing nondiscrimination testing relating to Matching Contributions, Nonelective Contributions and other Employer Contributions (excluding Elective Deferrals), the Plan Administrator may limit the Compensation of such Self-Employed

Individual to such equivalent alternative compensation amount. The Employer in its Adoption Agreement may elect to allocate contributions based on Compensation within a specified 12 month period which ends within a Plan Year.

(B) Base Definitions and Modifications. The Employer in its Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in its Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article III. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(1) W-2 Wages. W-2 Wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)). The Employer in Appendix B may elect to exclude from W-2 Compensation certain Employer paid or reimbursed moving expenses as described therein.

(2) Code §3401(a) Wages (income tax wage withholding). Code §3401(a) Wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415(c)-2(d)(2)). Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 Compensation does not include:

(a) Deferred compensation/SEP/SIMPLE. Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a simple retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) Option exercise. Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

(c) Sale of option stock. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

(d) Other amounts that receive special tax benefits. Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125).

(e) Other similar items. Other items of remuneration which are similar to any of the items in Sections 1.11(B)(3)(a) through (d).

(4) Alternative (general) 415 Compensation. The Employer in Appendix B may elect to apply the 415 definition of Compensation in Treas. Reg. §1.415(c)-2(a). Under this definition, Compensation means as defined in Section 1.11(B)(3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(h) but only to the extent that these amounts are includible in Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to an Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b); and (e) amounts that are includible in the Employee's gross income under Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 Wages or Code §3401(a) Wages, then Compensation already includes the amounts described in clause (e).]

(C) Deemed 125 Compensation. Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a Code §125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage. Compensation under this Section 1.11 does not include Deemed 125 Compensation, unless the Employer in Appendix B elects to include Deemed 125 Compensation under this Section 1.11.

(D) Elective Deferrals. Compensation under Section 1.11 includes Elective Deferrals unless the Employer in its Adoption Agreement elects to exclude Elective Deferrals. In addition, for purposes of making Elective Deferrals, Compensation means as defined in Section 1.11 and as the Employer elects in its Adoption Agreement.

(E) Compensation Dollar Limitation. For any Plan Year, the Plan Administrator in allocating contributions under Article III or in testing the Plan for nondiscrimination, cannot take into account more than $200,000 (or such larger amount as the Commissioner of Internal Revenue may prescribe pursuant to an adjustment made in the same manner as under Code §415(d)) of any Participant's Compensation. Notwithstanding the foregoing, an Employee under a 401(k) Plan may make Elective Deferrals with respect to Compensation which exceeds the Plan Year Compensation limitation, provided such Elective Deferrals otherwise satisfy the Elective Deferral Limit and other applicable Plan limitations. In applying any Plan limitation on the amount of Matching Contributions or any Plan limit on Elective Deferrals which are subject to Matching Contributions, where such limits are expressed as a percentage of Compensation, the Plan Administrator may apply the Compensation limit under this Section 1.11(E) annually, even if the Matching Contribution formula is applied on a per pay period basis or is applied over any other time interval which is less than the full Plan Year or the Plan Administrator may pro rate the Compensation limit.

(F) Nondiscrimination. For purposes of determining whether the Plan discriminates in favor of HCEs, Compensation means as the Plan Administrator operationally determines provided that any such nondiscrimination testing definition which the Plan Administrator applies must satisfy Code §414(s) and the regulations thereunder. For this purpose the Plan Administrator may, but is not required, to apply for nondiscrimination testing purposes the Plan's allocation definition of Compensation under this Section 1.11 or Annual Additions Limit definition of Compensation under Section 4.05(B). The Employer's election in its Adoption Agreement relating to Pre-Entry Compensation for allocation purposes (to limit Compensation to Participating Compensation or to include Plan Year Compensation) is nondiscriminatory.

(G) Excluded Compensation. Excluded Compensation means such Compensation as the Employer in its Adoption Agreement elects to exclude for purposes of this Section 1.11. Regardless of the definition of Compensation selected in the Adoption Agreement, the Plan Administrator may adopt a uniform policy for purposes of determining the amount of a Participant's elective deferrals of excluding Non-cash Compensation. For purposes of this Section 1.11(G), Non-cash Compensation means tips, fringe benefits, and other items of Compensation not regularly paid in cash or cash equivalents, or for which the Employer does not or may not have the ability to withhold Elective Deferrals in cash for the purpose of transmitting the Elective Deferrals to the Plan pursuant to the Participant's Deferral Election. Additionally, the Employer may, on a uniform and nondiscriminatory basis, provide different deferral elections for different items of Compensation (e.g., a separate deferral election for bonuses), and may exclude for purposes of calculating elective deferrals one or more items of irregular pay (e.g., car allowance).

(H) Pre-Entry Compensation. The Employer in its Adoption Agreement for allocation purposes must elect Participating Compensation or Plan Year Compensation as to some or all Contribution Types.

(1) Participating Compensation. Participating Compensation for purposes of this Section 1.11 means Compensation only for the period during the Plan Year in which the Participant is a Participant in the overall Plan, or under the plan resulting from disaggregation under the OEE or EP rules under Section 4.06(C)(1), or as to a Contribution Type as applicable. If the Employer in its Adoption Agreement elects Participating Compensation, the Employer will elect whether to apply the election to all Contribution Types or only to particular Contribution Type(s).

(2) Plan Year Compensation. Plan Year Compensation for purposes of this Section 1.11 means Compensation for a Plan Year, including Compensation for any period prior to the Participant's Entry Date in the overall Plan or as to a Contribution Type as applicable. If the Employer in its Adoption Agreement elects Plan Year Compensation, the Employer will elect whether to apply the election to all Contribution Types or only to particular Contribution Type(s).

(I) Post-Severance Compensation. Compensation includes Post-Severance Compensation to the extent the Employer elects

in its Adoption Agreement or as the Plan otherwise provides. Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section 1.11(I). In the absence of an election to the contrary by an Employer in its Adoption Agreement, Post-Severance Compensation includes any and all regular pay, leave cash-outs, and deferred compensation paid within the time period described in Section 1.11(I)(1), and excludes salary continuation for military service and for disabled Participants, all as defined below. An Employer in its Adoption Agreement may elect to exclude any or all of regular pay, leave cash-outs, or deferred compensation paid within the time period described in Section 1.11(I)(1), and may also elect to include salary continuation for military service and/or for disabled Participants. Any other payment paid after Severance from Employment that is not described in this Section 1.11(I) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to Severance from Employment.

(1) Timing. Post-Severance Compensation includes regular pay, leave cash-outs, or deferred compensation only to the extent the Employer pays such amounts by the later of 2 1/2 months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

(a) Regular pay. Regular pay means the payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(b) Leave cash-outs. Leave cash-outs means payments for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's severance from employment.

(c) Deferred compensation. As used in this Section 1.11(I), deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the deferred compensation if it had been paid prior to the Participant's Severance from Employment, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(2) Salary continuation for military service. Salary continuation for military service means payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service. However, for Plan Years beginning after December 31, 2008, this paragraph (2) will not apply to Differential Wage Payments, which instead are subject to Section 1.11(L).

(3) Salary continuation for disabled Participants. Salary continuation for disabled Participants means Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). This Section 1.11(I)(3) will apply, as the Employer elects in its Adoption Agreement, either just to NHCEs (who are NHCEs immediately prior to becoming disabled) or to all Participants for a fixed or determinable period specified in the Adoption Agreement.

(J) Earned Income. Earned Income means net earnings from self-employment in the trade or business with respect to which the Employer has established the Plan, provided personal services of the Self-Employed Individual are a material income-producing factor. Earned Income also includes gains and earnings (other than capital gain) from the sale or licensing of property (other than goodwill) by the individual who created that property, even if those gains would not ordinarily be considered net earnings from self-employment. The Plan Administrator will determine net earnings without regard to items excluded from gross income and the deductions allocable to those items. The Plan Administrator will determine net earnings after the deduction allowed to the Self-Employed Individual for all contributions made by the Employer to a qualified plan and after the deduction allowed to the Self-Employed Individual under Code §164(f) for self-employment taxes.

(K) Deemed Disability Compensation. The Plan does not include Deemed Disability Compensation under Code §415(c)(3)(C) unless the Employer in Appendix B elects to include Deemed Disability Compensation under this Section 1.11(K). Deemed Disability Compensation is the Compensation the Participant would have received for the year if the Participant were paid at the same rate as applied immediately prior to the Participant becoming permanently and totally disabled (as defined in Code §22(e)(3)) if such deemed compensation is greater than actual Compensation as determined without regard to this Section 1.11(K). This Section 1.11(K) applies only if the affected Participant is an NHCE immediately prior to becoming disabled (or the Appendix B election provides for the continuation of contributions on behalf of all such disabled participants for a fixed or determinable period) and all contributions made with respect to Compensation under this Section 1.11(K) are immediately Vested.

(L) Differential Wage Payments. Unless the Employer otherwise elects in Appendix B, for Plan Years beginning after December 31, 2008, the Plan will treat Differential Wage Payments as Compensation for all Plan contribution and benefit purposes.

1.12 **Contribution Types.** Contribution Types means the contribution types required or permitted under the Plan as the Employer elects in its Adoption Agreement.

1.13 **Defined Contribution Plan.** Defined Contribution Plan means a retirement plan which provides for an individual account for each Participant and for benefits based solely on the amount contributed to the Participant's Account, and on any Earnings, expenses, and forfeitures which the Plan Administrator may allocate to such Participant's Account.

1.14 **Defined Benefit Plan.** Defined Benefit Plan means a retirement plan which does not provide for individual accounts for Employer contributions and which provides for payment of determinable benefits in accordance with the plan's formula.

1.15 **Differential Wage Payment.** Differential Wage Payment means differential wage payment as defined by Code §3401(h)(2).

1.16 **Disability.** Except as otherwise provided in the Plan, Disability means, as the Employer elects in its Adoption Agreement, the basic Plan definition or an alternative definition, as defined below. A Participant who incurs a Disability is "disabled."

(A) Basic Plan Definition. Disability means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. The permanence and degree of such impairment must be supported by medical evidence.

(B) Alternative Definition. The Employer in its Adoption Agreement may specify any alternative definition of Disability.

(C) Administration. For purposes of this Plan, a Participant is disabled on the date the Plan Administrator determines the Participant satisfies the definition of Disability. The Plan Administrator may require a Participant to submit to a physical examination in order to confirm the Participant's Disability. The Plan Administrator will apply the provisions of this Section 1.16 in a nondiscriminatory, consistent, and uniform manner.

1.17 **Designated IRA Contribution.** Designated IRA Contribution means a Participant's IRA contribution to the Plan made in accordance with the Adoption Agreement.

1.18 **DOL.** DOL means the U.S. Department of Labor.

1.19 **Earnings.** Earnings means the net income, gain or loss earned by a particular Account, by the Trust, or with respect to a contribution or to a distribution, as the context requires.

1.20 **Effective Date.** The Effective Date of this Plan is the date the Employer elects in its Adoption Agreement, but not earlier than January 1, 2007. The provisions of Sections 4.01 through 4.05 apply to Limitation Years commencing on or after July 1, 2007. However, as to a particular provision or action taken by any party pursuant to the Plan (such as a Plan amendment or termination, or the giving of any notice), a different Effective Date may apply such as the basic plan document may provide, as the Employer may elect in its Adoption Agreement, in a Participation Agreement or in an Appendix, or as indicated in any other document which evidences the action taken. Throughout the Plan, there are many provisions which have their own effective date (such as that described in the second sentence of this Section), which may be earlier than the Restatement Effective Date. If the Employer in its Adoption Agreement indicates that this plan is a Restated Plan, and the Plan is a PPA Restatement, then the earlier effective date applies. If the Plan is not a PPA Restatement, then the earlier effective date does not apply, and the provisions are effective on the Restatement Effective Date, or such other date as may apply pursuant to an Appendix or other document.

1.21 **Elective Deferrals.** Elective Deferrals means a Participant's Pre-Tax Deferrals, Roth Deferrals, Automatic Deferrals and, as the context requires, Catch-Up Deferrals under the Plan, and which the Employer contributes to the Plan at the Participant's election (or automatically) in lieu of cash compensation. As to other plans, as may be relevant to the Plan, Elective Deferrals means amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457(b), and includes amounts included in the Employee's gross income under Code §402A, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) plan, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457(b) plan.

(A) Pre-Tax Deferral. Pre-Tax Deferral means an Elective Deferral (including a Catch-Up Deferral or an Automatic Deferral) which is not subject to income tax when made.

(B) Roth Deferral. Roth Deferral means an Elective Deferral (including a Catch-Up Deferral or an Automatic Deferral) which a Participant irrevocably designates as a Roth Deferral under Code §402A at the time of deferral and which is subject to income tax when made to the Plan. In the case of an Automatic Deferral, see Section 3.02(B).

(C) Automatic Deferral. See Section 3.02(B)(4)(a).

(D) Catch-Up Deferral. See Section 3.02(D)(2).

1.22 **Employee.** Employee means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of the Employer for purposes of the Employer's qualified plan. An Employee is either an Eligible Employee or an Excluded Employee. An Employee is either an HCE or an NHCE.

(A) Self-Employed Individual. Self-Employed Individual means an individual who has Earned Income (or who would have had Earned Income but for the fact that the trade or business did not have net profits) for the Taxable Year from the trade or business for which the Plan is established.

(B) Leased Employee. Leased Employee means an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person (the "leasing organization"), has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full-time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code §414(n)(2). Except as described in Section 1.22(B)(1), a Leased Employee is an Employee for purposes of the Plan. However, under a Nonstandardized Plan or under a Volume Submitter Plan, a Leased Employee is an Excluded Employee unless the Employer in Appendix B elects not to treat Leased Employees as Excluded Employees as to any or all Contribution Types. "Compensation" in the case of an out-sourced worker who is an Employee or a Leased Employee includes Compensation from the leasing organization which is attributable to services performed for the Employer.

(1) Safe Harbor Plan Exception. A Leased Employee is not an Employee for Plan purposes if the leasing organization covers the employee in a safe harbor plan and, prior to application of this safe harbor plan exception, 20% or fewer of the NHCEs, excluding those NHCEs who do not satisfy the "substantially full-time" standard of Code §414(n)(2)(B), are Leased Employees. A safe harbor plan is a Money Purchase Pension Plan providing immediate participation, full and immediate vesting, and a nonintegrated contribution formula equal to at least 10% of the employee's compensation, without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the 10% contribution on the basis of compensation as defined in Code §415(c)(3) including Elective Deferrals.

(2) Other Requirements. The Plan Administrator must apply this Section 1.22 in a manner consistent with Code §§414(n) and 414(o) and the regulations issued under those Code sections. The Plan Administrator for 415 testing under Article IV, for satisfaction of the Top-Heavy Minimum Allocation under Article X will treat contributions or benefits provided to a Leased Employee under a plan of the leasing organization, and which are attributable to services performed by the Leased Employee for the Employer, as provided by the Employer. However, the Employer will not offset (reduce) contributions to this Plan by such contributions or benefits provided to the Leased Employee under the leasing organization's plan unless the Employer in Appendix B elects to do so.

(C) Eligible Employee. Eligible Employee means an Employee other than an Excluded Employee.

(D) Excluded Employee. Excluded Employee means, as the Plan provides or as the Employer elects in its Adoption Agreement, any Employee, or class or group of Employees, not eligible to participate in the Plan, or as to any Contribution Type, as the context requires. The Employer may not impose a maximum age in defining Excluded Employees.

(1) Collective Bargaining Employees. If the Employer elects in its Adoption Agreement to exclude Collective Bargaining Employees from eligibility to participate, the exclusion applies to any Employee included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers if: (a) retirement benefits were the subject of good faith bargaining; and (b) two percent or fewer of the employees covered by the agreement are "professional employees" as defined in Treas. Reg. §1.410(b)-9, unless the collective bargaining agreement requires the Employee to be included within the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer.

(2) Nonresident Aliens. If the Employer elects in its Adoption Agreement to exclude Nonresident Aliens from eligibility to participate, the exclusion applies to any Nonresident Alien Employee who does not receive any earned income, as defined in Code §911(d)(2), from the Employer which constitutes United States source income, as defined in Code §861(a)(3).

(3) Reclassified Employees. A Reclassified Employee under a Nonstandardized Plan or a Volume Submitter Plan is an Excluded Employee unless the Employer in Appendix B elects: (a) to include all Reclassified Employees as Eligible Employees; (b) to include one or more categories of Reclassified Employees as Eligible Employees; or (c) to include Reclassified Employees (or one or more groups of Reclassified Employees) as Eligible Employees as to one or more Contribution Types. A Reclassified Employee is any person the Employer does not treat as a common law employee or as a self-employed individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), irrespective of whether there is a binding determination that the individual is an Employee or a Leased Employee of the Employer. Self-Employed Individuals are not Reclassified Employees.

(4) Part-Time/Temporary/Seasonal Employees. The Employer in its Adoption Agreement may elect to exclude any Employees who it defines in the Adoption Agreement as "part-time," "temporary" or "seasonal" based on their regularly scheduled Service being less than a specified number of Hours of Service during a relevant Eligibility Computation Period. Notwithstanding any such exclusion, if the Part-Time, Temporary or Seasonal Excluded Employee actually completes at least 1,000 Hours of Service in the relevant Eligibility Computation Period, the affected Excluded Employee is no longer an Excluded Employee and will enter the Plan on the next Entry Date following completion of the Eligibility Computation Period in which he/she completed 1,000 Hours of Service, provided the Employee is employed by the Employer on that Entry Date.

(E) HCE. HCE means a highly compensated Employee, defined under Code §414(q) as an Employee who satisfies one of Sections 1.22(E)(1) or (2) below.

(1) More than 5% owner. During the Plan Year or during the preceding Plan Year, the Employee is a more than 5% owner of the Employer (applying the constructive ownership rules of Code §318 as modified by Code §416(i)(1)(B)(iii)(I), and applying the principles of Code §318 as modified by Code §416(i)(1)(B)(iii)(I), for an unincorporated entity).

(2) Compensation Threshold. During the preceding Plan Year (or in the case of a short Plan Year, the immediately preceding 12 month period) the Employee had Compensation in excess of $80,000 (as adjusted for the relevant year by the Commissioner of Internal Revenue at the same time and in the same manner as under Code §415(d), except that the base period is the calendar quarter ending September 30, 1996) and, if the Employer under its Adoption Agreement makes the top-paid group election, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

(3) Compensation Definition. For purposes of this Section 1.22(E), "Compensation" means Compensation as defined in Section 4.05(F).

(4) Top-paid Group and Calendar Year Data. The Plan Administrator must make the determination of who is an HCE, including the determinations of the number and identity of the top-paid 20% group, consistent with Code §414(q) and

regulations issued under that Code section. The Employer in its Adoption Agreement may make a calendar year data election to determine the HCEs for the Plan Year, as prescribed by Treasury regulations or by other guidance published in the Internal Revenue Bulletin. A calendar year data election must apply to all plans of the Employer which reference the HCE definition in Code §414(q). For purposes of this Section 1.22(E), if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

(5) Highly compensated former employee. The determination of highly compensated former employee status and the rules applicable thereto are determined in accordance with Temporary Reg. §1.414(q)-1T, A-4 and Notice 97-45.

(F) NHCE. NHCE means a nonhighly compensated employee, which is any Employee who is not an HCE.

(G) Differential Wage Payment recipient. For years beginning after December 31, 2008, an individual receiving a Differential Wage Payment from the Employer is treated as an Employee of the Employer.

1.23 **Employee Contribution and DECs.** Employee Contribution means a Participant's after-tax contribution to the Trust and which the Participant designates as an Employee Contribution at the time of contribution. An Elective Deferral (Pre-Tax or Roth) is not an Employee Contribution. A deductible employee contribution (DEC) means certain pre-1987 contributions described in Section 3.13.

1.24 **Employer.** Employer means each Signatory Employer, Lead Employer, Related Employer, and Participating Employer as the Plan indicates or as the context requires.

(A) Signatory Employer. The Signatory Employer is the Employer who establishes a Plan under this Prototype Plan or under this Volume Submitter Plan by executing an Adoption Agreement. The Employer for purposes of acting as Plan Administrator, making Plan amendments, restating the Plan, terminating the Plan or performing other ERISA settlor functions, means the Signatory Employer and does not include any Related Employer or Participating Employer. The Signatory Employer also may terminate the participation in the Plan of any Participating Employer upon written notice. The Signatory Employer will provide such notice not less than 30 days prior to the date of termination unless the Signatory Employer determines that the interest of Plan Participants requires earlier termination. See Article XII if the Plan is a Volume Submitter Plan and is a Multiple Employer Plan.

(B) Lead Employer. Lead Employer means the Signatory Employer under a plan which is a Multiple Employer Plan. See Section 12.02(B).

(C) Related Group/Related Employer. A Related Group is a controlled group of corporations (as defined in Code §414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code §414(c)), an affiliated service group (as defined in Code §414(m)) or an arrangement otherwise described in Code §414(o). Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service and Hours of Service, determining Years of Service and Breaks in Service under Articles II and V, determining Separation from Service, applying the coverage test under Code §410(b), applying the Annual Additions Limit and nondiscrimination testing in Article IV, applying the top-heavy rules and the minimum allocation requirements of Article X, applying the definitions of Employee, HCE, Compensation (except as the Employer may elect in its Adoption Agreement relating to allocations) and Leased Employee, applying the safe harbor 401(k) provisions of Article III, applying the SIMPLE 401(k) provisions of Article III, applying the ESOP exception under Section 7.11(A)(1)(a), and for any other purpose the Code or the Plan require.

(D) Participating Employer. Participating Employer means a Related Employer (to the Signatory Employer or another Related Employer) which signs the Execution Page of the Adoption Agreement or a Participation Agreement to the Adoption Agreement. Only a Participating Employer (or Employees thereof) may contribute to the Plan. A Participating Employer is an Employer for all purposes of the Plan except as provided in Sections 1.24(A) or (B).

(1) Standardized/Nonstandardized Plan. If the Employer's Plan is a Standardized Plan, all Employees of the Employer or of any Related Employer, are Eligible Employees, irrespective of whether the Related Employer directly employing the Employee is a Participating Employer. Notwithstanding the immediately preceding sentence, individuals who become Employees of a Related Employer as a result of a transaction described in Code §410(b)(6)(C) are Excluded Employees during the Plan Year in which such transaction occurs and in the following Plan Year, unless the Related Employer which employs such Employees becomes during such period a Participating Employer by executing a Participation Agreement to the Adoption Agreement; or the Plan benefits or coverage change significantly during the transition period resulting in the termination of the transition period. If the Plan is a Nonstandardized Plan, the Employees of a Related Employer are Excluded Employees unless the Related Employer is a Participating Employer.

(2) Volume Submitter/Multiple Employer Plan. If Article XII applies, a Participating Employer includes an unrelated Employer who executes a Participation Agreement. See Section 12.02(C).

1.25 **Employer Contribution.** Employer Contribution means a Nonelective Contribution, a Matching Contribution, an Elective Deferral, a Prevailing Wage Contribution, or a Money Purchase Pension Contribution, as the context may require.

1.26 **Entry Date.** Entry Date means the date(s) the Employer elects in its Adoption Agreement upon which an Eligible Employee who has satisfied the Plan's eligibility conditions and who remains employed by the Employer on the Entry Date, commences participation in the Plan or in a part of the Plan.

1.27 **EPCRS.** EPCRS means the IRS's Employee Plans Compliance Resolution System for resolving plan defects, or any successor program.

1.28 **ERISA.** ERISA means the Employee Retirement Income Security Act of 1974, as amended, and includes applicable DOL regulations.

1.29 **401(k) Plan.** 401(k) Plan means the 401(k) Plan the Employer establishes under a 401(k) Plan Adoption Agreement. The Plan as the Employer elects under its 401(k) Adoption Agreement may be a Traditional 401(k) Plan, a Safe Harbor 401(k) Plan or a SIMPLE 401(k) Plan. A 401(k) Plan is also a Profit Sharing Plan for purposes of applying the Plan terms, except as to Elective Deferrals, Matching Contributions or otherwise where the Plan specifies provisions which apply either to such Contribution Types or to the overall Plan on account of its status as a 401(k) Plan.

(A) Traditional 401(k) Plan. A Traditional 401(k) Plan is a 401(k) Plan under which Elective Deferrals are subject to nondiscrimination testing under the ADP test and any Matching Contributions and Employee Contributions also are subject to nondiscrimination testing under the ACP test.

(B) Safe Harbor 401(k) Plan. A Safe Harbor 401(k) Plan is a 401(k) Plan under which Elective Deferrals are not subject to nondiscrimination testing under the ADP test because the Plan satisfies the ADP test safe harbor. Any Matching Contributions are subject to the ACP test unless the Plan also satisfies the ACP test safe harbor. Any Employee Contributions are subject to the ACP test.

(C) SIMPLE 401(k) Plan. A SIMPLE 401(k) Plan is a 401(k) Plan which satisfies the contribution and other requirements in Section 3.10 and which is not subject to nondiscrimination testing or certain other requirements as provided in Section 3.10.

1.30 **401(m) Plan.** 401(m) Plan means the 401(m) plan, if any, the Employer establishes under its Adoption Agreement. The definitions under Sections 1.29(A), (B), and (C) also apply as to a 401(m) Plan.

1.31 **HEART Act.** HEART Act means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended.

1.32 **Hour of Service.** Hour of Service means:

(i) Paid and duties. Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan Administrator credits Hours of Service under this Paragraph (i) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid;

(ii) Back pay. Each Hour of Service for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Plan Administrator credits Hours of Service under this Paragraph (ii) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made; and

(iii) Payment but no duties. Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a computation period, such as leave of absence, vacation, holiday, sick leave, illness, incapacity (including disability), layoff, jury duty or military duty. The Plan Administrator will credit no more than 501 Hours of Service under this Paragraph (iii) to an Employee on account of any single continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). The Plan Administrator credits Hours of Service under this Paragraph (iii) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. §2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this Paragraph (iii).

(iv) Crediting and computation. The Plan Administrator will not credit an Hour of Service under more than one of the above Paragraphs (i), (ii) or (iii). A computation period for purposes of this Section 1.32 is the Plan Year, Year of Service period, Break in Service period or other period, as determined under the Plan provision for which the Plan Administrator is measuring an Employee's Hours of Service. The Plan Administrator will resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.

(A) Method of Crediting Hours of Service. The Employer must elect in its Adoption Agreement the method the Plan Administrator will use in crediting an Employee with Hours of Service and the purpose for which the elected method will apply.

(1) Actual Method. Under the Actual Method as determined from records, an Employee receives credit for Hours of Service for hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

(2) Equivalency Method. Under an Equivalency Method, for each equivalency period for which the Plan Administrator would credit the Employee with at least one Hour of Service, the Plan Administrator will credit the Employee with: (a) 10 Hours of Service for a daily equivalency; (b) 45 Hours of Service for a weekly equivalency; (c) 95 Hours of Service for a semi-monthly payroll period equivalency; and (d) 190 Hours of Service for a monthly equivalency.

(3) Elapsed Time Method. Under the Elapsed Time Method, an Employee receives credit for Service for the aggregate of all time periods (regardless of the Employee's actual Hours of Service) commencing with the Employee's Employment Commencement Date, or with his/her Re-Employment Commencement Date, and ending on the date a Break in Service begins in accordance with Treas. Reg. §1.410(a)-7. See Section 2.02(C)(4). In applying the Elapsed Time Method, the Plan Administrator will credit an Employee's Service for any Period of Severance of less than 12-consecutive months and will express fractional periods of Service in days.

(i) Elapsed Time - Break in Service. Under the Elapsed Time Method, a Break in Service is a Period of Severance of at least 12 consecutive months. In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date the Employee is otherwise absent from Service does not constitute a Break in Service.

(ii) Elapsed Time - Period of Severance. A Period of Severance is a continuous period of time during which the Employee is not employed by the Employer. The continuous period begins on the date the Employee retires, quits, is

discharged, or dies or if earlier, the first 12-month anniversary of the date on which the Employee otherwise is absent from Service for any other reason (including disability, vacation, leave of absence, layoff, etc.).

(iii) Elapsed Time - Year of Service. For purposes of any plan provision which refers to Year of Service and does not specifically reference the Elapsed Time Method, the plan will credit a Participant with a Year of Service for each 1-year period of service or 365 days of service, as described in Treas. Reg. §1.410(a)-7, as modified by relevant elections in the Adoption Agreement.

(B) Maternity/Paternity Leave/Family and Medical Leave Act. Solely for purposes of determining whether an Employee incurs a Break in Service under any provision of this Plan, the Plan Administrator must credit Hours of Service during the Employee's unpaid absence period: (1) due to maternity or paternity leave; or (2) as required under the Family and Medical Leave Act. An Employee is on maternity or paternity leave if the Employee's absence is due to the Employee's pregnancy, the birth of the Employee's child, the placement with the Employee of an adopted child, or the care of the Employee's child immediately following the child's birth or placement. The Plan Administrator credits Hours of Service under this Section 1.32(B) on the basis of the number of Hours of Service for which the Employee normally would receive credit or, if the Plan Administrator cannot determine the number of Hours of Service the Employee would receive credit for, on the basis of 8 hours per day during the absence period. The Plan Administrator will credit only the number (not exceeding 501) of Hours of Service necessary to prevent an Employee's Break in Service. The Plan Administrator credits all Hours of Service described in this Section 1.32(B) to the computation period in which the absence period begins or, if the Employee does not need these Hours of Service to prevent a Break in Service in the computation period in which his/her absence period begins, the Plan Administrator credits these Hours of Service to the immediately following computation period.

(C) Qualified Military Service. Hour of Service also includes any Service the Plan must credit for eligibility, vesting, contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u).

1.33 **IRS.** IRS means the Internal Revenue Service.

1.34 **Limitation Year.** Limitation Year means the consecutive month period the Employer specifies in its Adoption Agreement as applicable to allocations under Article IV. If the Employer elects the same Plan Year and Limitation Year, the Limitation Year is always a 12-consecutive month period even if the Plan Year is a short period, unless the short Plan Year results from an amendment, in which case, the Limitation Year also is a short year. If the Employer amends the Limitation Year to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year for which the Employer makes the amendment, creating a short Limitation Year.

1.35 **Matching Contribution.** Matching Contribution means a fixed or discretionary contribution the Employer makes on account of Elective Deferrals under a 401(k) Plan or on account of Employee Contributions. Matching contributions also include Participant forfeitures allocated on account of such Elective Deferrals or Employee Contributions.

(A) Fixed Matching Contribution. Fixed Matching Contribution means a Matching Contribution which the Employer, subject to satisfaction of allocation conditions, if any, must make pursuant to a formula in the Adoption Agreement. Under the formula, the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Elective Deferrals or Employee Contributions eligible for a match.

(B) Discretionary Matching Contribution. Discretionary Matching Contribution means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. The Employer retains discretion over the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "matching formula"), except as the Employer otherwise elects in its Adoption Agreement.

(C) QMAC. QMAC means a qualified matching contribution which is 100% Vested at all times and which is subject to the distribution restrictions described in Section 6.01(C)(4)(b). Any Matching Contributions allocated to a Participant's QMAC Account under the Plan automatically satisfy and are subject to the QMAC definition. See Section 3.07(A)(7) for a limitation on the source of QMACs.

(D) Regular Matching Contribution. A Regular Matching Contribution is a Matching Contribution which is not a QMAC, a Safe Harbor Matching Contribution or an Additional Matching Contribution.

(E) Basic Matching Contribution. See Section 3.05(E)(4).

(F) Enhanced Matching Contribution. See Section 3.05(E)(6).

(G) Additional Matching Contribution. See Section 3.05(F)(1).

(H) QACA Basic Matching Contribution. See Section 3.05(E)(5).

(I) SIMPLE Matching Contribution. See Section 3.10(E)(1).

(J) Safe Harbor Matching Contribution. See Section 3.05(E)(3).

1.36 **Money Purchase Pension Plan/Money Purchase Pension Contribution.** Money Purchase Pension Plan means the Money Purchase Pension Plan the Employer establishes under a Money Purchase Pension Plan Adoption Agreement. The Employer Contribution to its Money Purchase Pension Plan is a Money Purchase Pension Contribution. The Employer will make its Money Purchase Pension Contribution as the Employer elects in its Adoption Agreement. As the context requires, Money Purchase Pension Plan also includes a target benefit plan.

1.37 **Named Fiduciary.** The Named Fiduciary is the Employer. The Employer in writing also may designate the Plan Administrator (if the Plan Administrator is not the Employer) and other persons as additional Named Fiduciaries. See Section 8.03. If the Plan is a restated Plan and under the prior plan document a different Named Fiduciary is in place, this Section 1.37 becomes effective on the date the Employer executes this restated Plan unless the Employer designates otherwise in writing.

1.38 **Nonelective Contribution.** Nonelective Contribution means a fixed or discretionary Employer Contribution which is not a Matching Contribution or a Money Purchase Pension Contribution.

(A) Fixed Nonelective Contribution. Fixed Nonelective Contribution means a Nonelective Contribution which the Employer, subject to satisfaction of allocation conditions, if any, must make pursuant to a formula (based on Compensation of Participants who will receive an allocation of the contributions or otherwise) in the Adoption Agreement. See 3.04(A)(2).

(B) Discretionary Nonelective Contribution. Discretionary Nonelective Contribution means a Nonelective Contribution which the Employer in its sole discretion elects to make to the Plan. See 3.04(A)(1).

(C) QNEC. QNEC means a qualified nonelective contribution which is 100% Vested at all times and which is subject to the distribution restrictions described in Section 6.01(C)(4)(b). Any Nonelective Contributions allocated to a Participant's QNEC Account under the Plan automatically satisfy and are subject to the QNEC definition. See Section 3.07(A)(7) for a limitation on the source of QNECs.

(D) SIMPLE Nonelective Contribution. See Section 3.10(E)(1).

(E) Safe Harbor Nonelective Contribution. See Section 3.05(E)(2).

1.39 **Opinion Letter.** Opinion Letter means an IRS issued letter as to the acceptability of the form of a Prototype Plan as defined in Section 4.06 of Rev. Proc. 2011-49.

1.40 **Paid Time Off Plan.** A Paid Time Off Plan is any plan or similar arrangement under which the Employer provides to Employees vacation, sick or other leave for which the Employer pays the Employee, and agrees to compensate the Employee for part or all of the unused leave.

1.41 **Participant.** Participant means an Eligible Employee who becomes a Participant in the Plan or as to any Contribution Type as the context requires, in accordance with the provisions of Section 2.01.

1.42 **Plan.** Plan means the retirement plan established or continued by the Employer in the form of this Prototype Plan or Volume Submitter Plan, including the Adoption Agreement under which the Employer has elected to establish this Plan. The Employer must designate the name of the Plan in its Adoption Agreement. An Employer may execute more than one Adoption Agreement offered under this Plan, each of which will constitute a separate Plan and Trust established or continued by that Employer. All section references within this basic plan document are Plan section references unless the context clearly indicates otherwise. The Plan includes any Appendix permitted by the basic plan document or by the Employer's Adoption Agreement and which the Employer attaches to its Adoption Agreement.

(A) Multiple Employer Plan (Article XII). Multiple Employer Plan means a Plan in which at least one Employer which is not a Related Employer participates. This Plan may be a Multiple Employer Plan only if maintained on a Nonstandardized Adoption Agreement or on a Volume Submitter Adoption Agreement. Article XII of the Plan applies to a Multiple Employer Plan, but otherwise does not apply to the Plan.

(B) Frozen Plan. See Section 3.01(J).

1.43 **Plan Administrator.** Plan Administrator means the Employer unless the Employer designates another person or persons to hold the position of Plan Administrator. Any person(s) the Employer appoints as Plan Administrator may or may not be Participants in the Plan. In addition to its other duties, the Plan Administrator has full responsibility for the Plan's compliance with the reporting and disclosure rules under ERISA. If the Employer is the Plan Administrator, any requirement under the Plan for communication between the Employer and the Plan Administrator automatically is deemed satisfied, and the Employer has discretion to determine the manner of documenting any decision deemed to be communicated under this provision.

1.44 **Plan Year.** Plan Year means the consecutive month period the Employer specifies in its Adoption Agreement.

1.45 **Practitioner.** Practitioner means the sponsor as to its Employer clients of the Volume Submitter Plan and as defined in Section 13.05 of Rev. Proc. 2011-49.

1.46 **Predecessor Employer/Predecessor Plan.**

(A) Predecessor Employer. A Predecessor Employer is an employer that previously employed one or more of the Employees.

(B) Predecessor Plan. A Predecessor Plan is a Code §401(a) or §403(a) qualified plan the Employer terminated within the five-year period beginning before or after the Employer establishes this Plan, as described in Treas. Reg. §1.411(a)-5(b)(3)(v)(B).

1.47 **Prevailing Wage Contract/Contribution.** Prevailing Wage Contract means a contract under which Employees are performing services subject to the Davis-Bacon Act, the McNamara-O'Hara Contract Service Act or any other federal, state or municipal prevailing wage law. A Prevailing Wage Contribution is a contribution the Employer makes to the Plan in accordance with a Prevailing Wage Contract. A Prevailing Wage Contribution is treated as a Nonelective Contribution or other Employer Contribution except as the Plan otherwise provides.

1.48 **Profit Sharing Plan.** Profit Sharing Plan means the Profit Sharing Plan the Employer establishes under a Profit Sharing Plan Adoption Agreement.

1.49 **Protected Benefit.** Protected Benefit means any accrued benefit described in Treas. Reg. §1.411(d)-4, including any optional form of benefit provided under the Plan which may not (except in accordance with such regulations) be reduced, eliminated or made subject to Employer discretion.

1.50 **Prototype Plan/Master Plan (M&P Plan).** Prototype Plan means as described in Section 4.02 of Rev. Proc. 2011-49 or in any successor thereto under which each adopting Employer establishes a separate Trust. This Plan is not a Master Plan as described in Section 4.01 of Rev. Proc. 2011-49 under which unrelated adopting employers participate in a single funding medium (trust or custodial account). However, the Plan could be a Master Trust under DOL Reg. §2525.103-2(e). A Prototype Plan or a Master Plan must have an Opinion Letter as described in Section 4.06 of Rev. Proc. 2011-49.

1.51 **QDRO.** QDRO means a qualified domestic relations order under Code §414(p).

1.52 **Qualified Military Service.** Qualified Military Service means qualified military service as defined in Code §414(u)(5). Notwithstanding any provision in the Plan to the contrary, as to Qualified Military Service, the Plan will credit Service under Section 1.32(C), the Employer will make contributions to the Plan and the Plan will provide benefits in accordance with Code §414(u).

1.53 **Qualified Reservist Distribution (QRD).** See Section 6.01(C)(4)(b)(iii).

1.54 **Restated Plan.** A Restated Plan means a plan the Employer adopts in substitution for, and in amendment of, an existing plan, as the Employer elects in its Adoption Agreement. If a Participant incurs a Separation from Service or Severance from Employment before the Employer executes the Adoption Agreement as a Restated Plan, the provisions of the Restated Plan do not apply to the Participant unless he/she has an Account Balance as of the execution date or unless the Employer rehires the Participant.

1.55 **Rollover Contribution.** A Rollover Contribution means an amount of cash or property (including a participant loan from another plan) which the Code permits an Eligible Employee or Participant to transfer directly or indirectly to this Plan from another Eligible Retirement Plan (or vice versa) within the meaning of Code §402(c)(8)(B) and Section 6.08(F)(2), except that a 401(k) Plan may permit an In-Plan Roth Rollover Contribution as provided in Section 3.08(E). A Rollover Contribution will be made to the Plan and not to a Designated IRA within the Plan under Section 3.12, if any.

(A) In-Plan Roth Rollover Contribution. An In-Plan Roth Rollover Contribution means a Rollover Contribution to the Plan that consists of a distribution from a Participant's Plan Account, other than a Roth Deferral Account, that the Participant rolls over to the Participant's In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4). In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth Deferral Accounts, subject to preservation of Protected Benefits in accordance with clause (c) of Section 3.08(E)(4).

(B) In-Plan Roth Rollover Contribution Account. An In-Plan Roth Rollover Contribution Account is a sub-account the Plan Administrator establishes for the purpose of separately accounting for a Participant's Rollover Contributions attributable to the Participant's In-Plan Roth Rollover Contributions. The Plan Administrator has authority to establish such a sub-account, and to the extent necessary, may establish sub-accounts based on the source of the In-Plan Roth Rollover Contribution. The Plan Administrator will administer an In-Plan Roth Rollover Contribution Account in accordance with Applicable Law and the Plan provisions.

1.56 **Safe Harbor Contribution.** Safe Harbor Contribution means a Safe Harbor Nonelective Contribution or a Safe Harbor Matching Contribution as the Employer elects in its Adoption Agreement. See Sections 3.05(E)(2) and (3).

1.57 **Salary Reduction Agreement.** A Salary Reduction Agreement means a Participant's written election to make Elective Deferrals to the Plan (including a Contrary Election under Section 3.02(B)(4)(d)), made on the form the Plan Administrator provides for this purpose.

(A) Effective Date. A Salary Reduction Agreement may not be effective earlier than the following date which occurs last: (1) under Article II, the Participant's Entry Date or, in the case of a re-hired Employee, his/her re-participation date; (2) the execution date of the Salary Reduction Agreement; (3) the date the Employer adopts the 401(k) Plan; or (4) the Effective Date of the 401(k) Plan (or Elective Deferral provision within the Plan). Subject to the foregoing limitations, a Participant's Salary Reduction Agreement will be effective for the first pay period that is within an administratively reasonable period after the date the Plan Administrator receives the Agreement, unless the Participant specifies a later effective date.

(B) Compensation. A Salary Reduction Agreement must specify the dollar amount of Compensation or the percentage of Compensation the Participant wishes to defer. The Salary Reduction Agreement: (1) applies only to Compensation for Elective Deferral allocation as the Employer elects in its Adoption Agreement and which becomes currently available after the effective date of the Salary Reduction Agreement; and (2) applies to all or to such Elective Deferral Compensation as the Salary Reduction Agreement indicates, including any Participant elections made in the Salary Reduction Agreement.

(C) Additional Rules. The Plan Administrator in the Plan's Salary Reduction Agreement form, or in a Salary Reduction Agreement policy will specify additional rules and restrictions applicable to a Participant's Salary Reduction Agreement, including but not limited to those regarding the timing, frequency and mechanics of changing or revoking a Salary Reduction Agreement. Any such rules and restrictions must be consistent with the Plan. The Plan Administrator may provide more than one Salary Reduction Agreement form for use in specific situations.

1.58 **Separation from Service/Severance from Employment.** Separation from Service means an event after which the Employee no longer has an employment relationship with the Employer maintaining this Plan or with a Related Employer. The Plan applies Separation from Service for all purposes except as otherwise provided. For purposes of distribution of Restricted 401(k) Accounts, the application of Post-Severance Compensation and top-heavy look-back period distributions, the plan will apply the definition of Severance

from Employment under EGTRRA §646 (as modified for Code §415 purposes in applying the parent-subsidiary controlled group rules).

1.59 **Service.** Service means any period of time the Employee is in the employ of the Employer, including any period the Employee is on an unpaid leave of absence authorized by the Employer under a uniform, nondiscriminatory policy applicable to all Employees.

(A) Related Employer Service. See Section 1.24(C).

(B) Predecessor Employer/Plan Service. See Section 1.46. If the Employer maintains (by adoption, plan merger or Transfer) the plan of a Predecessor Employer, service of the Employee with the Predecessor Employer is Service with the Employer. If the Employer maintained a Predecessor Plan, for purposes of vesting Service, the Plan Administrator must count service credited to any Employee covered under the Predecessor Plan. If the Employer in its Adoption Agreement elects to disregard vesting Service prior to the time that the Employer maintained the Plan, the Plan Administrator will treat a Predecessor Plan as the Plan for purposes of such election.

(C) Elective Service Crediting. If the Employer does not maintain the plan of a Predecessor Employer, the Plan does not credit Service with the Predecessor Employer, unless the Employer in its Adoption Agreement (or in a Participation Agreement, if applicable) elects to credit designated Predecessor Employer Service and specifies the purposes for which the Plan will credit service with that Predecessor Employer. Unless the Employer under its Adoption Agreement provides for this purpose specific Entry Dates, an Employee who satisfies the Plan's eligibility condition(s) by reason of the crediting of predecessor service will enter the Plan in accordance with the provisions of Article II as if the Employee were a re-employed Employee on the first day the Plan credits predecessor service.

(D) Standardized Plan. If the Employer's Plan is a Standardized Plan, the Plan limits the elective crediting of past Predecessor Employer Service to the period which does not exceed 5 years immediately preceding the year in which an amendment crediting such service becomes effective, such credit must be granted to all Employees on a reasonably uniform basis, and the crediting must otherwise comply with Treas. Reg. §1.401(a)(4)-5(a)(3).

1.60 **SIMPLE Contribution.** SIMPLE Contribution means a SIMPLE Nonelective Contribution or a SIMPLE Matching Contribution. See Section 3.10(E).

1.61 **Sponsor.** Sponsor means the sponsor of this Prototype Plan as to the Sponsor's adopting Employer clients and as defined in Section 4.07 of Rev. Proc. 2011-49.

1.62 **Successor Plan.** Successor Plan means a plan in which at least 50% of the Eligible Employees for the first Plan Year were eligible under a cash or deferred arrangement maintained by the Employer in the prior year, as described in Treas. Reg. §1.401k-2(c)(2)(iii).

1.63 **Taxable Year.** Taxable Year means the taxable year of a Participant or of the Employer as the context requires.

1.64 **Transfer.** Transfer means the Trustee's movement of Plan assets from the Plan to another plan (or vice versa) directly as between the trustees and not by means of a distribution. A Transfer may be an Elective Transfer or a Nonelective Transfer. See Section 11.06. A Direct Rollover under Section 6.08(F)(1) is not a Transfer.

1.65 **Trust.** Trust means the separate Trust created under the Plan.

1.66 **Trust Fund.** Trust Fund means all property of every kind acquired by the Plan and held by the Trust, other than incidental benefit insurance contracts.

1.67 **Trustee/Custodian.** Trustee or Custodian means the person or persons who as Trustee or Custodian execute the Adoption Agreement (or other Trust or Custodial Agreement in substitution of the provisions in Article VIII as applicable), or any successor in office who in writing accepts the position of Trustee or Custodian. The Employer must designate in its Adoption Agreement whether the Trustee will administer the Trust as a discretionary Trustee or as a nondiscretionary Trustee. See Article VIII. If the Sponsor or Practitioner is a bank, savings and loan association, credit union, mutual fund, insurance company, or other institution qualified to serve as Trustee, a person other than the Sponsor or Practitioner (or its affiliate) may not serve as Trustee or as Custodian of the Plan without the written consent of the Sponsor or Practitioner.

1.68 **USERRA.** USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

1.69 **Valuation Date.** Valuation Date means the Accounting Date, such additional dates as the Employer in its Adoption Agreement may elect, and any other date that the Plan Administrator designates for the valuation of the Trust Fund.

1.70 **Vested.** Vested means a Participant or a Beneficiary has an unconditional claim, legally enforceable against the Plan, to the Participant's Account Balance or Accrued Benefit or to a portion thereof if not 100% Vested. Vesting means the degree to which a Participant is Vested in one or more Accounts.

1.71 **Volume Submitter Plan.** Volume Submitter Plan means as described in Section 13.01 of Rev. Proc. 2011-49 or in any successor thereto. A Volume Submitter Plan must have an Advisory Letter as described in Section 13.03 of Rev. Proc. 2011-49.

ARTICLE II
ELIGIBILITY AND PARTICIPATION

2.01 ELIGIBILITY. Each Eligible Employee becomes a Participant in the Plan in accordance with the eligibility conditions the Employer elects in its Adoption Agreement. The Employer may elect different age and service conditions for different Contribution Types under the Plan.

(A) Maximum Age and Years of Service. For purposes of an Eligible Employee's participation in the Plan, the Plan may not impose an age condition exceeding age 21 and may not require completion of more than one Year of Service, except under Section 2.02(E).

(B) New Plan. Any Eligible Employee who has satisfied the Plan's eligibility conditions and who has reached his/her Entry Date as of the Effective Date is eligible to participate as of the Effective Date, assuming the Employer continues to employ the Employee on that date. Any other Eligible Employee becomes eligible to participate: (1) upon satisfaction of the eligibility conditions and reaching his/her Entry Date; or (2) upon reaching his/her Entry Date if such Employee had already satisfied the eligibility conditions prior to the Effective Date.

(C) Restated Plan. If this Plan is a Restated Plan, each Employee who was a Participant in the Plan on the day before the restated Effective Date continues as a Participant in the Restated Plan, irrespective of whether he/she satisfies the eligibility conditions of the Restated Plan, unless the Employer provides otherwise in its Adoption Agreement.

(D) Prevailing Wage Contribution. If the Employer makes Prevailing Wage Contributions to the Plan, no minimum age or service conditions apply to an Eligible Employee's eligibility to receive Prevailing Wage Contributions under the Plan. The Employer's Adoption Agreement elections imposing age and service eligibility conditions apply to such an Employee as to non-Prevailing Wage Contributions under the Plan.

(E) Special Eligibility Effective Date (Dual Eligibility). The Employer in its Adoption Agreement may elect to provide a special Effective Date for the Plan's eligibility conditions, with the effect that such conditions may apply only to Employees who are employed by the Employer after a specified date.

2.02 APPLICATION OF SERVICE CONDITIONS. The Plan Administrator will apply this Section 2.02 in administering the Plan's eligibility service condition(s), if any.

(A) Definition of Year of Service. A Year of Service for purposes of an Employee's participation in the Plan, means the applicable Eligibility Computation Period under Section 2.02(C), during which the Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its

Adoption Agreement, without regard to whether the Employer continues to employ the Employee during the entire Eligibility Computation Period.

(B) Counting Years of Service. For purposes of an Employee's participation in the Plan, the Plan counts all of an Employee's Years of Service, except as provided in Section 2.03.

(C) Initial and Subsequent Eligibility Computation Periods. If the Plan requires one Year of Service for eligibility and an Employee does not complete one Year of Service during the Initial Eligibility Computation Period, the Plan measures Subsequent Eligibility Computation Periods in accordance with the Employer's election in its Adoption Agreement. If the Plan measures Subsequent Eligibility Computation Periods on a Plan Year basis, an Employee who receives credit for the required number of Hours of Service during the Initial Eligibility Computation Period and also during the first applicable Plan Year receives credit for two Years of Service under Article II.

(1) Definition of Eligibility Computation Period. An Eligibility Computation Period is a 12-consecutive month period.

(2) Definition of Initial Eligibility Computation Period. The Initial Eligibility Computation Period is the Employee's Anniversary Year which begins on the Employee's Employment Commencement Date.

(3) Definition of Anniversary Year. An Employee's Anniversary Year is the 12-consecutive month period beginning on the Employee's Employment Commencement Date or beginning on anniversaries thereof.

(4) Definitions of Employment Commencement Date/Re-Employment Commencement Date. An Employee's Employment Commencement Date is the date on which the Employee first performs an Hour of Service for the Employer. An Employee's Re-Employment Commencement Date is the date on which the Employee first performs an Hour of Service for the Employer after the Employer re-employs the Employee.

(5) Definition of Subsequent Eligibility Computation Period. A Subsequent Eligibility Computation Period is any Eligibility Computation Period after the Initial Eligibility Computation Period, as the Employer elects in its Adoption Agreement.

(D) Entry Date. The Employer in its Adoption Agreement elects the Entry Date(s) and elects whether such Entry Date(s) are retroactive, coincident with or next following an Employee's satisfaction of the Plan's eligibility conditions. The Employer may elect to apply different Entry Dates to different Contribution Types.

(1) Definition of Entry Date. See Section 1.26.

(2) Maximum delay in participation. An Entry Date may not result in an Eligible Employee who has satisfied the Plan's eligibility conditions being held out of Plan participation longer than six months, or if earlier, the first day of the next Plan Year, following completion of the Code §410(a) maximum eligibility requirements.

(3) Prevailing Wage Contributions. If the Employer makes Prevailing Wage Contributions to the Plan, an Eligible Employee's Entry Date with regard to such contributions is the Employee's Employment Commencement Date. The Employer's Adoption Agreement elections regarding Entry Dates apply to

such an Employee as to non-Prevailing Wage Contributions under the Plan.

(E) Alternative Service Conditions. The Employer in its Adoption Agreement may elect to impose for eligibility a condition of less than one Year of Service or of more than one Year of Service, but not exceeding two Years of Service. If the Employer elects an alternative Service condition to one Year of Service or two Years of Service, the Employer must elect in its Adoption Agreement the Hour of Service and other requirement(s), if any, after the Employee completes one Hour of Service. Under any alternative Service condition election, the Plan may not require an Employee to complete more than one Year of Service (1,000 Hours of Service in 12-consecutive months) or two Years of Service if applicable.

(1) Vesting requirement. If the Employer elects to impose more than a one Year of Service eligibility condition, the Plan Administrator must apply 100% vesting on any Employer Contributions (and the resulting Accounts) subject to that eligibility condition.

(2) One Year of Service maximum for specified Contributions. The Plan may not require more than one Year of Service for eligibility for an Eligible Employee to make Elective Deferrals, to receive Safe Harbor Contributions or to receive SIMPLE Contributions.

(F) Equivalency or Elapsed Time. If the Employer in its Adoption Agreement elects to apply the Equivalency Method or the Elapsed Time Method in applying the Plan's eligibility Service condition, the Plan Administrator will credit Service in accordance with Sections 1.32(A)(2) and (3).

2.03 BREAK IN SERVICE - PARTICIPATION. The Plan Administrator will apply this Section 2.03 if any Break in Service rule applies for eligibility under the Plan.

(A) Definition of Break in Service. For purposes of this Article II, an Employee incurs a Break in Service if during any applicable Eligibility Computation Period he/she does not complete more than 500 Hours of Service with the Employer. The Eligibility Computation Period under this Section 2.03(A) is the same as the Eligibility Computation Period the Plan uses to measure a Year of Service under Section 2.02. If the Plan applies the Elapsed Time Method of crediting Service under Section 1.32(A)(3), a Participant incurs a Break in Service if the Participant has a Period of Severance of at least 12 consecutive months.

(B) Two Year Eligibility. If the Employer under the Adoption Agreement elects a two Years of Service eligibility condition, an Employee who incurs a one year Break in Service prior to completing two Years of Service: (1) is a new Employee on the date he/she first performs an Hour of Service for the Employer after the Break in Service; (2) the Plan disregards the Employee's Service prior to the Break in Service; and (3) the Employee establishes a new Employment Commencement Date for purposes of the Initial Eligibility Computation Period under Section 2.02(C).

(C) One Year Hold-Out Rule-Participation. The Employer in its Adoption Agreement must elect whether to apply the "one year hold-out" rule under Code §410(a)(5)(C). Under this rule, a Participant will incur a suspension of participation in the Plan after incurring a one year Break in Service and the Plan disregards a Participant's Service completed prior to a Break in Service until the Participant completes one Year of Service following the Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the Eligibility Computation Period following the Eligibility Computation Period in which the Participant incurs the Break in Service.

(1) Completion of one Year of Service. If a Participant completes one Year of Service following his/her Break in Service, the Plan restores the Participant's pre-break Service and the Participant resumes active participation in the Plan retroactively to the first day of the Eligibility Computation Period in which the Participant first completes one Year of Service following his/her Break in Service.

(2) Eligibility Computation Period. The Plan Administrator measures the Initial Eligibility Computation period under this Section 2.03(C) from the date the Participant first receives credit for an Hour of Service following the one year Break in Service. The Plan Administrator measures any Subsequent Eligibility Computation Periods, if necessary, in a manner consistent with the Employer's Eligibility Computation Period election in its Adoption Agreement, using the Re-Employment Commencement Date in determining the Anniversary Year if applicable.

(3) Election to limit application to separated Employees. If the Employer elects to apply the one year hold-out rule, the Employer also may elect in its Adoption Agreement to limit application of the rule only to a Participant who has incurred a Separation from Service.

(4) Application to Employee who did not enter. The Plan Administrator also will apply the one year hold-out rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions, but who incurs a Separation from Service and a one year Break in Service prior to becoming a Participant.

(5) No effect on vesting or Earnings. This Section 2.03(C) does not affect a Participant's vesting credit under Article V and, during a suspension period, the Participant's Account continues to share fully in Earnings under Article VII.

(6) No restoration under two year break rule. The Plan Administrator in applying this Section 2.03(C) does not restore any Service disregarded under the Break in Service rule of Section 2.03(B).

(7) No application to Elective Deferrals in 401(k) Plan. If the Plan is a 401(k) Plan and the Employer in its Adoption Agreement elects to apply the Section 2.03(C) one year hold-out rule, the Plan Administrator will not apply such provisions to the Elective Deferral portion of the Plan.

(8) USERRA. An Employee who has completed Qualified Military Service and who the Employer has rehired under USERRA, does not incur a Break in Service under the Plan by reason of the period of such Qualified Military Service.

(D) Rule of Parity - Participation. For purposes of Plan participation, the Plan does not apply the "rule of parity" under Code §410(a)(5)(D), unless the Employer in Appendix B elects to apply the rule of parity.

2.04 <u>PARTICIPATION UPON RE-EMPLOYMENT</u>.

(A) Rehired Participant/Immediate Re-Entry. A Participant who incurs a Separation from Service will re-enter the Plan as a Participant on his/her Re-Employment Commencement Date (provided he/she is not an Excluded Employee), subject to any Break in Service rule, if applicable, under Section 2.03.

(B) Rehired Eligible Employee Who Had Satisfied Eligibility. An Eligible Employee who satisfies the Plan's eligibility conditions, but who incurs a Separation from Service prior to becoming a Participant, subject to any Break in Service rule, if applicable, under Section 2.03, will become a Participant on the later of: (1) the Entry Date on which he/she would have entered the Plan had he/she not incurred a Separation from Service; or (2) his/her Re-Employment Commencement Date.

(C) Rehired Eligible Employee Who Had Not Satisfied Eligibility. An Eligible Employee who incurs a Separation from Service prior to satisfying the Plan's eligibility conditions becomes a Participant in accordance with the Employer's Adoption Agreement elections. The Plan Administrator, for purposes of applying any shift in the Eligibility Computation Period, takes into account the Employee's prior Service and the Employee is not treated as a new hire.

2.05 <u>CHANGE IN EMPLOYMENT STATUS</u>. The Plan Administrator will apply this Section 2.05 if the Employer in its Adoption Agreement elected to exclude any Employees as Excluded Employees.

(A) Participant Becomes an Excluded Employee. If a Participant has not incurred a Separation from Service but becomes an Excluded Employee (as to any or all Contribution Types), during the period of exclusion the Excluded Employee: (i) will not share in the allocation of the applicable Employer Contributions (including a Top-Heavy Minimum Allocation under Section 10.02 if the Employee is excluded as to all Contribution Types) or Participant forfeitures, based on Compensation paid to the Excluded Employee during the period of exclusion; (ii) may not make Employee Contributions, Rollover Contributions or Designated IRA Contributions; and (iii) if the Plan is a 401(k) Plan and the Participant is an Excluded Employee as to Elective Deferrals, may not make Elective Deferrals as to Compensation paid to the Excluded Employee during the period of exclusion.

(1) Vesting, accrual, Break in Service and Earnings. A Participant who becomes an Excluded Employee under this Section 2.05(A) continues: (a) to receive Service credit for vesting under Article V for each included vesting Year of Service; (b) to receive Service credit for applying any allocation conditions under Section 3.06 as to Employer Contributions accruing for any non-excluded period and as to Contribution Types for which the Participant is not an Excluded Employee; (c) to receive Service credit in applying the Break in Service rules; and (d) to share fully in Earnings under Article VII.

(2) Resumption of Eligible Employee status. If a Participant who becomes an Excluded Employee subsequently resumes status as an Eligible Employee, the Participant will participate in the Plan immediately upon resuming eligible status, subject to the Break in Service rules, if applicable, under Section 2.03.

(B) Excluded Employee Becomes Eligible. If an Excluded Employee who is not a Participant becomes an Eligible Employee, he/she will participate immediately in the Plan if he/she has satisfied the Plan's eligibility conditions and would have been a Participant had he/she not been an Excluded Employee during his/her period of Service. An Excluded Employee receives Service credit for eligibility, for allocation conditions under Section 3.06 (but the Plan disregards Compensation paid while excluded) and for vesting under Article V for each included vesting Year of Service, notwithstanding the Employee's Excluded Employee status.

2.06 <u>PARTICIPATION OPT-OUT</u>.

(A) Volume Submitter Plan. If the Plan is a Volume Submitter Plan, the Plan Administrator may elect to permit an Eligible Employee to elect irrevocably to not participate in the Plan (to "opt-out"). The Eligible Employee prior to his/her Entry Date and prior to first becoming eligible under any plan of the Employer as described in Code §219(g)(5)(A), including terminated plans, must file an opt-out election in writing with the Plan Administrator on a form the Plan Administrator provides for this purpose. An Employee's election not to participate, pursuant to this Section 2.06(A), includes his/her right to make

Elective Deferrals, Employee Contributions, Rollover Contributions or Designated IRA Contributions, unless the Plan Administrator's opt-out form permits an Eligible Employee to opt-out of specified Contribution Types prior to becoming eligible to participate in such Contribution Type. A Participant's mere failure to make Elective Deferrals or Employee Contributions is not an opt-out under this Section 2.06(A).

(B) Prototype Plan. If the Plan is a Prototype Plan, the Plan does not permit an otherwise Eligible Employee or any Participant to elect to opt-out. However, if the Plan is a Nonstandardized Plan, an Eligible Employee may opt-out in accordance with Section 2.06(A) provided: (1) the Plan terms as in effect prior to restatement under this Plan permitted the opt-out; and (2) the Employee executes the opt-out prior to the date of the Employer's execution of this Plan as a Restated Plan.

ARTICLE III
PLAN CONTRIBUTIONS AND FORFEITURES

3.01 <u>CONTRIBUTION TYPES</u>. The Employer in its Adoption Agreement will elect the Contribution Type(s) and any formulas, allocation methods, conditions and limitations applicable thereto, except where the Plan expressly reserves discretion to the Employer or to the Plan Administrator.

(A) Application of Limits. The Employer's contribution to the Trust for any Plan Year is subject to Article IV limits and other Plan limits.

(B) Compensation for Allocations/Limit. The Plan Administrator will allocate all Employer Contributions and Elective Deferrals based on the definition of Compensation under Section 1.11 the Employer elects in its Adoption Agreement for a particular Contribution Type. The Plan Administrator in allocating such contributions must limit each Participant's Compensation to the amount described in Section 1.11(E).

(C) Allocation Conditions. The Plan Administrator will allocate Employer Contributions only to those Participants who satisfy the Plan's allocation conditions under Section 3.06, if any, for the Contribution Type being allocated.

(D) Top-Heavy. If the Plan is top-heavy, the Employer will satisfy the Top-Heavy Minimum Allocation requirements in accordance with Article X.

(E) Net Profit Not Required. The Employer need not have net profits to make a contribution under the Plan, unless the Employer in its Adoption Agreement specifies a fixed formula based on net profits.

(F) Form of Contribution. Subject to the consent of the Trustee under Article VIII, the Employer may make discretionary Employer Contributions to a Profit Sharing Plan, to a 401(k) Plan or to a 401(m) Plan (excluding Elective Deferrals or Employee Contributions) in the form of unencumbered property instead of cash, provided the contribution of property is not a prohibited transaction. The Employer may not make contributions in the form of property to its Money Purchase Pension Plan.

(G) Time of Payment of Contribution. The Employer may pay to the Trust its Employer Contributions for any Plan Year in one or more installments, without interest. Unless otherwise required by applicable contract, the Employer may make an Employer Contribution to the Plan for a particular Plan Year at such time(s) as the Employer in its sole discretion determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Plan Administrator and to the Trustee the Plan Year for which the Employer is making the Employer Contribution. The Plan Administrator will allocate the contribution accordingly.

(H) Return of Employer Contribution. The Employer contributes to the Plan on the condition its contribution is not due to a mistake of fact and the IRS will not disallow the deduction of the Employer Contribution.

(1) Request for contribution return/timing. The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer Contribution made by the Employer by mistake of fact or the amount of the Employer Contribution disallowed as a deduction under Code §404. The Trustee will not return any portion of the Employer Contribution under the provisions of this Section 3.01(H) more than one year after: (a) the Employer made the contribution by mistake of fact; or (b) the IRS's disallowance of the contribution as a deduction, and then, only to the extent of the disallowance.

(2) Earnings. The Trustee will not increase the amount of the Employer Contribution returnable under this Section 3.01(H) for any Earnings increases attributable to the contribution, but the Trustee will decrease the Employer Contribution returnable for any Earnings losses attributable thereto.

(3) Evidence. The Trustee may require the Employer to furnish the Trustee whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

(I) Money Purchase Pension and Defined Benefit Plans. If the Employer's Plan is a Money Purchase Pension Plan and the Employer also maintains a defined benefit pension plan, notwithstanding the Money Purchase Pension Contribution formula in the Employer's Adoption Agreement, the Employer's required contribution to its Money Purchase Pension Plan for a Plan Year is limited to the amount which the Employer may deduct under Code §404(a)(7). If the Employer under Code §404(a)(7) must reduce its Money Purchase Pension Plan contribution, the Plan Administrator will allocate the reduced contribution amount in accordance with the Plan's allocation formula.

(J) Frozen Plan. The Employer in its Adoption Agreement may elect to treat the Plan as a Frozen Plan. Under a Frozen Plan, the Employer and the Participants will not make any contributions to the Plan. A Frozen Plan remains subject to all qualification and reporting requirements except as the Plan provisions (other than those relating to ongoing permitted or required contributions) continue in effect until the Employer terminates the Plan. An Eligible Employee will not become a Participant in a Frozen Plan.

3.02 <u>ELECTIVE DEFERRALS</u>. If the Plan is a 401(k) Plan and the Employer in its Adoption Agreement elects to permit Elective Deferrals, the Plan Administrator will apply the provisions of this Section 3.02. A Participant's Elective Deferrals will be made pursuant to a Salary Reduction Agreement unless the Employer elects in its Adoption Agreement to apply the Automatic Deferral provision under Section 3.02(B) or the CODA provision under Section 3.02(C). A Participant's Elective Deferrals may include the cash equivalent of the Participant's unused paid time off that the Participant otherwise may elect to receive in cash under the Employer's Paid Time Off Plan, if any, if such cash equivalent otherwise satisfies the Plan's definition of Compensation for purposes of Elective Deferrals (including following Severance from Employment). The Plan will treat any Elective Deferrals described in the preceding sentence in the same manner as other Elective Deferrals for all purposes under the Plan.

(A) Limitations. Except as described below regarding Catch-Up Deferrals, the Employer in its Adoption Agreement must elect the Plan limitations, if any, which apply to Elective Deferrals (or separately to Pre-Tax Deferrals or to Roth Deferrals, if applicable). Such Plan limitations are in addition to those mandatory limitations imposed under Article IV. In applying any such additional Plan limitation, the Plan Administrator will take into account the Compensation for Elective Deferral purposes the Employer elects in the Adoption Agreement. The Plan Administrator in the Salary Reduction Agreement form or in a Salary Reduction Agreement policy (see Section 1.57(C)) may specify additional rules and restrictions applicable to Salary Reduction Agreements, including those applicable to a deferral of a Participant's unused paid time off, under the Employer's Paid Time Off Plan, if applicable. The Employer in a SIMPLE 401(k) Plan may not impose any Plan limit on Elective Deferrals except as provided under Code §408(p). See Section 3.05(C)(2) regarding limits on Elective Deferrals under a safe harbor plan. Unless otherwise provided on the Salary Reduction form or in the Salary Reduction Agreement policy, the termination of a Participant's employment with the Employer automatically revokes the Participant's Salary Reduction Agreement with regard to periods after the Participant is rehired.

(1) Plan Administrator discretion if no stated Plan limit. The Employer may elect a Plan limit in its Adoption Agreement, but if the Employer does not so elect, the Plan Administrator may establish or change a Plan limit on Elective Deferrals from time to time by providing notice to the Participants. Any such limit change made during a Plan Year applies only prospectively and applies until the Plan Administrator changes or revokes the limit.

(2) Compensation from which Deferrals may be made. Participants may not make Elective Deferrals from amounts that are not Code §415 Compensation under Section 4.05(F). In addition, a Participant may not make Elective Deferrals from amounts which are not Compensation under Section 1.11, even if 415 Compensation is more inclusive. In determining Compensation from which a Participant may make Elective Deferrals, the Compensation dollar limitation described in Section 1.11(E) does not apply.

(B) Automatic Deferrals. The Employer in its Adoption Agreement will elect whether to apply or not apply the Automatic Deferral provisions. The Employer may elect the Automatic Deferral provisions under a Section 3.02(B)(1) (ACA), a Section 3.02(B)(2) (EACA), or a Section 3.02(B)(3) (QACA). If the QACA provisions apply, the safe harbor provisions of Section 3.05(J) and EACA provisions of Section 3.02(B)(2) also apply. The Plan Administrator will treat Automatic Deferrals as Elective Deferrals for all purposes under the Plan, including application of limitations, nondiscrimination testing and distributions. If the Employer in its Adoption Agreement has elected to permit Roth Deferrals, Automatic Deferrals are Pre-Tax Deferrals unless the Employer in Appendix B elects otherwise.

(1) Automatic Contribution Arrangement (ACA). If the Employer elects in its Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as an Automatic Contribution Arrangement ("ACA"), effective as of the date the Employer elects in the Adoption Agreement, and the provisions of this Section 3.02(B)(1) will apply.

(a) Participants subject to ACA. The Employer in its Adoption Agreement will elect which Participants are subject to the ACA Automatic Deferral on the Effective Date thereof, including some or all current Participants and those Employees who become Participants after the ACA Effective Date.

(b) Effect of Contrary Election. A Participant who makes a Contrary Election is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes or modifies the Contrary Election. A Participant's Contrary Election continues in effect until the Participant subsequently changes his/her Salary Reduction Agreement.

(2) Eligible Automatic Contribution Arrangement. (EACA). If the Employer elects in its Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as an Eligible Automatic Contribution Arrangement (EACA), effective as of the date the Employer elects in its Adoption Agreement (but not earlier than Plan Years beginning after December 31, 2007) and the provisions of this Section 3.02(B)(2) will apply.

(a) Participants subject to EACA. The Employer in its Adoption Agreement will elect which Participants are subject to the EACA Automatic Deferral on the Effective Date thereof which may include some or all current Participants or may be limited to those Employees who become Participants after the EACA Effective Date.

(i) EACA Effective Date. EACA Effective Date means the date on which the EACA goes into effect, either as to the overall Plan or as to an individual Participant as the context requires. An EACA becomes effective as to the Plan as of the date the Employer elects in its Adoption Agreement. A Participant's EACA Effective Date is as soon as practicable after the Participant is subject to Automatic Deferrals under the EACA, consistent with the objective of affording the Participant a reasonable period of time after receipt of the EACA notice to make a Contrary Election (and, if applicable, an investment election).

(b) Uniformity. The Automatic Deferral Percentage must be a uniform percentage of Compensation. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because the Plan applies any of the following provisions:

(i) Years of participation. The Automatic Deferral Percentage varies based on the number of Plan Years (or portions of years) the Participant has participated in the Plan while the Plan has applied EACA provisions;

(ii) No reduction from prior default percentage. The Employer elects in the Adoption Agreement not to apply Automatic Deferrals to a Participant whose Elective deferrals immediately prior to the EACA's Effective Date were higher than the Automatic Deferral Percentage;

(iii) Applying statutory limits. The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code §§401(a)(17), 402(g) (determined without regard to Age 50 Catch-Up Deferrals), or 415;

(iv) No deferrals during hardship suspension. The Plan does not apply the Automatic Deferral during the period of suspension, under the Plan's hardship distribution provisions, of Participant's right to make Elective Deferrals to the Plan following a hardship distribution; or

(v) Disaggregated groups. The Plan applies different Automatic Deferral Percentages to different groups if the groups can be disaggregated under Treas. Reg. §1.401(k)-1(b)(4).

(c) EACA notice. The Plan Administrator annually will provide a notice to each Covered Employee a reasonable period prior to each Plan Year the Employer maintains the Plan as an EACA ("EACA Plan Year").

(i) Deemed reasonable notice/new Participant. The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the EACA notice at least 30 days and not more than 90 days prior to the beginning of the EACA Plan Year.

(ii) Mid-year notice/new Participant or Plan. If: (A) an Employee becomes eligible to make Elective Deferrals in the Plan during an EACA Plan Year but after the Plan Administrator has provided the annual EACA notice for that Plan Year; or (B) the Employer adopts mid-year a new Plan as a EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Elective Deferrals. However, if it is not practicable for the Plan Administrator to provide the notice on or before the date an Employee becomes a Participant, then the notice nonetheless will be treated as provided timely if the Plan Administrator provides the notice as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(iii) Content. The EACA notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant.

(d) EACA permissible withdrawal. The Employer will elect in its Adoption Agreement whether a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Section 3.02(B)(2)(d). Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

(i) Amount. If a Participant elects a permissible withdrawal under this Section 3.02(B)(2)(d), then the Plan must make a distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for Earnings to the date of the distribution).The Plan may account separately for Automatic Deferrals, in which case the Plan will distribute the entire Account. If the Plan does not account separately for the Automatic Deferrals, then the Plan must determine Earnings in the same manner applied to determine Allocable Income to the refund of Excess Contributions under Section 4.11(C)(2)(a).

(ii) Fees. Notwithstanding Section 3.02(B)(2)(d)(i), the Plan Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section 3.02(B)(2)(d)(ii), than applies to other distributions. The Plan Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

(iii) Timing. The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days, or such shorter period as the Employer specifies in its Adoption Agreement (but not less than 30 days), after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. For purposes of the preceding sentence, EACAs under the Plan are aggregated, except that the mandatory disaggregation rules of Code §410(b) apply. In addition, a Participant's withdrawal right is not restricted due to the Participant making a Contrary Election during the 90-day period (or shorter period as the Employer specifies in its Adoption Agreement).

(iv) Rehired Employees. For purposes of Section 3.02(B)(2)(d)(iii), the Plan will treat an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA as having not had such contributions for any prior Plan Year as well.

(v) Effective date of the actual withdrawal election. The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of: (A) the pay date of the second payroll period beginning after the Participant makes the election; or (B) the first pay date that occurs at least 30 days after the Participant makes the election. The election also will be deemed to be the Participant's Contrary Election to have no Elective Deferrals made to the Plan. However, the Participant may subsequently make a deferral election hereunder.

(vi) Related Matching Contributions. The Plan Administrator will not take into account any deferrals withdrawn pursuant to this Section 3.02(B)(2)(d) in computing and allocating Matching Contributions. If the Employer already has allocated Matching Contributions to the Participant's account with respect to Elective Deferrals being withdrawn pursuant to this Section, the Plan must forfeit the Matching Contributions, as adjusted for Earnings.

(vii) Treatment of withdrawals. With regard to Elective Deferrals withdrawn pursuant to this Section 3.02(B)(2)(d): (A) the Plan Administrator will disregard such deferrals in the ADP test (if applicable) under Section 4.10(B); (B) the Plan Administrator will disregard such Deferrals for purposes of the Elective Deferral Limit under Section 4.10(A); and (C) such Deferrals are not subject to the consent requirements of Code §§401(a)(11) or 417. The Plan Administrator will disregard any Matching Contributions forfeited under Section 3.02(B)(2)(d)(vi) in the ACP test (if applicable) under Section 4.10(C).

(e) Effect of Contrary Election/Covered Employee status. A Participant's Contrary Election continues in effect until the Participant subsequently revokes or modifies his/her Salary Reduction Agreement, or the Contrary Election expires. A Participant who makes a Contrary Election is not thereafter

subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes the Contrary Election or the Contrary Election expires, unless the Participant is a Covered Employee.

(i) Covered Employee. A Covered Employee is a Participant who is subject to the EACA. The Employer in its Adoption Agreement will elect whether a Participant who makes a Contrary Election is a Covered Employee. A Covered Employee must receive the annual EACA notice even though the Participant's Contrary Election remains in effect. In addition, a Covered Employee who revokes his/her Contrary Election or whose Contrary Election expires, is thereafter immediately subject to the EACA Automatic Deferral.

(3) Qualified Automatic Contribution Arrangement (QACA). If the Employer elects in its Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as a Qualified Automatic Contribution Arrangement (QACA), effective as of the date the Employer elects in it Adoption Agreement (but not earlier than Plan Years beginning after December 31, 2007) and the provisions of this Section 3.02(B)(3) and of Section 3.05(J) will apply. If this Plan is a QACA, then the Employer may elect in its Adoption Agreement to provide EACA permissible withdrawals, as described in Section 3.02(B)(2)(d).

(a) Participants subject to QACA. The Employer in its Adoption Agreement will elect which Participants are subject to the QACA Automatic Deferral on the Effective Date thereof including some or all current Participants and those Employees who become Participants after the QACA Effective Date. The Employer must elect to apply the QACA Automatic Deferral at least to those Participants as of the QACA Effective Date who do not have in effect a Salary Reduction Agreement and may also elect to apply the QACA Automatic Deferral to such Participants who have an existing Salary Reduction Agreement in effect as provided in the Adoption Agreement.

(i) QACA Effective Date. QACA Effective Date means the date on which the QACA goes into effect, either as to the overall Plan or as to an individual Participant as the context requires. A QACA becomes effective as to the Plan as of the date the Employer elects in its Adoption Agreement. A Participant's QACA Effective Date is as soon as practicable after the Participant is subject to Automatic Deferrals under the QACA, consistent with the objective of affording the Participant a reasonable period of time after receipt of the QACA notice to make a Contrary Election (and, if applicable, an investment election). However, in no event will the Automatic Deferral be effective later than the earlier of: (1) the pay date for the second payroll period that begins after the date the QACA safe harbor notice (described in Section 3.05(H)(5)) is provided to the Employee, or (2) the first pay date that occurs at least 30 days after the QACA safe harbor notice is provided to the Employee.

(b) QACA Automatic Deferral Percentage. Except as provided in Section 3.02(B)(3)(c) (relating to uniformity requirements), the Plan must apply to all Participants subject to the QACA as described in Section 3.02(B)(3)(a), a uniform Automatic Deferral Percentage, as a percentage of each Participant's Compensation, which does not exceed 10%, and which is at least the following minimum amount:

(i) Initial period. 3% for the period that begins when the Participant first has contributions made pursuant to a default election under the QACA and ends on the last day of the following Plan Year;

(ii) Third Plan Year. 4% for the third Plan Year of the Participant's participation in the QACA;

(iii) Fourth Plan Year. 5% for the fourth Plan Year of the Participant's participation in the QACA; and

(iv) Fifth and later Plan Years. 6% for the fifth Plan Year of the Participant's participation in the QACA and for each subsequent Plan Year.

For purposes of this Section 3.02(B)(3)(b), the Plan will treat a Participant who for an entire Plan Year did not have Automatic Deferral contributions made under the QACA as not having made such contributions for any prior Plan Year.

(c) Uniformity. The uniformity provisions of Section 3.02(B)(2)(b) applicable to an EACA, also apply to a QACA.

(d) QACA Notice. See Section 3.05(H)(5) as to QACA notice provisions.

(e) Effect of Contrary Election and termination of Election. A Participant's Contrary Election continues in effect until a Participant modifies or revokes the Election, or until the Election expires. A Participant who revokes his/her Contrary Election or whose Contrary Election expires, is thereafter immediately subject to the QACA Automatic Deferral.

(4) Automatic Contribution Definitions. The following definitions apply to all Automatic Contribution Arrangements under this Section 3.02(B):

(a) Automatic Deferral. An Automatic Deferral is an Elective Deferral that results from the operation of Section 3.02(B)(1), Section 3.02(B)(2) or Section 3.02(B)(3). Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage or Amount the Compensation of each Participant subject to the Automatic Deferral, except those Participants who timely make a Contrary Election.

(b) Automatic Deferral Percentage/Increases. The Automatic Deferral Percentage is the percentage of Automatic Deferral which the Employer elects in its Adoption Agreement including any scheduled increase to the Automatic Deferral Percentage which the Employer may elect. If a Participant subject to the Automatic Deferral elected, before the Effective Date of the Automatic Deferral, to defer an amount which is less than the Automatic Deferral Percentage the Employer has elected in its Adoption Agreement, the Automatic Deferral Percentage includes only the incremental percentage amount necessary to increase the Participant's Elective Deferral to equal the Automatic Deferral Percentage, including any scheduled increases thereto. See Section 3.02(B)(3)(b) as to the QACA required Automatic Deferral Percentage.

(c) Compensation. Compensation for purposes of determining the amount of Automatic Deferrals by applying the Automatic Deferral Percentage means Compensation for purposes of allocating Elective Deferrals under the Plan. For

Plan Years beginning on or after January 1, 2010, Compensation must be nondiscriminatory Compensation as described in Section 1.11(F); provided that the Employer in its Adoption Agreement may not elect to limit NHCE Compensation to a specified dollar amount.

(d) Contrary Election. A Contrary Election is a Participant's election made after the ACA, EACA or QACA Effective Date not to defer any Compensation or to defer an amount which is more or less than the Automatic Deferral Percentage.

(e) Contrary Election Effective Date. A Participant's Contrary Election generally is effective as of the first payroll period which follows the payroll period in which the Participant makes the Contrary Election. However, a Participant may make a Contrary Election which is effective: (i) for the first payroll period in which he/she becomes a Participant if the Participant makes a Contrary Election within a reasonable period following the Participant's Entry Date and before the Compensation to which the Election applies becomes currently available; or (ii) for the first payroll period following the Effective Date of the Automatic Deferral, if the Participant makes a Contrary Election not later than the Effective Date of the Automatic Deferral.

(C) Cash or Deferred Arrangement (CODA). The Employer in its Adoption Agreement may elect to apply the CODA provisions of this Section 3.02(C). Under a CODA, a Participant may elect to receive in cash his/her proportionate share of the Employer's cash or deferred contribution, in accordance with the Employer's Adoption Agreement election. A Participant's proportionate share of the Employer's cash or deferred contribution is the percentage of the total cash or deferred contribution which bears the same ratio that the Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year. For purposes of determining each Participant's proportionate share of the cash or deferred contribution, a Participant's Compensation is his/her Compensation for Nonelective Contribution allocations (unless the Employer elects otherwise in its Adoption Agreement) as determined under Section 1.11, excluding any effect the proportionate share may have on the Participant's Compensation for the Plan Year. The Plan Administrator will determine the proportionate share prior to the Employer's actual contribution to the Trust, to provide the Participants with the opportunity to file cash elections. The Employer will pay directly to the Participant the portion of his/her proportionate share the Participant has elected to receive in cash.

(D) Catch-Up Deferrals. Unless the Employer otherwise elects in its Adoption Agreement, the Plan permits Catch-Up Eligible Participants to make Catch-Up Deferrals to the Plan under this Section 3.02(D).

(1) Definition of Catch-Up Eligible Participant. A Catch-Up Eligible Participant is a Participant who is eligible to make Elective Deferrals and who has attained at least age 50 or who will attain age 50 before the end of the Taxable Year in which he/she will make a Catch-Up Deferral. A Participant who dies or who incurs a Separation from Service before actually attaining age 50 in such Taxable Year is a Catch-Up Eligible Participant.

(2) Definition of Catch-Up Deferral. A Catch-Up Deferral is an Elective Deferral by a Catch-up Eligible Participant and which exceeds: (a) a Plan limit on Elective Deferrals under Section 3.02(A); (b) the Annual Additions Limit under Section 4.05(B); (c) the Elective Deferral Limit under Section 4.10(A); or (d) the ADP Limit under Section 4.10(B).

(3) Limit on Catch-Up Deferrals. A Participant's Catch-Up Deferrals for a Taxable Year may not exceed the lesser of: (a) 100% of the Participant's Compensation for the Taxable Year when added to the Participant's other Elective Deferrals; or (b) the Catch-Up Deferral dollar limit in effect for the Taxable Year ($5,000 for 2006).

(4) Adjustment after 2006. After the 2006 Taxable Year, the Secretary of the Treasury will adjust the Catch-Up Deferral dollar limit in multiples of $500 under Code §414(v)(2)(C).

(5) Treatment of Catch-Up Deferrals. Catch-Up Deferrals are not: (a) subject to the Annual Additions Limit under Section 4.05(B); (b) subject to the Elective Deferral Limit under Section 4.10(A); (c) included in a Participant's ADR in calculating the Plan's ADP under Section 4.10(B); or (d) taken into account in determining the Highest Contribution Rate under Section 10.06(E). Catch-Up Deferrals are taken into account in determining the Plan's Top-Heavy Ratio under Section 10.06(K). Otherwise, Catch-Up Deferrals are treated as other Elective Deferrals.

(6) Universal availability. If the Employer permits Catch-Up Deferrals to its Plan, the right of all Catch-Up Eligible Participants to make Catch-Up Deferrals must satisfy the universal availability requirement of Treas. Reg. §1.414(v)-1(e). If the Employer maintains more than one applicable plan within the meaning of Treas. Reg. §1.414(v)-1(g)(1), and any of the applicable plans permit Catch-Up Deferrals, then any Catch-up Eligible Participant in any such plans must be permitted to have the same effective opportunity to make the same dollar amount of Catch-Up Deferrals. Any Plan-imposed limit on total Elective Deferrals including Catch-Up Deferrals may not be less than 75% of a Participant's gross Compensation.

(E) Roth Deferrals. The Employer in its 401(k) Plan Adoption Agreement may elect to permit Roth Deferrals. The Employer must also elect to permit Pre-Tax Deferrals if the Employer elects to permit Roth Deferrals. The Plan Administrator will administer Roth Deferrals in accordance with this Section 3.02(E).

(1) Treatment of Roth Deferrals. The Plan Administrator will treat Roth Deferrals as Elective Deferrals for all purposes of the Plan, except where the Plan indicates otherwise.

(2) Separate accounting. The Plan Administrator will establish a Roth Deferral Account for each Participant who makes any Roth Deferrals and Earnings thereon in accordance with Section 7.04(A)(1). The Plan Administrator will establish a Pre-Tax Account and Earnings thereon for each Participant who makes any Pre-Tax Deferrals in accordance with Section 7.04(A)(1). The Plan Administrator will credit only Roth Deferrals and Earnings thereon (allocated on a reasonable and consistent basis) to a Participant's Roth Deferral Account.

(3) No re-classification. An Elective Deferral contributed to the Plan either as a Pre-Tax Deferral or as a Roth Deferral may not be re-classified as the other type of Elective Deferral; provided, however that a Pre-Tax Deferral may be converted to a Roth Deferral by means of an In-Plan Roth Rollover under Section 3.08(E).

(F) Elective Deferrals as Employer Contributions. Where the context requires under the Plan, Elective Deferrals are Employer Contributions except: (1) under Section 3.04 relating to allocation of Employer Contributions; (2) under Section 3.06 relating to allocation conditions; and (3) under Section 5.03 relating to vesting.

(G) Automatic Escalation. The Employer in its Adoption Agreement will elect whether to apply the Automatic Escalation provisions of this Section 3.02(G) to Salary Reduction Agreements. Such provisions shall apply to affirmative deferral elections and will not apply to participants for whom the Employer is withholding Automatic Deferrals under Section 3.02(B). In its Adoption Agreement, the Employer will specify the Participants to whom automatic escalation applies, the amount by which the Elective Deferrals will increase, and the timing of the increase.

3.03 MATCHING CONTRIBUTIONS. If the Employer elects in its Adoption Agreement to provide for Matching Contributions (or if Section 3.03(C)(2) applies), the Plan Administrator will apply the provisions of this Section 3.03.

(A) Matching Formula: Type, Rate/Amount, Limitations and Time Period. Except as provided in Section 3.03(C)(2), the Employer in its Adoption Agreement must elect the type(s) of Matching Contributions (Fixed or Discretionary Matching Contributions), and as applicable, the Matching Contribution rate(s)/amount(s), the limit(s) on Elective Deferrals or Employee Contributions subject to match, the limit(s) on the amount of Matching Contributions, and the time period the Plan Administrator will apply in the computation of any Matching Contributions. If the Employer in its Adoption Agreement elects to apply any limit on Matching Contributions based on pay periods or on any other time period which is less than the Plan Year, the Plan Administrator will determine the limits in accordance with the time period specified and will not take into account any other Compensation or Elective Deferrals not within the applicable time period, even in the case of a Participant who becomes eligible for the match mid-Plan Year and regardless of the Employer's election as to Pre-Entry Compensation. If the Employer in its Adoption Agreement elects to use "Participating Compensation" for Matching Contributions, the Plan Administrator will take Elective Deferrals into account in computing Matching Contributions only if the Elective Deferrals were made after the Participant became eligible for the match. An Employee becomes "eligible for the match" when the Employee becomes a Participant in the Matching Contribution portion of the plan.

(1) Fixed Match. The Employer in its Adoption Agreement may elect to make a Fixed Matching Contribution to the Plan under one or more formulas.

(a) Allocation. The Employer may contribute on a Participant's behalf under a Fixed Matching Contribution formula only to the extent that the Participant makes Elective Deferrals or Employee Contributions which are subject to the formula and if the Participant satisfies the allocation conditions for Fixed Matching Contributions, if any, the Employer elects in its Adoption Agreement.

(2) Discretionary Match. The Employer in its Adoption Agreement may elect to make a Discretionary Matching Contribution to the Plan.

(a) Allocation. To the extent the Employer makes Discretionary Matching Contributions, the Plan Administrator will allocate the Discretionary Matching Contributions to the Account of each Participant entitled to the match under the Employer's discretionary matching allocation formula and who satisfies the allocation conditions for Discretionary Matching Contributions, if any, the Employer elects in its Adoption Agreement. The Employer under a Discretionary Matching Contribution retains discretion over the amount of its Matching Contributions, and, except as the Employer otherwise elects in its Adoption Agreement, the Employer also retains discretion over the matching formula. See Section 1.35(B).

(3) Roth Deferrals. Unless the Employer elects otherwise in its Adoption Agreement, the Employer's Matching Contributions apply in the same manner to Roth Deferrals as they apply to Pre-Tax Deferrals.

(4) Contribution timing. Except as described in Section 3.05 regarding a Safe Harbor 401(k) Plan, the time period that the Employer elects for computing its Matching Contributions does not require that the Employer actually contribute the Matching Contribution at any particular time. As to Matching Contribution timing and the ACP test, see Section 4.10(C)(5)(e)(iii).

(5) Participating Employers. If any Participating Employers contribute Matching Contributions to the Plan, the Employer in its Adoption Agreement must elect: (a) whether each Participating Employer will be subject to the same or different Matching Contribution formulas than the Signatory Employer; and (b) whether the Plan Administrator will allocate Matching Contributions only to Participants directly employed by the contributing Employer or to all Participants regardless of which Employer contributes or how much any Employer contributes. The allocation of Matching Contributions under this Section 3.03(A)(5) also applies to the allocation of any forfeiture attributable to Matching Contributions and which the Plan allocates to Participants.

(B) Regular Matching Contributions. If the Employer in its Adoption Agreement elects to make Matching Contributions, such contributions are Regular Matching Contributions unless: (i) the Employer in its Adoption Agreement elects to treat some or all Matching Contributions as a Plan-Designated QMAC under Section 3.03(C)(1); or (ii) the Employer makes an Operational QMAC under Section 3.03(C)(2).

(1) Separate Account. The Plan Administrator will establish a separate Regular Matching Contribution Account for each Participant who receives an allocation of Regular Matching Contributions in accordance with Section 7.04(A)(1).

(C) QMAC. The provisions of this Section 3.03(C) apply to QMAC contributions.

(1) Plan-Designated QMAC. The Employer in its 401(k) Plan Adoption Agreement will elect whether or not to treat some or all Matching Contributions as a QMAC ("Plan-Designated QMAC"). If the Employer elects any Plan-Designated QMAC, the Employer in its Adoption Agreement will elect whether to allocate the QMAC to all Participants or only to NHCE Participants. The Plan Administrator will allocate a Plan-Designated QMAC only to those Participants who have satisfied eligibility conditions under Article II to receive Matching Contributions (or if applicable, to receive QMACs) and who have satisfied any allocation conditions under Section 3.06 the Employer has elected in the Adoption Agreement as applicable to QMACs.

(2) Operational QMAC. The Employer, to facilitate the Plan Administrator's correction of test failures under Section 4.10, (or to lessen the degree of such failures), but only if the Plan is using Current Year Testing, also may make Discretionary Matching Contributions as QMACs to the Plan ("Operational QMAC"), irrespective of whether the Employer in its Adoption Agreement has elected to provide for any Matching Contributions or Plan-Designated QMACs. The Plan Administrator, in its discretion, will allocate the Operational QMAC, but will limit the allocation of any Operational QMAC only to some or all NHCEs who are ADP Participants or ACP Participants under Sections 4.11(A) and (B). The Plan Administrator may allocate an Operational QMAC to any such NHCE Participants who are eligible to make (and who actually make) Elective Deferrals or Employee Contributions even if such Participants have not satisfied any eligibility conditions under Article II applicable to Matching Contributions (including QMACs) or have not satisfied any allocation conditions under Section 3.06 applicable to Matching Contributions (or to QMACs). Where the Plan Administrator disaggregates the Plan for coverage and for nondiscrimination testing under the "otherwise excludible employees" rule described in Section 4.06(C), the Plan Administrator also may limit the QMAC allocation to those NHCEs in any disaggregated plan which actually is subject to ADP and ACP testing (because there are HCEs in that disaggregated plan).

(3) Separate Account. The Plan Administrator will establish a separate QMAC Account for each Participant who receives an allocation of QMACs in accordance with Section 7.04(A)(1).

(D) Matching Catch-Up Deferrals. The Employer in its 401(k) Plan Adoption Agreement must elect whether or not to match any Catch-Up Deferrals if the Plan permits Catch-Up Deferrals. The Employer's election to match Catch-Up Deferrals will apply to all Matching Contributions or will specify the Fixed Matching Contributions or Discretionary Matching Contributions which apply to the Catch-Up Deferrals. Regardless of the Employer's Adoption Agreement election, in a Safe Harbor 401(k) Plan, the Plan will apply the Basic Matching Contribution or Enhanced Matching Contribution to Catch-Up Deferrals and if the Plan will satisfy the ACP test safe harbor under Section 3.05(G), the Employer will apply any Additional Matching Contribution to Catch-Up Deferrals.

(E) Targeting Limitations. Matching Contributions, for nondiscrimination testing purposes, are subject to the targeting limitations in Section 4.10(D). The Employer will not make an Operational QMAC in an amount which exceeds the targeting limitations.

3.04 NONELECTIVE/EMPLOYER CONTRIBUTIONS. If the Employer elects to provide for Nonelective Contributions to a Profit Sharing Plan or 401(k) Plan (or if Section 3.04(C)(2) applies), or the Plan is a Money Purchase Pension Plan, the Plan Administrator will apply the provisions of this Section 3.04.

(A) Amount and Type. The Employer in its Adoption Agreement must elect the type and amount of Nonelective Contributions or other Employer Contributions.

(1) Discretionary Nonelective Contribution. The Employer in its Adoption Agreement may elect to make Discretionary Nonelective Contributions.

(2) Fixed Nonelective or other Employer Contributions. The Employer in its Adoption Agreement may elect to make Fixed Nonelective Contributions or Money Purchase Pension Plan Contributions. The Employer must specify the time period to which any fixed contribution formula will apply (which is deemed to be the Plan Year if the Employer does not so specify) and must elect the allocation method which may be the same as the contribution formula or may be a different allocation method under Section 3.04(B).

(a) Cash value of unused paid time off. The Employer in its Adoption Agreement may elect to make a Fixed Nonelective Contribution on behalf of each Participant who participates in the Employer's Paid Time Off Plan. Under this provision, provided such amounts are Compensation for purposes of Nonelective Contributions (including Post-Severance Compensation as applicable), the Employer will make a Nonelective Contribution in an amount equal to the cash equivalent of each Participant's unused paid time off, as the Employer determines such amount, at the end of the Plan Year or other period determined by the Employer on a uniform and nondiscriminatory basis. The contributions described in this Section 3.04(A)(2)(a) are Fixed Nonelective Contributions for all purposes under the Plan, including the allocation conditions described in Section 3.06(B) and (C), and the Vesting provisions described in Section 5.03.

(3) Prevailing Wage Contribution. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to make fixed Employer Contributions pursuant to a Prevailing Wage Contract. In such event, the Employer's Prevailing Wage Contributions will be made in accordance with the Prevailing Wage Contract, based on hourly rate, employment category, employment classification and such other factors as such contract specifies. The Employer in its Adoption Agreement must elect whether to offset the Employer Contributions (which are not Prevailing Wage Contributions) to this Plan or to another Employer plan, by the amount of the Participant's Prevailing Wage Contributions. To offset any Employer Contribution, the Prevailing Wage Contribution must comply with any distribution restriction under Section 6.01(C)(4) otherwise applicable to the Employer Contribution being offset and the Plan Administrator must account for the Prevailing Wage Contribution accordingly. See Section 5.03(E) regarding vesting of Prevailing Wage Contributions.

(4) Participating Employers. If any Participating Employers contribute Nonelective Contributions or other Employer Contributions to the Plan, the Employer in its Adoption Agreement must elect: (a) whether each Participating

Employer will be subject to the same or different Nonelective/Employer Contribution formulas under Section 3.04(A) and allocation methods under Section 3.04(B) than the Signatory Employer; and (b) whether, under Section 3.04(B), the Plan Administrator will allocate Nonelective/Employer Contributions only to Participants directly employed by the contributing Employer or to all Participants regardless of which Employer contributes or how much any Employer contributes. The allocation of Nonelective/Employer Contributions under this Section 3.04(A)(4) also applies to the allocation of any forfeiture attributable to Nonelective/Employer Contributions and which the Plan allocates to Participants.

(B) Method of Allocation. The Employer in its Adoption Agreement must specify the method of allocating Nonelective Contributions or other Employer Contributions to the Trust. The Plan Administrator will apply this Section 3.04(B) by including in the allocation only those Participants who have satisfied the Plan's allocation conditions under Section 3.06, if any, applicable to the contribution. The Plan Administrator, in allocating a contribution under any allocation formula which is based in whole or in part on Compensation, will take into account Compensation under Section 1.11 as the Employer elects in its Adoption Agreement and only will take into account the Compensation of the Participants entitled to an allocation. In addition, if the Employer has elected in its Adoption Agreement to define allocation Compensation over a time period which is less than a full Plan Year, the Plan Administrator will apply the allocation methods in this Section 3.04(B) based on Participant Compensation within the relevant time period.

(1) Pro rata allocation formula. The Employer in its Adoption Agreement may elect a pro rata allocation formula. Under a pro rata allocation formula, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year (or other applicable period) bears to the total Compensation of all Participants for the Plan Year (or other applicable period).

(2) Permitted disparity allocation formula. The Employer in its Adoption Agreement may elect a two-tiered or a four-tiered permitted disparity formula, providing allocations described in (a) or (b) below, respectively. The Employer also may elect a two-tiered permitted disparity formula which changes to four-tiered in any Plan Year in which the Plan is top-heavy.

(a) Two-tiered.

(i) Tier one. Under the first tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation (as the Employer defines that term in its Adoption Agreement) for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this first tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (5.7%, 5.4%, or 4.3%) listed under Section 3.04(B)(2)(c).

(ii) Tier two. Under the second tier, the Plan Administrator will allocate any remaining Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(b) Four-tiered.

(i) Tier one. Under the first tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Compensation. Solely for purposes of this first tier allocation, a "Participant" means, in addition to any Participant who satisfies the allocation conditions of Section 3.06 for the Plan Year, any other Participant entitled to a Top-Heavy Minimum Allocation.

(ii) Tier two. Under the second tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Excess Compensation (as the Employer defines that term in its Adoption Agreement) for the Plan Year bears to the total Excess Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Excess Compensation.

(iii) Tier three. Under the third tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this third tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (2.7%, 2.4%, or 1.3%) listed under Section 3.04(B)(2)(c).

(iv) Tier four. Under the fourth tier, the Plan Administrator will allocate any remaining Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(c) Maximum disparity table. For purposes of the permitted disparity allocation formulas under this Section 3.04(B)(2), the applicable percentage is:

Integration level % of taxable wage base	Applicable % for 2-tiered formula	Applicable % for for 4-tiered formula
100%	5.7%	2.7%
More than 80% but less than 100%	5.4%	2.4%
More than 20% (but not less than $10,001) and not more than 80%	4.3%	1.3%
20% (or $10,000, if greater) or less	5.7%	2.7%

For this purpose, the Taxable Wage Base is the contribution and benefit base under Section 230 of the Social Security Act in effect at the beginning of the Plan Year. The integration level is the uniform amount specified in the Employer's Adoption Agreement.

(d) Overall permitted disparity limits.

(i) Annual overall permitted disparity limit. Notwithstanding Sections 3.04(B)(2)(a) and (b), for any Plan Year the Plan benefits any Participant who benefits under another qualified plan or under a simplified employee pension plan (as defined in Code §408(k)) maintained by the Employer that provides for permitted disparity (or imputes disparity), the Plan Administrator will allocate Employer Contributions to the Account of each Participant in the same ratio that each Participant's Compensation bears to the total Compensation of all Participants for the Plan Year.

(ii) Cumulative permitted disparity limit. Effective for Plan Years beginning after December 31, 1994, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. "Total cumulative permitted disparity years" means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, the Plan Administrator will treat all years ending in the same calendar year as the same year. If the Participant has not benefited under a Defined Benefit Plan or under a target benefit plan of the Employer for any year beginning after December 31, 1993, the Participant does not have a cumulative permitted disparity limit.

For purposes of this Section 3.04(B)(2)(d), a Participant "benefits" under a plan for any Plan Year during which the Participant receives, or is deemed to receive, a contribution allocation in accordance with Treas. Reg. §1.410(b)-3(a).

(e) Pro-ration of integration level. In the event that the Plan Year is less than 12 months and the Plan Administrator will allocate the Employer Contribution based on Compensation for the short Plan Year, the Plan Administrator will pro rate the integration level based on the number of months in the short Plan Year. The Plan Administrator will not pro rate the integration level in the case of: (i) a Participant who participates in the Plan for less than the entire 12 month Plan Year and whose allocation is based on Participating Compensation; (ii) a new Plan established mid-Plan Year, but with an Effective Date which is as of the beginning of the Plan Year; or (iii) a terminating Plan which bases allocations on Compensation through the effective date of the termination, but where the Plan Year continues for the balance of the full 12 month Plan Year.

(3) Classifications allocation formula. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to specify classifications of Participants to whom the Plan Administrator will allocate any Employer Contribution.

(a) Classifications. The Employer may elect to specify any number of classifications and a classification may consist of any number of Participants. The Employer also may elect to put each Participant in his/her own classification.

(b) Allocation of contribution within classifications. The Plan Administrator will apportion the Employer Contribution for a Plan Year to the classifications as the Employer designates in writing at the time that the Employer makes the contribution. If there is more than one Participant in a classification, the Plan Administrator will allocate the Employer Contribution for the Plan Year within each classification as the Employer elects in its Adoption Agreement which may be: (i) in the same ratio that each Participant's Compensation for the Plan Year bears to the total Plan Year Compensation for all Participants within the same classification (pro rata); or (ii) the same dollar amount to each Participant within a classification.

(c) Shifting classifications within the Plan Year. If a Participant during a Plan Year shifts from one classification to another, the Plan Administrator will apportion the Participant's allocation for each classification pro rata based on the Participant's Compensation for the part of the Plan Year the Participant was a member of the classification, unless the Employer in Appendix B: (i) specifies apportionment based on the number of months or days a Participant spends in a classification; or (ii) elects that the Employer in a nondiscriminatory manner will direct the Plan Administrator as to which classification the Participant will participate in during that entire Plan Year.

(4) Super-integrated allocation formula. The Employer in its Volume Submitter Plan may elect a super-integrated allocation formula. The Plan Administrator will allocate the Employer Contribution for the Plan Year in accordance with the tiers of priority that the Employer elects in its Adoption Agreement. The Plan Administrator will not allocate to the tier with the next lower priority until the Employer has contributed an amount sufficient to maximize the allocation under the immediately preceding tier.

(5) Age-based allocation formula. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect an age-based allocation formula. The Plan Administrator will allocate the Employer Contribution for the Plan Year in the same ratio that each Participant's Benefit Factor for the Plan Year bears to the sum of the Benefit Factors of all Participants for the Plan Year. As such, the total employer contribution will be allocated to each Participant sharing in the allocation such that the equivalent benefit accrual rate for each such Participant is identical.

(a) Definition of Benefit Factor. A Participant's Benefit Factor is his/her Compensation for the Plan Year multiplied by the Participant's Actuarial Factor.

(b) Definition of Actuarial Factor. A Participant's Actuarial Factor is the factor that the Plan Administrator establishes based on the interest rate and mortality table the Employer elects in its Adoption Agreement. If the Employer elects to use the UP-1984 table, a Participant's Actuarial Factor is the factor in Table I of Appendix D to the Adoption Agreement or is the product of the factors in Tables I and II of Appendix D to the Adoption Agreement if the Plan's Normal Retirement Age is not age 65. If the Employer in its Adoption Agreement elects to use a table other than the UP-1984 table, the Plan Administrator will determine a Participant's Actuarial Factor in accordance with the designated table (which the Employer will attach to the Adoption Agreement as a substituted Appendix D) and the Adoption Agreement elected interest rate.

(6) Uniform points allocation formula. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect a uniform points allocation formula. The Plan Administrator will allocate any Employer Contribution for a Plan Year in the same ratio that each Participant's points bear to the total points of all

Participants for the Plan Year. The Plan Administrator determines a Participant's points in accordance with the Employer's Adoption Agreement elections under which the Employer will elect to define points based on Years of Service, Compensation and/or age.

(7) Incorporation of fixed or Prevailing Wage Contribution formula. The Employer in its Adoption Agreement may elect to allocate Employer Contributions in accordance with the Plan's fixed Employer Contribution formula. In such event, the Plan Administrator will allocate the Employer Contributions for a Plan Year in accordance with the Fixed Nonelective or other Employer Contribution formula or in accordance with the Prevailing Wage Contribution formula the Employer has elected under Sections 3.04(A)(2) or (3).

(8) Money Purchase allocation formula. The Plan Administrator will allocate the Employer Contributions for a Plan Year to its Money Purchase Pension Plan as provided in the Employer's Adoption Agreement.

(C) QNEC. The provisions of this Section 3.04(C) apply to QNEC contributions.

(1) Plan-Designated QNEC. The Employer in its 401(k) Plan Adoption Agreement will elect whether or not to treat some or all Nonelective Contributions as a QNEC ("Plan-Designated QNEC"). If the Employer elects any Plan-Designated QNECs, the Employer in its Adoption Agreement will elect whether to allocate a Plan-Designated QNEC to all Participants or only to NHCE Participants and the Employer in its Adoption Agreement also must elect a QNEC allocation method as follows: (a) pro rata in relation to Compensation; (b) in the same dollar amount without regard to Compensation (flat dollar); (c) under the reverse allocation method; or (d) under any other method subject to the testing limitations of Section 3.04(C)(5). The Plan Administrator will allocate a QNEC under this Section 3.04(C)(1) only to those Participants who have satisfied eligibility conditions under Article II to receive Nonelective Contributions (or if applicable, to QNECs) and who have satisfied any allocation conditions under Section 3.06 the Employer has elected in the Adoption Agreement as applicable to QNECs.

(2) Operational QNEC. The Employer, to facilitate the Plan Administrator's correction of test failures under Section 4.10, (or to lessen the degree of such failures), but only if the Plan is using Current Year Testing, also may make Discretionary Nonelective Contributions as QNECs to the Plan ("Operational QNEC"), irrespective of whether the Employer in its Adoption Agreement has elected to provide for any Nonelective Contributions or Plan-Designated QNECs. The Plan Administrator, in its discretion, will allocate the Operational QNEC, but will limit the allocation of any Operational QNEC only to some or all NHCE Participants who are ADP Participants or ACP Participants under Sections 4.11(A) and (B). The Plan Administrator operationally must elect whether to allocate an Operational QNEC to NHCE ADP Participants: (a) pro rata in relation to Compensation; (b) in the same dollar amount without regard to Compensation (flat dollar); (c) under the reverse allocation method; or (d) under any other method; provided, that any QNEC allocation is subject to the limitations of Section 3.04(C)(5). The Plan Administrator may allocate an Operational QNEC to any NHCE ADP or ACP Participants even if such Participants have not satisfied any eligibility conditions under Article II applicable to Nonelective Contributions (including QNECs) or have not satisfied any allocation conditions under Section 3.06 applicable to Nonelective Contributions (or to QNECs). Where the Plan Administrator disaggregates the Plan for coverage and for nondiscrimination testing under the "otherwise excludible employees" rule described in Section 4.06(C), the Plan Administrator also may limit the QNEC allocation to those NHCEs in any disaggregated "plan" which actually is subject to ADP and ACP testing (because there are HCEs in that disaggregated plan), The Employer may designate all or any part of its Prevailing Wage Contribution as a QNEC, provided that the Prevailing Wage Contribution qualifies as a QNEC.

(3) Reverse QNEC allocation. Under the reverse QNEC allocation method, the Plan Administrator (subject to Section 3.06 if applicable), will allocate a QNEC first to the NHCE Participant(s) with the lowest Compensation for the Plan Year in an amount not exceeding the Annual Additions Limit for each Participant, with any remaining amounts allocated to the next highest paid NHCE Participant(s) not exceeding his/her Annual Additions Limit and continuing in this manner until the Plan Administrator has fully allocated the QNEC.

(4) Separate Account. The Plan Administrator will establish a separate QNEC Account for each Participant who receives an allocation of QNECs in accordance with Section 7.04(A)(1).

(5) Anti-conditioning and targeting. The Employer in its Adoption Agreement and the Plan Administrator in operation may not condition the allocation of any QNEC under this Section 3.04(C), on whether a Participant has made Elective Deferrals. The nondiscrimination testing of QNECs also is subject to the targeting limitations of Section 4.10(D). The Employer will not make an Operational QNEC in an amount which exceeds the targeting limitations.

(6) Standardized Plan limitation. The Employer in its Standardized Plan may not elect a reverse QNEC allocation method or any similar QNEC allocation method even if such allocation would comply with Section 3.04(C)(5).

(D) Qualified Replacement Plan. The Employer may establish or maintain this Plan as a qualified replacement plan as described in Code §4980 under which the Plan may receive a Transfer from a terminating qualified plan the Employer also maintains. The Plan Administrator will credit the transferred amounts to a suspense account under the Plan and thereafter the Plan Administrator will allocate the transferred amounts under this Section 3.04(D) in the same manner as the Plan Administrator allocates Employer Nonelective Contributions.

3.05 SAFE HARBOR 401(k) CONTRIBUTIONS. The Employer in its 401(k) Plan Adoption Agreement may elect to apply to its Plan the safe harbor provisions of this Section 3.05.

(A) Prior Election and Notice/12 Month Plan Year. Except as otherwise provided in this Plan an Employer: (i) prior to beginning of the Plan Year to which the safe harbor provisions apply, must elect the safe harbor plan provisions of this Section 3.05; (ii) prior to the beginning of the Plan Year to which the safe harbor provisions apply, must satisfy the applicable notice requirements; and (iii) must apply the safe harbor provisions for the entire 12 month safe harbor Plan Year.

(1) Short Plan Year. An Employer's Plan may be a Safe Harbor 401(k) Plan in a short Plan Year: (a) as provided in Sections 3.05(I)(3) or (5), relating to the initial safe harbor Plan Year; (b) if the Employer creates a short Plan Year by changing its Plan Year, provided that the Employer maintains the Plan as a Safe Harbor 401(k) Plan in the Plan Years both before and after the short Plan Year as described in Treas. Reg. §1.401(k)-3(e)(3); or (c) if the short Plan Year is the result of the Employer's termination of the Plan under Section 3.05(I)(6).

(B) Effect/Remaining Terms/Testing Status. The provisions of this Section 3.05 apply to an electing Employer notwithstanding any contrary provision of the Plan and all other remaining Plan terms continue to apply to the Employer's Safe Harbor 401(k) Plan. An Employer which elects and operationally satisfies the safe harbor provisions of this Section 3.05 is not subject to the nondiscrimination provisions of Section 4.10(B) (ADP test). An electing Employer which provides for an Enhanced Matching Contribution under Section 3.05(E)(6) or for Additional Matching Contributions under Section 3.05(F) is subject to the nondiscrimination provisions of Section 4.10(C) (ACP test), unless the Employer elects in its Adoption Agreement to apply the ACP test safe harbor described in Section 3.05(G). If the Plan is a Safe Harbor 401(k) Plan, for purposes of testing in future (non-safe harbor) Plan Years, the Plan in the safe harbor Plan Year is deemed to be using Current Year Testing as to the ADP test and is deemed to be using Current Year Testing for the ACP test if the Plan in the safe harbor Plan Year satisfies the ACP test safe harbor. If a Safe Harbor 401(k) Plan is subject to Sections 3.05(I)(1) or (2), the Plan in such Plan Year is deemed to be using Current Year Testing for both the ADP and ACP tests.

(C) Compensation for Allocation. In allocating Safe Harbor Contributions and Additional Matching Contributions that satisfy the ACP test safe harbor under Section 3.05(G) and for Elective Deferral allocation under this Section 3.05, the following provisions apply:

(1) Safe Harbor and Additional Matching allocation. For purposes of allocating the Employer's Safe Harbor Contributions and ACP test safe harbor Additional Matching Contributions, if any, Compensation is limited as described in Section 1.11(E) and Employer must elect under its Adoption Agreement a nondiscriminatory definition of Compensation as described in Section 1.11(F). The Employer in its Adoption Agreement may not elect to limit NHCE Compensation to a specified dollar amount, except as required under Section 1.11(E).

(2) Deferral allocation. An Employer in its Adoption Agreement may elect to limit the type of Compensation from which a Participant may make an Elective Deferral to any reasonable definition. The Employer in its Adoption Agreement also may elect to limit the amount of a Participant's Elective Deferrals to a whole percentage of Compensation or to a whole dollar amount, provided each Eligible NHCE Participant may make Elective Deferrals in an amount sufficient to receive the maximum Matching Contribution, if any, available under the Plan and may defer any lesser amount. However, a Participant may not make Elective Deferrals in the event that the Participant is suspended from doing so under Section 6.07(A)(2), relating to hardship distributions or to the extent that the allocation would exceed a Participant's Annual Additions Limit in Section 4.05(B) or the maximum Deferral Limit in Section 4.10(A). If the Plan permits Roth Deferrals in addition to Pre-Tax Deferrals, Elective Deferrals for purposes of Section 3.05 includes both Roth Deferrals and Pre-Tax Deferrals.

(D) "Early" Elective Deferrals/Delay of Safe Harbor Contribution. If the Employer in its Adoption Agreement elects any age and service eligibility requirements for Elective Deferrals that are less than age 21 and one Year of Service (with one Year of Service being defined as completion of 1,000 Hours of Service during the relevant Eligibility Computation Period), the Employer in its Adoption Agreement may elect to apply the OEE rule described in Section 4.06(C) to the Safe Harbor Contributions. If the Employer so elects, then (1) Only those Participants who are Includible Employees will receive the Safe Harbor Contributions; (2) the disaggregated plan which covers the Includible Employees is a Safe Harbor 401(k) Plan under this Section 3.05; (3) the Plan Administrator will perform the ADP (and ACP) tests as necessary for the disaggregated plan which covers the Otherwise Excludible Employees, as provided in Section 4.06(B)(1). If the Employer in its Adoption Agreement has elected "Participating Compensation" for allocating Nonelective Contributions or Matching Contributions (as applicable), the Plan Administrator, in allocating the Safe Harbor Contribution for the Plan Year in which a Participant crosses over to the Includible Employees group, will count Compensation and Elective Deferrals only on and following the Cross-Over Date. See Section 4.06(C) for the definitions of "OEE rule," "Includible Employees," "Otherwise Excludible Employees," and "Cross-Over Date." Nothing in this Section 3.05(D) affects the obligation of the Employer under Article X in the event that the Plan is top-heavy, to provide a Top-Heavy Minimum Allocation for Non-Key Employee Participants. Under this Section 3.05(D), eligibility for Additional Matching Contributions and for Nonelective Contributions which are not Safe Harbor Nonelective Contributions is controlled by the Employer's Adoption Agreement elections and is not necessarily limited to age 21 and one Year of Service as is the case for Safe Harbor Contributions. However, as to ACP test safe harbor treatment for Additional Matching Contributions, see Section 3.05(F)(2).

(E) Safe Harbor Contributions/ADP Test Safe Harbor. An Employer which elects under this Section 3.05(E) to apply the safe harbor provisions, must satisfy the ADP test safe harbor contribution requirement under either Code §401(k)(12) or Code §401(k)(13) by making a Safe Harbor Contribution to the Plan. Except as otherwise provided in this Section 3.05, the Employer must make its Safe Harbor Contributions (and any Additional Matching Contributions which will satisfy the ACP test safe harbor), no later than twelve months after the end of the Plan Year to which such contributions are allocated. If the Employer satisfies this Section 3.05(E) and the remaining applicable provisions of Section 3.05, Elective Deferrals are not subject to nondiscrimination testing under Section 4.10(B) (ADP test). The Employer in its Adoption Agreement may elect to apply forfeitures toward satisfaction of the Employer's required Safe Harbor Contribution.

(1) Definition of Safe Harbor Contribution. A Safe Harbor Contribution is a Safe Harbor Nonelective Contribution or a Safe Harbor Matching Contribution as the Employer elects in its Adoption Agreement and includes a QACA Safe Harbor Contribution.

(2) Definition of Safe Harbor Nonelective Contribution. A Safe Harbor Nonelective Contribution is a Fixed Nonelective Contribution in an amount the Employer elects in its Adoption Agreement, which must equal at least 3% of each Participant's Compensation unless the Employer elects to limit Safe Harbor Nonelective Contributions to NHCEs under Section 3.05(E)(9) or unless Section 3.05(D) applies. A Safe Harbor Nonelective Contribution is a QNEC, except that the Employer in its Adoption Agreement may elect to apply a QACA vesting schedule to a Safe Harbor Nonelective Contribution the Employer makes to a QACA.

(3) Definition of Safe Harbor Matching Contribution. A Safe Harbor Matching Contribution is a Basic Matching Contribution, a QACA Basic Matching Contribution, or an Enhanced Matching Contribution. Under a Safe Harbor Matching Contribution an HCE may not receive a greater rate of match at any level of Elective Deferrals than any NHCE. A Safe Harbor Matching Contribution is a QMAC, except that the Employer in its Adoption Agreement may elect to apply a QACA vesting schedule to a QACA Basic Matching Contribution or to an Enhanced Matching Contribution the Employer makes to a QACA.

(4) Definition of Basic Matching Contribution. A Basic Matching Contribution is a Fixed Matching Contribution equal to 100% of a Participant's Elective Deferrals which do not exceed 3% of Compensation, plus 50% of Elective Deferrals which exceed 3%, but do not exceed 5% of Compensation.

(5) Definition of QACA Basic Matching Contribution. A QACA Basic Matching Contribution is a Fixed Matching Contribution equal to 100% of a Participant's Elective Deferrals which do not exceed 1% of Compensation, plus 50% of Elective Deferrals which exceed 1%, but do not exceed 6% of Compensation.

(6) Definition of Enhanced Matching Contribution. An Enhanced Matching Contribution is a Fixed Matching Contribution made in accordance with any formula the Employer elects in its Adoption Agreement under which: (a) at any rate of Elective Deferrals, a Participant receives a Matching Contribution which is at least equal to the match the Participant would receive under the Basic Matching Contribution formula or under the QACA Basic Matching Contribution formula, as applicable; and (b) the rate of match does not increase as the rate of Elective Deferrals increases.

(7) Time period for computing/contributing Safe Harbor Matching Contribution.

(a) Computation. The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's Safe Harbor Matching Contributions. If the Employer fails to so elect, the Employer is deemed to have elected to compute its Safe Harbor Matching Contribution based on the Plan Year.

(b) Contribution deadline. If the Employer elects to compute its Safe Harbor Matching Contribution based on a time period which is less than the Plan Year, the Employer must contribute the Safe Harbor Matching Contributions to the Plan no later than the end of the Plan Year quarter which follows the quarter in which the Elective Deferral that gave rise to the Safe Harbor Matching Contribution was made. If the Employer fails to contribute by the foregoing deadline, the Employer will correct the operational failure by contributing the Safe Harbor Matching Contribution as soon as is possible and also will contribute Earnings on the Contribution. See Section 7.08. If the time period for computing the Safe Harbor Matching Contribution is the Plan Year, the Employer must contribute the Safe Harbor Matching Contribution to the Plan no later than twelve months after the end of the Plan Year to which the Safe Harbor Contribution is allocated.

(8) No allocation conditions. The Plan Administrator must allocate the Employer's Safe Harbor Contribution without regard to the Section 3.06 allocation conditions, if any, the Employer has elected as to non-Safe Harbor Contributions.

(9) NHCEs must receive allocation; further election of allocation group. Subject to Section 3.05(D), the Plan Administrator must allocate the Safe Harbor Contribution to NHCE Participants, which for purposes of Section 3.05 means NHCEs who are eligible to make Elective Deferrals. The Employer in its Adoption Agreement, must elect whether to allocate Safe Harbor Contributions: (a) to all Participants; (b) only to NHCE Participants; or (c) to NHCE Participants and to designated HCE Participants. The Employer in its Adoption Agreement also may elect to exclude Collective Bargaining Employees from the allocation of Safe Harbor Contributions.

(10) 100% vesting/distribution restrictions. A Participant's Account Balance attributable to Safe Harbor Contributions: (a) at all times is 100% Vested, unless the Employer maintains a QACA and elects in its Adoption Agreement to apply a QACA vesting schedule; and (b) is subject to the distribution restrictions described in Section 6.01(C)(4)(b).

(11) Possible application of ACP test. If the Plan's sole Matching Contribution is a Basic Matching Contribution or a QACA Basic Matching Contribution, the Basic Matching Contribution or QACA Basic Matching Contribution is not subject to nondiscrimination testing under Section 4.10(C) (ACP test). The Employer in its Adoption Agreement must elect whether to satisfy the ACP test safe harbor amount limitations under Section 3.05(G) with respect to the Employer's Enhanced Matching Contributions or to test its Enhanced Matching Contributions under Section 4.10(C) (ACP test). The Employer in its Adoption Agreement may elect to test Enhanced Matching Contributions using Current Year Testing or Prior Year Testing.

(12) Application to other allocations/testing. Except as the Employer otherwise elects in Appendix B and as described below as to permitted disparity, any Safe Harbor Nonelective Contributions will be applied toward (offset) any other allocation to a Participant of a non-Safe Harbor Nonelective Contribution. An Employer electing to apply the general nondiscrimination test under Section 4.06(C), may include Safe Harbor Nonelective Contributions in applying the general test. An Employer which has elected in its Adoption Agreement to apply permitted disparity in allocating the Employer's Nonelective Contributions made in addition to Safe Harbor Nonelective Contributions may not include within the permitted disparity formula allocation any of the Employer's Safe Harbor Nonelective Contributions.

(13) Contribution to another plan. An Employer in its Adoption Agreement may elect to make the Safe Harbor

Contribution to another Defined Contribution Plan the Employer maintains provided: (a) this Plan and the other plan have the same Plan Years; (b) each Participant eligible for Safe Harbor Contributions under this Plan is eligible to participate in the other plan; and (c) the other plan provides that 100% vesting and the distribution restrictions under Section 6.01(C)(4)(b) apply to the Safe Harbor Contribution Account maintained within the other plan. An Employer cannot apply any Safe Harbor Contributions to satisfy the 401(k) safe harbor requirements in more than one plan.

(F) Additional Matching Contributions. The Employer in its Adoption Agreement may elect to make Additional Matching Contributions to its safe harbor Plan under this Section 3.05(F).

(1) Definition of Additional Matching Contributions. Additional Matching Contributions are Fixed or Discretionary Matching Contributions ("Fixed Additional Matching Contributions" or "Discretionary Additional Matching Contributions") the Employer makes to its Safe Harbor 401(k) Plan (including a Safe Harbor 401(k) Plan the Employer elected into during the Plan Year under Section 3.05(I)(1)) and are not Safe Harbor Matching Contributions. Additional Matching Contributions are in addition to whatever type of Safe Harbor Contributions the Employer makes to satisfy the ADP test safe harbor under Section 3.05(E). If the Employer under Section 3.05(I)(1) does not elect into the safe harbor as of a Plan Year, any Matching Contributions for that Plan Year are not Additional Matching Contributions and as such cannot qualify for the ACP test safe harbor.

(2) Safe harbor or testing. The Employer in its Adoption Agreement must elect whether to subject the Additional Matching Contributions to the ACP test safe harbor requirements of Section 3.05(G), or for the Plan Administrator to test the Additional Matching Contributions (and any Safe Harbor Matching Contribution) for nondiscrimination under Section 4.10(C) (ACP test). The Employer in its Adoption Agreement may elect to test Additional Matching Contributions (and any Safe Harbor Matching Contribution) using Current Year Testing or Prior Year Testing. See Section 3.05(I)(1)(a) with regard to ACP testing Matching Contributions in connection with the maybe notice.

(3) Eligibility, vesting, allocation conditions and distributions. The Employer must elect in its Adoption Agreement the eligibility conditions, vesting schedule, allocation conditions and distribution provisions applicable to the Employer's Additional Matching Contributions. To satisfy the ACP test safe harbor under Section 3.05(G), any allocation conditions the Employer otherwise elects in its Adoption Agreement do not apply to Additional Matching Contributions. However, regardless of whether the Employer elects to treat the Additional Matching Contributions as being subject to the ACP test safe harbor, the Employer may elect: (a) to apply a vesting schedule to the Additional Matching Contributions; and (b) to treat the Additional Matching Contributions Account as not subject to the distribution restrictions under Section 6.01(C)(4)(b). If the Employer wishes to apply the ACP test safe harbor to Additional Matching Contributions, the Employer must not elect eligibility conditions applicable to the Additional Matching Contribution which exceed age 21 and one Year of Service and the Employer must elect eligibility conditions which are the same as it elects for the Safe Harbor Contribution.

(4) Time period for computing/contributing Additional Matching Contributions.

(a) Computation. The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's Additional Matching Contributions. If the Employer fails to so elect, the Employer is deemed to have elected to compute its Additional Matching Contribution based on the Plan Year.

(b) Contribution deadline. This Section 3.05(F)(4)(b) applies if the Employer in its Adoption Agreement elects to apply the ACP test safe harbor under Section 3.05(G) to its Additional Matching Contributions. If the Employer elects to compute its Additional Matching Contribution based on a time period which is less than the Plan Year, the Employer must contribute the Additional Matching Contributions to the Plan no later than the end of the Plan Year quarter which follows the quarter in which the Elective Deferral that gave rise to the Additional Matching Contribution was made. If the Employer fails to contribute by the foregoing deadline, the Employer will correct the operational failure by contributing the Additional Matching Contribution as soon as is possible and will also contribute Earnings on the Contribution. See Section 7.08. If the Employer elects to apply the ACP test safe harbor and elects the Plan Year as the time period for computing the Additional Matching Contribution, the Employer must contribute the Additional Matching Contribution to the Plan no later than twelve months after the end of the Plan Year to which the Additional Matching Contribution is allocated.

(G) ACP test safe harbor. The Employer in its Adoption Agreement will elect whether (i) to apply the amount limitations under this Section 3.05(G) in order to comply with the ACP test safe harbor as described in this Section 3.05(G); or (ii) the Plan Administrator must test all Matching Contributions under the ACP test unless the Plan's only Matching Contribution is a Basic Matching Contribution or a QACA Basic Matching Contribution. If the Employer elects to test, the Employer also will elect whether to perform the ACP test using Current Year or Prior Year Testing.

(1) Amount limitations. Under the ACP test safe harbor: (a) the Employer may not make Matching Contributions as to a Participant's Elective Deferrals which exceed 6% of the Participant's Plan Year Compensation; (b) the amount of any Discretionary Additional Matching Contribution allocated to any Participant may not exceed 4% of the Participant's Plan Year Compensation; (c) the rate of Matching Contributions may not increase as the rate of Elective Deferrals increases; and (d) an HCE may not receive a rate of match greater than any NHCE (taking into account HCE aggregation under Section 4.10(C)(6)).

(2) No partial ACP test safe harbor. If the Employer's Plan has more than one Matching Contribution formula, each Matching Contribution formula must satisfy the ACP test safe harbor or the Plan Administrator must test all of the Employer's Matching Contributions together under Section 4.10(C) (ACP test).

(3) Employee Contributions. If the Employer in its Adoption Agreement has elected to permit Employee Contributions under the Plan: (a) any Employee Contributions do not satisfy the ACP test safe harbor and the Plan

Administrator must test the Employee Contributions under Section 4.10(C) (ACP test) using Current Year Testing unless the Employer elects in its Adoption Agreement to apply Prior Year Testing; and (b) if the Employer in its Adoption Agreement elects to match the Employee Contributions, the Plan Administrator in applying the 6% amount limit in Section 3.05(G)(1) must aggregate a Participant's Elective Deferrals and Employee Contributions which are subject to the 6% limit.

(H) Safe Harbor Notice. The Plan Administrator must provide a safe harbor notice to each Participant a reasonable period prior to each Plan Year for which the Employer in its Adoption Agreement has elected to apply the safe harbor provisions.

(1) Deemed reasonable notice. The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the safe harbor notice at least 30 days and not more than 90 days prior to the beginning of the safe harbor Plan Year.

(2) Mid-year notice/new Participant or Plan. If: (a) an Employee becomes eligible to participate in the Plan during a safe harbor Plan Year, but after the Plan Administrator has provided the annual safe harbor notice for that Plan Year; (b) the Employer adopts mid-year a new Safe Harbor 401(k) Plan; or (c) the Employer amends mid-year its existing Profit Sharing Plan to add a 401(k) feature and also elects safe harbor status, the Plan Administrator must provide the safe harbor notice a reasonable period (with 90 days being deemed reasonable) prior to and no later than the Employee's Entry Date. However, if it is not practicable for the Plan Administrator to provide the notice on or before the date an Employee becomes a Participant, then the Plan nonetheless will treat the notice as provided timely if the Plan Administrator provides the notice as soon as practicable after that date and the Participant is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(3) Content. The safe harbor notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant. The Plan Administrator's notice must satisfy the content requirements of Treas. Reg. §1.401(k)-3(d).

(4) Election following notice. A Participant may make or modify a Salary Reduction Agreement under the Employer's Safe Harbor 401(k) Plan for 30 days following receipt of the safe harbor notice, or if greater, for the period the Plan Administrator specifies in the Salary Reduction Agreement.

(5) Additional QACA notice requirements. If the Plan is a QACA, in addition to the other requirements of this Section 3.05(H), the Employer must provide the initial QACA safe harbor notice sufficiently early so that a Participant has a reasonable period after receiving the notice and before the first Automatic Deferral (see Section 3.02(B)(3)(a)(i)) to make a Contrary Election and, as applicable, to make an election as to the investment of his/her Account. In addition, the notice will state: (a) the Automatic Deferral Percentage that will apply in absence of the Participant's Contrary Election; (b) the Participant's right under a Contrary Election to elect not to have any Automatic Deferral made on the Participant's behalf or to elect to make Elective Deferrals in a different amount or percentage of Compensation; and (c) how the Plan will invest the Automatic Deferrals in the event that the Plan permits Participant-Directed Accounts, and the Participant does not make an investment election.

(I) Mid-Year Changes in Safe Harbor Status.

(1) Contingent ("maybe") notice and supplemental notice-delayed election of Safe Harbor Nonelective Contributions. The Employer during any Plan Year may elect for its Plan to become a Safe Harbor 401(k) Plan under this Section 3.05(I)(1) for that Plan Year, provided: (i) the Plan is using Current Year Testing; (ii) the Employer elects to satisfy the Safe Harbor Contribution requirement using the Safe Harbor Nonelective Contribution; (iii) the Employer amends the Plan to add such Safe Harbor Contribution not later than 30 days prior to the end of the Plan Year, computed with regard to the entire Plan Year; and (iv) the Plan Administrator provides a notice ("maybe notice") to Participants prior to the beginning of the Plan Year for which the safe harbor amendment may become effective, that the Employer later may elect to become a Safe Harbor 401(k) Plan for that Plan Year using the Safe Harbor Nonelective Contribution and that if the Employer does so, the Plan Administrator will provide a supplemental notice to Participants at least 30 days prior to the end of that Plan Year informing Participants of the Employer's election to provide the Safe Harbor Nonelective Contribution for that Plan Year. The Employer elects into the safe harbor by timely giving the supplemental notice and by amending the Plan as described above and thereby elects not to be subject to the ADP test, regardless of the Employer's Adoption Agreement Elections. Except as otherwise specified, the Participant notices described in this Section 3.05(I)(1) also must satisfy the requirements applicable to safe harbor notices under Section 3.05(H).

(a) Effect on Additional Matching Contributions. If the Employer gives a maybe notice under this Section 3.05(I)(1), and then gives the supplemental notice electing into the ADP test safe harbor for the Plan Year, any Additional Matching Contribution the Employer elects in its Adoption Agreement will be subject to the ACP test safe harbor regardless of the Employer's Adoption Agreement Elections, unless one or more Matching Contributions, as described in the Adoption Agreement, fails to satisfy the limitations of Sections 3.05(G)(1) and (2). If the Employer does not give a supplemental notice, or any Matching Contribution fails to satisfy such limitations, any Matching Contributions are not Additional Matching Contributions in that Plan Year and the Plan Administrator will test all such Matching Contributions under Section 4.10(C) (ACP test) using Current Year Testing.

(2) Exiting Safe Harbor Contributions. The Employer may amend its Safe Harbor 401(k) Plan during a Plan Year to reduce or eliminate prospectively, any or all Safe Harbor Matching Contributions or Additional Matching Contributions, or Safe Harbor Nonelective Contributions, provided: (a) the Plan Administrator provides a notice to the Participants which explains the effect of the amendment, specifies the amendment's Effective Date and informs Participants they will have a reasonable opportunity to modify their Salary Reduction Agreements, and if applicable, Employee Contributions; (b) Participants have a reasonable opportunity and period prior to the Effective Date of the amendment to modify their Salary Reduction Agreements, and if applicable, Employee Contributions; (c) the amendment is not effective earlier than the later of: (i) 30 days after the Plan Administrator gives notice of the amendment; or (ii) the date the Employer adopts the

amendment and (d) the employer otherwise complies with Treas. Reg. 1.401(k)-3(g) and, if applicable, Treas. Reg. §1.401(m)-3(h). An Employer which amends its Safe Harbor 401(k) Plan to eliminate or reduce any Matching Contribution or the Nonelective Contribution under this Section 3.05(I)(2), effective during the Plan Year, must continue to apply all of the safe harbor requirements of this Section 3.05 until the amendment becomes effective and also must apply for the entire Plan Year, using Current Year Testing, the nondiscrimination test under Section 4.10(B) (ADP test) and the nondiscrimination test under Section 4.10(C) (ACP test). However, any Employer which eliminates only an Additional Matching Contribution does not need to test under the ADP test provided that the Plan still satisfies the ADP test safe harbor.

(3) Amendment of non-401(k) Plan into safe harbor status. An Employer maintaining a Profit Sharing Plan or pre-ERISA Money Purchase Pension Plan, during a Plan Year, may amend prospectively its Plan to become a Safe Harbor 401(k) Plan provided: (a) the Employer's Plan is not a Successor Plan; (b) the Participants may make Elective Deferrals for at least 3 months during the Plan Year; (c) the Plan Administrator provides the safe harbor notice described in Section 3.05(H) a reasonable time prior to and not later than the Effective Date of the 401(k) arrangement; and (d) the Plan commencing on the Effective Date of the amendment (or such earlier date as the Employer will specify in its Adoption Agreement), satisfies all of the safe harbor requirements of this Section 3.05.

(4) Amendment to add Roth Deferrals or Beneficiary Hardship Distributions. The Employer during any Plan Year may amend its Safe Harbor 401(k) Plan to: (a) permit Participants to make Roth Deferrals, as defined in Section 1.21(B), and subject to Section 3.02(E) and other Plan provisions as applicable; or (b) to add a Beneficiary hardship distribution provision under Section 6.07(H).

(5) New Plan/new Employer. An Employer (including a new Employer) may establish a new Safe Harbor 401(k) Plan which is not a Successor Plan, provided; (a) the Plan Year is at least 3 months long; (b) the Plan Administrator provides the safe harbor notice described in Section 3.05(H) a reasonable time prior to and not later than the Effective Date of the Plan; and (c) the Plan commencing on the Effective Date of the Plan satisfies all of the safe harbor requirements of this Section 3.05. If the Employer is new, the Plan Year may be less than 3 months provided the Plan is in effect as soon after the Employer is established as it is administratively feasible for the Employer to establish the Plan.

(6) Plan termination. An Employer may terminate its Safe Harbor 401(k) Plan mid-Plan Year in accordance with Article XI and this Section 3.05(I)(6).

(a) Acquisition/disposition or substantial business hardship. If the Employer terminates its Safe Harbor 401(k) Plan resulting in a short Plan Year, and the termination is on account of an acquisition or disposition transaction described in Code §410(b)(6)(C), or if termination is on account the Employer's substantial business hardship, within the meaning of Code §412(c), the Plan remains a Safe Harbor 401(k) Plan for the short Plan Year provided that the Employer satisfies this Section 3.05 through the Effective Date of the Plan termination.

(b) Other termination. If the Employer terminates its Safe Harbor 401(k) Plan for any reason other than as described in Section 3.05(I)(6)(a), and the termination results in a short Plan Year, the Employer must conduct the termination under the provisions of Section 3.05(I)(2), except that the Employer need not provide Participants with the right to change their Salary Reduction Agreements.

(J) Qualified Automatic Contribution Arrangement (QACA). If the Employer under Section 3.02(B)(3) elects in its Adoption Agreement to apply the QACA provisions, this Section 3.05(J) also applies. Except as modified in this Section 3.05(J), the safe harbor provisions of this Section 3.05 apply to the QACA.

(1) QACA Safe Harbor Contributions. The Employer will provide Safe Harbor Contributions as specified in its Adoption Agreement to the Participants specified in the Adoption Agreement. Compensation for purposes of allocating QACA Safe Harbor Contributions means as described in Section 3.05(C)(1).

(2) Vesting and Distributions. A Participant's Account Balance attributable to QACA Safe Harbor Contributions is subject to: (a) vesting as the Employer elects in its Adoption Agreement; and (b) the distribution restrictions under Section 6.01(C)(4)(b) that apply to Safe Harbor Contributions.

3.06 <u>ALLOCATION CONDITIONS</u>. The Employer in its Adoption Agreement will elect the allocation conditions, if any, which the Plan Administrator will apply in allocating Employer Contributions (except for those contributions described below) and in allocating forfeitures allocated as an Employer Contribution under the Plan.

(A) Contributions Not Subject to Allocation Conditions. The Employer may not elect to impose any allocation conditions on: (1) Elective Deferrals; (2) Safe Harbor Contributions; (3) Additional Matching Contributions to which the Employer elects to apply the ACP test safe harbor; (4) Employee Contributions; (5) Rollover Contributions; (6) Designated IRA Contributions; (7) SIMPLE Contributions; or (8) Prevailing Wage Contributions. The Plan Administrator also may elect under Sections 3.03(C)(2) and 3.04(C)(2), not to apply to any Operational QMAC or Operational QNEC any allocation conditions otherwise applicable to Matching Contributions (including QMACs) or to Nonelective Contributions (including QNECs).

(B) Conditions. The Employer in its Adoption Agreement may elect to impose allocation conditions based on Hours of Service or employment at a specified time (or both), in accordance with this Section 3.06(B). The Employer may elect to impose different allocation conditions to different Employer Contribution Types under the Plan. A Participant does not accrue an Employer Contribution or forfeiture allocated as an Employer Contribution with respect to a Plan Year or other applicable period, until the Participant satisfies the allocation conditions for that Employer Contribution Type.

(1) Hours of Service requirement. Except as required to satisfy the Top-Heavy Minimum Allocation, the Plan Administrator will not allocate any portion of an Employer Contribution for a Plan Year to any Participant's Account if the Participant does not complete the applicable minimum Hours of

Service (or consecutive calendar days of employment under the Elapsed Time Method) requirement the Employer specifies in its Adoption Agreement for the relevant period.

(a) 1,000 HOS in Plan Year/other HOS requirement. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to require a Participant to complete: (i) 1,000 Hours of Service during the Plan Year (or to be employed for at least 182 consecutive calendar days under the Elapsed Time Method); (ii) a specified number of Hours of Service during the Plan Year which is less than 1,000 Hours of Service; or (iii) a specified number of Hours of Service within the time period the Employer elects in its Adoption Agreement, but not exceeding 1,000 Hours of Service in a Plan Year.

(b) 501 HOS/terminees. The Employer in its Adoption Agreement may elect to require a Participant to complete during a Plan Year 501 Hours of Service (or to be employed for at least 91 consecutive calendar days under the Elapsed Time Method) to share in the allocation of Employer Contributions for that Plan Year where the Participant is not employed by the Employer on the last day of that Plan Year, including the Plan Year in which the Employer terminates the Plan.

(c) Short Plan Year or allocation period. This Section 3.06(B)(1)(c) applies to any Plan Year or to any other allocation time period under the Adoption Agreement which is less than 12 months, where in either case, the Employer creates a short allocation period on account of a Plan amendment, the termination of the Plan or the adoption of the Plan with an initial short Plan Year. In the case of any short allocation period, the Plan Administrator will prorate any Hour of Service requirement based on the number of days in the short allocation period divided by the number of days in the normal allocation period, using 365 days in the case of Plan Year allocation period. The Employer in Appendix B may elect not to pro-rate Hours of Service in any short allocation period or to apply a monthly pro-ration method.

(2) Last day requirement.

(a) Standardized Plan. If the Plan is a Standardized Plan, a Participant who is employed by the Employer on the last day of a Plan Year will share in the allocation of Employer Contributions for that Plan Year without regard to the Participant's Hours of Service completed during that Plan Year.

(b) Nonstandardized or Volume Submitter Plan. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to require a Participant to be employed by the Employer on the last day of the Plan Year or other specified period or on a specified date. If the Plan is a Nonstandardized or Volume Submitter Money Purchase Pension Plan, the Plan expressly conditions Employer Contribution allocations on a Participant's employment with the Employer on the last day of the Plan Year for the Plan Year in which the Employer terminates or freezes the Plan, even if the Employer in its Adoption Agreement did not elect the "last day of the Plan Year" allocation condition.

(C) Time Period. The Employer in its Adoption Agreement will elect the time period to which the Plan Administrator will apply any allocation condition. The Employer may elect to apply the same time period to all Contribution Types or to elect a different time period based on Contribution Type.

(D) Death, Disability or Retirement Age. The Employer in its Adoption Agreement will elect whether any elected allocation condition applies or is waived for a Plan Year if a Participant incurs a Separation from Service during the Plan Year on account of the Participant's death, Disability or attainment of Normal Retirement Age or Early Retirement Age in the current Plan Year or on account of the Participant's Disability or attainment of Normal Retirement Age or Early Retirement Age in a prior Plan Year. The Employer's election may be based on Contribution Type or may apply to all Contribution Types.

(E) No Other Conditions. In allocating Employer Contributions under the Plan, the Plan Administrator will not apply any other allocation conditions except those the Employer elects in its Adoption Agreement or otherwise as the Plan may require.

(F) Suspension of Allocation Conditions in a Nonstandardized or Volume Submitter Plan. The Employer in its Nonstandardized Plan or Volume Submitter Plan will elect whether to apply the suspension provisions of this Section 3.06(F). If: (i) Section 3.06(F) applies; (ii) the Plan (or any component part of the Plan) in any Plan Year must perform coverage testing; and (iii) the Plan (or component part of the Plan) fails to satisfy coverage under the ratio percentage test under Treas. Reg. §1.410(b)-2(b)(2), the Plan suspends for that Plan Year any Plan (or component part of the Plan) allocation conditions in accordance with this Section 3.06(F). If the Plan Administrator must perform coverage testing, the Administrator will apply testing separately as required to each component part of the Plan after applying the aggregation and disaggregation rules under Treas. Reg. §§1.410(b)-6 and -7.

(1) No average benefit test. If the Employer elects to apply this Section 3.06(F), the Plan Administrator may not apply the average benefit test under Treas. Reg. §1.410(b)-2(b)(3), to determine satisfaction of coverage or to correct a coverage failure, as to the Plan or to the component part of the Plan to which this Section 3.06(F) applies, unless the Plan or component still fails coverage after application of this Section 3.06(F). The restriction in this Section 3.06(F)(1) does not apply as to application of the average benefit test in performing nondiscrimination testing.

(2) Methodology. If this Section 3.06(F) applies for a Plan Year, the Plan Administrator, in the manner described herein, will suspend the allocation conditions for the NHCEs who are included in the coverage test and who are Participants in the Plan (or component part of the Plan) but who are not benefiting thereunder (within the meaning of Treas. Reg. §1.410(b)-3), such that enough additional NHCEs are benefiting under the Plan (or component part of the Plan) to pass coverage under the ratio percentage test. The ordering of suspension of allocation conditions is in the following priority tiers and if more than one NHCE in any priority tier satisfies the conditions for suspension (but all are not needed to benefit to pass coverage), the Plan Administrator will apply the suspension beginning first with the NHCE(s) in that suspension tier with the lowest Compensation during the Plan Year:

(a) Last day. Those NHCE(s) employed by the Employer on the last day of the Plan Year, without regard to the

number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(F)(2)(b).

(b) Latest Separation. Those NHCE(s) who have the latest Separation from Service date during the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(F)(2)(c).

(c) Most Hours of Service (more than 500). Those NHCE(s) with the greatest number of Hours of Service during the Plan Year but who have more than 500 Hours of Service.

(3) Appendix B. The Employer in Appendix B may elect a different order of the suspension tiers, may elect to use Hours of Service (in lieu of Compensation) as a tiebreaker within any tier or may elect additional or other suspension tiers which are objective and not subject to Employer discretion.

(4) Separate Application to Nonelective and Matching. If applicable under the Plan, the Employer in its Adoption Agreement will elect whether to apply this Section 3.06(F): (a) to both Nonelective Contributions and to Matching Contributions if both components fail the ratio percentage test; (b) only to Nonelective Contributions if this component fails the ratio percentage test; or (c) only to Matching Contributions if this component fails the ratio percentage test.

(G) Conditions Apply to Re-Hired Employees. If a Participant incurs a Separation from Service and subsequently is re-hired and resumes participation in the same Plan Year as the Separation from Service or in any subsequent Plan Year, the allocation conditions under this Section 3.06, if any, continue to apply to the re-hired Employee/Participant in the Plan Year in which he/she is re-hired, unless the Employer elects otherwise in Appendix B.

3.07 FORFEITURE ALLOCATION. The amount of a Participant's Account forfeited under the Plan is a Participant forfeiture. The Employer may direct the Administrator to use Forfeitures to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 5.07, or to satisfy any contribution that may be required pursuant to Section 7.07.

(A) Allocation Method. The Employer in its Adoption Agreement must specify the method or methods the Plan Administrator will apply to allocate forfeitures. If the Employer elects more than one method, unless the Employer designates a specific ordering in its Adoption Agreement, the Plan Administrator may allocate the forfeitures by applying one or more of such elected methods in any order as the Plan Administrator operationally may determine, until the forfeitures are fully allocated to the applicable forfeiture allocation Plan Year.

(1) 401(k) forfeiture source. If the Plan is a 401(k) Plan, the Employer in its Adoption Agreement may elect a different allocation method based on the forfeiture source (from Nonelective Contributions or from Matching Contributions) or may elect to apply the same allocation method to all forfeitures.

(a) Attributable to Matching. A Participant's forfeiture is attributable to Matching Contributions if the forfeiture is: (i) from the non-Vested portion of a Matching Contribution Account forfeited in accordance with Section 5.07 or, if applicable, Section 7.07; (ii) a non-Vested Excess Aggregate Contribution (including Allocable Income) forfeited in correcting for nondiscrimination failures under Section 4.10(C); or (iii) an Associated Matching Contribution.

(b) Definition of Associated Matching Contribution. An Associated Matching Contribution includes any Vested or non-Vested Matching Contribution (including Allocable Income) made as to Elective Deferrals or Employee Contributions the Plan Administrator distributes under Section 4.02(E) (Excess Amount), Section 4.10(A) (Excess Deferrals), Section 4.10(B) (ADP test), Section 4.10(C) (ACP test) or Section 7.08 relating to Plan correction.

(c) Forfeiture or distribution of Associated Match. An Employee forfeits an Associated Matching Contribution unless the Matching Contribution is a Vested Excess Aggregate Contribution distributed in accordance with Section 4.10(C) (ACP test). A forfeiture under this Section 3.07(A)(1)(c) occurs in the Plan Year following the Testing Year (unless the Employer in Appendix B elects that the forfeiture occurs in the Testing Year) and the forfeiture is allocated in the Plan Year described in Section 3.07(B). See Section 3.07(B)(1) as to nondiscrimination testing of allocated forfeitures. In the event of correction under Section 7.08 resulting in forfeiture of Associated Matching Contributions, the forfeiture occurs in the Plan Year of correction.

(2) Application of "reduce" option/excess forfeitures. If the Employer elects to allocate forfeitures to reduce Nonelective or Matching Contributions and the allocable forfeitures for the forfeiture allocation Plan Year described in Section 3.07(B) exceed the amount of the applicable contribution for that Plan Year to which the Plan Administrator would apply the forfeitures (or there are no applicable contributions under the Plan), the Plan Administrator will allocate the remaining forfeitures in the forfeiture allocation Plan Year. In such event, the Plan Administrator will allocate the remaining forfeitures to pay Plan expenses, as an additional Discretionary Nonelective Contribution or as a Discretionary Matching Contribution, as the Plan Administrator determines.

(3) Plan expenses. If the Employer in its Adoption Agreement elects to apply forfeitures to the payment of Plan expenses under Section 7.04(C), the Employer must elect at least one additional allocation method so that if the Plan Administrator elects to first apply the forfeitures to the payment of Plan expenses, and the forfeitures exceed the Plan's expenses, the Plan Administrator will apply any remaining forfeitures under the additional method the Employer has elected in its Adoption Agreement. The Plan Administrator may elect not to apply forfeitures to the payment of Plan expenses which are allocated to specific Participant accounts under Section 7.04(C)(2)(b).

(4) Safe harbor-top-heavy exempt fail-safe. If the Employer has a Safe Harbor 401(k) Plan which otherwise qualifies for exemption from the top-heavy requirements of Article X, the Employer in its Adoption Agreement may elect to limit the allocation of all Plan forfeitures in such a manner as to avoid inadvertent application of the top-heavy requirements on account of a forfeiture allocation. If the Employer in its Adoption Agreement elects this "fail-safe" provision, the Plan

Administrator will allocate forfeitures in the following order of priority: (a) first to reduce Safe Harbor Contributions to the extent permitted by Section 3.07(A)(7); (b) then to reduce Fixed Additional Matching Contributions if any, which satisfy the ACP test safe harbor under Section 3.05(G); and (c) then as Discretionary Additional Matching Contributions which satisfy the ACP test safe harbor (without regard to whether the Employer in its Adoption Agreement has elected Discretionary Additional Matching Contributions). Notwithstanding the ordering rule of the preceding sentence, the Plan Administrator, either before or after applying the ordering rule, or any tier thereunder, may elect to allocate any forfeitures to pay Plan expenses. If the Employer elects to allocate forfeitures under this Section 3.07(A)(4), the Plan Administrator will apply this Section 3.07(A)(4) regardless of whether the Employer in any Plan Year actually satisfies all conditions necessary for the Plan to be top-heavy exempt. The Employer in Appendix B may elect to alter the forfeiture allocation ordering rules of this Section 3.07(A)(4).

(5) No allocation to Elective Deferral Accounts. The Plan Administrator will not allocate forfeitures to any Participant's Elective Deferral Account, including his/her Roth Deferral Account.

(6) Allocation under classifications. If the Employer in its Adoption Agreement has elected to allocate its Nonelective Contributions based on classifications of Participants, the Plan Administrator will allocate any forfeitures which under the Plan are allocated as additional Nonelective Contributions: (a) first to each classification pro rata in relation to the Employer's Nonelective Contribution to that classification for the forfeiture allocation Plan Year described in Section 3.07(B); and (b) second, the total amount of forfeitures allocated to each classification under (a) are allocated in the same manner as are the Nonelective Contributions to be allocated to that classification.

(7) Limitation on forfeiture uses. Effective for plan years beginning after the adoption of the 2010 Cumulative List (Notice 2010-90) restatement, forfeitures cannot be used as QNECs, QMACs, Elective Deferrals, or Safe Harbor Contributions (Code §401(k)(12)) other than QACA Safe Harbor Contributions (Code §401(k)(13)). However, forfeitures can be used to reduce Fixed Additional Matching Contributions which satisfy the ACP test safe harbor or as Discretionary Additional Matching Contributions.

(B) Timing (forfeiture allocation Plan Year). The Plan Administrator will allocate Participant forfeitures (including the Earnings thereon) no later than the last day of the Plan Year following the Plan Year in which the forfeiture occurs. See Sections 3.07(A)(1)(c), 5.07 and 7.07 as to when a forfeiture occurs. If the Employer in its Adoption Agreement elects to apply forfeitures to the payment of Plan expenses, the Plan Administrator, consistent with this election, may apply forfeitures to pay Plan expenses which the Plan incurs in the forfeiture allocation Plan Year, but which the Plan Administrator pays within a reasonable time after the end of the forfeiture allocation Plan Year.

(1) 401(k) Plans/allocation timing and re-testing. If the Plan is a 401(k) Plan, the Employer may elect different allocation timing based on the forfeiture source (from Nonelective Contributions or from Matching Contributions) or may elect to apply the same allocation timing to all forfeitures. If the 401(k) Plan is subject to the ACP test and allocates any forfeiture as a Matching Contribution, the following re-testing rules apply. If, under the Plan, the Plan Administrator will allocate the forfeiture in the same Plan Year in which the forfeiture occurs and the Plan Administrator runs the ACP test before the forfeiture allocation occurs, the Plan Administrator will not re-run the ACP test for the forfeiture allocation Plan Year. If the Plan Administrator allocates the forfeiture in the Plan Year which follows the Plan Year in which the forfeiture occurs, the Plan Administrator will include the allocated forfeiture in the ACP test for the forfeiture allocation Plan Year. If the Plan allocates any forfeiture as a Nonelective Contribution, the allocation, in the forfeiture allocation Plan Year, is subject to any nondiscrimination testing which applies to Nonelective Contributions for that Plan Year.

(2) Contribution amount and timing not relevant. The forfeiture allocation timing rules in this Section 3.07(B) apply irrespective of when the Employer makes its Employer Contribution for the forfeiture allocation Plan Year, and irrespective of whether the Employer makes an Employer Contribution for that Plan Year.

(C) Administration of Account Pending/Incurring Forfeiture. The Plan Administrator will continue to hold the undistributed, non-Vested portion of the Account of a Participant who has incurred a Separation from Service solely for his/her benefit until a forfeiture occurs at the time specified in Section 5.07 or if applicable, until the time specified in Section 7.07.

(D) Participant Does Not Share in Own Forfeiture. A Participant will not share in the allocation of a forfeiture of any portion of his/her Account, even if the Participant otherwise is entitled to an allocation of Employer Contributions and forfeitures in the forfeiture allocation Plan Year described in Section 3.07(B). If the forfeiting Participant is entitled to an allocation of Employer Contributions and forfeitures in the forfeiture allocation Plan Year, the Plan Administrator only will allocate to the Participant a share of the allocable forfeitures attributable to other forfeiting Participants.

(E) Plan Merger. In the event that the Employer merges another plan into this Plan, and does not fully vest upon merger the participant accounts in the merging plan, the Plan Administrator will allocate any post-merger forfeitures attributable to the merging plan in accordance with the Employer's elections in its Adoption Agreement. The Employer may elect to limit any such forfeiture allocation only to those Participants who were also participants in the merged plan, but in the absence of such an election, all Participants who have satisfied any applicable allocation conditions under Section 3.06 will share in the forfeiture allocation.

3.08 <u>ROLLOVER CONTRIBUTIONS</u>. The Plan Administrator will apply this Section 3.08 in administering Rollover Contributions to the Plan, if any.

(A) Policy Regarding Rollover Acceptance. The Plan Administrator, operationally (except as to In-Plan Roth Rollover Contributions under Section 3.08(E)) and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan or may elect to limit an Eligible Employee's right or a Participant's right to make a

Rollover Contribution. The Plan Administrator also may adopt, amend or terminate any policy regarding the Plan's acceptance of Rollover Contributions. If the Employer in its Adoption Agreement elects to permit In-Plan Roth Rollover Contributions, the Plan Administrator will administer In-Plan Roth Rollover Contributions in accordance with Section 3.08(E) and the Employer's Adoption Agreement elections.

(1) Rollover documentation. If the Plan Administrator permits Rollover Contributions, any Participant (or as applicable, any Eligible Employee), with the Plan Administrator's written consent and after filing with the Plan Administrator the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Plan Administrator may require a Participant (or Eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "rollover contribution" which the Code permits an employee to make to a qualified plan.

(2) Declination/related expense. The Plan Administrator, in its sole discretion in a nondiscriminatory manner, may decline to accept a Rollover Contribution of property which could: (a) generate unrelated business taxable income; (b) create difficulty or undue expense in storage, safekeeping or valuation; or (c) create other practical problems for the Plan or Trust. The Plan Administrator also may accept the Rollover Contribution on condition that the Participant's or Employee's Account is charged with all expenses associated therewith.

(B) Limited Testing. A Rollover Contribution is not an Annual Addition under Section 4.05(A) and is not subject to nondiscrimination testing except as a "right or feature" within the meaning of Treas. Reg. §1.401(a)(4)-4.

(C) Pre-Participation Rollovers. If an Eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions or prior to reaching his/her Entry Date, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Participant forfeitures and may not make Elective Deferrals if the Plan is a 401(k) Plan, until he/she actually becomes a Participant in the Plan. If a limited Participant has a Separation from Service prior to becoming a Participant in the Plan, the Trustee will distribute his/her Rollover Contributions Account to him/her in accordance with Section 6.01(A).

(D) May Include Employee Contributions and Roth Deferrals. A Rollover Contribution may include Employee Contributions and Roth Deferrals made to another plan, as adjusted for Earnings. In the case of Employee Contributions: (1) such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a); and (2) the Plan must account separately for the Rollover Contribution, including the Employee Contribution and the Earnings thereon. In the case of Roth Deferrals: (1) such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a) or from a 403(b) plan; (2) the Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon; and (3) as to rollovers which occur on or after April 30, 2007, this Plan must be a 401(k) Plan which permits Roth Deferrals.

(E) In-Plan Roth Rollover Contributions.

(1) Employer Election. The Employer in its 401(k) Adoption Agreement in which the Employer has elected to permit Roth Deferrals also will elect whether to permit an In-Plan Roth Rollover Contribution in accordance with this Section 3.08(E). If the Employer elects to permit such contributions, the Employer in its Adoption Agreement will specify the Effective Date thereof which may not be earlier than distributions made after September 27, 2010.

(2) Eligibility for Distribution and Rollover. A Participant must be eligible for a distribution from the affected Account in order to roll over the distribution to an In-Plan Roth Rollover Account. A Participant may not make an In-Plan Roth Rollover Contribution with regard to an amount which is not an Eligible Rollover Distribution.

(a) Parties eligible to elect. For purposes of eligibility for an In-Plan Roth Rollover, the Plan will treat a Participant's surviving spouse Beneficiary or alternate payee spouse or alternate payee former spouse as a Participant, unless the Employer in Appendix B limits to Employees the right to elect an In-Plan Roth Rollover. A non-spouse Beneficiary may not make an In-Plan Roth Rollover.

(b) Distribution from partially Vested account. In-Plan Roth Rollovers are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts unless the Employer elects otherwise in Appendix B. If a distribution is made to a Participant who has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account, then at any relevant time Section 5.03(C) will apply to determine the Participant's Vested portion of the Account.

(3) Form and Source of Rollover.

(a) Direct Rollover. An In-Plan Roth Rollover Contribution may be made only by a Direct Rollover.

(b) Account source. A Participant may make an In-Plan Roth Rollover from any account (other than a Roth account) unless the Employer otherwise elects in Appendix B. Also see Section 6.01(C)(7).

(c) Cash or in-kind. The Plan Administrator may permit an In-Plan Roth Rollover Contribution either by converting to cash any non-cash investments prior to rolling over the Participant's distribution election amount to the In-Plan Roth Rollover Account, or by rolling over the Participant's current investments to the In-Plan Roth Rollover Account. A plan loan so transferred without changing the repayment schedule is not treated as a new loan.

(4) No Rollover or Distribution Treatment. Notwithstanding any other Plan provision, an In-Plan Roth Rollover Contribution is not a Rollover Contribution for purposes of the Plan. Accordingly: (a) if the Employer in its Adoption Agreement has elected $5,000 as the Plan limit on Mandatory Distributions, the Plan Administrator will take into account amounts attributable to an In-Plan Roth Rollover Contribution, in determining if the $5,000 limit is exceeded,

regardless of the Employer's election as to whether to count Rollover Contributions for this purpose; (b) no spousal consent is required for a Participant to elect to make an In-Plan Roth Rollover Contribution; (c) Protected Benefits with respect to the amounts subject to the In-Plan Roth Rollover are preserved; and (d) mandatory 20% federal income tax withholding does not apply to the In-Plan Roth Rollover Contribution.

3.09 EMPLOYEE CONTRIBUTIONS. An Employer must elect in its Adoption Agreement whether to permit Employee Contributions. If the Employer elects to permit Employee Contributions, the Employer also must specify in its Adoption Agreement any limitations which apply to Employee Contributions. If the Employer permits Employee Contributions, the Plan Administrator operationally will determine if a Participant will make Employee Contributions through payroll deduction or by other means.

(A) Testing. Employee Contributions must satisfy the nondiscrimination requirements of Section 4.10(C) (ACP test).

(B) Matching. The Employer in its Adoption Agreement must elect whether the Employer will make Matching Contributions as to any Employee Contributions and, as applicable, the matching formula. Any Matching Contribution must satisfy the nondiscrimination requirements of Section 4.10(C) (ACP test), unless the Matching Contributions satisfy the ACP test safe harbor under a Safe Harbor 401(k) Plan.

3.10 SIMPLE 401(k) CONTRIBUTIONS. The Employer in its Adoption Agreement may elect to apply to its Plan the SIMPLE 401(k) provisions of this Section 3.10 if the Employer is eligible under Section 3.10(B). The provisions of this Section 3.10 apply to an electing Employer notwithstanding any contrary provision in the Plan.

(A) Plan Year. An Employer electing to apply this Section 3.10 must have a 12 month calendar year Plan Year except that in the case of an Employer adopting a new SIMPLE 401(k) Plan, the Employer must adopt the Plan no later than October 1 with a calendar year Plan Year of at least 3 months.

(B) Eligible Employer. An Employer may elect to apply this Section 3.10 if: (i) the Plan Year is the calendar year; (ii) the Employer (including Related Employers under Section 1.24(C)) has no more than 100 Employees who received Compensation of at least $5,000 in the immediately preceding calendar year; and (iii) the Employer (including Related Employers under Section 1.24(C)) does not maintain any other plan as described in Code §219(g)(5), to which contributions were made or under which benefits were accrued for Service by an Eligible Employee in the Plan Year to which the SIMPLE 401(k) provisions apply.

(1) Loss of eligible employer status. If an electing Employer fails for any subsequent calendar year to satisfy all of the Section 3.10(B) requirements, including where the Employer is involved in an acquisition, disposition or similar transaction under which the Employer satisfies Code §410(b)(6)(C)(i), the Employer remains eligible to maintain the SIMPLE 401(k) Plan for two additional calendar years following the last year in which the Employer satisfied the requirements.

(C) Compensation. For purposes of this Section 3.10, Compensation is limited as described in Section 1.11(E) and: (1) in the case of an Employee, means Code §3401(a) Wages but increased by the Employee's Elective Deferrals under this Plan or any other 401(k) arrangement, SIMPLE IRA, SARSEP, 403(b) annuity or 457 plan of the Employer; and (2) in the case of a Self-Employed Individual, means Earned Income determined by disregarding contributions made to this Plan.

(D) Participant Elective Deferrals. Each Participant may enter into a Salary Reduction Agreement to make Elective Deferrals in each calendar year to the SIMPLE 401(k) Plan in accordance with this Section 3.10(D).

(1) Amount Table. A Participant's annual Elective Deferrals may not exceed the amount as in effect under Code §408(p)(2)(E) ($10,000 in 2005) under which Treasury adjusts the limit in $500 increments.

(2) Catch-Ups. If the Employer in its Adoption Agreement elects to permit Catch-Up Deferrals, a Catch-Up Eligible Participant also may make Catch-Up Deferrals to the SIMPLE 401(k) Plan in accordance with Section 3.02(D).

(3) Election timing. A Participant may elect to make Elective Deferrals or to modify a Salary Reduction Agreement at any time in accordance with the Plan Administrator's SIMPLE 401(k) Plan Salary Reduction Agreement form, but the form must be provided at least 60 days prior to the beginning of each SIMPLE Plan Year or at least 60 days prior to commencement of participation for the Participant to make or modify his/her Salary Reduction Agreement. A Participant also may at any time terminate prospectively his/her Salary Reduction Agreement applicable to the Employer's SIMPLE 401(k) Plan.

(E) Employer SIMPLE 401(k) contributions. An Employer which elects to apply this Section 3.10 must make an annual SIMPLE Contribution to the Plan as described in this Section 3.10(E). The Employer operationally must elect for each SIMPLE Plan Year which type of SIMPLE Contribution the Employer will make.

(1) Definition of SIMPLE Contribution. A SIMPLE Contribution is one of the following Employer Contribution types: (a) a SIMPLE Matching Contribution equal to 100% of each Participant's Elective Deferrals but not exceeding 3% of Plan Year Compensation or such lower percentage as the Employer may elect under Code §408(p)(2)(C)(ii)(II); or (b) a SIMPLE Nonelective Contribution equal to 2% of Plan Year Compensation for each Participant whose Compensation is at least $5,000.

(F) SIMPLE 401(k) notice. The Plan Administrator must provide a notice to each Participant a reasonable period of time before the 60th day prior to the beginning of each SIMPLE 401(k) Plan Year, describing the Participant's Elective Deferral rights and the Employer's SIMPLE Contributions which the Employer will make for the Plan Year described in the notice.

(G) Application of remaining Plan provisions.

(1) Annual Additions. All contributions to the SIMPLE 401(k) Plan are Annual Additions under Section 4.05(A) and subject to the Annual Additions Limit.

(2) No allocation conditions. The Employer in its Adoption Agreement may not elect to apply any Section 3.06

allocation conditions to the Plan Administrator's allocation of SIMPLE Contributions.

(3) No other contributions. No contributions other than those described in this Section 3.10 or Rollover Contributions described in Section 3.08 may be made to the SIMPLE 401(k) Plan.

(4) Vesting. All SIMPLE Contributions and Accounts attributable thereto are 100% Vested at all times and in the event of a conversion of a non-SIMPLE 401(k) Plan into a SIMPLE 401(k) Plan, all Account Balances in existence on the first day of the Plan Year to which the SIMPLE 401(k) provisions apply, become 100% Vested.

(5) No nondiscrimination testing. A SIMPLE 401(k) Plan is not subject to nondiscrimination testing under Section 4.10(B) (ADP test) or Section 4.10(C) (ACP test) of the Plan.

(6) No top-heavy. A SIMPLE 401(k) Plan is not subject to the top-heavy provisions of Article X.

(7) Remaining Plan terms. Except as otherwise described in this Section 3.10, if an Employer has elected in its Adoption Agreement to apply the SIMPLE 401(k) provisions of this Section 3.10, the Plan Administrator will apply the remaining Plan provisions to the Employer's Plan.

3.11 USERRA/HEART ACT CONTRIBUTIONS.

(A) Application. This Section 3.11 applies to an Employee who: (1) has completed Qualified Military Service under USERRA; (2) the Employer has rehired under USERRA; and (3) is a Participant entitled to make-up contributions under Code §414(u). This Section 3.11 also applies to an Employee who dies or becomes disabled while performing Qualified Military Service, as provided in Sections 3.11(K) and 3.11(L) and the Employer's Adoption Agreement elections.

(B) Employer Contributions. The Employer will make-up any Employer Contribution the Employer would have made and which the Plan Administrator would have allocated to the Participant's Account had the Participant remained employed by the Employer during the period of Qualified Military Service.

(C) Compensation. For purposes of this Section 3.11, the Plan Administrator will determine an effected Participant's Compensation as follows. A Participant during his/her period of Qualified Military Service is deemed to receive Compensation equal to that which the Participant would have received had he/she remained employed by the Employer, based on the Participant's rate of pay that would have been in effect for the Participant during the period of Qualified Military Service. If the Compensation during such period would have been uncertain, the Plan Administrator will use the Participant's actual average Compensation for the 12 month period immediately preceding the period of Qualified Military Service, or if less, for the period of employment.

(D) Elective Deferrals/Employee Contributions. If the Plan provided for Elective Deferrals or for Employee Contributions during a Participant's period of Qualified Military Service, the Plan Administrator must allow a Participant under this Section 3.11 to make up such Elective Deferrals or Employee Contributions to his/her Account. The Participant may make up the maximum amount of Elective Deferrals or Employee Contributions which he/she under the Plan terms would have been able to contribute during the period of Qualified Military Service (less any such amounts the Participant actually contributed during such period) and the Participant must be permitted to contribute any lesser amount as the Plan would have permitted. The Participant must make up any contribution under this Section 3.11(D) commencing on his/her Re-Employment Commencement Date and not later than 5 years following reemployment (or if less, a period equal to 3 times the length of the Participant's Qualified Military Service triggering such make-up contribution).

(E) Matching Contributions. The Employer will make-up any Matching Contribution that the Employer would have made and which the Plan Administrator would have allocated to the Participant's Account during the period of Qualified Military Service, but based on any make-up Elective Deferrals or make-up Employee Contributions that the Participant makes under Section 3.11(D).

(F) Limitations/Testing. Any contribution made under this Section 3.11 does not cause the Plan to violate and is not subject to testing under: (1) nondiscrimination requirements including under Code §401(a)(4), the ADP test, the ACP test, the safe harbor 401(k) rules or the SIMPLE 401(k) rules; (2) top-heavy requirements under Article X; or (3) coverage under Code §410(b). Contributions under this Section 3.11 are Annual Additions and are tested under Section 4.10(A) (Elective Deferral Limit) in the year to which such contributions are allocated, but not in the year in which such contributions are made.

(1) Differential Wage Payments. Effective for Differential Wage Payments made after December 31, 2008, the Plan is not treated as failing to meet the requirements of any provision described in this Section 3.11(F) by reason of any contribution or benefit which is based on a Differential Wage Payment. The preceding sentence applies only if all Employees performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive Differential Wage Payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)). The Plan Administrator operationally may determine, for purposes of any provision described in this Section 3.11(F), whether to take into account any Elective Deferrals, and if applicable, any Matching Contributions, attributable to Differential Wage Payments.

(G) No Earnings. A Participant receiving any make-up contribution under this Section 3.11 is not entitled to an allocation of any Earnings on any such contribution prior to the time that the Employer actually makes the contribution (or timely deposits the Participant's own make-up Elective Deferrals or Employee Contributions) to the Trust.

(H) No Forfeitures. A Participant receiving any make-up allocation under this Section 3.11 is not entitled to an allocation of any forfeitures allocated during the Participant's period of Qualified Military Service.

(I) Allocation Conditions. For purposes of applying any Plan allocation conditions under Section 3.06, the Plan Administrator will treat any period of Qualified Military Service as Service.

(J) HEART Act Death Benefits. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing Qualified Military Service, the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's Qualified Military Service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

(K) HEART Act Continued Benefit Accrual. This Section 3.11(K) does not apply unless the Employer in Appendix B elects to apply such provisions. If this Section 3.11(K) applies, then effective as of the date specified in Appendix B, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled while performing Qualified Military Service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or Disability (as the case may be) and terminated employment on the actual date of death or Disability.

(1) Determination of benefits. The Plan will determine the amount of Employee Contributions and the amount of Elective Deferrals of an individual treated as reemployed under this Section 3.11(K) for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual Employee Contributions or Elective Deferrals for the lesser of: (a) the 12-month period of service with the Employer immediately prior to Qualified Military Service; or (b) the actual length of continuous service with the Employer.

3.12 DESIGNATED IRA CONTRIBUTIONS. The Employer in its Adoption Agreement may elect to permit Participants to make Designated IRA Contributions to its Plan. Designated IRA Contributions are subject to the provisions of this Section 3.12.

(A) Effective Date. The Employer may elect in its Adoption Agreement to apply the Designated IRA Contribution provisions. The Employer may accept Designated IRA Contributions during such Plan Year only if the Employer elects to apply the provisions of this Section 3.12 (or otherwise adopted a good faith amendment under Code §408(q)), prior to the Plan Year for which the Designated IRA Contribution provisions will apply.

(B) Traditional or Roth IRA. The Employer in its Adoption Agreement may elect to treat Designated IRA Contributions as traditional IRA contributions, as Roth IRA contributions or as consisting of either type, at the Participant's election.

(C) Account or Annuity. The Employer in its Adoption Agreement may elect to establish Accounts to receive Designated IRA Contributions either as individual retirement accounts, as individual retirement annuities or as consisting of either type, at the Participant's election.

(1) Trustee or Custodian. A trustee or custodian satisfying the requirements of Code §408(a)(2) must hold Designated IRA Contributions Accounts. If the Trustee holding the Designated IRA Contribution assets is a non-bank trustee, the Trustee, upon receipt of notice from the Commissioner of Internal Revenue that substitution is required because the Trustee has failed to comply with the requirements of Treas. Reg. §1.408-2(e), will substitute another trustee in its place.

(2) Additional IRA requirements. All Designated IRA Contributions: (a) must be made in cash; (b) are subject to the IRA contribution limit under Code §408(a)(1) ($5,000 in 2008), including cost-of-living adjustments after 2011 in $500 increments under Code §219(b)(5)(C) and as to Catch-Up Eligible Participants to the IRA Catch-Up limit of $1,000 beginning in 2006; and (c) must be 100% Vested.

(3) Not for deposit of SEP or SIMPLE IRA amounts/no Rollover Contributions. An Employer which maintains a SEP or a SIMPLE IRA may not deposit contributions under these arrangements to the Designated IRA Contribution Accounts under this Section 3.12. A Participant may not make a Rollover Contribution to his/her Designated IRA Contribution Account.

(4) Designated Roth IRA Contributions.

(a) Contribution Limit. A Participant's contribution to the Designated Roth IRA and to all other Roth IRAs for a Taxable Year may not exceed the lesser of the amount described in Section 3.12(C)(2) or the Participant's Compensation under Section 3.12(C)(4)(c). However, if (i) and/or (ii) below apply, the maximum (non-rollover) contribution that can be made to all the Participant's Roth IRAs (including to this Designated Roth IRA which must be a non-Rollover Contribution) for a Taxable Year is the smaller amount determined under (i) or (ii).

(i) General. The maximum contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in Section 3.12(C)(4)(b)) as follows:

Filing Status	Full Contribution	Phase-out Range	No Contribution
Single/Head of Household	$95,000 or less	$95,000- $110,000	$110,000 or more
Joint/Qualifying Widow(er)	$150,000 or less	$150,000- $160,000	$160,000 or more

Married-Separate	$0	$0-$10,000	$10,000 or more

If the Participant's modified AGI for a Taxable Year is in the phase-out range, the maximum contribution determined above for that Taxable Year is rounded up to the next multiple of $10 and is not reduced below $200.

(ii) Roth and non-Roth IRA contributions. If the Participant makes (non-rollover) contributions to both Roth and non-Roth IRAs for a Taxable Year, the maximum contribution that can be made to all of the Participant's Roth

IRAs for that Taxable Year is reduced by the contributions made to the Participant's non-Roth IRAs for the Taxable Year.

(iii) Conversion. After December 31, 2009, a Participant may convert a Designated non-Roth IRA Contributions Account to a Designated Roth IRA Contributions Account in accordance with Treas. Reg. §1.408A-4. A Participant may not effect a conversion by means of contributing a Rollover Contribution to his/her Designated IRA under this Plan.

(b) Modified AGI. For purposes of Section 3.12(C)(4)(a), a Participant's modified AGI for a Taxable Year is defined in Code §408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a non-Roth IRA conversion.

(c) Compensation. For purposes of Section 3.12(C)(4)(a), Compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code §401(c)(2) (reduced by the deduction the Self-Employed Individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Code §401(c)(2) shall be applied as if the term "trade or business" for purposes of Code §1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. Compensation includes any amount includible in the Participant's gross income under Code §71 with respect to a divorce or separation instrument described in Code §71(b)(2)(A). In the case of a married Participant filing a joint return, the greater compensation of his or her spouse is treated as the Participant's Compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a non-Roth IRA.

(D) Accounting and Investments. The Plan Administrator may cause Designated IRA Contributions to be held and invested: (1) in a separate trust for each Participant; (2) as a single trust holding all Participant Designated IRA Contributions; or (3) as part of a single trust holding all of the assets of the Plan. If the Plan Administrator establishes a single trust under clause (2) or (3), the Plan Administrator must account separately for each Participant's Designated IRA Contributions and for the Earnings attributable thereto. If the Designated IRA Contributions are invested in an individual retirement annuity, the Plan Administrator may establish separate annuity contracts for each Participant's Designated IRA Contributions or may establish a single annuity contract for all Participants, with separate accounting for each Participant. If the Plan Administrator establishes a single annuity contract, such contract must be separate from any other annuity contract under the Plan. The Plan Administrator also may invest Designated IRA Contributions in any common or collective fund under Sections 8.02 or 8.09. The Trust provisions of Article VIII otherwise apply to the investment of Designated IRA Contributions except that no part of such contributions may be invested in life insurance contracts and a Participant may not borrow from a Designated IRA Contributions Account or take such amounts into account in determining the maximum amount available for a loan from the Participant's other Plan assets. The Plan Administrator or Trustee/Custodian may not cause Designated IRA Contribution Accounts to be commingled with any non-Plan assets. Any Designated IRA Contribution Account is established for the exclusive benefit of the affected Participant and his/her Beneficiaries. No part of the Trust attributable to Designated IRA Contributions may be invested in collectibles as described in Code §408(m), except as may be permitted under Code §408(m)(3).

(E) Participant Contribution and Designation. A Participant may make Designated IRA Contributions directly or through payroll withholding as the Plan Administrator may permit. At the time of the Participant's contribution (or when the Designated IRA Contribution is withheld from payroll), the Participant must designate the contribution as a Designated IRA Contribution and if applicable, also must designate whether the contribution is traditional or Roth and whether the account is an individual retirement account or an individual retirement annuity.

(F) Treatment as IRA. For all purposes of the Code except as otherwise provided in this Section 3.12, Designated IRA Contributions are subject to the IRA rules under Code §§408 and 408A as applicable. Designated IRA Contributions are not Annual Additions under Section 4.05(A) and are not subject to any testing under Article IV.

(G) Reporting. The Designated IRA Contribution Trustee or Custodian must comply with all Code §408(i) reporting requirements, including providing required information regarding RMDs.

(H) Distribution/RMDs. Designated IRA Contribution Accounts are distributable under Section 6.01(C)(4)(g) and are subject to the RMD requirements of Section 6.02 (and to the Adoption Agreement elections described therein) except that: (1) the Participant's RBD (only as it relates to the Designated IRA Contribution Account) is determined under Section 6.02(E)(7)(a) referencing age 70 1/2 and without regard to 5% owner or continuing employment status; (2) if the Designated IRA Contribution Account is a Roth Account, there are no lifetime RMDs; and (3) to the extent that the provisions of Section 6.02 differ, RMDs from Designated IRA Contribution Accounts otherwise are subject to the required minimum distribution rules applicable to IRAs under Code §§408(a)(6) or 408A(c)(5) as applicable, and under the corresponding Treasury regulations, which are incorporated by reference herein.

3.13 DEDUCTIBLE EMPLOYEE CONTRIBUTIONS (DECs). A DEC is a Deductible Employee Contribution made to the Plan for a Taxable Year commencing prior to 1987. If a Participant has made DECs to the Plan, the Plan Administrator must maintain a separate Account for the Participant's DECs as adjusted for Earnings, including DECs which are part of a Rollover Contribution described in Section 3.08. The DECs Account is part of the Participant's Account for all purposes of the Plan, except for purposes of determining the Top-Heavy Ratio under Section 10.01. The Plan Administrator may not use a Participant's DECs Account to purchase life insurance on the Participant's behalf. DECs are distributable under Section 6.01(C)(4)(e).

ARTICLE IV
LIMITATIONS AND TESTING

4.01 ANNUAL ADDITIONS LIMIT. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Annual Additions Limit.

(A) Actions to Prevent Excess Amount. If the Annual Additions the Plan Administrator otherwise would allocate under the Plan to a Participant's Account for the Limitation Year would exceed the Annual Additions Limit, the Plan Administrator will not allocate the Excess Amount, but instead will take any reasonable, uniform and nondiscriminatory action the Plan Administrator determines necessary to avoid allocation of an Excess Amount. Such actions include, but are not limited to, those described in this Section 4.01(A). If the Plan is a 401(k) Plan, the Plan Administrator may apply this Section 4.01 in a manner which maximizes the allocation to a Participant of Employer Contributions (exclusive of the Participant's Elective Deferrals). Notwithstanding any contrary Plan provision, the Plan Administrator, for the Limitation Year, may: (1) suspend or limit a Participant's additional Employee Contributions or Elective Deferrals; (2) notify the Employer to reduce the Employer's future Plan contribution(s) as necessary to avoid allocation to a Participant of an Excess Amount; or (3) suspend or limit the allocation to a Participant of any Employer Contribution previously made to the Plan (exclusive of Elective Deferrals) or of any Participant forfeiture. If an allocation of Employer Contributions previously made (excluding a Participant's Elective Deferrals) or of Participant forfeitures would result in an Excess Amount to a Participant's Account, the Plan Administrator will allocate the Excess Amount to the remaining Participants who are eligible for an allocation of Employer Contributions for the Plan Year in which the Limitation Year ends. The Plan Administrator will make this allocation in accordance with the Plan's allocation method as if the Participant whose Account otherwise would receive the Excess Amount is not eligible for an allocation of Employer Contributions. If the Plan Administrator allocates to a Participant an Excess Amount, the Plan Administrator must dispose of the Excess Amount in accordance with Section 4.03.

(B) Estimated and Actual Compensation. Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Annual Additions Limit on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Annual Additions Limit on the basis of the Participant's actual Compensation for such Limitation Year.

4.02 ANNUAL ADDITIONS LIMIT CODE §415 AGGREGATED PLANS.

(A) Aggregation of Code §415 Aggregated Plans. For purposes of applying the Annual Additions Limit, all Code §415 Aggregated Plans are treated as one plan.

(1) Break-up of an affiliate employer or an affiliated service group. For purposes of aggregating plans for Code §415, a Formerly Affiliated Plan of an employer is taken into account for purposes of applying the Code §415 limitations to the employer, but the Formerly Affiliated Plan is treated as if it had terminated immediately prior to the Cessation of Affiliation.

(2) Mid-year Aggregation. Two or more Defined Contribution Plans that are not Code §415 Aggregated Plans as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because later in that Limitation Year they become Code §415 Aggregated Plans, provided that no Annual Additions are credited to the Participant's Account after the date on which the Plans are required to be aggregated.

(B) Combined Plans Limitation. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Combined Plans Limitation.

(1) Prevention. If the amount the Employer otherwise would allocate to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this Section 4.02(B) Combined Plans Limitation, the Employer will reduce the amount of its allocation to that Participant's Account in the manner described in Section 4.01(A), so the Annual Additions under all of the Code §415 Aggregated Plans for the Limitation Year will equal the Annual Additions Limit.

(2) Correction. If the Plan Administrator allocates to a Participant an amount attributed to this Plan under Section 4.02(D) which exceeds the Combined Plans Limitation, the Plan Administrator must dispose of the Excess Amount in accordance with Section 4.03.

(C) Estimated and Actual Compensation. Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Combined Plans Limitation on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Combined Plans Limitation on the basis of the Participant's actual Compensation for such Limitation Year.

(D) Ordering Rules. If a Participant's Annual Additions under this Plan and the Code §415 Aggregated Plans result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. The Plan Administrator will determine the Amounts last allocated by treating the Annual Additions attributable to a simplified employee pension as allocated first, followed by allocation to a welfare benefit fund or individual medical account, irrespective of the actual allocation date. If the

Plan Administrator allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will equal the product of:

(1) the total Excess Amount allocated as of such date, multiplied by

(2) the ratio of (a) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (b) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the Code §415 Aggregated Plans.

(E) Disposition of Allocated Excess Amount Attributable to Plan. The Plan Administrator will dispose of any allocated Excess Amounts described in and attributed to this Plan under Section 4.02(D) as provided in Section 4.03.

(F) Override. The Employer in Appendix B may specify overriding provisions which will apply to satisfy the 0requirements of Code §415 and the applicable regulations if the Employer maintains more than one qualified plan.

4.03 DISPOSITION OF EXCESS ANNUAL ADDITIONS. If a Participant's Account exceeds the Annual Additions Limit for the Limitation Year, then the Plan may correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS).

4.04 NO COMBINED DCP/DBP LIMITATION. If the Employer maintains a Defined Benefit Plan, or has ever maintained a Defined Benefit Plan which the Employer has terminated, this Plan does not calculate a combined 415 limit based on the Defined Benefit Plan and this Plan.

4.05 DEFINITIONS: SECTIONS 4.01-4.04. The following definitions apply for purposes of Sections 4.01 through 4.04, and supersede any contrary definitions in Article I:

(A) Annual Additions. Annual Additions means the sum of the following amounts allocated to a Participant's Account for a Limitation Year: (1) Employer Contributions (including Elective Deferrals); (2) forfeitures; (3) Employee Contributions; (4) amounts allocated to an individual medical account (as defined in Code §415(l)(2)) included as part of a pension or annuity plan maintained by the Employer; (5) contributions paid or accrued attributable to post-retirement medical benefits allocated to the separate account of a key-employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the Employer; (6) amounts allocated under a Simplified Employee Pension Plan; and (7) corrected (distributed) Excess Contributions under Section 4.10(B)(8) and corrected (distributed) Excess Aggregate Contributions under Section 4.10(C)(8).

(1) Exclusions. Annual Additions do not include: (a) Catch-Up Contributions; (b) Excess Deferrals which the Plan Administrator corrects by distribution by April 15 of the following calendar year; (c) Designated IRA Contributions; (d) Restorative Payments; (e) Transfers to this Plan; (f) Rollover Contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (g) In-Plan Roth Rollovers, (h) Repayments of loans made to a Participant from the Plan; and (i) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(2) Date of tax-exempt Employer Contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(B) Annual Additions Limit. Annual Additions Limit means the lesser of: (i) $40,000 (or, if greater, the $40,000 amount as adjusted under Code §415(d)), or (ii) 100% of the Participant's Compensation paid or accrued for the Limitation Year. If there is a short Limitation Year because of a change in Limitation Year, the Plan Administrator will multiply the $40,000 (as adjusted) limitation by the following fraction:

$$\frac{\text{Number of months (or fractional parts thereof) in the short Limitation Year}}{12}$$

The 100% Compensation limitation in clause (ii) above does not apply to any contribution for medical benefits within the meaning of Code §401(h) or Code §419A(f)(2) which otherwise is an Annual Addition.

(1) Certain contributions treated as made to a Defined Contribution Plan. Solely for purposes of Sections 4.01 through 4.04, the following contributions are treated as contributions to a Defined Contribution Plan: (i) mandatory employee contributions under Code §411(c)(2)(C) made to a Defined Benefit Plan maintained by the Employer, unless such contributions are "picked up" by the Employer under Code §414(h)(2); (ii) contributions to an individual medical account (as defined in Code §415(l)(2)) included as part of a Defined Benefit Plan or annuity plan under Code §401(h) maintained by the Employer; and (iii) a welfare benefit fund under Code §419(e) maintained by the Employer to the extent there are post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)).

(2) Change of Limitation Year/Plan termination. The Employer may change the Limitation Year only by a Plan amendment. If the Employer terminates the Plan effective as of a date other than the last day of the Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

(C) Cessation of Affiliation. A Cessation of Affiliation means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Treas. Reg.

§§1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(D) Code §415 Aggregated Plans. Code §415 Aggregated Plans means all Defined Contribution Plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a Predecessor Employer) under which the Participant receives Annual Additions and as described under Treas. Reg. §1.415(f)-1.

(E) Combined Plans Limitation. The Combined Plans Limitation means the Annual Additions Limit, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under the Code §415 Aggregated Plans.

(F) Compensation. Compensation for purposes of Code §415 testing means Compensation as defined in Section 1.11(B)(1), (2), (3), or (4), except:
(i) Compensation includes Elective Deferrals under Section 1.11(D), irrespective of whether the Employer has elected in its Adoption Agreement to include Elective Deferrals in Compensation for allocation purposes; (ii) Compensation for the entire Limitation Year is taken into account even if the Employer in its Adoption Agreement has elected to include only Participating Compensation for allocation purposes; (iii) Compensation includes regular pay Post-Severance Compensation under Section 1.11(I)(1)(a) regardless of whether the Employer elected in its Adoption Agreement under Section 1.11 to exclude such amounts in allocation Compensation; (iv) if the Employer elects on Appendix B to use different selections for Post-Severance Compensation under this

Section 4.05(F) than it does under Section 1.11, then Compensation includes or excludes such other items of Post-Severance Compensation as the Employer elected in Appendix B, without regard to whether the Employer elected under Section 1.11 to include or to exclude such amounts in allocation Compensation and (v) except as elected under (iv), any other Compensation adjustment or exclusion the Employer has elected in its Adoption Agreement for allocation purposes does not apply.

(1) "First few weeks rule." If the Employer elects in Appendix B, the Plan Administrator on a uniform and consistent basis as to similarly situated Participants, will include in Compensation for Code §415 purposes Compensation earned in such Limitation Year but which, solely because of pay period and pay date timing, is paid in the first few weeks of the next following Limitation Year as described in Treas. Reg. §1.415(c)-2(e)(2). This Section 4.05(F)(1) applies to Code §415 testing Compensation but does not affect Compensation for allocation purposes.

(2) Differential Wage Payment. For years beginning after December 31, 2008, the Plan treats a Differential Wage Payment to an Employee as Compensation for purposes of: (i) application the Annual Additions Limit; (ii) application of Article X (top-heavy); (iii) determination of HCEs under Section 1.22(E); and (iv) application of the 5% Gateway Contribution requirement described in Section 4.07(A).

(G) Employer. Employer means the Signatory Employer and any Related Employer. Solely for purposes of applying the Annual Additions Limit, the Plan Administrator will determine Related Employer status by modifying Code §§414(b) and (c) in accordance with Code §415(h) and Treas. Reg. §1.415(a)-1(f)(1) and will take into account tax-exempt organizations under Treas. Reg. §1.414(c)-5. If this Plan is a Multiple Employer Plan, then as to each Participating Employer, the term "Employer" means the Participating Employer and any Related Employer to the Participating Employer.

(H) Excess Amount. Excess Amount means the excess of the Participant's Annual Additions for the Limitation Year over the Annual Additions Limit.

(I) Formerly Affiliated Plan. Formerly Affiliated Plan means a plan that, immediately prior to the Cessation of Affiliation, was actually maintained by one or more of the entities that constitute the Employer (as determined under the employer affiliation rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the Employer (as determined under the employer affiliation rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2)).

(J) Limitation Year. See Section 1.34.

(K) Predecessor Employer. Predecessor Employer means a former employer with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the employer, but only if that benefit is provided under the plan maintained by the employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. §1.415(f)-1(b)(2) apply as if the Employer and Predecessor Employer constituted a single employer under the rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. §§1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship. With respect to an Employer of a Participant, a former entity that antedates the Employer is a Predecessor Employer with respect to the Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(L) Restorative Payment. A Restorative Payment means a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are Restorative Payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to the Plan made pursuant to a DOL order, the DOL's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified Defined Contribution Plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not Restorative Payments and

generally constitute contributions that are considered Annual Additions.

4.06 ANNUAL TESTING ELECTIONS. The Plan Administrator may elect to test for coverage and nondiscrimination by applying, as applicable, annual testing elections under this Section 4.06.

(A) Changes and Uniformity. In applying any testing election, the Plan Administrator may elect to apply or not to apply such election in any Testing Year, consistent with this Section 4.06. However, the Plan Administrator will apply the testing elections in effect within a Testing Year uniformly to all similarly situated Participants.

(B) Plan Specific Elections. The Employer in its Adoption Agreement must elect for the Plan Administrator to apply the following annual testing elections: (1) nondiscrimination testing under the ADP and ACP tests as a Traditional 401(k) Plan; (2) no nondiscrimination testing as a Safe Harbor 401(k) Plan or nondiscrimination testing under the ACP test as an ADP only Safe Harbor 401(k) Plan; (3) no nondiscrimination testing as a SIMPLE 401(k) Plan; (4) the top-paid group election under Code §414(q)(1)(B)(ii); (5) the calendar year data election under Notice 97-45; (6) Current or Prior Year Testing as a Traditional 401(k) Plan or as an ADP only Safe Harbor 401(k) Plan under Treas. Reg. §§1.401(k)-2(a)(2)(ii) and 1.401(m)-2(a)(2)(ii) as applicable; and (7) any other testing election which the IRS in the future specifies in written guidance as being subject to a requirement of the Employer making a Plan (versus an operational) election.

(1) Special Rules relating to ADP/ACP Testing. If the Adoption Agreement elects both ADP test safe harbor status and nondiscrimination testing under the ADP test, the elections relating to Safe Harbor status will apply only to a disaggregated plan under Treas. Reg. §1.401(k)-1(b)(4) which is a Safe Harbor 401(k) Plan under Section 3.05. If a disaggregated plan is a Safe Harbor 401(k) Plan and there are other disaggregated plans which are not Safe Harbor 401(k) Plans (such as through operation of the OEE rule described in Section 4.06(C) and Section 3.05(D)), Current Year Testing will apply to the disaggregated plan covering Otherwise Excludible Employees unless the Employer otherwise elects in the Adoption Agreement. See Section 3.05(I)(1) regarding ADP and ACP testing in connection with the maybe notice. See Section 3.05(G) regarding the application of the ACP test to Employee Contributions if the Plan qualifies for the ACP test safe harbor. See Section 3.10(G)(5) regarding SIMPLE 401(k) plans.

(C) Operational Elections. The Plan Administrator operationally may apply any testing election available under Treasury regulations or other guidance published in the Internal Revenue Bulletin, other than those plan specific elections described in 4.06(B), including but not limited to: (i) the "otherwise excludible employees rule" ("OEE rule") under Code §410(b)(4)(B); (ii) the "early participation rule" ("EP rule") under Code §§401(k)(3)(F) and 401(m)(5)(C); (iii) except as Section 4.07 may limit, the application of any Code §414(s) nondiscriminatory definition of compensation for nondiscrimination testing, regardless of the Plan's definitions of Compensation for any other purpose; (iv) application of the general nondiscrimination test under Treas. Reg. §1.401(a)(4)-2(c); (v) application of the "compensation ratio test" under Treas. Reg. §1.414(s)-1(d)(3); (vi) application of imputed permitted disparity under Treas. Reg. §1.401(a)(4)-7; (vii) application of restructuring under Treas. Reg. §1.401(a)(4)-9; (viii) application of the average benefit test under Code §410(b)(2), except as limited under Section 3.06(F); (ix) application of permissive aggregation under Code §410(b)(6)(B); (x) application of the "qualified separate line of business rules" under Code §410(b)(5); (xi) shifting Elective Deferrals from the ADP test to the ACP test; (xii) shifting QMACs from the ACP test to the ADP test; or (xiii) application of the "2 1/2 month rule" in the ADP test under Treas. Reg. §1.401(k)-2(a)(4)(i)(B)(2).

(1) Application of otherwise excludible employees and early participation rules. In applying the OEE and EP rules in clauses (i) and (ii) of Section 4.06(C) above, the Plan Administrator will apply the following provisions.

(a) Definitions of Otherwise Excludible Employees and Includible Employees. For purposes of this Section 4.06(C), an Otherwise Excludible Employee means a Participant who has not reached the Cross-Over Date. For purposes of this Section 4.06(C), an Includible Employee means a Participant who has reached the Cross-Over Date.

(b) Satisfaction of coverage. To apply the OEE or EP rules for nondiscrimination testing, the Plan must satisfy coverage as to the disaggregated plans under Code §410(b)(4)(B).

(c) Definition of Cross-Over Date. The Cross-Over Date under the OEE rule means the date on which an Employee changes status from the disaggregated plan benefiting the Otherwise Excludible Employees to the disaggregated plan benefiting the Includible Employees. The Cross-Over Date has the same meaning under the EP rule except it is limited only to NHCEs. Under the EP rule, all HCE Participants remain subject to nondiscrimination testing.

(d) Determination of Cross-Over Date. The Plan Administrator may elect to determine the Cross-Over Date for an Employee by applying any date which is not later than the maximum permissible entry date under Code §410(a)(4).

(e) Amounts in testing in Cross-Over Plan Year. For purposes of the OEE rule, the Plan Administrator will count the total Plan Year Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the Includible Employees plan test for the Employees who become Includible Employees at any time during such Plan Year. For purposes of applying the EP rule, the Plan Administrator will count the Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the single test for the Includible Employees, but only such of these items as are attributable to the period on and following the Cross-Over Date.

(f) Application of other conventions. Notwithstanding Sections 4.06(C)(1)(c), (d), and (e) the Plan Administrator under a Restated Plan operationally may apply the Plan terms commencing in the Plan Year beginning after the Employer executes the Restated Plan in lieu of applying the Plan terms retroactive to the Plan's restated Effective Date; and (iii) the Plan Administrator operationally may apply any other reasonable conventions, uniformly applied within a Plan Year.

(g) Allocations not effected by testing. The Plan Administrator's election to apply the OEE or EP rules for testing does not control the Plan allocations, or the Compensation or Elective Deferrals taken into account for Plan allocations. The Plan Administrator will determine Plan allocations, and Compensation and Elective Deferrals for Plan allocations, based on the Employer's Adoption Agreement elections, including elections relating to Participating Compensation or Plan Year Compensation. For this purpose, an election of Participating Compensation means Compensation and Elective Deferrals on and following the Cross-Over Date as to the allocations for the disaggregated plan benefiting the Includible Employees.

(D) Election Timing. Except where the Plan specifies another deadline for making a Plan specific annual testing election under Section 4.06(B), the Plan Administrator may make any such testing election, and the Employer must amend the Plan as necessary to reflect the election, by the end of the Testing Year. The Plan Administrator may make operational testing elections under Section 4.06(C). If the Employer is correcting an operational Plan failure under EPCRS, the Employer may make an annual testing election for any Testing Year at the time the Employer makes the correction.

(E) Coverage Transition Rule. The Plan Administrator in determining the Plan's compliance with the coverage requirements of Code §410(b), in the case of certain acquisitions or dispositions described in Code §410(b)(6)(C) and in the regulations thereunder, will apply the "coverage transition rule" described therein.

4.07 <u>TESTING BASED ON BENEFITS</u>. In applying the general nondiscrimination test under Section 4.06(C) to any non-uniform Plan allocation, the Plan Administrator may elect to test using allocation rates or using equivalent accrual (benefit) rates ("EBRs") as defined in Treas. Reg. §1.401(a)(4)-(8)(b)(2). In the event that the Plan Administrator elects to test using EBRs, the Plan must comply with this Section 4.07.

(A) Gateway Contribution. Except as provided in Section 4.07(A)(2), if the Plan Administrator will perform nondiscrimination testing using EBRs, the Employer must make a Gateway Contribution.

(1) Definition of Gateway Contribution. A Gateway Contribution is an additional Employer Contribution or Nonelective Contribution in an amount necessary to satisfy the minimum allocation gateway requirement described in Treas. Reg. §1.401(a)(4)-8(b)(1)(vi).

(2) Exception to Gateway Contribution requirement. An Employer is not required to make any Gateway Contribution in the event that the Employer's elected allocation under Section 4.07(A) satisfies; (a) the "broadly available allocation rate" requirements; (b) the "age-based allocation with a gradual age or service schedule" requirements; or (c) the uniform target benefit allocation requirements each as described in Treas. Reg. §1.401(a)(4)-8(b)(1)(B). Moreover, an Employer is not required to make any Gateway Contribution in the event that the Plan is permissively aggregated (pursuant to Section 4.06(C)(ix)) with one or more defined benefit plans for purposes of coverage and nondiscrimination testing under Treas. Reg. §1.401(a)(4)-8(b)(2) and the aggregated plan is eligible to be tested on a benefits basis, either because the aggregated plan is primarily defined benefit in character, or the aggregated plan provided the minimum aggregate allocation gateway as further defined in Treas. Reg. §1.401(a)(4)-9(b)(2)(v).

(B) Eligibility for Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution for a Plan Year to each NHCE Participant who receives an allocation of any Employer Contribution or Nonelective Contribution for such Plan Year. The Plan Administrator will allocate the Gateway Contribution without regard to any allocation conditions under Section 3.06 otherwise applicable to Employer Contributions or Nonelective Contributions under the Plan. However, if the Plan Administrator disaggregates the Plan for testing pursuant to the OEE rule under Section 4.06(C), the Otherwise Excludible Employees will not receive an allocation of any Gateway Contribution.

(C) Amount of Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution pro rata based on the Compensation of each Participant who receives a Gateway Contribution allocation for the Plan Year, but in no event will an allocation of the Gateway Contribution to any Participant exceed the lesser of: (1) 5% of Compensation; or (2) one-third (1/3) of the Highest Allocation Rate for the Plan Year. The Plan Administrator will reduce (offset) the Gateway Contribution allocation for a Participant under either the 5% or the 1/3 Gateway Contribution alternative, by the amount of any other Employer Contributions or Nonelective Contributions the Plan Administrator allocates (including forfeitures allocated as an Employer Contribution or Nonelective Contribution and Safe Harbor Nonelective Contributions, but excluding other QNECs, as defined under Section 1.38(C)) for the same Plan Year to such Participant; provided that if an NHCE is receiving only a QNEC and the QNEC amount equals or exceeds the Gateway Contribution, the QNEC satisfies the Gateway Contribution requirement as to that NHCE. Notwithstanding the foregoing, the Employer may increase the Gateway Contribution to satisfy the provisions of Treas. Reg. §1.401(a)(4)-9(b)(2)(v)(D) if the Plan consists (for nondiscrimination testing purposes) of one or more Defined Contribution Plans and one or more Defined Benefit Plans.

(D) Compensation for 5% Gateway Contribution. For allocation purposes under the 5% Gateway Contribution alternative, "Compensation" means under Section 4.05(F) except that Compensation is limited to Participating Compensation.

(E) Compensation for Determination of Highest Rate and 1/3 Gateway Contribution. The Plan Administrator under the 1/3 Gateway Contribution alternative: (i) will determine the Highest Allocation Rate and the resulting Gateway Contribution rate for the NHCE Participants entitled to the Gateway Contribution; and (ii) will allocate the Gateway Contribution, based on Compensation the Employer elects in its Adoption Agreement, provided that such definition satisfies Code §414(s) and if it does not, the Plan Administrator will allocate the Gateway Contribution based on a Code §414(s) definition which the Plan Administrator operationally selects.

(1) Definition of Highest Allocation Rate. The Highest Allocation Rate means the greatest allocation rate of any HCE Participant and is equal to the Participant's total Employer Contribution or Nonelective Contribution allocation (including any QNECs, Safe Harbor Nonelective Contributions and forfeitures allocated as a Nonelective Contribution or forfeitures

allocated as a Money Purchase Pension Contribution) divided by his/her Compensation, as described in this Section 4.07(E).

(F) Employer Contribution Excludes Match. For purposes of this Section 4.07, an Employer Contribution excludes Matching Contributions.

4.08 AMENDMENT TO PASS TESTING. In the event that the Plan fails to satisfy Code §§410(b) or 401(a)(4) in any Plan Year, the Employer may elect to amend the Plan consistent with Treas. Reg. §1.401(a)(4)-11(g) to correct the failure, or as otherwise permitted in the regulation. The Employer may make such an amendment in any form or manner as the Employer deems reasonable, but otherwise consistent with Section 11.02. Any amendment under this Section 4.08 will not affect reliance on the Plan's Opinion Letter or Advisory Letter.

4.09 APPLICATION OF COMPENSATION LIMIT. The Plan Administrator in performing any nondiscrimination testing under this Article IV will limit each Participant's Compensation to the amount described in Section 1.11(E).

4.10 401(k) (OR OTHER PLAN) TESTING. The Plan Administrator will test Elective Deferrals, Matching Contributions and Employee Contributions under the Employer's 401(k) Plan or other Plan as applicable, in accordance with this Section 4.10.

(A) Annual Elective Deferral Limitation. A Participant's Elective Deferrals for a Taxable Year may not exceed the Elective Deferral Limit.

(1) Definition of Elective Deferral Limit. The Elective Deferral Limit is the Code §402(g) limitation on each Participant's Elective Deferrals for each Taxable Year. If the Participant's Taxable Year is not a calendar year, the Plan Administrator must apply the Code §402(g) limitation in effect for the calendar year in which the Participant's Taxable Year begins.

(2) Definition of Excess Deferral. A Participant's Excess Deferral is the amount of Elective Deferrals for a Taxable Year which exceeds the Elective Deferral Limit.

(3) Elective Deferral Limit. The Elective Deferral Limit is the amount as in effect under Code §402(g) ($16,500 in 2011), subject to adjustment by the Treasury in multiples of $500 under Code §402(g)(4).

(4) Suspension after reaching limit. If, pursuant to a Salary Reduction Agreement or pursuant to a CODA election, the Employer determines a Participant's Elective Deferrals to the Plan for a Taxable Year would exceed the Elective Deferral Limit, the Employer will suspend the Participant's Elective Deferrals under his/her Salary Reduction Agreement, if any, until the following January 1 and will pay to the Participant in cash the portion of the Elective Deferrals which would result in the Participant's Elective Deferrals for the Taxable Year exceeding the Elective Deferral Limit.

(5) Correction. If the Plan Administrator determines a Participant's Elective Deferrals already contributed to the Plan for a Taxable Year exceed the Elective Deferral Limit, the Plan Administrator will distribute the Excess Deferrals as adjusted for Allocable Income, no later than April 15 of the following Taxable Year (or if later, the date permitted under Code §§7503 or 7508A). See Section 4.11(C)(1) as to Gap Period income.

(6) 415 interaction. If the Plan Administrator distributes the Excess Deferrals by the April 15 deadline under Section 4.10(A)(5), the Excess Deferrals are not an Annual Addition under Section 4.05, and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. Elective Deferrals distributed to a Participant as an Excess Amount in accordance with Section 4.03 are not taken into account in determining the Participant's Elective Deferral Limit.

(7) ADP interaction. The Plan Administrator will reduce the amount of Excess Deferrals for a Taxable Year distributable to a Participant by the amount of Excess Contributions (as determined in Section 4.10(B)), if any, previously distributed to the Participant for the Plan Year beginning in that Taxable Year.

(8) More than one plan. If a Participant participates in another plan subject to the Code §402(g) limitation under which he/she makes elective deferrals pursuant to a 401(k) Plan, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a tax-sheltered annuity (irrespective of whether the Employer maintains the other plan), the Participant may provide to the Plan Administrator a written claim for Excess Deferrals made to the Plan for a Taxable Year. The Participant must submit the claim no later than the March 1 following the close of the particular Taxable Year and the claim must specify the amount of the Participant's Elective Deferrals under this Plan which are Excess Deferrals. The Plan Administrator may require the Participant to provide reasonable evidence of the existence of and the amount of the Participant's Excess Deferrals. If the Plan Administrator receives a timely claim which it approves, the Plan Administrator will distribute the Excess Deferrals (as adjusted for Allocable Income under Section 4.11(C)(1)) the Participant has assigned to this Plan, in accordance with this Section 4.10(A). If a Participant has Excess Deferrals because of making Elective Deferrals to this Plan and other plans of the Employer (but where the Elective Deferral Limit is not exceeded based on Deferrals to any single plan), the Participant for purposes of this Section 4.10(A)(8) is deemed to have notified the Plan Administrator of this Plan of the Excess Deferrals.

(9) Roth and Pre-Tax Deferrals. If a Participant who will receive a distribution of Excess Deferrals, in the Taxable Year for which the corrective distribution is made, has contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Trustee to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Trustee will make the corrective distribution. However, the amount of a corrective distribution of Excess Deferrals to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.10(A)(9) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the Taxable Year of the correction.

(B) Actual Deferral Percentage (ADP) Test. If the Employer in its Adoption Agreement has elected to test its 401(k) Plan as a Traditional 401(k) Plan, a Participant's Elective Deferrals for a Plan Year may not exceed the ADP Limit. However, this Section 4.10(B) will not apply to a Plan Year if: (1) for the Plan

Year no NHCE was an ADP Participant, (2) for the Plan Year no HCE was an ADP Participant, or (3) the Plan is a Volume Submitter Plan and the plan is a governmental plan described in Code §414(d). In accordance with Treas. Reg. §1.401(k)-1(e)(7), it is impermissible for the Plan to use ADP testing for a Plan Year in which it is intended for the Plan through its written terms to use the ADP test safe harbor, even though the Plan fails to satisfy the requirements of such safe harbor for the Plan Year.

(1) Definition of ADP Limit. The ADP Limit is the maximum dollar amount of Elective Deferrals each HCE Participant may defer under the Plan such that the Plan passes the ADP test for that Plan Year.

(2) Definition of Excess Contributions. Excess Contributions are the amount of Elective Deferrals made by the HCEs which exceed the ADP Limit and which may not be recharacterized as Catch-Up Contributions or as Employee Contributions.

(3) ADP test. For each Plan Year, Elective Deferrals satisfy the ADP test if they satisfy either of the following tests:

(a) 1.25 test. The ADP for the HCE Group does not exceed 1.25 times the ADP of the NHCE Group; or

(b) 2 percent test. The ADP for the HCE Group does not exceed the ADP for the NHCE Group by more than two percentage points and the ADP for the HCE Group is not more than twice the ADP for the NHCE Group.

(4) Calculation of ADP. The ADP for either group is the average of the separate ADRs calculated to the nearest one-hundredth of one percent for each ADP Participant who is a member of that group. The Plan Administrator will include in the ADP test as a zero an ADP Participant who elects not to make Elective Deferrals to the Plan for the Testing Year.

(a) Definition of ADR (actual deferral ratio). An ADP Participant's ADR for a Plan Year is the ratio of the ADP Participant's Elective Deferrals, but excluding Catch-Up Contributions, for the Plan Year to the ADP Participant's Compensation for the Plan Year.

(b) Definitions of ADP Participant and HCE and NHCE Groups. See Sections 4.11(B), (G), and (H).

(c) Excess Deferrals interaction. In determining the ADP, the Plan Administrator must include any HCE's Excess Deferrals (whether or not corrected), as described in Section 4.10(A), to this Plan or to any other Plan of the Employer and the Plan Administrator will disregard any NHCE's Excess Deferrals.

(d) QNECs and QMACs. The Plan Administrator operationally may include in the ADP test, QNECs, and QMACs the Plan Administrator does not use in the ACP test, provided that the Plan passes the ACP test before and after the shifting of any amount from the ACP test to the ADP test. The Plan Administrator may use QNECs or QMACs in the ADP test provided such amounts are not impermissibly targeted under Section 4.10(D).

(e) Shifting Elective Deferrals to ACP. The Plan Administrator will not count in the ADP test any Elective Deferrals the Plan Administrator operationally elects to shift to the ACP test; provided that the Plan must pass the ADP test both taking into account and disregarding the Elective Deferrals the Plan Administrator shifts to the ACP test.

(f) Current/Prior Year Testing.

(i) Election. In determining whether the Plan's 401(k) arrangement satisfies the ADP test, the Plan Administrator will use Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement. Any such election applies for such Testing Years as the Employer elects (and retroactively as the Employer may elect in the case of a Restated Plan).

(ii) Permissible changes. The Employer may amend its Adoption Agreement to change from Prior Year Testing to Current Year Testing at any time, subject to Section 4.06(D). The Employer under Section 4.06(D) may amend its Adoption Agreement to change from Current Year Testing to Prior Year Testing only: (A) if the Plan has used Current Year Testing in at least the 5 immediately preceding Plan Years (or if the Plan has not been in existence for 5

Plan Years, the number of Plan Years the Plan has been in existence); (B) the Plan is the result of aggregation of 2 or more plans and each of the aggregated plans used Current Year Testing for the period described in clause (A); or (C) a transaction occurs to which the coverage transition rule under Code §410(b)(6)(C) applies and as a result, the Employer maintains a plan using Prior Year Testing and a plan using Current Year Testing. Under clause (C), the Employer may make an amendment to change to Prior Year Testing at any time during the coverage transition period.

(iii) Deferrals and QNEC/QMAC deadline/limitation under Prior Year Testing. The Plan Administrator includes Elective Deferrals, QNECs or QMACs in determining the HCE or NHCE ADP only if the Employer makes such contribution to the Plan within 12 months following the end of the Testing Year to which the Elective Deferral relates or to which the Plan Administrator will allocate the QNEC or QMAC. For this purpose, an Elective Deferral is considered allocated as of a date within a Testing Year if the allocation is not contingent on participation or performance of services after such date. Under Prior Year Testing, to count the QNEC or QMAC in the ADP test, the Employer must contribute a QNEC or QMAC by the end of the Testing Year. The Employer may not make an Operational QNEC or QMAC if the Plan uses Prior Year Testing.

(iv) First Plan Year under Prior Year Testing. For the first Plan Year the Plan permits Elective Deferrals, if the Plan is not a Successor Plan and is using Prior Year Testing, the prior year ADP for the NHCE Group is equal to the greater of 3% or the actual ADP for the NHCE Group in the first Plan Year. If the Plan continues to use Prior Year Testing in the second Plan Year, the Plan Administrator must use the actual first Plan Year ADP for the NHCE Group in the ADP test for the second Plan Year.

(v) Plan coverage changes under Prior Year Testing. If the Employer's Plan is using Prior Year Testing and the Plan experiences a plan coverage change under Treas. Reg. §1.401(k)-2(c)(4), the Plan Administrator will make any adjustments such regulations may require to the NHCEs' ADP for the prior year.

(vi) Shifting contributions and switching from Current Year Testing to Prior Year Testing. If the Plan Administrator is using Current Year Testing and shifts an Elective Deferral to the ACP test or shifts a QMAC to the ADP test, then, in the subsequent Testing Year for which the Plan Administrator switched to Prior Year Testing, the Plan Administrator in applying Prior Year Testing must disregard the shifted amount. The Plan Administrator in applying Prior Year Testing in such subsequent Testing Year will restore the ADP and ACP to their original amounts, leaving the shifted amount in the original test without regard to the shift in the previous Testing Year.

(5) Special aggregation rule for HCEs. To determine the ADR of any HCE, the Plan Administrator must take into account any Elective Deferrals made by the HCE (and if used in the ADP test, any QNECs and QMACs allocated to the HCE) under any other 401(k) Plan maintained by the Employer. If the 401(k) Plans have different Plan Years, the Plan Administrator will determine the combined Elective Deferrals on the basis of the Plan Years ending in the same calendar year. If the 401(k) Plans have different Plan Years, all Elective Deferrals made during the Plan Year will be aggregated. Notwithstanding the foregoing, the Plan Administrator will not apply the aggregation rule of this Section 4.10(B)(5) to plans which may not be aggregated under Treas. Reg. §1.401(k)-2(a)(3)(ii)(B).

(6) Aggregation of certain 401(k) plans. If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(k) Plans to determine whether the plans satisfy the ADP test. This aggregation rule applies to the ADR determination for all ADP Participants (and ADP participants under the other plans), irrespective of whether an ADP Participant is an HCE or an NHCE. An Employer may not aggregate: (a) plans with different Plan Years; (b) a Safe Harbor 401(k) Plan with a non-Safe Harbor 401(k) Plan; (c) plans which use different testing methods (Current Year Testing versus Prior Year Testing); or (d) any other plans which must be disaggregated under Treas. Reg. §1.401(k)-1(b)(4)(iv). If the Employer aggregating 401(k) Plans under this Section 4.10(B)(6) is using Prior Year Testing, the Plan Administrator must adjust the NHCE Group ADP for the prior year as provided in Section 4.10(B)(4)(f)(v).

(7) Characterization of Excess Contributions. If, pursuant to Section 4.10(B)(4)(d), the Plan Administrator has elected to include QMACs in the ADP test, any Excess Contributions are attributable proportionately to Elective Deferrals and to QMACs in the ADP test allocated on the basis of those Elective Deferrals. The Plan Administrator will reduce the amount of Excess Contributions for a Plan Year distributable to an HCE by the amount of Excess Deferrals (as determined in Section 4.10(A)), if any, previously distributed to that Employee for the Employee's Taxable Year ending in that Plan Year.

(8) Distribution of Excess Contributions. If the Plan Administrator determines the Plan fails to satisfy the ADP test for a Plan Year, the Trustee, as directed by the Plan Administrator, by the end of the Plan Year which follows the Testing Year (or any later date determined under Code §7508A), must distribute the Excess Contributions, as adjusted for Allocable Income under Section 4.11(C)(2).

(a) Calculation of total Excess Contributions. The Plan Administrator will determine the total amount of the Excess Contributions to the Plan by starting with the HCE(s) who has the greatest ADR, reducing his/her ADR (but not below the next highest ADR), then, if necessary, reducing the ADR of the HCE(s) at the next highest ADR, including the ADR of the HCE(s) whose ADR the Plan Administrator already has reduced (but not below the next highest ADR), and continuing in this manner until the ADP for the HCE Group is equal to the ADP Limit. All reductions under this Section 4.10(B)(8)(a) are to the ADR only and do not result in any actual distributions.

(b) Apportionment and distribution of Excess Contributions. After the Plan Administrator has determined the total Excess Contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute to each HCE his/her respective share of the Excess Contributions. The Plan Administrator will determine each HCE's share of Excess Contributions by starting with the HCE(s) who has the highest dollar amount of Elective Deferrals, reducing his/her Elective Deferrals (but not below the next highest dollar amount of Elective Deferrals), then, if necessary, reducing the Elective Deferrals of the HCE(s) at the next highest dollar amount of Elective Deferrals including the Elective Deferrals of the HCE(s) whose Elective Deferrals the Plan Administrator already has reduced (but not below the next highest dollar amount of Elective Deferrals), and continuing in this manner until the Trustee has distributed all Excess Contributions.

(c) Roth and Pre-Tax Deferrals. If an HCE who will receive a distribution of Excess Contributions, in the Plan Year for which the corrective distribution is made, has contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Trustee to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Trustee will make the corrective distribution. However, the amount of a corrective distribution of Excess Contributions to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.10(B)(8)(c) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the Testing Year.

(d) Catch-Up Deferrals re-characterized. If the Plan permits Catch-Up Contributions and a Catch-Up Eligible Participant exceeds his/her ADP Limit and the Plan Administrator otherwise would distribute the Participant's Excess Contributions, the Plan Administrator instead will re-characterize as a Catch-Up Deferral the portion of such Excess Contributions as is equal to the Participant's unused Catch-Up Deferral Limit applicable to the Testing Year. Any such re-characterized Excess Contribution, plus Allocable Income, will remain in the Participant's Account and the Plan Administrator, for purposes of determining ADP test correction, will treat the re-characterized amount, including Allocable Income, as having been distributed. If the Employer in its Adoption Agreement has elected to match Catch-Up Deferrals, the Plan Administrator will retain in the affected Participant's Account any Matching Contributions made with respect to any Excess Contributions which the Plan Administrator re-characterizes under this Section 4.10(B)(8)(d).

(9) Allocable Income/Testing Year and Gap Period. A corrective distribution under Section 4.10(B)(8) must include Allocable Income. See Section 4.11(C)(2).

(10) Treatment as Annual Additions. Distributed Excess Contributions are Annual Additions under Sections 4.01 through 4.05 in the Limitation Year in which such amounts were allocated.

(11) Re-characterization as Employee Contributions. In addition to the other correction methods under this Section 4.10(B), the Plan Administrator operationally may elect to correct an ADP test failure by re-characterizing the Elective Deferrals in excess of the ADP Limit as Employee Contributions in accordance with Treas. Reg. §1.401(k)-2(b)(3). Elective Deferrals may not be re-characterized with respect to HCE Participants to the extent that the re-characterized amounts, in conjunction with Employee Contributions actually made by the HCE, exceed the maximum amount of Employee Contributions (determined prior to performing the ACP Test) that the employee is permitted to make under the plan in the absence of re-characterization. Elective Deferrals may not be re-characterized under this paragraph after 2 1/2 months after the close of the plan year to which the re-characterization relates. The amount of Excess Aggregate Contributions for a plan year will be determined only after first determining the amount of Elective Deferrals treated as Employee Contributions due to re-characterization.

(C) Actual Contribution Percentage (ACP) Test. If: (i) the Employer in its Adoption Agreement has elected to test its Plan as a traditional 401(m) Plan; (ii) the Employer under its 401(k) Plan has elected only ADP test safe harbor plan status and the Employer makes Matching Contributions; or (iii) under any Plan there are Employee Contributions or Matching Contributions (not exempted from ACP testing), a Participant's Aggregate Contributions may not exceed the ACP Limit. However, this Section 4.10(C) will not apply to a Plan Year if: (1) for the Plan Year no NHCE was an ACP Participant, (2) for the Plan Year no HCE was an ACP Participant, or (3) the Plan is a Volume Submitter Plan and the plan is a governmental plan described in Code §414(d). In accordance with Treas. Reg. §§1.401(k)-1(e)(7) and 1.401(m)-1(c)(2), it is impermissible for the Plan to use ACP testing for a Plan Year in which it is intended for the Plan through its written terms to use the ACP test safe harbor, even though the Plan fails to satisfy the requirements of such safe harbor for the Plan Year.

(1) Definition of ACP Limit. The ACP Limit is the maximum dollar amount of Aggregate Contributions each HCE Participant may receive or may make under the Plan such that the Plan passes the ACP test.

(2) Definition of Aggregate Contributions. Aggregate Contributions are Matching Contributions and Employee Contributions. Aggregate Contributions also include any QMACs, QNECs and Elective Deferrals the Plan Administrator includes in the ACP test. If the Employer has elected ADP test safe harbor plan status and the Employer makes a Safe Harbor Matching Contribution for a Plan Year, then the Plan Administrator in computing Aggregate Contributions may disregard each Participant's Matching Contributions which do not exceed 4% of the Participant's Compensation for the Plan Year.

(3) Definition of Excess Aggregate Contributions. Excess Aggregate Contributions are the amount of Aggregate Contributions allocated on behalf of the HCEs which exceed the ACP Limit.

(4) ACP test. For each Plan Year, Aggregate Contributions satisfy the ACP test if they satisfy either of the following tests:

(a) 1.25 test. The ACP for the HCE Group does not exceed 1.25 times the ACP of the NHCE Group; or

(b) 2 percent test. The ACP for the HCE Group does not exceed the ACP for the NHCE Group by more than two percentage points and the ACP for the HCE Group is not more than twice the ACP for the NHCE Group.

(5) Calculation of ACP. The ACP for either group is the average of the separate ACRs calculated to the nearest one-hundredth of one percent for each ACP Participant who is a member of that group. The Plan Administrator will include in the ACP test as a zero an ACP Participant who for the Testing Year: (i) is eligible to make Employee Contributions but who does not do so; or (ii) is eligible to make Elective Deferrals and to receive an allocation of any Matching Contributions based on Elective Deferrals but who does not make any Elective Deferrals. An Employee who fails to satisfy an allocation condition applicable to Matching Contributions is excluded from the ACP test unless the Employee is eligible to make Employee Contributions or the Plan Administrator re-characterizes any of the Employee's Elective Deferrals as Employee Contributions.

(a) Definition of ACR (actual contribution ratio). An ACP Participant's ACR for a Plan Year is the ratio of the ACP Participant's Aggregate Contributions for the Plan Year to the ACP Participant's Compensation for the Plan Year.

(b) Definitions of ACP Participant and HCE and NHCE Groups. See Section 4.11(A), (G), and (H).

(c) QNECs and Elective Deferrals. The Plan Administrator operationally may include in the ACP test QNECs and Elective Deferrals the Plan Administrator does not use in the ADP test, provided that the Plan passes the ADP test before and after the shifting of any amount from the ADP test to the ACP test. The Plan Administrator may use QNECs in the ACP test provided such amounts are not impermissibly targeted under Section 4.10(D).

(d) Shifting QMACs to ADP. The Plan Administrator will not count in the ACP test any QMACs the Plan Administrator operationally elects to shift to the ADP test; provided that the Plan must pass the ACP test both taking into account and disregarding the QMACs the Plan Administrator shifts to the ADP test.

(e) Current/Prior Year Testing.

(i) Election. In determining whether the Plan's 401(k) arrangement satisfies the ACP test, the Plan Administrator will use Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement. Any such election applies for such Testing Years as the Employer elects (and retroactively as the Employer elects in the case of a Restated Plan).

(ii) Permissible changes. The Employer may amend its Adoption Agreement to change from Prior Year Testing to Current Year Testing at any time, subject to Section 4.06(D). The Employer, under Section 4.06(D) may amend its Adoption Agreement to change from Current Year Testing to Prior Year Testing only: (A) if the Plan has used Current Year Testing in at least the 5 immediately preceding Plan Years (or if the Plan has not been in existence for 5 Plan Years, the number of Plan Years the Plan has been in existence); (B) the Plan is the result of aggregation of 2 or more plans and each of the aggregated plans used Current Year Testing for the period described in clause (A); or (C) a transaction occurs to which the coverage transition rule under Code §410(b)(6)(C) applies and as a result, the Employer maintains a plan using Prior Year Testing and a plan using Current Year Testing. Under clause (C), the Employer may make an amendment to change to Prior Year Testing at any time during the coverage transition period.

(iii) Employee Contribution, Matching and QNEC deadline/limitation under Prior Year Testing. The Plan Administrator includes Employee Contributions in the ACP test in the Testing Year in which the Employer withholds the Employee Contributions from the Participant's pay, provided such contributions are contributed to the Trust within a reasonable period thereafter. The Plan Administrator may include Matching Contributions and QNECs in determining the HCE or NHCE ACP only if the Employer makes such contribution to the Plan within 12 months following the end of the Testing Year to which the Plan Administrator will allocate the Matching Contribution or QNEC. To be included in the ACP test, a Matching Contribution must be made on account of an Employee's Elective Deferrals or Employee Contributions for the Testing Year. Under Prior Year Testing, to count the QNEC in the ACP test, the Employer must contribute a QNEC by the end of the Testing Year. The Employer may not make an Operational QNEC if the Plan uses Prior Year Testing.

(iv) First Plan Year under Prior Year Testing. For the first Plan Year the Plan permits Matching Contributions or Employee Contributions, if the Plan is not a Successor Plan and is using Prior Year Testing, the prior year ACP for the NHCE Group is equal to the greater of 3% or the actual ACP for the NHCE Group in the first Plan Year. If the Plan continues to use Prior Year Testing in the second Plan Year, the Plan Administrator must use the actual first Plan Year ACP for the NHCE Group in the ACP test for the second Plan Year.

(v) Plan coverage changes under Prior Year Testing. If the Employer's Plan is using Prior Year Testing and the Plan experiences a plan coverage change under Treas. Reg. §1.401(m)-2(c)(4), the Plan Administrator will make any adjustments such regulations may require to the NHCEs' ACP for the prior year.

(vi) Shifting contributions and switching from Current Year Testing to Prior Year Testing. If the Plan Administrator is using Current Year Testing and shifts an Elective Deferral to the ACP test or shifts a QMAC to the ADP test, then, in the subsequent Testing Year for which the Plan Administrator switched to Prior Year Testing, the Plan Administrator in applying Prior Year Testing must disregard the shifted amount. The Plan Administrator in applying Prior Year Testing in such subsequent Testing Year will restore the ADP and ACP to their original amounts, leaving the shifted amount in the original test without regard to the shift in the previous Testing Year.

(6) Special aggregation rule for HCEs. To determine the ACR of any HCE, the Plan Administrator must take into account any Aggregate Contributions allocated to the HCE under any other 401(m) Plan maintained by the Employer. If the 401(m) Plans have different Plan Years, the Plan Administrator will determine the combined Aggregate Contributions on the basis of the Plan Years ending in the same calendar year. If the 401(m) Plans have different Plan Years, all Aggregate Contributions made during the Plan Year will be aggregated. Notwithstanding the foregoing, the Plan Administrator will not apply the aggregation rule of this Section 4.10(C)(6) to plans which may not be aggregated under Treas. Reg. §1.401(m)-2(a)(3)(ii)(B).

(7) Aggregation of certain 401(m) plans. If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(m) Plans under such plans to determine whether the plans satisfy the ACP test. This aggregation rule applies to the ACR determination for all ACP Participants (and ACP participants under the other plans), irrespective of whether an ACP Participant is an HCE or an NHCE. An Employer may not aggregate: (a) plans with different Plan Years; (b) a Safe Harbor 401(k) Plan with a non-Safe Harbor 401(k) Plan; (c) plans which use different testing methods (Current Year Testing versus Prior Year Testing); or (d) any other plans which must be disaggregated under Treas. Reg. §1.401(k)-1(b)(4)(iv). If the Employer aggregating 401(m) Plans under this Section 4.10(C)(7) is using Prior Year Testing, the Plan Administrator must adjust the NHCE Group ACP for the prior year as provided in Section 4.10(C)(5)(e)(v).

(8) Distribution of Excess Aggregate Contributions. If the Plan Administrator determines the Plan fails to satisfy the ACP test for a Plan Year, the Trustee, as directed by the Plan Administrator, by the end of the Plan Year which follows the Testing Year (or any later date determined under Code §7508A), must distribute the Vested Excess Aggregate Contributions, as adjusted for Allocable Income under Section 4.11(C)(2).

(a) Calculation of total Excess Aggregate Contributions. The Plan Administrator will determine the total amount of the Excess Aggregate Contributions by starting with the HCE(s) who has the greatest ACR, reducing his/her ACR (but not below the next highest ACR), then, if necessary, reducing the ACR of the HCE(s) at the next highest ACR, including the ACR of the HCE(s) whose ACR the Plan Administrator already has reduced (but not below the next highest ACR), and continuing in this manner until the ACP for the HCE Group is equal to the ACP Limit. All reductions under this Section 4.10(C)(8)(a) are to the ACR only and do not result in any actual distributions.

(b) Apportionment and distribution of Excess Aggregate Contributions. After the Plan Administrator has determined the total Excess Aggregate Contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute (to the extent Vested) to each HCE his/her respective share of the Excess Aggregate Contributions. The Plan Administrator will determine each HCE's share of Excess Aggregate Contributions by starting with the HCE(s) who has the highest dollar amount of Aggregate Contributions, reducing the amount of his/her Aggregate Contributions (but not below

the next highest dollar amount of the Aggregate Contributions), then, if necessary, reducing the amount of Aggregate Contributions of the HCE(s) at the next highest dollar amount of Aggregate Contributions, including the Aggregate Contributions of the HCE(s) whose Aggregate Contributions the Plan

Administrator already has reduced (but not below the next highest dollar amount of Aggregate Contributions), and continuing in this manner until the Trustee has distributed all Excess Aggregate Contributions.

(9) Allocable Income/Testing Year and Gap Period. The Plan Administrator will calculate and will distribute Excess Aggregate Contribution Allocable Income in the same manner and for the same Plan Years as described in Section 4.10(B)(9) for Excess Contributions.

(10) Testing and correction ordering. If the Plan Administrator must perform both the ADP and ACP tests in a given Plan Year, the Plan Administrator may perform the tests and undertake correction of a failed test in any order that the Plan Administrator determines, with a view toward preserving Plan benefits, maximizing Employer Contributions in the Plan versus Employee Contributions or Elective Deferrals, and minimizing forfeitures. Toward this end, the Plan Administrator may treat an HCE's allocable share of Excess Aggregate Contributions in the following priority: (a) first as attributable to his/her Employee Contributions and Matching Contributions thereon, if any; (b) then as attributable to Matching Contributions allocable as to Excess Contributions determined under the ADP test such that the Plan Administrator distributes any Vested Excess Aggregate Contribution to reduce the amount of Associated Matching Contribution subject to forfeiture (irrespective of vesting). See Section 3.07(B)(1) as to testing or re-testing related to forfeiture allocations. To the extent that distributed Excess Aggregate Contributions include Elective Deferrals, and the Participant in that Testing Year made both Pre-Tax Deferrals and Roth Deferrals, the ordering rules under Sections 4.10(A)(9) and 4.10(B)(8)(c) apply.

(11) Vesting/Forfeiture of non-Vested Excess Aggregates. To the extent an HCE's Excess Aggregate Contributions are attributable to Matching Contributions, and he/she is not 100% Vested in his/her Matching Contribution Account, the Plan Administrator will distribute only the Vested portion and will forfeit the non-Vested portion. The Vested portion of the HCE's Excess Aggregate Contributions attributable to Employer Matching Contributions is the total amount of such Excess Aggregate Contributions (as adjusted for allocable income) multiplied by his/her Vested percentage (determined as of the last day of the Plan Year for which the Employer made the Matching Contribution).

(12) Treatment as Annual Addition. Distributed Excess Aggregate Contributions are Annual Additions under Sections 4.01 through 4.05 in the Limitation Year in which such amounts were allocated.

(D) QNEC, Matching and QMAC Targeting Restrictions. The Plan Administrator in performing the ADP or ACP tests may not include in the tests any impermissibly targeted QNEC or Matching Contribution as described in this Section 4.10(D). These targeting restrictions apply to Matching Contributions, to Plan-Designated and Operational QNECs and to Plan-Designated and Operational QMACs. The Employer will not contribute Operational QNECs or QMACs which would violate the targeting restrictions.

(1) QNEC targeting rules. The Plan Administrator may include in the ADP test or in the ACP test only such amounts of any QNEC as are not impermissibly targeted. A QNEC is impermissibly targeted if the QNEC amount allocated to any NHCE exceeds the greater of: (a) 5% of Compensation; or (b) 2 times the Plan's Representative Contribution Rate.

(a) Definition of Representative Contribution Rate.

(i) ADP. The Plan's ADP Representative Contribution Rate is the lowest ADP Applicable Contribution Rate of any ADP Participants who are NHCEs in a group consisting of: (A) any one-half of the ADP Participants who are NHCEs for the Plan Year; or (B) if it would result in a greater Representative Contribution Rate than under clause (A), all of the ADP Participants who are NHCEs and who are employed by the Employer on the last day of the Plan Year.

(ii) ACP. The Plan's ACP Representative Contribution Rate is the lowest ACP Applicable Contribution Rate of any ACP Participants who are NHCEs in a group consisting of: (A) any one-half of the ACP Participants who are NHCEs for the Plan Year; or (B) if it would result in a greater Representative Contribution Rate than under clause (A), all of the ACP Participants who are NHCEs and who are employed by the Employer on the last day of the Plan Year.

(b) Definition of Applicable Contribution Rate.

(i) ADP. The Applicable Contribution Rate of an ADP Participant who is an NHCE for the ADP test is the sum of the NHCE's QNECs and QMACs used in the ADP test, divided by the NHCE's Compensation.

(ii) ACP. The Applicable Contribution Rate of an ACP Participant who is an NHCE for the ACP test is the sum of the NHCE's Matching Contributions and QNECs used in the ACP test, divided by the NHCE's Compensation.

(c) QNEC in ACP test. The Plan Administrator may not use in the ADP test or take into account in determining the Plan's Representative Contribution Rate, any QNEC the Plan Administrator applies to the ACP test.

(d) Prevailing Wage Contribution. Notwithstanding Section 4.10(D)(1), the Plan Administrator may count in the ADP test QNECs which are Prevailing Wage Contributions to the extent that such QNECs do not exceed 10% of Compensation. The Plan Administrator also may count in the ACP test a QNEC which is a Prevailing Wage Contribution up to an additional 10% of Compensation, such that the combined QNEC amount does not exceed 20% of Compensation and not more than 10% in either test.

(2) Matching Contribution targeting rules. The Plan Administrator may include in the ACP test only such Matching Contribution amounts (including QMACs) as are not impermissibly targeted. A Matching Contribution is impermissibly targeted if the Matching Contribution amount allocated to any NHCE exceeds the greatest of: (i) 5% of Compensation; (ii) the amount of the NHCE's Elective

Deferrals; or (iii) the product of 2 times the Plan's Representative Matching Rate and the NHCE's Elective Deferrals for the Plan Year.

(a) Definition of Representative Matching Rate. The Plan's Representative Matching Rate is the lowest Matching Rate for any ACP Participants who are NHCEs in a group consisting of: (i) any one-half of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year; or if it would result in a greater Representative Matching Rate, (ii) all of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year and who are employed by the Employer on the last day of the Plan Year.

(b) Definition of Matching Rate. The Matching Rate for an NHCE is the NHCE's Matching Contributions divided by his/her Elective Deferrals; provided that if the Matching Rate is not the same for all levels of Elective Deferrals, the Plan Administrator will determine each NHCE's Matching Rate by assuming an Elective Deferral equal to 6% of Compensation.

(c) Employee Contributions. If the Plan permits Employee Contributions, the Plan Administrator will apply this Section 4.10(D)(2) by adding together an NHCE's Employee Contributions and Elective Deferrals. If the Plan provides a Matching Contribution only as to Employee Contributions, the Plan Administrator will apply this Section 4.10(D)(2) by substituting the Employee Contributions for Elective Deferrals.

(3) Accrued fixed contributions. The Employer must contribute any accrued fixed contribution, even if any or all of such contribution is impermissibly targeted under this Section 4.10(D).

4.11 DEFINITIONS: SECTIONS 4.06-4.10. For purposes of Sections 4.06 through 4.10:

(A) ACP Participant. ACP Participant means an Eligible Employee who has satisfied the eligibility requirements under Article II and the allocation conditions under Section 3.06 applicable to any Matching Contributions such that the Participant would be entitled to a Matching Contribution allocable to the Testing Year if he/she makes an Elective Deferral. An ACP Participant also includes an Eligible Employee who has satisfied the eligibility requirements under Article II applicable to Employee Contributions and who has the right at any time during the Testing Year to make Employee Contributions. Any Employee with zero Compensation for the Testing Year is not an ACP Participant.

(B) ADP Participant. ADP Participant means an Eligible Employee who has satisfied the eligibility requirements under Article II applicable to any Elective Deferrals and who has the right at any time during the Testing Year to make Elective Deferrals. Any Employee with zero Compensation for the Testing Year is not an ADP Participant. A Participant is an ADP Participant even if he/she may not make Elective Deferrals for all or any part of the Testing Year because of the Annual Additions Limit or suspension based on a hardship distribution under Section 6.07.

(C) Allocable Income. Allocable Income means as follows:

(1) Excess Deferrals. For purposes of making a distribution of Excess Deferrals pursuant to Section 4.10(A), Allocable Income means Earnings allocable to the Excess Deferrals for the Taxable Year in which the Participant made the Excess Deferral. The Plan Administrator also will distribute Gap Period income with respect to Excess Deferrals in Taxable Years which began during 2007, if the Plan Administrator in accordance with the Plan terms otherwise would allocate the Gap Period Allocable Income to the Participant's Account. The Plan Administrator will not calculate and distribute Gap Period income with respect to Excess Deferrals made in Taxable Years which begin after December 31, 2007.

(a) Reasonable or alternative (pro rata) method. To calculate such Allocable Income for the Taxable Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §1.402(g)-1(e)(5)(iii). See Section 4.11(C)(2)(a) as to the alternative method except the Plan Administrator will apply such modifications as are necessary to determine Taxable Year Allocable Income with respect to the Excess Deferrals.

(b) Gap Period. To calculate Gap Period Allocable Income, the Plan Administrator may use either of the Section 4.11(C)(1)(a) methods, or may apply the "safe harbor method" under Treas. Reg. §1.402(g)-1(e)(5)(iv). See Section 4.11(C)(2)(b) as to the safe harbor method except the Plan Administrator will apply such modifications as are necessary to determine Gap Period Allocable Income with respect to the Excess Deferrals. Under a reasonable method described in Section 4.11(C)(1)(a), clause (i), the Plan Administrator may determine the Allocable Income as of a date which is no more than 7 days prior to the date of the corrective distribution.

(2) Excess Contributions/Aggregates. For purposes of making a distribution of Excess Contributions under Section 4.10(B) and Excess Aggregate Contributions under Section 4.10(C), Allocable Income means Earnings allocable to such amounts. For Plan Years beginning on or after the final 401(k) regulations effective date, and before January 1, 2008, the Plan Administrator must calculate Allocable Income for the Testing Year and also for the Gap Period; provided that the Plan Administrator will calculate and distribute the Gap Period Allocable Income only if the Plan Administrator in accordance with the Plan terms otherwise would allocate the Gap Period Allocable Income to the Participant's Account. The Plan Administrator will not calculate and distribute Gap Period income with respect to Excess Contributions or Excess Aggregate Contributions made in Plan Years beginning after December 31, 2007.

(a) Reasonable or alternative (pro rata) method. To calculate such Allocable Income for the Testing Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §§1.401(k)-2(b)(2)(iv)(C) and 1.401(m)-2(b)(2)(iv)(C). Under the alternative method, the Plan Administrator will determine the Allocable Income for the Testing Year by multiplying the Testing Year income with respect to Participant's Excess Contributions (or Excess Aggregate Contributions) by a fraction, the numerator of which is the Participant's Excess Contributions

(or Excess Aggregate Contributions) and the denominator of which is the Participant's end of the Testing Year Account Balance attributable to Elective Deferrals (or Matching Contributions and Employee Contributions) and any other amounts included in the ADP test (or ACP test), but disregarding Earnings on such amounts for the Testing Year.

(b) Gap Period. To calculate Gap Period Allocable Income, the Plan Administrator may use either of the Section 4.11(C)(2)(a) "reasonable method" or "alternative method" (but as modified to include the Gap Period), or may apply the "safe harbor method" under Treas. Reg. §§1.401(k)-2(b)(2)(iv)(D) and 1.401(m)-2(b)(2)(iv)(D). Under the safe harbor method, the Gap Period Allocable Income is equal to 10% of the Testing Year income determined under the alternative method, multiplied by the number of calendar months in the Gap Period. If a corrective distribution is made on or before the 15th day of a month, that month is disregarded in determining the number of months in the Gap Period. If the corrective distribution is made after the 15th day of the month, that month is included in such calculation. Under a reasonable method described in Section 4.11(C)(2)(a), clause (i), the Plan Administrator may determine the Allocable Income as of a date which is no more than 7 days prior to the date of the corrective distribution.

(D) Compensation. Compensation means, except as otherwise provided in this Article IV, Compensation as defined for nondiscrimination purposes in Section 1.11(F).

(E) Current Year Testing. Current Year Testing means for purposes of the ADP test described in Section 4.10(B) and the ACP test described in Section 4.10(C), the use of data from the Testing Year in determining the ADP or ACP for the NHCE Group.

(F) Gap Period. Gap Period means the period commencing on the first day of the next Plan Year following the Testing Year and ending on the date the Plan Administrator distributes Excess Contributions or Excess Aggregate Contributions for the Testing Year. As to Excess Deferrals, Gap Period means the period commencing on the first day of the next Taxable Year following the Taxable Year in which the Participant made the Excess Deferrals and ending on the date the Plan Administrator distributes the Excess Deferrals.

(G) HCE Group. HCE Group means the group of ADP Participants or ACP Participants (as the context requires) who are HCEs for the Testing Year.

(H) NHCE Group. NHCE Group means the group of ADP Participants or ACP Participants (as the context requires) who are NHCEs for the Testing Year, or for the immediately prior Plan Year under Prior Year Testing, except as the Testing Year may apply in the first Plan Year, in accordance with Sections 4.10(B)(4)(f)(iv) or 4.10(C)(5)(e)(iv).

(I) Prior Year Testing. Prior Year Testing means for purposes of the ADP test described in Section 4.10(B) and the ACP test described in Section 4.10(C), the use of data from the Plan Year immediately prior to the Testing Year in determining the ADP or ACP for the NHCE Group, unless the first Plan Year provisions of Sections 4.10(B)(4)(f)(iv) or 4.10(C)(5)(e)(iv) apply.

(J) Testing Year. Testing Year means the Plan Year for which the Plan Administrator is performing coverage or nondiscrimination testing including the ADP test or the ACP test.

ARTICLE V
VESTING

5.01 NORMAL/EARLY RETIREMENT AGE. The Employer in its Adoption Agreement must specify the Plan's Normal Retirement Age of at least age 55. If the Employer fails to specify the Plan's Normal Retirement Age in its Adoption Agreement, the Employer is deemed to have elected age 65 as the Plan's Normal Retirement Age. The Employer in its Adoption Agreement may specify an Early Retirement Age. A Participant's Account Balance derived from Employer contributions is 100% Vested upon and after his/her attaining Normal Retirement Age (or if applicable, Early Retirement Age) if the Participant is employed by the Employer on or after that date and regardless of the Participant's Years of Service for vesting or the Employer's Adoption Agreement elected vesting schedules.

(A) Pension Plans. If the Plan is a Money Purchase Pension Plan, effective as of the first Plan Year beginning after June 30, 2008, the Employer in its Adoption Agreement must elect a Normal Retirement Age of at least age 62; provided that the Employer may designate a lower age, not less than age 55, if that age is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

5.02 PARTICIPANT DEATH OR DISABILITY. The Employer must elect in its Adoption Agreement whether a Participant's Account Balance derived from Employer Contributions is 100% Vested if the Participant's Separation from Service is a result of his/her death or Disability.

5.03 VESTING SCHEDULE.

(A) General. Except as provided in Sections 5.01 and 5.02, or unless the Employer in its Adoption Agreement elects immediate vesting, for each Year of Service as described in Section 5.05, a Participant's Vested percentage of his/her Account Balance derived from Nonelective Contributions, Regular Matching Contributions, Additional Matching Contributions, QACA Safe Harbor Contributions, or Money Purchase Pension Contributions equals the percentage under the appropriate vesting schedule the Employer has elected in its Adoption Agreement. For purposes of this Section 5.03 and the corresponding Appendix B elections, "top-heavy vesting schedule" means a vesting schedule at least as rapid as a 6-year graded schedule or a 3-year cliff schedule. Any vesting schedule which is not a top-heavy vesting schedule is a "non-top-heavy schedule."

(1) Top-heavy schedule. If the Employer in it Adoption Agreement elects to apply a vesting schedule, it must elect a top-heavy vesting schedule as to the Regular Matching Contributions, Additional Matching Contributions and all other (non-Matching) Employer Contributions, except QACA Safe Harbor Contributions under Section 5.03(A)(5) or fully vested contributions under Section 5.03(E). The top-heavy vesting schedule(s) the Employer elects in its Adoption Agreement applies to: (i) all Regular Matching Contributions Accounts and Additional Matching Contributions Accounts of all Participants who have at least one Hour of Service in a Plan Year beginning after December 31, 2001; (ii) all other (non-Matching) Employer Contribution Accounts of all Participants who have at least one Hour of Service in a Plan Year beginning after December 31, 2006; and (iii) regardless of when the Contributions under (i) or (ii) were made.

(2) Possible non-top-heavy schedule and overrides as to application of top-heavy schedule. Notwithstanding Section 5.03(A)(1), the Employer in Appendix B may elect to apply a non-top-heavy vesting schedule in Plan Years in which the Plan is not top-heavy. The Employer also may elect to override the application of top-heavy vesting schedules under Section 5.03(A)(1). Specifically, the Employer: (i) may elect to apply the top-heavy vesting schedule only to Regular Matching Contributions and Additional Matching Contributions made in Plan Years beginning after December 31, 2001, and to the associated Earnings; and (ii) may elect to apply top-heavy vesting to the affected Matching Contributions for all Participants even if they do not have one Hour of Service in a Plan Year beginning after December 31, 2001; (iii) may elect to apply the top-heavy vesting schedule only to non-Matching Contributions made in Plan Years beginning after December 31, 2006, and to the associated Earnings; and/or (iv) may elect to apply top-heavy vesting to the affected non-Matching Contributions for all Participants even if they do not have one Hour of Service in a Plan Year beginning after December 31, 2006.

(a) Election of schedule once Plan is top-heavy. If the Employer elects in Appendix B to apply a non-top-heavy vesting schedule as permitted, in the event that the Plan becomes top-heavy and then later becomes non-top-heavy, the Employer must further elect whether the Plan will continue to apply the top-heavy schedule or to return to the elected non-top-heavy schedule commencing in the non-top-heavy Plan Year.

(3) Election of different schedules. The Employer in its Adoption Agreement must elect whether the Plan will apply the same vesting schedule or a different vesting schedule to Employer Contributions (other than Matching Contributions), Regular Matching Contributions and Additional Matching Contributions.

(4) Top-heavy default schedule. If the Employer elects a non-compliant top-heavy schedule, the Plan Administrator will apply a top-heavy schedule under the Plan which most closely approximates the Employer's elected schedule (graded or cliff).

(5) QACA vesting schedule. The Employer in its Adoption Agreement as to QACA Safe Harbor Contributions will elect either: (a) 100% immediate vesting; or (b) any other vesting schedule under which a Participant will become 100% Vested after not more than 2 Years of Service.

(B) Vesting Schedules. For purposes of the Employer's elections under its Adoption Agreement, "2 year cliff," "6-year graded," "3-year cliff," "7-year graded" or "5-year cliff" means an Employee's Vested percentage, based on each included Year of Service (as the Employer elects in its Adoption Agreement), under the following applicable schedule:

6-year graded	**7-year graded**
0-1 year / 0%	0-2 years / 0%
2 years / 20%	3 years / 20%
3 years / 40%	4 years / 40%
4 years / 60%	5 years / 60%
5 years / 80%	6 years / 80%
6 years / 100%	7 years / 100%

2-year cliff

0-1 year/0%
2 years/100%

3-year cliff	**5-year cliff**
0-2 years / 0%	0-4 years / 0%
3 years / 100%	5 years / 100%

(C) "Grossed-Up" Vesting Formula. If the Trustee makes a distribution (other than a Cash-Out Distribution described in Section 5.04) to a Participant from an Account which is not fully Vested, and the Participant has not incurred a Forfeiture Break in Service, the provisions of this Section 5.03(C) apply to the Participant's Account Balance.

(1) Separate Account/formula. The Plan Administrator will establish a separate account for the Participant's Account Balance at the time of the distribution. At any relevant time following the distribution, the Plan Administrator will determine the Participant's Vested Account Balance in such separate account derived from Employer Contributions in accordance with the following formula: P(AB + D) - D. To apply this formula, "P" is the Participant's current vesting percentage at the relevant time, "AB" is the Participant's Employer-derived Account Balance at the relevant time and "D" is the amount of the earlier distribution. If, under a Restated Plan, the Plan has made distribution to a partially-Vested Participant prior to its restated Effective Date and is unable to apply the cash-out provisions of Section 5.04 to that prior distribution, this special vesting formula also applies to that Participant's remaining Account Balance.

(2) Alternative formula. The Employer, in Appendix B, may elect to modify this formula to read as follows: P(AB + (R x D)) - (R x D). For purposes of this alternative formula, "R" is the ratio of "AB" to the Participant's Employer-derived Account Balance immediately following the earlier distribution.

(3) Application to Contribution Type. If a Participant will receive a distribution from a particular Contribution Type, the Plan Administrator in applying this Section 5.03(C) will determine the Participant's Vested Account Balance for the Participant's Contribution Type separately.

(D) Special Vesting Elections. The Employer in its Adoption Agreement may elect other specified vesting provisions which are consistent with Code §411.

(E) Fully Vested Amounts. A Participant has a 100% Vested interest at all times in his/her Accounts attributable to Elective Deferrals, Employee Contributions, QNECs, QMACs, Safe Harbor Contributions (except as the Employer otherwise elects in its Adoption Agreement as to QACA Safe Harbor Contributions), SIMPLE Contributions, Rollover Contributions, DECs and Designated IRA Contributions. A Participant has a 100% Vested interest at all times in his/her Account attributable to Prevailing Wage Contributions.

(F) Mergers/Transfers. A merger or other Transfer of assets from another Defined Contribution Plan to this Plan does not result, solely by reason of the merger or Transfer, in 100% vesting of the merged or transferred assets. The Plan Administrator operationally and on a uniform and nondiscriminatory basis will determine in the case of a merger or other Transfer to the Plan whether: (1) to vest immediately all transferred assets; (2) to vest the transferred assets in accordance with the Plan's vesting schedule applicable to the Contribution Type being transferred but subject to the requirements of Section 5.08; or (3) to vest the transferred assets in accordance with the transferor plan's vesting schedule(s) applicable to the Contribution Types being transferred, as such schedules existed on the date of the Transfer. The Employer may elect to record such information in its Adoption Agreement as a special vesting election.

5.04 <u>CASH-OUT DISTRIBUTION/POSSIBLE RESTORATION</u>.

(A) Effect of Cash-Out Distribution. If a Partially-Vested Participant receives a Cash-Out Distribution before he/she incurs a Forfeiture Break in Service the Participant will incur an immediate forfeiture of the non-Vested portion of his/her Account Balance.

(1) Definition of Partially-Vested Participant. A Partially-Vested Participant is a Participant whose Vested percentage determined under Section 5.03 in any Account is less than 100%, who is not a 0% Vested Participant as defined below.

(2) Definition of Cash-Out Distribution. A Cash-Out Distribution is a distribution to the Participant or a Direct Rollover for the Participant (whether a Mandatory Distribution or a Distribution Requiring Consent as described in Article VI), of his/her entire Vested Account Balance (including Elective Deferrals and Employee Contributions if any) due to the Participant's Separation from Service or Severance from Employment.

(3) Allocation in Cash-Out Year. If a Partially-Vested Participant's Account is entitled to an allocation of Employer Contributions or Participant forfeitures for the Plan Year in which he/she otherwise would incur a forfeiture by reason of a Cash-Out Distribution, the Plan Administrator will make the additional allocation of Employer Contributions and forfeitures without regard to whether the Participant previously received a Cash-Out Distribution; provided, that the Plan Administrator, in accordance with Section 3.07(D), will not allocate to such Participant any of his/her own forfeiture resulting from the Cash-Out Distribution.

(B) Forfeiture Restoration and Conditions for Restoration. A partially-Vested Participant re-employed by the Employer after receiving a Cash-Out Distribution of the Vested percentage of his/her Account Balance may repay to the Trust the entire amount of the Cash-Out Distribution (including Elective Deferrals and Employee Contributions if any) without any

adjustment for Earnings, unless the Participant no longer has a right to restoration under this Section 5.04(B).

(1) Restoration. If a re-employed Participant repays his/her Cash-Out Distribution, the Plan Administrator, subject to the conditions of this Section 5.04(B), must restore the Participant's Account Balance to the same dollar amount as the dollar amount of his/her Account Balance on the Accounting Date, or other Valuation Date, immediately preceding the date of the Cash-Out Distribution, unadjusted for any Earnings occurring subsequent to that Accounting Date (and prior to the Participant's repayment or the Employer's restoration) or other Valuation Date.

(2) Source of repayment. A re-employed Participant may make repayment from any source, including an IRA Rollover Contribution.

(3) No restoration. The Plan Administrator will not restore a re-employed Participant's Account Balance under this Section 5.04 (B) if:

(a) 5 Years. 5 years have elapsed since the Participant's first re-employment date with the Employer following the Cash-Out Distribution;

(b) Not employed. The Employer does not employ the Participant on the date the Participant repays his/her Cash-Out Distribution; or

(c) Forfeiture Break. The Participant has incurred a Forfeiture Break in Service. This condition also applies if the Participant makes repayment within the Plan Year in which he/she incurs the Forfeiture Break in Service and that Forfeiture Break in Service would result in a complete forfeiture of the amount the Plan Administrator otherwise would restore.

(4) Restoration timing. If none of the conditions in Section 5.04(B)(3) preventing restoration of the Participant's Account Balance apply, the Plan Administrator will restore the Participant's Account Balance as of the Plan Year Accounting Date coincident with or immediately following the repayment.

(5) Source of restoration. To restore the Participant's Account Balance, the Plan Administrator, to the extent necessary, will allocate to the Participant's Account:

(a) Forfeitures. First, from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate in that Plan Year under Section 3.07;

(b) Earnings. Second, from the amount, if any, of the Earnings for the Plan Year, except to the extent Earnings are allocable to specific Participant-Directed Accounts under Section 7.04(A)(2)(b); and

(c) Employer Contribution. Third, from the amount of a discretionary Employer Contribution for the Plan Year.

The Employer in Appendix B may eliminate as a source of restoration any of the amounts described in clauses (a), (b), and (c) or may change the order of priority of these amounts.

(6) Multiple restorations. If, for a particular Plan Year, the Plan Administrator must restore the Account Balance of more than one re-employed Participant, the Plan Administrator will make the restoration allocations from the amounts described in Section 5.04(B)(5), clauses (a), (b) and (c) to each such Participant's Account in the same proportion that a Participant's restored amount for the Plan Year bears to the restored amount for the Plan Year of all re-employed Participants.

(7) Employer must make-up shortfall. To the extent the amounts described in Section 5.04(B)(5) are insufficient to enable the Plan Administrator to make the required restoration, the Employer must contribute, without regard to any requirement or condition of Article III, the additional amount necessary to enable the Plan Administrator to make the required restoration.

(8) Not an Annual Addition. A cash-out restoration allocation is not an Annual Addition under Article IV.

(C) Deemed Cash-Out of 0% Vested Participant. Except as the Employer may elect in Appendix B, the "deemed cash-out rule" of this Section 5.04(C) applies to any 0% Vested Participant. Under a deemed cash-out, a Participant does not receive an actual Plan distribution but the Plan Administrator treats the Participant as having received an actual Cash-Out Distribution.

(1) Definition of 0% Vested Participant. A Participant is not 0% Vested if, at the time that the Plan Administrator applies the deemed cash-out rule: (i) the Participant has any existing Account Balance attributable to Elective Deferrals, Employee Contributions, Safe Harbor Contributions, Prevailing Wage Contributions, Rollover Contributions, QNECs, QMACs or DECs; or (ii) the Participant has any vesting in accordance with the vesting schedule applicable to any other Contribution Type with a positive (non-zero) balance in that Account. A Participant is 0% Vested if the Participant is eligible to make or to receive any of the contributions described in clause (i) above, but has not made or received such contributions and if the Participant has no vesting or no Account Balance as to Contribution Types described in clause (ii) above.

(2) If not entitled to allocation. If a 0% Vested Participant's Account is not entitled to an allocation of Employer Contributions for the Plan Year in which the Participant has a Severance from Employment, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a Cash-Out Distribution on the date of the Participant's Severance from Employment.

(3) If entitled to allocation. If a 0% Vested Participant's Account is entitled to an allocation of Employer contributions or Participant forfeitures for the Plan Year in which the Participant has a Severance from Employment, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a Cash-Out Distribution on the first day of the first Plan Year beginning after his/her Severance from Employment.

(4) Timing of "deemed repayment." For purposes of applying the restoration provisions of this Section 5.04, the Plan Administrator will treat a re-employed 0% Vested Participant as repaying his/her cash-out "distribution" on the date of the Participant's re-employment with the Employer.

(5) Pension plans. If the Plan is a Money Purchase Pension Plan, all references in this Section 5.04(C) to "Severance from Employment" mean "Separation from Service."

(D) Accounting for Cash-Out Repayment.

(1) Pending restoration. As soon as is administratively practicable, the Plan Administrator will credit to the Participant's Account the Cash-Out Distribution amount a Participant has repaid to the Plan. Pending the restoration of the Participant's Account Balance, the Plan Administrator under Section 7.04(A)(2)(c) may direct the Trustee to place the Participant's Cash-Out Distribution repayment in a Segregated Account.

(2) Accounting by contribution source. The Plan Administrator will account for a Participant's restored balance by treating the Account as consisting of the same Contribution Types and amounts as existed on the date of the Cash-Out Distribution. The Employer in Appendix B may elect an alternative accounting for a restored Account, either under the "nonelective rule" or under the "rollover rule." Under the nonelective rule, the Plan Administrator will treat the portion of the Participant's restored balance attributable to the Participant's cash-out repayment as a Nonelective Contribution (or other Employer Contributions as applicable) for purposes of any subsequent distribution. Under the rollover rule, the Plan Administrator will treat the portion of the Participant's restored balance attributable to the Participant's cash-out repayment as a Rollover Contribution for purposes of any subsequent distribution; provided however that if the cash-out repayment does not qualify as a Rollover Contribution or if the Plan does not permit Rollover Contributions, the Plan Administrator will apply the nonelective rule. Under either the nonelective rule or the rollover rule the portion of the Participant's restored balance attributable to the Plan Administrator's restoration under Section 5.04(B)(1), consists of the same Contribution Types and amounts as existed as of the date of the Cash-out Distribution.

(3) Return if failed repayment. Unless the cash-out repayment qualifies as a Participant Rollover Contribution, the Plan Administrator will direct the Trustee to repay to the Participant as soon as is administratively practicable, the full amount of the Participant's Cash-Out Distribution repayment if the Plan Administrator determines any of the conditions of Section 5.04(B)(3) prevents restoration as of the applicable Accounting Date, notwithstanding the Participant's repayment.

5.05 <u>YEAR OF SERVICE - VESTING</u>.

(A) Definition of Year of Service. A Year of Service, for purposes of determining a Participant's vesting under Section 5.03, means the Vesting Computation Period during which an Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement, without regard to whether the Employer continues to employ the Employee during the entire Vesting Computation Period.

(B) Definition of Vesting Computation Period. A Vesting Computation Period is a 12-consecutive month period the Employer elects in its Adoption Agreement.

(C) Counting Years of Service. For purposes of a Participant's vesting in the Plan, the Plan counts all of an Employee's Years of Service except:

(1) Forfeiture Break in Service; Cash-Out. For the sole purpose of determining a Participant's Vested percentage of his/her Account Balance derived from Employer Contributions which accrued for his/her benefit prior to a Forfeiture Break in Service or receipt of a Cash-Out Distribution, the Plan disregards any Year of Service after the Participant first incurs a Forfeiture Break in Service or receives a Cash-Out Distribution (except where the Plan Administrator restores the Participant's Account under Section 5.04(B)).

(2) Rule of parity and one-year hold-out rule. If the rule of parity under Section 5.06(C) or the one-year hold-out rule under Section 5.06(D) applies, the Plan disregards pre-break Service as described therein.

(3) Other exclusions. Consistent with Code §411(a)(4), any Year of Service the Employer elects to exclude under its Adoption Agreement, including Service during any period for which the Employer did not maintain the Plan or a Predecessor Plan. See Section 1.46(B).

(D) Elapsed Time. If the Employer in its Adoption Agreement elects to apply the Elapsed Time Method in applying the Plan's vesting schedule, the Plan Administrator will credit Service in accordance with Section 1.32(A)(3).

5.06 <u>BREAK IN SERVICE AND FORFEITURE BREAK IN SERVICE - VESTING</u>.

(A) Definition of Break in Service. For purposes of this Article V, a Participant incurs a Break in Service if during any Vesting Computation Period he/she does not complete more than 500 Hours of Service. If the Plan applies the Elapsed Time Method of crediting Service, a Participant incurs a Break in Service if the Participant has a Period of Severance of at least 12 consecutive months. If, pursuant to Section 5.05(A), the Plan does not require more than 500 Hours of Service to receive credit for a Year of Service, a Participant incurs a Break in Service in a Vesting Computation Period in which he/she fails to complete a Year of Service.

(B) Definition of Forfeiture Break in Service. A Participant incurs a Forfeiture Break in Service when he/she incurs 5 consecutive Breaks in Service.

(C) Rule of Parity-Vesting. The Employer in its Adoption Agreement may elect to apply the "rule of parity" under Code §411(a)(6)(D) for purposes of determining vesting Years of Service. Under the rule of parity, the Plan Administrator excludes a Participant's Years of Service before a Break in Service if: (1) the number of the Participant's consecutive Breaks in Service equals or exceeds 5; and (2) the Participant is 0% Vested in his/her Account Balance (as described under Section 5.04(C)(1)) at the time he/she has the Breaks in Service.

(D) One-Year Hold-out Rule-Vesting. The "one-year hold-out rule" under Code §411(a)(6)(B) will not apply to this Article V unless the Employer elects otherwise in Appendix B. If the one-year hold-out rule applies, an Employee who has a one-year Break in Service will not be credited for vesting purposes with any Years of Service earned before such one-year Break in Service, until the Employee has completed a Year of Service after the one-year Break in Service.

5.07 FORFEITURE OCCURS.

(A) Timing. A Participant's forfeiture of his/her non-Vested Account Balance derived from Employer Contributions occurs under the Plan on the earlier of:

(1) Forfeiture Break. The last day of the Vesting Computation Period in which the Participant first incurs a Forfeiture Break in Service; or

(2) Cash-Out. The date the Participant receives a Cash-Out Distribution.

(B) Vesting Schedule/Lost Participants. The Plan Administrator determines the percentage of a Participant's Account Balance forfeiture, if any, under this Section 5.07 solely by reference to the vesting schedule the Employer elected in its Adoption Agreement. A Participant does not forfeit any portion of his/her Account Balance for any other reason or cause except as expressly provided by this Section 5.07 or as provided under Sections 3.07 or 7.07.

5.08 AMENDMENT TO VESTING SCHEDULE. The Employer under Section 11.02 may amend the Plan's vesting schedule(s) under Section 5.03 at any time, subject to this Section 5.08. For purposes of this Section 5.08, an amendment to the vesting schedule includes any Plan amendment which directly or indirectly affects the computation of the Vested percentage of a Participant's Account Balance. In addition, any shift in the Plan's vesting schedule under Article X, due to a change in the Plan's top-heavy status, is an amendment to the vesting schedule for purposes of this Section 5.08.

(A) No Reduction. The Plan Administrator will not apply the amended vesting schedule to reduce any Participant's existing Vested percentage (determined on the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) in the Participant's existing (pre-amendment) and future Account Balance attributable to Employer Contributions, to a percentage less than the Vested percentage computed under the Plan without regard to the amendment. Furthermore, the Plan Administrator will not apply the amended vesting schedule to affect adversely a Participant's Vesting under the pre-amendment vesting schedule with respect to the Participant's pre-amendment Account Balance.

(B) Hour of Service Required. Except as the Plan otherwise expressly provides, an amended vesting schedule will apply to a Participant only if the Participant receives credit for at least one Hour of Service after the new vesting schedule becomes effective.

(C) Election. If the Employer amends the Plan's vesting schedule, each Participant having completed at least 3 Years of Service (as described in Section 5.05) with the Employer prior to the expiration of the election period described below, may elect irrevocably to have the Plan Administrator determine the Vested percentage of his/her Account Balance without regard to the amendment.

(1) Notice of amendment. The Plan Administrator will forward an appropriate notice of any amendment to the vesting schedule to each affected Participant, together with the appropriate form upon which the Participant may make an election to remain under the pre-amendment vesting schedule and notice of the time within which the Participant must make an election to remain under the pre-amendment vesting schedule.

(2) Election timing. The Participant must file his/her election with the Plan Administrator within 60 days of the latest of: (a) the Employer's adoption of the amendment; (b) the effective date of the amendment; or (c) the Participant's receipt of a notice of the amendment.

(3) No election if no adverse effect. The election described in this Section 5.08(C) does not apply to a Participant if the amended vesting schedule provides for vesting at least as rapid at any time as the vesting schedule in effect prior to the amendment.

5.09 EMPLOYEE CONTRIBUTIONS. A Participant who is either fully or partially vested in his or her Employer Contributions will not forfeit any of those contributions merely as the result of a distribution of all or any portion of the Participant's Employee Contributions.

ARTICLE VI
DISTRIBUTIONS

6.01 TIMING OF DISTRIBUTION. The Plan Administrator will direct the Trustee to commence distribution of a Participant's Vested Account Balance in accordance with this Section 6.01 upon the Participant's Separation from Service (or Severance from Employment) for any reason, upon the Participant's death, or if the Participant exercises an In-Service Distribution right under the Plan. The Trustee may make Plan distributions on any administratively practical date during the Plan Year, consistent with the Employer's elections in its Adoption Agreement. For purposes of this Article VI, the Plan applies Severance from Employment in place of Separation from Service where distribution is of Restricted 401(k) Accounts. Section 6.01(A) is controlling as to distribution of all Accounts upon Separation from Service or Severance from Employment. Section 6.01(B) is controlling as to distribution of all Accounts upon death (whether death occurs before or after Separation from Service or Severance from Employment). Section 6.01(C) applies only while a Participant remains employed by the Employer and only to such Accounts described in the Plan and as the Employer elects in its Adoption Agreement.

(A) Distribution upon Separation from Service/Severance from Employment (other than death).

(1) Mandatory Distributions. The Employer in its Adoption Agreement will elect whether the Plan will make Mandatory Distributions and will elect the timing of the Mandatory Distribution. If the Employer elects no Mandatory Distributions, then all distributions are Distributions Requiring Consent under Section 6.01(A)(2). The timing of any Mandatory Distribution must comply with Code §401(a)(14).

(a) Definition of Mandatory Distribution. A Mandatory Distribution is a Plan required distribution without the Participant's consent upon the Participant's Separation from Service. A Mandatory Distribution does not include a distribution based on the Participant's death or on account of Plan termination.

(i) Distribution after 62/NRA; unlimited amount. A Mandatory Distribution in the case of a Participant who will receive the distribution after the Participant attains the later of age 62 or Normal Retirement Age includes a distribution of any amount.

(ii) Distribution before 62/NRA; amount limit and Rollovers. A Mandatory Distribution in the case of a Participant who will receive the distribution before the Participant attains the later of age 62 or Normal Retirement Age may not exceed the amount (not exceeding $5,000) the Employer elects in its Adoption Agreement. In applying the elected Mandatory Distribution amount, the Plan Administrator will include or exclude a Participant's Rollover Contributions Account as the Employer elects in its Adoption Agreement. The Plan Administrator will disregard accumulated DECs.

(iii) Remaining Installments. A Mandatory Distribution does not include the remaining balance of any Installment distribution (originally subject to Participant consent), but where the remaining Account Balance presently is less than the Mandatory Distribution amount.

(b) Distribution of Mandatory Distribution before 62/NRA; method and timing. If a Participant will receive a Mandatory Distribution before attaining the later of age 62 or Normal Retirement Age, the Plan Administrator will direct the Trustee to distribute the Mandatory Distribution to the Participant in a Lump-Sum (without regard to Section 6.04) consisting of the Participant's entire Vested Account Balance (including any Rollover Contribution Account even if the Plan disregards a Rollover Contribution Account in determining Mandatory Distribution status). The Plan Administrator will direct the Trustee to make a Mandatory Distribution at the time the Employer elects in its Adoption Agreement, but in no event later than the 60th day following the close of the Plan Year in which: (i) the Participant attains Normal Retirement Age or age 65 if earlier; or (ii) occurs the Participant's 10th anniversary of Plan participation, whichever is later. See Section 6.08(D) regarding potential Automatic Rollover of Mandatory Distributions. The Plan Administrator, in accordance with Section 6.08(B) will give a rollover notice to a Participant who will receive a Mandatory Distribution. The notice will explain the Automatic Rollover under Section 6.08(D) as applicable in the case of the Participant's failure to respond timely to the rollover notice.

(c) Distribution of Mandatory Distribution if 62/NRA; method and timing.

(i) Balance not exceeding $5,000. If a Participant will receive a Mandatory Distribution after attaining the later of age 62 or Normal Retirement Age, and the Participant's Vested Account Balance (including any Rollover Contributions Account) does not exceed $5,000 (or such lesser amount the Employer elects in Appendix B), the Plan Administrator will direct the Trustee to distribute a Mandatory Distribution to the Participant in a Lump-Sum (without regard to Section 6.04) consisting of the Participant's entire Vested Account Balance. The Plan Administrator will direct the Trustee to make a Mandatory Distribution at the time the Employer elects in its Adoption Agreement, but not later than the 60th day following the close of the Plan Year in which: (A) the Participant incurs a Separation from Service; or (B) occurs the Participant's 10th anniversary of Plan participation, whichever is later.

(ii) Balance exceeds $5,000. If a Participant will receive a Mandatory Distribution after attaining the later of age 62 or Normal Retirement Age, and the Participant's Vested Account Balance (including any Rollover Contributions Account) exceeds $5,000 (or such lesser amount the Employer elects in Appendix B), the Participant may elect any method or form of distribution available under the Plan and the Plan Administrator in accordance with Section 6.01(A)(2)(c) will provide the Participant with a distribution notice. If under Section 6.01(A)(2)(f) the Plan permits a Participant receiving a Distribution Requiring Consent to postpone distribution to any specified date (not beyond the Participant's DCD as described in Section 6.02), a Participant receiving a Mandatory Distribution under this Section 6.01(A)(1)(c)(ii) also may elect to postpone distribution. If a Participant may not elect to postpone distribution or fails to elect to postpone distribution, the Plan Administrator will direct the Trustee to distribute the Participant's Account at the time the Employer elects in its

Adoption Agreement, but not later than the 60th day following the close of the Plan Year in which: (A) the Participant incurs a Separation from Service; or (B) occurs the Participant's 10th anniversary of Plan participation, whichever is later.

(iii) Rollover notice but no Automatic Rollover. The Plan Administrator, in accordance with Section 6.08(B) will give a rollover notice to a Participant who will receive a Mandatory Distribution under this Section 6.01(A)(1)(c). However, the Automatic Rollover under Section 6.08(D), in the case of the Participant's failure to respond timely to the rollover notice, does not apply under this Section 6.01(A)(1)(c).

(2) Distributions Requiring Consent.

(a) Definition of Distribution Requiring Consent. A Distribution Requiring Consent is a distribution upon the Participant's Separation from Service other than on account of death and which is not a Mandatory Distribution,

(b) Distribution of Distribution Requiring Consent. The Plan Administrator, subject to this Section 6.01(A)(2) regarding Participant elections or the absence thereof, will direct the Trustee to commence or make a Distribution Requiring Consent, at the time or times and in the form the Adoption Agreement specifies.

(c) Distribution notice. At least 30 days and not more than 180 days prior to the Participant's Annuity Starting Date, the Plan Administrator must provide a written distribution notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible to receive a Distribution Requiring Consent. The distribution notice must explain the optional forms of benefit in the Plan, including the material features and relative values of those options, and the Participant's right to postpone distribution until the applicable date described in Section 6.01(A)(2)(f). The notice will describe the consequences of the Participant's failure to postpone the distribution. Also see Section 6.08(B) for provisions relating to a rollover notice.

(d) Consent requirements. A Participant must consent, in writing, following receipt of the distribution notice, to any Distribution Requiring Consent. The Participant's spouse also must consent, in writing, to any distribution, for which Section 6.04 requires the spouse's consent. The consent requirements of this Section 6.01(A)(2)(d) do not apply to defaulted loans described in Section 7.06(C), to RMDs under Section 6.02 or to corrective distributions under Article IV. See Section 11.05(D) as to consent requirements related to distributions following Plan termination.

(e) Distribution election/reconsideration. A Participant eligible to receive a Distribution Requiring Consent, consistent with the Adoption Agreement and subject to Sections 6.02, 6.03 and 6.04, may elect the time and method of distribution of his/her Account (or portion thereof) following receipt of the distribution notice. Unless the Plan Administrator in a distribution form, notice, or other Plan disclosure indicates otherwise, a Participant may reconsider his/her distribution election at any time prior to the Annuity Starting Date and may elect to commence distribution as of any other distribution date permitted under the Plan or under the Adoption Agreement. A Participant may elect to receive a distribution at any administratively practical time which is earlier than 30 days following the Participant's receipt of the distribution notice, by waiving in writing the balance of the 30 days. However, if the requirements of Section 6.04 apply, the Participant may not elect to commence distribution during the 7 days immediately following the date of the Participant's receipt of the distribution notice.

(f) Election to postpone. A Participant eligible to receive a Distribution Requiring Consent prior to his/her Annuity Starting Date, may elect to postpone distribution beyond the time the Employer has elected in its Adoption Agreement, to any specified date including, but not beyond the Participant's RBD as described in Section 6.02, unless the Employer, in its Adoption Agreement, specifically limits a Participant's right to postpone distribution of his/her Account Balance only to the later of the date the Participant attains age 62 or Normal Retirement Age. The Plan Administrator will reapply the notice and consent requirements of Section 6.01(A)(2) to any distribution a Participant postpones under this Section 6.01(A)(2)(f).

(g) No election/deemed elected distribution date. In the absence of a Participant's consent and distribution election (as described in Sections 6.01(A)(2)(d) and (e)) or in the absence of the Participant's election under Section 6.01(A)(2)(f), made prior to his/her Annuity Starting Date, to postpone distribution, the Plan Administrator, consistent with the Employer's elections in its Adoption Agreement, will treat the Participant as having elected (in accordance with the Treasury regulations under Code §§411 and 401(a)(14)) to postpone his/her distribution until the later of the date the Participant attains age 62 or Normal Retirement Age. At the applicable date, the Plan Administrator then will direct the Trustee to distribute the Participant's Vested Account Balance in a Lump-Sum (or, if applicable, the annuity form of distribution required under Section 6.04). The provisions Section 6.01(A)(2)(e) regarding reconsideration of distribution elections apply to any election or deemed election in this Section 6.01(A)(2)(g).

(h) Definition of Annuity Starting Date. See Section 1.06(A).

(3) Disability. If the Participant's Separation from Service is because of his/her Disability, except to the extent the Employer elects in its Adoption Agreement to accelerate distribution, the Plan Administrator will direct the Trustee to distribute the Participant's Vested Account Balance at the same time and in the same form as if the Participant had incurred a Separation from Service without Disability.

(4) Determination of Vested Account Balance. For purposes of the consent requirements under this Article VI and of determining whether a distribution is a Mandatory Distribution, the Plan Administrator determines a Participant's Vested Account Balance as of the most recent Valuation Date immediately prior to the distribution date, and takes into account the Participant's entire Account Balance, including Elective Deferrals, but including or excluding the Participant's Rollover Contributions Account as the Employer elects in its Adoption Agreement. The Plan Administrator in determining the Participant's Vested Account Balance at the relevant time, will disregard a Participant's Vested Account Balance existing on any prior date, except as related to Installment distributions under Section 6.01(A)(1)(a)(iii).

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(5) Consent to Cash-Out Distribution/forfeiture. If a Participant is partially Vested in his/her Account Balance, a Participant's election under Section 6.01(A)(2) to receive distribution prior to the Participant's incurring a Forfeiture Break in Service, must be in the form of a Cash-Out Distribution.

(6) Return to employment. A Participant may not receive a distribution based on Separation from Service, or continue any Installment distribution based on a prior Separation from Service, if, prior to the time the Trustee actually makes the distribution, the Participant returns to employment with the Employer.

(B) Distribution upon Death. In the event of the Participant's death (whether death occurs before or after Separation from Service or Severance from Employment), the Plan Administrator will direct the Trustee, in accordance with this Section 6.01(B) to distribute to the Participant's Beneficiary the Participant's Vested Account Balance remaining in the Trust at the time of the Participant's death.

(1) Timing of commencement. The Plan Administrator must direct the Trustee to distribute or commence distribution of the deceased Participant's Vested Account Balance following the date on which the Plan Administrator receives notification of, or otherwise confirms, the Participant's death. The actual timing of distribution will be in accordance with: (a) the Employer's Adoption Agreement elections; (b) any Participant or Beneficiary permitted and timely made election under Section 6.03(B); and (c) the Plan terms including Section 6.02.

(2) Distribution method. The Plan Administrator must direct the Trustee to distribute or commence distribution of the deceased Participant's Vested Account Balance under a method which is in accordance with: (a) the Employer's Appendix B elections; (b) any Participant or Beneficiary permitted and timely made election under Section 6.03(B); and (c) the Plan terms including Sections 6.02 and 6.04.

(C) In-Service Distribution. The Employer in its Adoption Agreement must elect the Participants' In-Service Distribution rights, if any. If the Employer elects to permit any In-Service Distributions, the Employer will elect the eligible Contribution Type or Contribution Type Accounts and the age or other events which entitle a Participant to an In-Service Distribution. An In-Service Distribution under this Section 6.01(C) is subject to all provisions and limitations described herein and in Sections 6.04 and 11.02(C)(3) as to Protected Benefits.

(1) Definition of In-Service Distribution. An In-Service distribution means distribution of a Participant's Account or any portion thereof prior to his/her Separation from Service.

(2) Conditions.

(a) Vesting. The Employer must elect in its Adoption Agreement whether a partially-Vested Participant may receive an In-Service Distribution. If a Participant receives an In-Service Distribution as to a partially-Vested Account, and the Participant has not incurred a Forfeiture Break in Service, the Plan Administrator will apply the vesting provisions of Section 5.03(C).

(b) Other Conditions. The Employer in its Adoption Agreement may elect other conditions applicable to In-Service Distributions.

(3) Administration.

(a) Participant election. A Participant must make any permitted In-Service Distribution election under this Section 6.01(C) in writing and on a form prescribed by the Plan Administrator which specifies the percentage or dollar amount of the distribution and the Participant's Contribution Type or Account to which the election applies.

(b) Frequency, timing and method. If the Plan permits In-Service Distributions: (i) the Plan Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions; and (ii) a Participant may elect as many In-Service Distributions per Plan Year as the election form prescribed by the Plan Administrator allows, or as any In-Service Distribution policy permits, with a minimum of one In-Service Distribution permitted each Plan Year. If the Plan Administrator's form or policy does not specify the permitted number of Plan Year In-Service Distributions, the number is not limited. The Trustee, as directed by the Plan Administrator and subject to Section 6.04, will distribute the amount(s) a Participant elects, as soon as administratively practical after the Participant files his/her properly completed In-Service Distribution election with the Plan Administrator. The Trustee will distribute the Participant's remaining Account Balance in accordance with the other provisions of this Article VI.

(4) Account restrictions.

(a) Nonelective, Regular Matching, Additional Matching and SIMPLE Contribution distribution events. The Employer in its Adoption Agreement may elect to permit an In-Service Distribution of the Nonelective, Regular Matching, Additional Matching and SIMPLE Contribution Accounts upon a Participant's attainment of a stated age, based on a fixed number of years or based upon some other specified event, such as hardship under Section 6.07. Such Adoption Agreement elections include, but are not limited to, the following:

(i) Two year "seasoned" contributions. The contributions which the Plan Administrator will distribute were made at least 2 years (or such other greater period as the Employer elects in its Adoption Agreement) prior to the date on which the distribution will occur. Such distributions may include Earnings on the "seasoned" contributions.

(ii) 60 months of participation. The Participant has been a Participant for at least 60 months (or for such other greater period as the Employer elects in its Adoption Agreement) prior to the date on which the Plan Administrator will make the distribution. This election applies to all applicable contributions, regardless of when made.

(b) 401(k) Plans.

(i) Limitation. The Employer in its Adoption Agreement may elect to permit an In-Service Distribution of the Restricted 401(k) Accounts only upon a Participant's Disability, attainment of age 59 1/2 (or any later age), hardship in accordance with Section 6.07, and as a QRD. Also see Section 6.11 regarding deemed severance distributions.

(ii) Definition of Restricted 401(k) Accounts. A Participant's Restricted 401(k) Accounts are the Participant's Elective Deferral Account, QNEC Account, QMAC Account and Safe Harbor Contributions Account.

(iii) Definition of QRD. A QRD means a qualified reservist distribution as defined under Code §72(t)(2)(G)(iii). A QRD is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (A) the distribution is from the Elective Deferral Account; (B) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (C) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

(c) Money Purchase Pension (including target benefit) Plans.

(i) Limitation. The Employer in its Adoption Agreement may elect to permit an In-Service distribution of the Restricted Pension Accounts only upon attainment of Normal Retirement Age (or any later age). For Plan Years commencing after 2006, the Employer in its Adoption Agreement may elect to permit distribution on attainment of age 62 (or any later age), even if Normal Retirement Age is later than age 62.

(ii) Definition of Restricted Pension Accounts. A Participant's Restricted Pension Accounts are the Participant's Money Purchase Pension Plan or as applicable, target benefit plan Accounts.

(d) Prevailing Wage Contributions. For purposes of In-Service Distributions, a Participant's Prevailing Wage Contribution Account is treated as a Nonelective or other Employer Contribution Account as applicable. However, if the Employer in its Adoption Agreement elects to offset other Contribution Types with the Prevailing Wage Contribution, for purposes of In-Service Distributions, the Plan Administrator will treat that portion of the Prevailing Wage Contribution Account which offsets another Contribution Type, as the other Contribution Type.

(e) Rollover Contributions, Employee Contributions and DECs. Unless otherwise specified on Appendix B, a Participant may elect to receive an In-Service Distribution of his/her Accounts attributable to Rollover Contributions, Employee Contributions and DECs. Distribution of a Rollover Contribution is subject to Section 6.04 if Section 6.04 otherwise applies to the Participant.

(f) Transferred amounts/distribution restrictions and Protected Benefits.

(i) Distribution restrictions: transfers from pension plans to non-pension plans. Except in the case of certain Elective Transfers, if this Plan is a Profit Sharing Plan or a 401(k) Plan, the Plan, except in accordance with Section 6.01(C)(4)(c), may not make any In-Service Distribution to the Participant of his/her Restricted Pension Accounts (including post-transfer Earnings on those Accounts) previously transferred, within the meaning of Code §414(l), to this Plan from a Money Purchase Pension Plan (or from a target benefit plan). In applying the Normal Retirement Age restriction in Section 6.01(C)(4)(c), the plan is subject to the limitations of Section 5.01(A). This limitation applies only to such transferred balances consisting of Restricted Pension Accounts.

(ii) Distribution restrictions: transfers from 401(k) Plans to other plans. Except in the case of certain Elective Transfers, if this Plan is a Profit Sharing Plan or a Money Purchase Pension Plan, the Plan, except in accordance with Section 6.01(C)(4)(b), may not make any In-Service Distribution to the Participant of his/her Restricted 401(k) Accounts (including post-transfer Earnings on those Accounts) previously transferred, within the meaning of Code §414(l), to this Plan from a 401(k) Plan. This limitation applies only to such transferred balances consisting of Restricted 401(k) Accounts.

(iii) Protected Benefit/Separate Accounting. See Section 11.06 regarding preservation of Protected Benefits with regard to transferred amounts. The Plan Administrator must apply proper separate accounting of transferred amounts to comply with this Section 6.01(C)(4)(f).

(g) Designated IRA. A Participant may request and receive distribution of his/her Designated IRA Account at any time, subject to the requirements of Code §401(a)(9) and the regulations thereunder as applicable to IRAs. Section 6.04 does not apply to Designated IRA Contributions.

(5) Hardship. See Section 6.07 regarding requirements for In-Service Distributions and for post-Separation from Service or Severance from Employment distribution accelerations, based on hardship.

(6) Plan termination. Notwithstanding Section 6.01(C)(4), in the event the Employer terminates the Plan, the Plan Administrator may instruct the Trustee to make distribution of any restricted accounts in accordance with Section 11.05.

(7) In-Plan Roth Rollover Contributions. Except as otherwise elected in Appendix B, if the Employer in its Adoption Agreement elects under Section 3.08(E) to permit In-Plan Roth Rollover Contributions, (a) all Accounts (except a Roth Account) which may be distributed in an In-Service Distribution are eligible for an In-Plan Roth Rollover; (b) a Participant may distribute and roll over his/her Plan loan in an In-Plan Roth Rollover, but without changing the loan repayment schedule; (c) any amount may be distributed in an In-Plan Roth Rollover with no minimum; (d) a Participant may receive In-Service Distributions from his/her In-Plan Roth Rollover Account under the same conditions as the Participant's Roth Elective Deferral Account; and (e) In-Service distributions which are eligible for an In-Plan Roth Rollover are limited to those which are available for other types of distributions. If the Employer in Appendix B provides for In-Service Distributions which are limited to In-Plan Roth Rollovers, the Employer in Appendix B may permit distribution of an additional amount solely for the purpose of federal or state income tax withholding for the Participant's anticipated tax obligations regarding the amount includible in the Participant's gross income by reason of the In-Plan Roth Rollover (and the amount withheld for income taxes). The Plan Administrator may limit the amount of the 100% withholding distribution to the amount the Plan Administrator reasonably determines is sufficient to satisfy the

Participant's federal and/or state income tax liability relating to the Plan distribution.

(8) EACA permissible withdrawals. See Section 3.02(B)(2)(d) regarding EACA permissible withdrawals.

6.02 REQUIRED MINIMUM DISTRIBUTIONS.

(A) Lifetime RMDs.

(1) RBD. The Plan Administrator will direct the Trustee to distribute or to commence distribution to the Participant of the Participant's entire Vested Account Balance no later than the Participant's RBD.

(2) Amount of RMD for each DCY. During the Participant's lifetime, the RMD that will be distributed for each DCY is the lesser of:

(a) ULT amount. The quotient obtained by dividing the Participant's RMD Account Balance by the distribution period in the ULT, using the Participant's age as of the Participant's birthday in the DCY; or

(b) SLT/younger spouse. If the Participant's sole Designated Beneficiary for the DCY is the Participant's spouse who is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's RMD Account Balance by the distribution period in the JLT using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the DCY.

(3) Lifetime RMDs continue through year of Participant's death. RMDs will be determined under this Section 6.02(A) beginning with the first DCY and up to and including the DCY that includes the Participant's date of death or until the Participant's Vested Account Balance is completely distributed.

(B) Death RMDs.

(1) Death of Participant before DCD. If the Participant dies before the DCD, the Plan Administrator will direct the Trustee to distribute or commence distribution to the Participant of the Participant's Vested Accrued Benefit no later than as follows:

(a) Spouse sole Designated Beneficiary. Except as otherwise provided in Section 6.02(B)(1)(e), if the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(i) Death of spouse. If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, then this Section 6.02(B)(1) (other than Section 6.02(B)(1)(a)) will apply as if the surviving spouse were the Participant.

(b) Other Designated Beneficiary. Except as otherwise provided in Section 6.02(B)(1)(e), if the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) No Designated Beneficiary/"5-year rule." If there is no Designated Beneficiary as of September 30 of the year following the calendar year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Participant survived by Designated Beneficiary/"Life Expectancy rule." If there is a Designated Beneficiary, the RMD for each DCY after the year of the Participant's death is the quotient obtained by dividing the Participant's RMD Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 6.02(B)(2)(a).

(e) 5-year or Life Expectancy rule; possible election. This Section 6.02(B)(1)(e) applies if a Participant dies before the DCD and determines whether the Life Expectancy rule under Section 6.02(B)(1)(d) or the 5-year rule under Section 6.02(B)(1)(c) applies to RMDs of a Beneficiary. If the Beneficiary is not a Designated Beneficiary, then the 5-year rule applies. Otherwise, a Designated Beneficiary may elect which of these rules will apply unless the Employer otherwise elects in Appendix B. A permitted election under this Section 6.02(B)(1)(e) must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 6.02(B)(1), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. In the absence of a timely election, the Life Expectancy rule applies unless the Employer in Appendix B elects to apply the 5-year rule. The election of the Life Expectancy rule or the 5-year rule does not (i) entitle a

Beneficiary to receive Installment distributions not otherwise provided in Section 6.03(A)(2), or (ii) delay the commencement or payment of distributions otherwise provided in 6.01(B)(1).

(2) Death on or after DCD. This Section 6.02(B)(2) applies if the Participant dies on or after his/her DCD. If distribution has commenced before the participant's death, the remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the participant's death, as provided and determined under Treas. Reg. §1.401(a)(9)-2, Q&A 5.

(a) Participant survived by Designated Beneficiary. If there is a Designated Beneficiary, the RMD for each DCY after the year of the Participant's death is the quotient obtained by dividing the Participant's RMD Account Balance by the longer of the Participant's remaining Life Expectancy or the Designated Beneficiary's remaining Life Expectancy, determined as follows:

(i) Participant's life expectancy. The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Spouse as sole Designated Beneficiary. If the Participant's surviving spouse is the Participant's sole

Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each DCY after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For DCYs after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) Non-Spouse Designated Beneficiary. If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(b) No Designated Beneficiary. If there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the RMD for each DCY after the year of the Participant's death is the quotient obtained by dividing the Participant's RMD Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(C) Distribution Methods. Nothing in this Section 6.02 gives any Participant or any Beneficiary the right to receive a distribution of the Participant's Account under any method or at a time which the Plan does not permit. Unless the Participant's Vested Account Balance is distributed in the form of an annuity purchased from an insurance company or in a Lump Sum on or before the RBD, as of the first DCY, distributions will be made in accordance with Section 6.02(A) and (B), but subject to the Employer's Adoption Agreement elections regarding the method of distribution. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the applicable Treasury regulations. Payments under such an annuity will either be non-increasing, or will increase only in accordance with Treas. Reg. §1.401(a)(9)-6, Q&A 14. If the Adoption Agreement limits distributions to a Lump Sum, the Plan will distribute the Participant's entire Vested Account Balance in the form of a Lump Sum on or before the Participant's RBD, or if applicable, at the time determined in Section 6.02(B), but subject to the Employer's Adoption Agreement elections regarding timing of the distribution. See Section 6.03(B) regarding Participant and Beneficiary elections.

(D) Operating Rules.

(1) Precedence. The requirements of this Section 6.02 will take precedence over any inconsistent provisions of the Plan.

(2) Requirements of Treasury regulations incorporated. All distributions required under this Section 6.02 will be determined and made in accordance with the Treasury regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).

(3) TEFRA Section 242(b)(2) elections. Notwithstanding the other provisions of this Section 6.02, distributions may be made under Section 6.10.

(E) Definitions. The following definitions apply to this Section 6.02.

(1) Designated Beneficiary. A "Designated Beneficiary" means an individual who is a Beneficiary under Section 7.05 (whether pursuant to a designation by the Participant or application of the Plan terms) and who is a designated beneficiary under Code §401(a)(9) of the Internal Revenue Code and Treas. Reg. §1.401(a)(9)-4, Q&As-4 and -5.

(2) DCY. A DCY is a distribution calendar year for which an RMD is required. For RMDs beginning before the Participant's death, the first DCY is the calendar year immediately preceding the calendar year which contains the Participant's RBD. For RMDs beginning after the Participant's death, the first DCY is the calendar year in which distributions are required to begin under Section 6.02(B). The RMD for the Participant's first DCY will be made on or before the Participant's RBD. The RMD for other DCYs, including the RMD for the DCY in which the Participant's RBD occurs, will be made on or before December 31 of that DCY.

(3) DCD. A DCD is a distribution commencement date and generally means the Participant's RBD. However, if Section 6.02(B)(1)(a)(i) applies, the DCD is the date distributions are required to begin to the surviving spouse under Section 6.02(B)(1)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the otherwise applicable DCD, then the DCD is the date distributions actually commence.

(4) JLT. The JLT is the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, Q/A-3.

(5) Life Expectancy. Life Expectancy refers to life expectancy as computed under the SLT.

(6) Participant's RMD Account Balance. A Participant's RMD Account Balance is the account balance as of the last Valuation Date in the VCY increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the VCY after the Valuation

Date and decreased by distributions made in the VCY after the Valuation Date. The Account Balance for the VCY includes any amounts rolled over or transferred to the Plan either in the VCY or in the DCY if distributed or transferred in the VCY.

(7) RBD. A Participant's RBD is his/her required beginning date determined as follows:

(a) More than 5% owner. A Participant's RBD is the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2 if the Participant is a more than 5% owner (as defined in Code §416(i)(B)) as to the Plan Year ending in that calendar year. If a Participant is a more than 5% owner at the close of the relevant Plan year, the Participant may not discontinue RMDs notwithstanding the Participant's subsequent change in ownership status.

(b) Other Participants. If the Participant is not a more than 5% owner, his/her RBD is the April 1 of the calendar year following the close of the calendar year in which the Participant incurs a Separation from Service or, if later, the April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

(c) Election as to RBD. The Employer in Appendix B may elect that the Plan Administrator continue to apply (indefinitely or to a specified date) the RBD definition in effect prior to 1997 ("pre-SBJPA RBD"). A Participant's pre-SBJPA RBD (if applicable) is April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

(8) RMD. An RMD is the required minimum distribution the Plan must make to a Participant or Beneficiary for a DCY. The Plan Administrator determines an RMD without regard to vesting, but in accordance with Treas. Reg. §1.401(a)(9)-5, the Plan only will distribute an RMD to the extent that the amount distributed is Vested.

(9) SLT. The SLT is the Single Life Table set forth in Treas. Reg. §1.401(a)(9)-9, Q/A-1.

(10) ULT. The ULT is the Uniform Lifetime Table set forth in Treas. Reg. §1.401(a)(9)-9, Q/A-2.

(11) VCY. A VCY is a valuation calendar year, which is the calendar year immediately preceding a DCY.

(F) 2009 RMDs. The provisions of this Section 6.02(F) apply as to RMDs due for the 2009 DCY, but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"). Such 2009 RMDs, if required, would have been satisfied by one or more distributions equal to or totaling the 2009 RMDs or by one or more distributions in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"),

(1) Suspension of 2009 RMDs unless otherwise elected by Participant. Notwithstanding the remaining provisions of Section 6.02, a Participant or Beneficiary who would have been required to receive a 2009 RMD will not receive those distributions for 2009, unless the Participant or Beneficiary elected to receive such distributions. The Plan Administrator will have provided Participants and Beneficiaries the opportunity to receive the 2009 RMDs, if this Section 6.02(F)(1) applies.

(2) Continuation of RMDs unless otherwise elected by Participant. Notwithstanding Section 6.02(F)(1), if the Employer in Appendix B elects to continue 2009 RMDs subject to a Participant's or Beneficiary's election, a Participant or Beneficiary who would have been required to receive a 2009 RMD will receive those distributions for 2009 unless the Participant or Beneficiary elected not to receive such distributions. The Plan Administrator will have provided Participants and Beneficiaries the opportunity to not receive the 2009 RMDs, if this Section 6.02(F)(2) applies.

(3) Continuation of RMDs/no election offered. Notwithstanding Section 6.02(F)(1), if the Employer in Appendix B elects to continue 2009 RMDs, a Participant or Beneficiary who would have been required to receive a 2009 RMD will receive those distributions for 2009. The Plan Administrator will not have provided Participants and Beneficiaries with an election to suspend the 2009 RMDs, if this Section 6.02(F)(3) applies.

(4) Other treatment. The Employer in Appendix B may describe such other treatment of 2009 RMDs.

(5) Direct Rollovers. The Plan will offer a Direct Rollover only for distributions that would be Eligible Rollover Distributions without regard to Code §401(a)(9)(H), except as the Employer otherwise may elect in Appendix B.

6.03 <u>POST-SEPARATION (SEVERANCE), LIFETIME RMD, AND BENEFICIARY DISTRIBUTION METHODS</u>. Distribution of a Participant's Account: (i) after Separation from Service (or Severance from Employment); (ii) during employment but where the lifetime RMD requirements under Section 6.02(A) apply; and (iii) to a Beneficiary after the Participant's death, are subject to the distribution methods in this Section 6.03.

(A) Plan Available Methods.

(1) Participant methods. The Employer in its Adoption Agreement will elect one or more of the following distribution methods applicable to a Participant: (i) Lump-Sum; (ii) Installments; (iii) Installments but only if the Participant is required to receive lifetime RMDs under Section 6.02(A); (iv) Alternative Annuity; (v) Ad-Hoc; or (vi) any other method the Employer describes in its Adoption Agreement. If Section 6.04 applies, the distribution must be a QJSA unless waived. In the event of a QJSA waiver, the distribution will be made under the alternative method the Participant elects (including a QOSA, as applicable), in accordance with this Section 6.03.

(2) Beneficiary Methods. If the Plan is subject to Section 6.04, a surviving spouse Beneficiary may receive a QPSA. However, a surviving spouse Beneficiary may elect to waive the QPSA in favor of another Beneficiary distribution method the Plan permits. See Section 6.04(B)(5). The balance of this paragraph shall apply after a Participant's death in all other situations, except to the extent the Employer makes a contrary election in Appendix B. If the only distribution option available for Participants is a lump sum distribution, or the Employer elects in the Adoption to require immediate distribution of the Participant or distribution on or before the end of the year following the year of the Participant's death, then the Lump-Sum method shall apply to distributions to the beneficiary. Otherwise, (i) a Beneficiary may elect to receive a distribution either as a Lump-Sum or in Installments, (ii) if the Plan permits

Ad-Hoc distributions to Participants the Beneficiary may elect to receive Ad-Hoc distributions, and (iii) any Installments or Ad-Hoc distributions in a DCY must be at least equal to the RMD for the DCY. See Sections 6.02(B)(1)(e) and 6.02(C) as to distribution timing elections and elections relating to death of the Participant before the DCD.

(3) Definition of Lump-Sum. A Lump-Sum means a single payment and includes, but is not limited to, a "lump-sum distribution" under Code §402(d)(4). If the Employer in its Adoption Agreement elects to limit distributions to a

Lump-Sum, all Plan distributions must be made in this form, including all RMDs under Section 6.02.

(4) Definition of Installments. Installments means payment in monthly, quarterly, semi-annual, annual or other installments over a fixed reasonable period of time, not exceeding the Life Expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and his/her Designated Beneficiary. To facilitate an Installment distribution the Plan Administrator under Section 7.04(A)(2)(c) may direct the Trustee to place all or any part of the Participant's Account Balance in a Segregated Account.

(a) Installments only for Lifetime RMDs. If the Employer in its Adoption Agreement elects Installments only if a Participant is subject to lifetime RMDs under Section 6.02(A), and does not elect Installments generally, only the affected Participants are entitled to an Installment distribution under the Plan. Any such Installment must satisfy Section 6.02(A).

(b) Installment acceleration. A Participant or Beneficiary receiving an Installment distribution may, at any time, elect to accelerate the payment of all, or any portion, of the Participant's unpaid Vested Account Balance.

(5) Definition of Alternative Annuity. An Alternative Annuity means distribution of an Annuity Contract which is not a QJSA, QPSA or a QOSA. The Alternative Annuity must be based on the life of the Participant or upon the joint lives of the Participant and an Individual Beneficiary. The Employer in its Adoption Agreement will describe the material characteristics of any Alternative Annuity available under the Plan. If Section 6.04 does not apply to the overall Plan, the Employer will not elect an Alternative Annuity.

(6) Definition of Ad-Hoc. Ad-Hoc means the Participant or Beneficiary may at any time after Separation from Service (or Severance from Employment) elect distribution of all or any part of his/her Account or of specified Accounts under the Plan. The Plan Administrator may adopt a policy regarding Ad-Hoc distributions imposing a reasonable minimum distribution amount, frequency limitations or other reasonable administrative conditions.

(B) Participant and Beneficiary Elections. Subject to any contrary requirements imposed by Sections 6.01, 6.02, this Section 6.03 or 6.04, and also subject to Section 8.04 as to the form of distribution (cash or property), a Participant or Beneficiary may elect any method, form or timing of distribution the Plan permits.

(1) Participant election as to Beneficiary. The Participant, on a form prescribed by the Plan Administrator, may elect the distribution method, form and timing which will apply to any Beneficiary, including his/her surviving spouse. The Participant's election may limit any Beneficiary's right to increase or to reduce the frequency or the amount of any payments.

(2) If no election. Unless the Employer otherwise elects in Appendix B, if a Participant or Beneficiary does not make a timely election as to the distribution method, form and timing as the Plan may permit, the Plan Administrator will direct the Trustee to distribute a Lump-Sum as soon as is practical and at the earliest date the Plan permits distribution but not later than the date the Plan requires distribution. If the Plan does not permit a Lump-Sum distribution, the Plan Administrator will direct distribution under any other method the Plan permits. If the Plan permits an election as to cash or property, in the absence of an election, the Plan Administrator will direct the Trustee to distribute cash, subject to Section 8.04.

(3) Combination of methods. If the Plan permits more than one distribution method under this Section 6.03, a Participant or Beneficiary may elect any combination of the available methods either as to different Accounts or as to specified amounts subject to distribution. The Plan Administrator may adopt a policy imposing a reasonable minimum distribution amount as a condition of a Participant or Beneficiary electing a combination of distribution methods.

(4) No third party discretion. No third party, including the Employer, the Plan Administrator and the Trustee, may exercise discretion over any Participant or Beneficiary election of the method of distribution, provided the election is made in accordance with the Plan.

(5) Lump-Sum only if Account does not exceed $5,000. Any distribution elections permitted under this Section 6.03 are available only if the Participant's Vested Account Balance, as determined under Section 6.01(A)(4), exceeds $5,000, unless the Employer elects to apply any lesser amount in Appendix B. If the Participant's Vested Account Balance does not exceed $5,000 (or such lesser amount the Employer elects in Appendix B), the Trustee will distribute the balance in a Lump-Sum (which will be a Cash-Out Distribution if the Participant's Account Balance is not 100% Vested) without regard to Section 6.04.

(6) Sourcing election. If a Participant or Beneficiary who will receive a partial (non-corrective) distribution of his/her Plan Account has both a Roth Deferral Account (or some other Account with tax basis) and one or more pre-tax Accounts including a Pre-Tax Deferral Account, the Participant or Beneficiary may elect the Account source(s) and composition (contributions or Earnings) of the distribution. This Section 6.03(B)(6) as to election of Account sources from among multiple sources does not apply to the extent that a Participant or Beneficiary is eligible under the Plan terms to receive a distribution only from one specific Account source. In the absence of a Participant or Beneficiary election, the Plan Administrator operationally will determine the Account source(s) from which the Trustee will make the distribution and will determine whether such amounts distributed consist of the Account contributions or of Account Earnings or both.

(7) Application to alternate payees. This Section 6.03 applies to an alternate payee in the same manner as if the alternate payee were the Participant. See Section 6.05 as to the right of a QDRO alternate payee to elect the distribution method, form and timing applicable to the alternate payee's distribution.

(C) Modification. The Employer in its Adoption Agreement may elect to modify the methods of payment available under the Plan, consistent with this Section 6.03. If the Employer's Plan is a Restated Plan, or in any other permitted Plan amendment, the Employer in accordance with Treas. Reg. §1.411(d)-4, may elect to eliminate from the prior Plan certain Protected Benefits.

6.04 ANNUITY DISTRIBUTIONS TO PARTICIPANTS AND TO SURVIVING SPOUSES.

(A) Qualified Joint and Survivor Annuity (QJSA). The Plan Administrator must direct the Trustee to distribute a married or unmarried Participant's Vested Account Balance in the form of a QJSA (or in the form of a QOSA described in Section 6.04(A)(8)), unless the Participant, and spouse if the Participant is married, waive the QJSA in accordance with this Section 6.04(A) or unless Section 6.04(G) applies.

(1) Definition of QJSA if married. If, as of the Annuity Starting Date, the Participant is married (even if the Participant has not been married throughout the one year period ending on the Annuity Starting Date), a QJSA is an immediate Annuity Contract which is purchasable with the Participant's Vested Account Balance and which provides a Life Annuity for the Participant and a Survivor Annuity payable for the remaining life of the Participant's surviving spouse equal to 50% of the amount of the annuity payable during the life of the Participant.

(2) Definition of QJSA if not married. If, as of the Annuity Starting Date, the Participant is not married, a QJSA is an immediate Life Annuity Contract for the Participant which is purchasable with the Participant's Vested Account Balance.

(3) Modification of QJSA benefit. The Employer in Appendix B may elect a different percentage (more than 50% but not exceeding 100%) for the Survivor Annuity.

(4) Definitions of Life/Survivor Annuity. A Life Annuity means an Annuity Contract payable to the Participant in equal installments for the life of the Participant that terminates upon the Participant's death. A Survivor Annuity means an Annuity Contract payable to the Participant's surviving spouse in equal installments for the life of the surviving spouse that terminates upon the death of the surviving spouse.

(5) QJSA notice/timing. A Participant may elect distribution of the QJSA at the earliest retirement age under the Plan, which is the earliest date on which the Participant could elect to receive retirement benefits. A married Participant may elect distribution of the QJSA without spousal consent. At least 30 days and not more than 180 days before the Participant's Annuity Starting Date, the Plan Administrator must provide the Participant a written explanation of the terms and conditions of the QJSA, the Participant's right to make, and the effect of, an election to waive the QJSA benefit, the rights of the Participant's spouse regarding the waiver election and the Participant's right to make, and the effect of, a revocation of a waiver election and which otherwise satisfies the requirements of Treas. Reg. §1.417(a)(3)-1.

(6) Waiver frequency and timing. The Plan does not limit the number of times the Participant may revoke a waiver of the QJSA or make a new waiver during the election period. The Participant (and his/her spouse, if the Participant is married), may revoke an election to receive a particular form of benefit at any time until the Annuity Starting Date.

(7) Married Participant waiver. A married Participant's QJSA waiver election is not valid unless: (i) the Participant's spouse (to whom the Survivor Annuity is payable under the QJSA), after the Participant has received the QJSA notice, has consented in writing to the waiver election, the spouse's consent acknowledges the effect of the election, and a notary public or the Plan Administrator (or his/her representative) witnesses the spouse's consent; (ii) the spouse consents to the alternative method of payment designated by the Participant or to any change in that designated method of payment; and (iii) unless the spouse is the Participant's sole primary Beneficiary, the spouse consents to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation.

(a) Effect of spousal consent/blanket waiver. The spouse's consent to a waiver of the QJSA is irrevocable, unless the Participant revokes the waiver election. The spouse may execute a blanket consent to the Participant's future payment method election or Beneficiary designation, if the spouse acknowledges the right to limit his/her consent to a specific designation but, in writing, waives that right.

(b) Spousal consent not required. The Plan Administrator will accept as valid a waiver election which does not satisfy the spousal consent requirements if the Plan Administrator establishes: (i) the Participant does not have a spouse; (ii) the spouse cannot be located; or (iii) the Participant is legally separated or has been abandoned (within the meaning of applicable state law) and the Participant has a court order to that effect. If the Participant's spouse is legally incompetent to give consent, the spouse's legal guardian (even if the guardian is the Participant) may give consent.

(8) Qualified Optional Survivor Annuity (QOSA). Effective for Plan Years beginning after December 31, 2007, a Participant who elects to waive the QJSA form of benefit is entitled to elect the QOSA at any time during the applicable QJSA election period. The QJSA notice will explain the terms and conditions of the QOSA. The QJSA provisions of Section 6.04(A) apply to a QOSA the Participant elects pursuant to this Section 6.04(A)(8).

(a) Definition of QOSA. A QOSA is an Annuity Contract: (i) for the life of the Participant with a Survivor Annuity for the life of the spouse which is equal to the Applicable Percentage of the amount of the annuity which is payable during the joint lives of the Participant and the spouse; and (ii) which is the actuarial equivalent of a single annuity for the life of the Participant. A QOSA also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) Definition of Applicable Percentage. For purposes of this Section 6.04(A)(8), the Applicable Percentage is based on the Survivor Annuity percentage under the Plan's QJSA. If the Survivor Annuity percentage is less than 75%, then the Applicable Percentage is 75%. If the Survivor Annuity percentage is greater than or equal to 75%, the Applicable Percentage is 50%.

(c) No spousal consent requirement for QOSA. A Participant may elect a QOSA without spousal consent.

(B) Qualified Preretirement Survivor Annuity (QPSA). If a married Participant dies prior to his/her Annuity Starting Date, the Plan Administrator will direct the Trustee to distribute a portion of the Participant's Vested Account Balance to the Participant's surviving spouse in the form of a QPSA, unless the Participant has a valid QPSA waiver election in effect, or unless Section 6.04(G) applies. The Employer in its Adoption

Agreement will elect whether to apply the "one-year marriage rule." If the Employer elects to apply the one-year marriage rule, the QPSA benefit does not apply unless the Participant and his/her spouse were married throughout the one year period ending on the date of the Participant's death.

(1) Definition of QPSA. A QPSA is an Annuity Contract which is purchasable with 50% of the Participant's Vested Account Balance (determined as of the date of the Participant's death) and which is payable for the life of the Participant's surviving spouse.

(2) Modification of QPSA. The Employer in Appendix B may elect a different percentage (more than 50% but not exceeding 100%) for the QPSA.

(3) Ordering rule. The value of the QPSA is attributable to Employer Contributions, to Pre-Tax Deferrals, to Roth Deferrals, and to Employee Contributions in the same proportion as the Participant's Vested Account Balance is attributable to those contributions.

(4) Disposition of remaining balance. The portion of the Participant's Vested Account Balance not payable as a QPSA is payable to the Participant's Beneficiary, in accordance with the remaining provisions of this Article VI.

(5) Surviving spouse elections. If the Participant's Vested Account Balance which the Trustee would apply to purchase the QPSA exceeds $5,000, the Participant's surviving spouse may elect to have the Trustee commence payment of the QPSA at any time following the date of the Participant's death, but not later than Section 6.02 requires, and may elect any of the methods of payment described in Section 6.03, in lieu of the QPSA. In the absence of an election by the surviving spouse, the Plan Administrator must direct the Trustee to distribute the QPSA on the earliest administratively practicable date following the close of the Plan Year in which the latest of the following events occurs: (a) the Participant's death; (b) the date the Plan Administrator receives notification of or otherwise confirms the Participant's death; (c) the date the Participant would have attained Normal Retirement Age; or (d) the date the Participant would have attained age 62.

(6) QPSA notice/timing. The Plan Administrator must provide a written explanation of the QPSA to each married Participant within the following period which ends last: (a) the period beginning on the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year in which the Participant attains age 34; (b) a reasonable period after an Employee becomes a Participant; or (c) a reasonable period after Section 6.04 of the Plan becomes applicable to the Participant. A "reasonable period" described in clauses (b) and (c) is the period beginning one year before and ending one year after the applicable event. If the Participant incurs a Separation from Service before attaining age 35, clauses (a), (b), and (c) do not apply and the Plan Administrator must provide the QPSA notice within the period beginning one year before and ending one year after the Separation from Service. If the Participant thereafter returns to employment with the Employer, the Plan Administrator will redetermine the applicable period. The QPSA notice must describe the terms and conditions of the QPSA and of the waiver of the QPSA, comparable to the QJSA notice required under Section 6.04(A)(5), and which otherwise satisfies the requirements of Treas. Reg. §1.417(a)(3)-1.

(7) Waiver frequency and timing. The Plan does not limit the number of times the Participant may revoke a waiver of the QPSA or make a new waiver during the election period. The election period for waiver of the QPSA ends on the date of the Participant's death. A Participant's QPSA waiver election is not valid unless the Participant makes the waiver election after the Participant has received the QPSA notice and no earlier than the first day of the Plan Year in which he/she attains age 35. However, if the Participant incurs a Separation from Service prior to the first day of the Plan Year in which he/she attains age 35, the Plan Administrator will accept a waiver election as to the Participant's Account Balance attributable to his/her Service prior to his/her Separation from Service. In addition, if a Participant who has not incurred a Separation from Service makes a valid waiver election, except for the age 35 Plan Year timing requirement above, the Plan Administrator will accept that election as valid, but only until the first day of the Plan Year in which the Participant attains age 35.

(8) Spousal consent to waiver. A Participant's QPSA waiver is not valid unless the Participant's spouse (to whom the QPSA is payable) satisfies or is excused from the consent requirements as described in Section 6.04(A)(7) as to a QJSA, except the spouse need not consent to the method of benefit payable to the Designated Beneficiary. The spouse's consent to the waiver of the QPSA is irrevocable, unless the Participant revokes the waiver election. The spouse also may execute a blanket consent as to the QPSA waiver in the same manner as described in Section 6.04(A)(7)(a) as to a QJSA.

(C) Effect of Waiver. If the Participant has in effect a valid waiver election regarding the QJSA or the QPSA, the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(D) Loan Offset. The Plan Administrator will reduce the Participant's Vested Account Balance by any security interest (pursuant to any offset rights authorized by Section 6.06) held by the Plan by reason of a Participant loan, to determine the value of the Participant's Vested Account Balance distributable in the form of a QJSA or QPSA, provided the loan satisfied the spousal consent requirement described in Section 7.06(D).

(E) Effect of QDRO. For purposes of applying this Article VI, a former spouse (in lieu of the Participant's current spouse) is the Participant's spouse or surviving spouse to the extent provided under a QDRO described in Section 6.05. The provisions of this Section 6.04 apply separately to the portion of the Participant's Vested Account Balance subject to a QDRO and to the portion of the Participant's Vested Account Balance not subject to the QDRO.

(F) Vested Account Balance Not Exceeding $5,000. The Trustee must distribute in a Lump-Sum a Participant's Vested Account Balance which the Trustee otherwise under Section 6.04 would apply to provide a QJSA or QPSA benefit, where the Participant's Vested Account Balance determined under Section 6.01(A)(4) does not exceed $5,000, unless the Employer elects to apply any lesser amount in Appendix B.

(G) Profit Sharing Plan Exception. If this Plan is a Profit Sharing Plan, the Employer in its Adoption Agreement must elect whether the preceding provisions of Section 6.04 apply to all Participants or only to Participants who are not Exempt Participants.

(1) Definition of Exempt Participants. All Participants are Exempt Participants except the following Participants to whom Section 6.04 (excluding this Section 6.04(G)) must be applied: (a) a Participant as respects whom the Plan is a direct or indirect transferee from a plan subject to the Code §417 requirements and the Plan received the Transfer after December 31, 1984, unless the Transfer is an Elective Transfer described in Section 11.06(E)(3); (b) a Participant who elects a Life Annuity distribution (if Section 11.02(C)(3) of the Plan requires the Plan to provide a Life Annuity distribution option); or (c) a Participant whose benefits under a Defined Benefit Plan maintained by the Employer are offset by benefits provided under this Plan.

(2) Transfers. If a Participant receives a Transfer under Section 6.04(G)(1), clause (a) above and to which Section 6.04 applies, the Plan Administrator may elect to apply Section 6.04 only to the Participant's transferred balance and not to the Participant's remaining Account Balance provided that the Plan

Administrator accounts properly for such balances.

(3) Distribution to Exempt Participant. The Plan Administrator must direct the Trustee to distribute the Exempt Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(4) Exempt Participant Beneficiary designation. See Section 7.05(A)(3) as to requirements relating to a married Exempt Participant's Beneficiary designation.

6.05 QDRO DISTRIBUTIONS. Notwithstanding any other provision of this Plan, the Trustee, in accordance with the direction of the Plan Administrator, must comply with the provisions of a QDRO, as defined in Code §414(p)(1)(A), which is issued with respect to the Plan.

(A) Distribution at Any Time. This Plan specifically permits distribution to an alternate payee under a QDRO at any time, irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code §414(p)(4)(B)) under the Plan. However, a distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution; and (2) if the present value of the alternate payee's benefits under the Plan exceeds $5,000, and the QDRO requires the alternate payee's consent to any distribution occurring prior to the Participant's attainment of earliest retirement age, the alternate payee gives such consent.

(B) Plan Terms Otherwise Apply. Except as to timing of distribution commencement under Section 6.05(A), nothing in this Section 6.05 gives a Participant or an alternate payee a right to receive a method, form or timing of distribution, to receive any option, or to increase benefits in a manner that the Plan does not permit.

(C) QDRO Procedures. The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order (as defined under Code §414(p)(1)(B).

(1) Notices and order status. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this Section 6.05(C)(1) by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with DOL regulations.

(2) Interim amounts payable. If any portion of the Participant's Vested Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

(3) Segregated Account. To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator under Section 7.04(A)(2)(c) may direct the Trustee to segregate the QDRO amount in a Segregated Account. The Trustee will make any payments or distributions required under this Section 6.05 by separate benefit checks or other separate distribution to the alternate payee(s).

6.06 DEFAULTED LOAN - TIMING OF OFFSET. If a Participant or a Beneficiary defaults on a Plan loan, the Plan Administrator will determine the timing of the reduction (offset) of the Participant's Vested Account Balance in accordance with this Section 6.06 and the Plan Administrator's loan policy.

(A) Offset if Distributable Event. If, under the loan policy a loan default also is a distributable event under the Plan, the Trustee, at the time of the loan default, will offset the Participant's Vested Account Balance by the lesser of the amount in default (including accrued interest) or the Plan's security interest in that Vested Account Balance.

(B) Restricted Accounts. If the loan is from a Restricted Pension Account and the loan default is a distributable event under the loan policy, the Trustee will offset the Participant's Account Balance in the manner described in Section 6.06(A) only if the Participant has incurred a Separation from Service or has attained Normal Retirement Age (or age 62 if earlier). If a 401(k) Plan makes the loan, to the extent the loan is attributable to the Participant's Restricted 401(k) Accounts, the Trustee will

not offset the Participant's Vested Account Balance prior to the earlier of the date the Participant incurs a Severance from Employment or the date the Participant attains age 59 1/2. Consistent with its loan policy, the Plan Administrator also may offset a Participant's defaulted loan upon Plan termination, provided the Participant's Account Balance is distributable upon Plan termination.

6.07 HARDSHIP DISTRIBUTIONS. The Employer in its Adoption Agreement may elect to permit a hardship distribution to an electing Participant. If the Employer elects to permit hardship distributions, the Employer, consistent with the Adoption Agreement, will elect: (i) which Accounts are available for a hardship distribution; (ii) whether the Plan Administrator will administer the hardship distributions in accordance with the safe harbor provisions of Section 6.07(A) or under the non-safe harbor provisions of Section 6.07(B); and (iii) whether the hardship distribution is an In-Service Distribution, an acceleration of a distribution occurring after Severance from Employment/Separation from Service, or both. The Employer in its Profit Sharing Plan Adoption Agreement may elect to apply the safe harbor rules. Unless the Employer otherwise elects on Appendix B, if the Employer elects to permit hardship acceleration of distributions after Severance from Employment/Separation from Service, the existence of such a hardship will be determined under the safe harbor rules of Section 6.07(B).

(A) Safe Harbor Need/Necessity.

(1) Deemed immediate and heavy need. For purposes of this Plan, a safe harbor hardship distribution is a distribution on account of one or more of the following immediate and heavy financial needs: (a) expenses for (or necessary to obtain) medical care (as defined in Code §213(d)) for the Participant, for the

Participant's spouse, or for any of the Participant's dependents; (b) costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant; (c) payment of post-secondary education tuition and related educational fees (including room and board), for the next 12-month period, for the Participant, for the Participant's spouse, for the Participant's children, or for any of the Participant's dependents; (d) payments necessary to prevent the eviction of the Participant from his/her principal residence or the foreclosure of the mortgage on the Participant's principal residence; (e) payments for the funeral or burial expenses for the Participant's deceased parent, spouse, child, or dependent; or (f) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income). The Plan Administrator operationally may limit the deemed immediate and heavy financial need events to only certain of the events specified as (a) through (f) above, upon which a Participant may elect to receive a hardship distribution. As used in this Section 6.07(A)(1), the term "dependent" means a dependent as defined in Code §152 but for Taxable Years beginning after 2004 as applied to clause (e), means without regard to Code §152(d)(1)(B) and, for purposes of clause (c), means as applied without regard to Code §§152(b)(1) or (2) and 152(d)(1)(B). Notwithstanding the immediately preceding sentence, the Plan Administrator may elect to limit the term "dependent" to those persons whom the Participant may claim as a dependent on IRS Form 1040. The administrative forms related to hardship distributions will reflect which deemed immediate and heavy financial need events, and which of these definitions of "dependent," the Plan Administrator has elected to apply.

(2) Deemed necessity. The following restrictions apply to a Participant who receives a safe harbor hardship distribution: (a) the Participant may not make Elective Deferrals or Employee Contributions to the Plan and other plans (described below) maintained by the Employer for the 6-month period (or any longer period the Plan Administrator may specify in a hardship distribution policy) following the date of his/her hardship distribution; (b) the distribution may not exceed the amount of the Participant's immediate and heavy financial need (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); and (c) the Participant must have obtained all distributions (including distribution of Code §404(k) ESOP dividends), other than hardship distributions, and all nontaxable loans (determined at the time of the loan) currently available under the Plan and all other plans (described below) maintained by the Employer. "Other plans" for purposes of clauses (a) and (c) means all other qualified plans and all nonqualified plans of deferred compensation maintained by the Employer including a cash or deferred arrangement that is part of a cafeteria plan under Code §125 (but excluding the mandatory employee contribution portion of a Defined Benefit Plan or a health or welfare benefit plan, including one that is part of a cafeteria plan). For purposes of clause (a), "other plans" also includes stock option, stock purchase and other similar plans maintained by the Employer.

(B) Non-safe Harbor Need/Necessity. For purposes of this Plan, a non-safe harbor hardship distribution is a distribution on account of an immediate and heavy financial need. The distribution cannot exceed the amount necessary to satisfy the need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). The Plan will not make a non-safe harbor hardship distribution if the Participant may relieve the need from other resources that are reasonably available to the Participant. The Plan Administrator will administer a hardship distribution under this Section 6.07(B) in accordance with Treas. Reg. §1.401(k)-1(d)(3)(iv), but excluding paragraph (E) thereof.

(C) Policy/Reliance. The Plan Administrator may adopt a uniform and nondiscriminatory policy regarding hardship distributions including objective standards for determining whether a Participant has an immediate and heavy financial need and for substantiating the extent of the Participant's need. The Plan Administrator, absent actual contrary knowledge, may rely on a Participant's written representation that the distribution is on account of hardship (as defined in Section 6.07(A)(1)), that the distribution satisfies Section 6.07(B) and/or that the distribution satisfies clause (b) under 6.07(A)(2).

(D) No Counterproductive Actions. A Participant, to establish necessity under either Sections 6.07(A)(2) or 6.07(B) need not take counterproductive actions as would increase the financial need. Such actions include, but are not limited to, being required to first take a Participant loan to purchase a principal residence where such a loan would result in the Participant's disqualification from obtaining other necessary financing.

(E) Restrictions on Amount; Grandfathered Amounts. The maximum amount distributable from Elective Deferrals as a hardship distribution may not exceed the amount equal to the

Participant's total Elective Deferrals as of the hardship distribution date, reduced by the amount of any Elective Deferrals previously distributed to the Participant based on hardship or otherwise. QMACs and QNECs, and any Earnings on such contributions, and Earnings on the Participant's Elective Deferrals, each credited as of December 31, 1988, or if later, by the end of the last Plan Year ending before July 1, 1989 (collectively, "grandfathered amounts"), increase the amount of the maximum available hardship distribution only if the Employer in Appendix B elects to include such amounts. The restrictions of this Section 6.07(E) do not apply to hardship distributions from Nonelective Contributions, Regular Matching Contributions or Additional Matching Contributions and such distributions also may include Earnings on such Accounts. No hardship distribution is available from Safe harbor Contribution Accounts.

(F) Ordering. If the Plan permits a hardship distribution from more than one Account type, the Participant or the Plan Administrator in accordance with Section 6.03(B)(6) will determine the ordering of a Participant's hardship distribution from the hardship distribution eligible Accounts, including ordering as between the Participant's Pre-Tax Deferral Account and Roth Deferral Account, if any, provided that any ordering is consistent with any restriction on hardship distributions under this Section 6.07.

(G) Prototype and Volume Submitter Plans. A Participant's hardship distribution made from Elective Deferrals under a Prototype Plan must comply with the safe harbor rules of Section 6.07(A). A Participant's hardship distribution made from the Nonelective Contribution, Regular Matching Contribution or Additional Matching Contribution Accounts under a Prototype Plan, as the Employer elects in its Adoption Agreement, may comply with the safe harbor rules of Section 6.07(A) or the non-safe harbor rules of Section 6.07(B). A Volume Submitter Plan, as the Employer elects in its Adoption Agreement, may provide hardship distributions under the safe harbor rules of Section 6.07(A) or under the non-safe harbor hardship distribution rules of Section 6.07(B).

(H) Beneficiary's Hardship Need. If the Employer elects in Appendix B and effective on the date specified therein which may not be earlier than August 17, 2006, a Participant's hardship event, for purposes of Section 6.07(A)(1), includes an immediate and heavy financial need of a primary Individual Beneficiary of the Participant, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Section 6.07(A)(1), but only as to the events described in Sections 6.07(A)(1)(a), (c) and (e). For purposes of this Section 6.07(H), a "primary Individual Beneficiary" is an Individual Beneficiary who has an unconditional right to all or a portion of the Participant's Account Balance upon the Participant's death.

6.08 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(A) Participant Election. A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of his/her Eligible Rollover Distribution from the Plan paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover. For purposes of this Section 6.08, a Participant includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO. A non-spouse Designated Beneficiary also has rollover rights as described in Section 6.08(G).

(B) Rollover and Withholding Notice. At least 30 days but not more than 180 days prior to the Trustee's distribution of an Eligible Rollover Distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal income tax withholding to any amount not directly rolled over, and the recipient's right to roll over the distribution within 60 days after the date of receipt of the distribution ("rollover notice"). If applicable, the rollover notice also must explain the availability of income averaging and the exclusion of net unrealized appreciation. A recipient of an Eligible Rollover Distribution (whether he/she elects a Direct Rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days (but more than 7 days if Section 6.04 applies) following receipt of the rollover notice.

(1) Notice of right to defer distribution. A distribution notice must include a description of a Participant's right, if any, to defer receipt of a distribution and also must describe the consequences of failing to defer receipt of the distribution.

(C) Default Rollover. The Plan Administrator, in the case of a Participant who does not respond timely to the rollover notice, may make a Direct Rollover of the Participant's Account (as described in Rev. Rul. 2000-36 or in any successor guidance, or in any DOL guidance) in lieu of distributing the Participant's Account.

(D) Automatic Rollover. If the Employer elects in its Adoption Agreement to provide for Mandatory Distributions described in Section 6.01(A), the Plan Administrator will apply this Section 6.08(D) to all Mandatory Distributions made before the Participant attains the later of age 62 or Normal Retirement Age. The Employer in its Adoption Agreement will elect whether to apply this Section 6.08(D) to a specified amount or will apply this Section only to such Mandatory Distributions which exceed $1,000. In the event of any Mandatory Distribution subject to this Section 6.08(D), if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan the Participant specifies in a Direct Rollover or to receive the distribution directly in accordance with Section 6.01(A), then the Plan Administrator will pay the distribution in a Direct Rollover to an Individual Retirement Plan the Plan Administrator designates ("Automatic Rollover").

(1) Determination of Mandatory Distribution amount.

(a) Rollovers count. The Plan Administrator, in determining whether a Mandatory Distribution is greater than $1,000 for purposes of this Section 6.08(D), will include the portion of the Participant's distribution attributable to any Rollover Contribution, regardless of the Employer's Adoption Agreement election to include or exclude Rollover Contributions in determining a Mandatory Distribution.

(b) Roth and non-Roth Accounts. In determining the Mandatory Distribution amount under this Section 6.08(D), the Plan Administrator will aggregate a Participant's Roth

Deferral and all other (non-Roth) Accounts if each Account Balance exceeds $200. If either the Roth Deferral Account or the total of all non-Roth Accounts is less than $200, the Plan Administrator will apply this Section 6.08(D) only to the other Account and will not aggregate the Account Balance under $200 with the other Account Balance.

(2) Spousal Beneficiaries, alternate payees and Plan termination. Except as otherwise provided in Section 7.07(B), the Automatic Rollover provisions of this Section 6.08(D) do not apply to spousal Beneficiaries, to alternate payees under a QDRO or to distributions upon Plan termination.

(E) Limitation on Employee Contribution and Roth Rollovers.

(1) Employee Contributions. The non-taxable portion of a Participant's Employee Contribution Account only may be transferred by means of a Direct Rollover to a qualified Defined Contribution Plan described in Code §§401(a) or 403(a), or for taxable years beginning after December 31, 2006, to a Code §403(b) plan, that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income. The non-taxable portion of a Participant's Employee Contributions also may be transferred by a Direct Rollover or by a 60-day rollover to an Individual Retirement Plan. For purposes of a rollover of a distribution which includes both Employee Contributions and pre-tax amounts, the Plan Administrator will treat the first amounts rolled over as attributable to the pre-tax amounts.

(2) Roth Accounts. Except as otherwise described, the provisions of this Section 6.08(E) apply for taxable years commencing on or after January 1, 2006. A Participant's Roth Account (which may include Roth deferrals, Roth rollovers, or In-Plan Roth Rollovers) may be transferred by means of a Direct Rollover to a Roth plan. A Participant also may transfer the taxable portion of his/her Roth Account by a 60-day rollover to a Roth plan. A "Roth plan" means any of the following plans which accept Roth deferrals: a qualified plan described in Code §401(k), a Code §403(b) plan, or commencing January 1, 2011, a governmental 457(b) plan. A Participant's Roth Account also may be transferred by a Direct Rollover or by a 60-day rollover to a Roth Individual Retirement Plan.

(F) Definitions. The following definitions apply to this Section 6.08:

(1) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan the distributee specifies in his/her Direct Rollover election or in the case of an Automatic Rollover, to the Individual Retirement Plan that the Plan Administrator designates.

(2) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), a qualified trust described in Code §401(a), an arrangement described in Code §403(b), an eligible governmental deferred compensation plan described in Code §457(b), or for distributions made after December 31, 2007, a Roth IRA described in Code §408A(b). However, with regard to a Participant's Roth Deferral Account, an Eligible Retirement Plan is a Roth IRA described in Code §408A(b), or a Roth plan, as defined in Section 6.08(E)(2).

(3) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the Participant's Vested Account Balance, except: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Beneficiary, or for a specified period of ten years or more; (b) any RMD under Section 6.02; (c) the portion of any distribution which is not includible in gross income (except for Roth Deferral Accounts, Employee Contributions and determined without regard to the exclusion of net unrealized appreciation with respect to employer securities); (d) any hardship distribution; (e) a corrective distribution made under Article IV; (f) a deemed distribution resulting from a defaulted Participant loan which is not also an offset distribution; (g) any other distributions described in Treas. Reg. §1.402(c)-2; and (h) as to a Direct Rollover, any distribution which otherwise would be an Eligible Rollover Distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than $200. For purposes of clause (h), a Participant's Roth Deferral Account is deemed to constitute a separate plan that is subject to a separate $200 limit. The Plan Administrator, in a form on which a Participant may elect a Direct Rollover, may restrict a Participant from directly rolling over only a part of an Eligible Rollover Distribution where the distribution amount does not exceed $500. In the case of such distribution exceeding $500, the Plan Administrator's form may require that any amount the Participant elects to directly roll over be equal to $500 or a lesser specified amount.

(4) Individual Retirement Plan (or IRA). An Individual Retirement Plan (or IRA) is an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b), and, as the context requires, includes a Roth individual retirement account or a Roth individual retirement annuity.

(G) Non-Spouse Designated Beneficiary Direct Rollover. Unless the Employer in Appendix B elects to delay the application of this Section 6.08(G) to distributions made after December 31, 2009, for distributions after December 31, 2006, a non-spouse Designated Beneficiary (including a trust which qualifies as a Designated Beneficiary), by a Direct Rollover, may roll over an Eligible Rollover Distribution to an Eligible Retirement Plan; provided that for this purpose, an Eligible Retirement Plan is an Individual Retirement Plan that the non-spouse Designated Beneficiary establishes for purposes of receiving the distribution and which is treated as an inherited IRA under Code §408(d)(3)(C). If a non-spouse Designated Beneficiary receives a distribution from the Plan, the distribution is not eligible for a 60-day rollover.

(1) Certain requirements not applicable before 2010. Although a non-spouse Designated Beneficiary may roll over directly a distribution as provided in this Section 6.08(G), any distribution made prior to January 1, 2010, is not subject to the Direct Rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B)), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c), or to the corresponding provisions of this Section 6.08.

(2) RMDs not eligible for rollover. A non-spouse Designated Beneficiary may not roll over an amount which is an RMD. If the Participant dies before his/her RBD and the non-spouse Designated Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the Life Expectancy rule under Section 6.02(B)(1)(d) or the 5-year rule under Section 6.02(B)(1)(c), in determining the RMDs from the IRA that receives the non-spouse Beneficiary's Direct Rollover distribution.

6.09 REPLACEMENT OF $5,000 AMOUNT. If the Employer in its Adoption Agreement under Section 6.01(A)(1) elects no Mandatory Distributions or elects a Mandatory Distribution amount which is less than $5,000, all other Plan references to "$5,000" remain unchanged unless the Employer in Appendix B elects to apply any lesser amount. However, any such override election does not apply to Sections 3.02(D) (relating to Catch-Up Deferrals, 3.10 (relating to SIMPLE Plans) and 3.12(C)(2) (relating to Designated IRAs) and references therein remain at $5,000. If this Plan is a Restated Plan with a retroactive Effective Date, any Employer election under this Section 6.09 must be consistent with the Plan Administrator's operation of the Plan prior to the Employer's execution of its Restated Plan.

6.10 TEFRA ELECTIONS.

(A) Application of Election in Lieu of Other Provisions. Notwithstanding the provisions of Sections 6.01, 6.02 and 6.03, if the Participant (or Beneficiary) signed a written distribution designation prior to January 1, 1984 ("TEFRA election"), the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with that election, subject however, to the Survivor Annuity requirements, if applicable, of Section 6.04.

(B) Non-Application. This Section 6.10 does not apply to a TEFRA election, and the Plan Administrator will not comply with that election, if any of the following applies: (1) the elected method of distribution would have disqualified the Plan under Code §401(a)(9) as in effect on December 31, 1983; (2) the Participant did not have an Account Balance as of December 31, 1983; (3) the election does not specify the timing and form of the distribution and the death Beneficiaries (in order of priority); (4) the substitution of a Beneficiary modifies the distribution payment period; or, (5) the Participant (or Beneficiary) modifies or revokes the election. In the event of a revocation, the Trustee must distribute, no later than December 31 of the calendar year following the year of revocation, the amount which the Participant would have received under Section 6.02 if the distribution designation had not been in effect or, if the Beneficiary revokes the distribution designation, the amount which the Beneficiary would have received under Section 6.02 if the distribution designation had not been in effect. The Plan Administrator will apply this Section 6.10 to rollovers and Transfers in accordance with Treasury Reg. §1.401(a)(9)-8.

6.11 DEEMED SEVERANCE DISTRIBUTIONS. The Employer in its Adoption Agreement will elect whether to permit a deemed severance distribution. If the Employer elects to permit a deemed severance distribution, then notwithstanding Section 1.22(G), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a Severance from Employment solely for purposes of distribution of amounts from Contribution Types the Employer has selected in the Adoption Agreement. If a Participant elects to receive a distribution on account of this deemed severance, and the distribution includes any of the Participant's Elective Deferrals, then the individual may not make Elective Deferrals or Employee Contributions to the Plan during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a QRD), then the other Plan provision will control and the 6-month suspension will not apply.

ARTICLE VII
ADMINISTRATIVE PROVISIONS

7.01 EMPLOYER ADMINISTRATIVE PROVISIONS.

(A) Information to Plan Administrator. The Employer must supply current information to the Plan Administrator, including the name, date of birth, date of employment, Compensation, leaves of absence, Years of Service and date of Separation from Service of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administrator considers necessary to administer the Plan. The Employer's records as to the information the Employer furnishes to the Plan Administrator are conclusive as to all persons.

(B) Plan Contributions. The Employer is solely responsible to determine the proper amount of any Employer Contribution it makes to the Plan and for the timely deposit to the Trust of the Employer Contributions.

(C) Employer Action. The Employer must take any action under the Plan in accordance with applicable Plan provisions and with proper authority such that the action is valid and is binding upon the Employer.

(D) No Responsibility for Others. Except as required under ERISA, the Employer has no responsibility or obligation under the Plan to Employees, Participants or Beneficiaries for any act required of the Plan Administrator, the Trustee, the Custodian, or any other service provider to the Plan (unless the Employer also serves in such capacities).

(E) Indemnity of Certain Fiduciaries. The Employer will indemnify, defend and hold harmless the Plan Administrator from and against any and all loss, damages or liability to which the Plan Administrator may be subjected by reason of any act or omission (except willful misconduct or gross negligence) in its official capacities in the administration of this Plan or Trust or both, including attorneys' fees and all other expenses reasonably incurred in the Plan Administrator's defense, in case the Employer fails to provide such defense. The indemnification provisions of this Section 7.01(E) do not relieve the Plan Administrator from any liability the Plan Administrator may have under ERISA for breach of a fiduciary duty. The Plan Administrator and the Employer may execute a written agreement further delineating the indemnification agreement of this Section 7.01(E), provided the agreement does not violate ERISA. The indemnification provisions of this Section 7.01(E) do not extend to any Trustee, third party administrator, Custodian or other Plan service provider unless so provided in a written agreement executed by such persons and the Employer.

(F) Settlor Expenses. The Employer will pay all reasonable Plan expenses that the Plan Administrator under Section 7.04(C) determines are "settlor expenses" under ERISA.

7.02 PLAN ADMINISTRATOR.

(A) Compensation and Expenses. The Plan Administrator (and any individuals serving as Plan Administrator) will serve without compensation for services as such (unless the Plan Administrator is not the Employer or an Employee), but the Employer or the Plan will pay all reasonable expenses of the Plan Administrator, in accordance with Section 7.04(C)(2).

(B) Resignation and Removal. If the Employer, under Section 1.43, appoints one or more persons to serve as Plan Administrator, such person(s) shall serve until they resign by written notice to the Employer or until the Employer removes them by written notice. In case of a vacancy in the position of Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

(C) General Powers and Duties. The Plan Administrator has the following general powers and duties which are in addition to those the Plan otherwise accords to the Plan Administrator:

(1) Eligibility/benefit determination. To determine the rights of eligibility of an Employee to participate in the Plan, all factual questions that arise in the course of administering the Plan, the amount of a Participant's Account Balance (based on the value of the Trust assets, as determined by the Trustee, the Custodian or the Named Fiduciary) and the Vested percentage of each Participant's Account Balance.

(2) Rules/policies. To adopt rules of procedure and regulations or policies the Plan Administrator considers reasonable or necessary for the proper and efficient administration of the Plan, provided the rules are not inconsistent with the terms of the Plan, the Code, or ERISA. The Plan Administrator may, but is not required to reduce such rules, regulations or policies to writing. The Plan Administrator at any time may amend or terminate prospectively any Plan policy without the requirement of a formal Plan amendment. The Employer or Plan Administrator also may create and modify from time to time one or more administrative checklists which are not part of the Plan, but which are for the purpose of tracking certain plan operational features, to generate written policies and plan forms, and to facilitate proper administration of the Plan.

(3) Construction/enforcement. To construe and enforce the terms of the Plan and the rules, regulations and policies the Plan Administrator adopts, including discretion to interpret the basic plan document, the Adoption Agreement and any document related to the Plan's operation.

(4) Distribution/valuation. To direct the Trustee regarding the crediting and distribution of the Trust Fund, to establish additional Valuation Dates, and to direct the Trustee to conduct interim valuations on such Valuation Dates under Section 8.02(C)(4).

(5) Claims. To review and render decisions regarding a claim for (or denial of a claim for) a benefit under the Plan.

(6) Information to Employer. To furnish the Employer with information which the Employer may require for tax or other purposes.

(7) Service providers. To engage the service of agents whom the Plan Administrator may deem advisable to assist it with the performance of its duties.

(8) Investment Manager. If the Plan Administrator is the Named Fiduciary (or the Named Fiduciary otherwise designates

the Plan Administrator to do so), to engage the services of an Investment Manager or Managers (as defined in ERISA §3(38)), each of whom will have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under such Investment Manager's control.

(9) Funding. As the Code or ERISA may require, to establish and maintain a funding policy and a funding standard account and to make credits and charges to that account. The Plan Administrator will review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan Administrator must communicate periodically, as it deems appropriate, to the Trustee and to any Plan Investment Manager the Plan's short-term and long-term financial needs for the coordination of the Plan's investment policy with Plan financial requirements.

(10) Records. To maintain Plan records and records of the Plan Administrator's activities, as necessary or appropriate for the proper administration of the Plan.

(11) Tax returns and other filings. To file with DOL or IRS as may be required, the Plan's informational tax return, and to make such other filings as the Plan Administrator deems necessary or appropriate.

(12) Notices and disclosures. To give and to make to Participants and to other parties, all Plan related notices and disclosures.

(13) Overpayment. To seek return from a Participant or Beneficiary of any distributed amount which exceeds their distributable Vested Account Balance (or exceeds the amount which otherwise should have been distributed) and to allocate any recovered overpayment in accordance with the Plan terms.

(14) Catch-all. To make any other determinations and undertake any other actions the Plan Administrator in its discretion believes are necessary or appropriate for the administration of the Plan (except to the extent that the Employer provides express contrary direction) and to otherwise administer the Plan in accordance with the Plan terms.

(D) 401(k) Plan Elective Deferrals. If the Plan is a 401(k) Plan, the Plan Administrator may adopt such policies regarding Elective Deferrals as it deems necessary or appropriate to administer the Plan. The Plan Administrator also will prescribe a Salary Reduction Agreement form for use by Participants. See Section 1.57.

(E) Limitations on Plan Administrator Responsibility.

(1) Acts of others. Except as required under ERISA, the Plan Administrator has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act required of the Employer, the Trustee, the Custodian or any other service provider to the Plan (unless the Plan Administrator also serves in such capacities).

(2) Plan contributions. The Plan Administrator is not responsible for collecting any required Plan contribution or to determine the correctness or deductibility of any Employer Contribution.

(3) Reliance on information. The Plan Administrator in administering the Plan is entitled to, but is not required to rely upon, information which a Participant, Beneficiary, Trustee, Custodian, the Employer, a Plan service provider or representatives thereof provide to the Plan Administrator.

(F) Allocation of Responsibility. If more than one person or entity is the Plan Administrator, then the Employer may assign certain duties between them. In that case, the assigned Plan Administrator shall have sole responsibility for the assigned duty and shall not have responsibility for any other duties of the Plan Administrator. However, at least one person or entity designated as Plan Administrator shall have and exercise all duties and powers of the Plan Administrator not otherwise assigned.

7.03 DIRECTION OF INVESTMENT.

(A) Employer Direction of Investment. The Employer has the right to direct the discretionary Trustee with respect to the investment and re-investment of assets comprising the Trust Fund only if and to the extent the discretionary Trustee consents in writing to permit such direction. The Employer will direct a nondiscretionary Trustee as to the Trust Fund investments in accordance with Article VIII unless an Investment Manager, the Participants or the Named Fiduciary are directing the nondiscretionary Trustee as to such investments.

(B) Participant/Beneficiary Direction of Investment. The Plan Administrator may adopt a policy to permit Participants to direct the investment of one or more of their Plan Accounts, subject to the provisions of this Section 7.03(B). The Plan Administrator may impose reasonable and nondiscriminatory administrative conditions on the Participants' ability to direct their Account investments. For purposes of this Section 7.03(B), a Participant includes a Beneficiary where the Beneficiary has succeeded to the Participant's Account and where the Plan Administrator's policy affords the Beneficiary self-direction rights. However, under the Plan Administrator's policy a Beneficiary may or may not have the same direction of investment rights as a Participant.

(1) Trustee authorization and procedures. Under any Plan Administrator policy permitting Participant direction of investment, the Trustee must consent in writing to permit such direction. If the Employer, in its Adoption Agreement, designates the Trustee as a nondiscretionary Trustee, the Employer may direct the Trustee to consent to Participant direction of investment. If the Trustee consents to Participant direction of investment, the Trustee only will accept direction from each Participant (or from the Participant's properly appointed independent investment adviser, financial planner or legal representative) on a written direction of investment form the Plan Administrator or Trustee provides or otherwise approves for this purpose. The Trustee may establish written procedures relating to Participant direction of investment under this Section 7.03(B) as are not inconsistent with the Plan Administrator's policy regarding Participant direction, including procedures or conditions for electronic transfers or for changes in investments by Participants or by their properly appointed independent investment advisers, financial planners or legal representatives. The Plan Administrator will maintain, or direct

the Trustee to maintain, an appropriate Account designated in the name of the Plan or Trust and for the benefit of the Participant, to the extent a Participant's Account is subject to Participant self-direction. Such an Account is a Participant-Directed Account under Section 7.04(A)(2)(b).

(2) ERISA §404(c). No Plan fiduciary (including the Employer and Trustee) is liable for any loss or for any breach resulting from a Participant's or Beneficiary's direction of the investment of any part of his/her directed Account to the extent the Participant's or Beneficiary's exercise of his/her right to direct the investment of his/her Account satisfies the requirements of ERISA §404(c).

(3) Participant loans. As part of any loan policy the Plan Administrator establishes under Section 7.06, the Plan Administrator under Section 7.06(E) may treat a Plan loan made to a Participant as a Participant direction of investment, even if the Plan Administrator has not adopted a policy permitting Participants to direct their own Account investments.

(4) Investment services programs. The Plan Administrator, as part of its Participant direction policy under this Section 7.03(B), may permit Participants to appoint an Investment Manager or Managers, which may be the Trustee, Custodian or an affiliate thereof, to render investment allocation services, investment advice or management services (collectively, an “investment services program”) to the appointing Participants.

(5) Failure to give direction/default investments. If a Participant fails to give direction as to the investment of his/her Account or of any portion thereof which is subject to Participant direction, the Trustee (or other applicable Plan fiduciary) may invest the undirected Account assets in one or more default investments of the Trustee’s (or other applicable Plan fiduciary’s) choosing. Any such default investments may, but are not required to comply with ERISA Section 404(c)(5) and the regulations thereunder, relating to qualified default investment alternatives (QDIA).

(C) Direction Consistent with Plan. To constitute a proper direction, any direction of investment given to the Trustee or Custodian under the Plan must be in accordance with the Plan terms and must not be contrary to ERISA.

7.04 ACCOUNT ADMINISTRATION, VALUATION AND EXPENSES.

(A) Individual Accounts. The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant’s Account Balance under the Plan. The Plan Administrator will make its allocations of Employer Contributions and of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types under Section 7.04(A)(1); (ii) allocation conditions under Section 3.06; (iii) investment account types under Section 7.04(A)(2); and (iv) Earnings allocation methods under Section 7.04(B). The Plan Administrator may also maintain, or direct the Trustee to maintain, a separate temporary Account for Participant forfeitures which occur during a Plan Year, pending their accrual and allocation in accordance with the Plan terms, or for other special items as the Plan Administrator determines is necessary and appropriate for proper plan administration.

(1) By Contribution Type. The Plan Administrator, will establish Plan Accounts for each Participant as necessary to reflect his/her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: Pre-Tax Deferrals, Roth Deferrals, Regular Matching Contributions, Nonelective and other Employer Contributions, QNECs, QMACs, Safe Harbor Contributions, Additional Matching Contributions, Rollover Contributions (including Roth versus pre-tax amounts), In-Plan Roth Rollover Contributions, Transfers, SIMPLE Contributions, Prevailing Wage Contributions, Employee Contributions, DECs and Designated IRA Contributions.

(2) By investment account type. The Plan Administrator will establish separate Accounts for each Participant as necessary to reflect his/her investment account types as described below:

(a) Pooled Accounts. A Pooled Account is an Account which for investment purposes is not a Segregated Account or a Participant-Directed Account. If any or all Plan investment Accounts are Pooled Accounts, each Participant’s Account has an undivided interest in the assets comprising the Pooled Account. In a Pooled Account, the value of each Participant’s Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his/her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants plus the cash surrender value of any incidental benefit insurance contracts held by the Trustee on the Participant’s life.

(b) Participant-Directed Accounts. A Participant-Directed Account is an Account that the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant to invest in one or more assets that are not pooled assets held by the Trust, such as assets in a brokerage account or other property in which other Participants do not have any interest. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds, or may be open-ended and subject only to any limitations imposed by ERISA. A Participant may have one or more Participant-Directed Accounts in addition to Pooled or Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings under Section 7.04(B)(4)(e). As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period.

(c) Segregated Accounts. A Segregated Account is an Account the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant: (i) as the result of a cash-out repayment under Section 5.04; (ii) to facilitate installment payments under Section 6.03; (iii) to hold a QDRO amount under Section 6.05; (iv) to prevent a distortion of Plan Earnings allocations; or (v) for such other purposes as the

Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The Trustee will invest the assets of a Segregated Account consistent with the purpose for which the Plan Administrator or Trustee established the Account. As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising under Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period.

(3) Amount of Account/distributions. The amount of a Participant’s Account, as determined by the Plan Administrator, is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the amount of a Participant’s Account Balance is determined based upon its value on the Valuation Date immediately preceding or coinciding with the date of the distribution. If any or all Plan investment Accounts are Participant-Directed Accounts, the directing Participant’s Account Balance consists of the assets held within the Participant-Directed Account and the value of the Account is determined based upon the fair market value of such assets.

(4) Account statements. As soon as practicable after the Accounting Date of each Plan Year and any other date that ERISA requires, the Plan Administrator will deliver within any time prescribed by ERISA, to each Participant (and to each Beneficiary) a statement reflecting the amount of his/her Account Balance in the Trust as of the statement date or most recent Valuation Date. The statement will also include any and all other information as of that date that ERISA may require. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

(B) Allocation of Earnings. This Section 7.04(B) applies solely to the allocation of Earnings of the Trust Fund. The Plan Administrator will allocate Employer Contributions and Participant forfeitures, if any, in accordance with Article III.

(1) Allocate as of Valuation Date. As of each Valuation Date, the Plan Administrator must adjust Accounts to reflect Earnings for the Valuation Period since the last Valuation Date.

(2) Definition of Valuation Date. A Valuation Date under this Plan is each: (a) Accounting Date; (b) Valuation Date the Employer elects in its Adoption Agreement; or (c) Valuation Date the Plan Administrator establishes under Section 7.02(C)(4). The Employer in its Adoption Agreement or the Plan Administrator may elect alternative Valuation Dates for the different Contribution Types which the Plan Administrator maintains under the Plan.

(3) Definition of Valuation Period. The Valuation Period is the period beginning on the day after the last Valuation Date and ending on the current Valuation Date.

(4) Allocation methods. The Plan Administrator will allocate Earnings to the Participant Accounts in accordance with the daily valuation method, balance forward method, balance forward with adjustment method, weighted average method, Participant-Directed Account method, or other method the Employer elects under its Adoption Agreement. The Employer in its Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the Earnings to the Accounts reflecting different Contribution Types or investment Account types which the Plan Administrator maintains under the Plan. The Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current Valuation Period, by reducing the Accounts for any forfeitures, distributions, and loan disbursement payments arising under the Plan, for expenses charged during the Valuation Period to the Accounts in accordance with Section 7.04(C)(2)(b) (expenses directly related to a Participant's Account) and Section 9.01 (relating to insurance premiums), and for the cash value of incidental benefit insurance contracts. The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate Earnings under the applicable valuation method.

(a) Daily valuation method. If the Employer in its Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate Earnings on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business. Under the daily valuation method, all assets subject to such method are subject to daily valuation. The assets may be held in Participant-Directed Accounts or in Accounts which are subject to Trustee or other fiduciary investment direction.

(b) Balance forward method. If the Employer in its Adoption Agreement elects to apply the balance forward method, the Plan Administrator will allocate Earnings pro rata to the adjusted Participant Accounts, since the last Valuation Date.

(c) Balance forward with adjustment method. If the Employer in its Adoption Agreement elects to apply the balance forward with adjustment method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat as part of the relevant Account at the beginning of the Valuation Period the percentage of the contributions made as the Employer elects in its Adoption Agreement, during the Valuation Period the Employer elects in its Adoption Agreement.

(d) Weighted average method. If the Employer in its Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat a weighted portion of the applicable contributions as if includible in the Participant's Account as of the beginning of the Valuation Period. The weighted portion is a fraction, the numerator of which is the number of months in the Valuation Period, excluding each month in the Valuation Period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the Valuation Period. The Employer in its Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation.

(e) Participant-Directed Account method. The Employer in its Adoption Agreement must elect to apply the Participant-Directed Account method to any Participant-Directed Account under the Plan. See Sections 7.03(B) and 7.04(A)(2)(b). Under the Participant-Directed Account method: (i) each Participant-Directed Account is

credited and charged with the Earnings such Account generates; (ii) the Employer's election, if any, in its Adoption Agreement of another method for the allocation of Earnings will not apply to any Participant-Directed Account; and (iii) the Participant-Directed Account may be valued as often as daily, but will be valued at least annually, and all assets in the Account are not necessarily valued on the same frequency. An Account which is subject to the Participant-Directed Account method includes an individual brokerage account or similar account in title to the Trustee for the benefit of the Participant.

(5) Special Earnings allocation rules.

(a) Code §415 Excess Amounts. An Excess Amount described in Article IV does not share in the allocation of Earnings described in this Section 7.04(B).

(b) Contributions prior to accrual or precise determination. If the Employer in its Adoption Agreement elects to impose one or more allocation conditions under Section 3.06 and the Employer contributes to the Plan amounts which at the time of the contribution have not accrued under the Plan terms ("pre-accrual contributions"), the Trustee may hold the pre-accrual contributions in the Trust and may invest such contributions as the Trustee (or other applicable Plan fiduciary) determines, pending accrual and allocation to Participant Accounts. When the Plan Administrator allocates to Participants who have satisfied the Plan's allocation conditions the Employer's pre-accrual contributions, the Plan Administrator also will allocate the Earnings thereon pro rata in relation to each Participant's share of the pre-accrual contribution. The Plan Administrator also may elect to apply this Section 7.04(B)(5)(b) to any other situation in which the Plan Administrator cannot determine precisely the amount a Participant's allocation as of the date that the Employer makes an Employer Contribution (excluding Elective Deferrals) to the Trust. The Employer in Appendix B may elect an alternative nondiscriminatory method to allocate the Earnings attributable to contributions described in this Section 7.04(B)(5)(b).

(c) Forfeitures prior to accrual/allocation. The Trustee (or other applicable Plan fiduciary) will direct the investment of any separate temporary forfeiture Account created under Section 7.04(A). As of each Accounting Date, or interim Valuation Date, if applicable, the Plan Administrator will allocate the Earnings from the temporary forfeiture Account, if any, to the Accounts of the Participants in accordance with the provisions of Section 7.04(B)(4), or will allocate such Earnings in the same manner as Earnings on pre-accrual contributions under Section 7.04(B)(5)(b).

(d) Accounting after Forfeiture Break in Service. If a Participant re-enters the Plan subsequent to his/her having a Forfeiture Break in Service (as defined in Section 5.06(B)), the Plan Administrator, or the Trustee, must maintain a separate Account for the Participant's pre-Forfeiture Break in Service

Account Balance and a separate Account for his post-Forfeiture Break in Service Account Balance, unless the Participant's entire Account Balance under the Plan is 100% Vested.

(e) Coordination of allocation and valuation elections. If the Plan is a 401(k) Plan that provides for Elective Deferrals, if the Plan permits Employee Contributions, or if the Plan allocates Nonelective or Matching Contributions as of any date other than the last day of the Plan Year, the Employer in its Adoption Agreement must elect the method the Plan Administrator will apply to allocate Earnings to such contributions made during the Plan Year and must elect any alternative Valuation Dates for the different Account types which the Plan Administrator maintains under the Plan.

(C) Plan Expenses. The Plan Administrator consistent with ERISA must determine whether a particular Plan expense is a settlor expense which the Employer must pay.

(1) Employer election as to non-settlor expenses. The Employer will direct the Plan Administrator as to whether the Employer will pay any or all non-settlor reasonable Plan expenses or whether the Plan must bear the expense.

(2) Allocation of Plan expense. As to any and all non-settlor reasonable Plan expenses, including Trustee fees, which the Employer determines that the Plan will pay, the Plan Administrator has discretion: (i) to determine which of such expenses will charged to the Plan as a whole and the method of allocating such Plan expenses under Section 7.04(C)(2)(a); (ii) to determine which of such expenses the Plan will charge to an individual Participant's Account under Section 7.04(C)(2)(b); and (iii) to adopt an expense policy regarding the foregoing. The Plan Administrator must exercise its discretion under this Section 7.04(C)(2) in a reasonable, uniform and nondiscriminatory manner. The Plan Administrator will direct the Trustee to pay from the Trust and to charge to the overall Plan or to particular Participant Accounts the expenses under this Section 7.04(C)(2) in accordance with the Plan Administrator's election of expense charging method or policy.

(a) Charge to overall Plan (pro rata or per capita). If the Plan Administrator charges a Plan expense to the Accounts of all Participants, the Plan Administrator may allocate the Plan expense either pro rata in relation to the total balance in each Account on the date the expense is allocated (using the balance determined as of the most recent Valuation Date) or per capita (an equal amount) to each Participant's Account.

(b) Charge to individual Participant Accounts. The Plan Administrator may charge a Participant's Account for any reasonable Plan expenses directly related to that Account, including, but not limited to the following categories of fees or expenses: distribution, loan, acceptance of rollover, QDRO, "lost Participant" search, account maintenance, brokerage accounts, investment management and benefit calculations. The Plan Administrator may charge a Participant's Account for the reasonable expenses incurred in connection with the maintenance of or a distribution from that Account even if the charging of such expenses would result in the elimination of the Participant's Account or in the Participant's not receiving an actual distribution. However, if the actual Account expenses exceed the Participant's Account Balance, the Plan Administrator will not charge the Participant outside of the Plan for such excess expenses.

(c) Participant's direct payment of investment expenses. The Plan Administrator may permit Participants to pay directly (outside the Plan) to the service provider Plan expenses such as investment management fees, provided such expenses: (i) would be properly payable either by the Employer or the Plan and are not "settlor" expenses payable exclusively by the Employer; (ii) are not paid by the Employer or by the Plan;

and (iii) are not intrinsic to the value of the Plan assets as described in Rev. Rul. 86-142 or in any successor ruling. This Section 7.04(C)(2)(c) does not permit a Participant to reimburse the Plan for expenses the Plan previously has paid. To the extent a Participant does not pay an expense the Participant may pay according to this Section 7.04(C)(2)(c), the Plan Administrator will charge the expense under Sections 7.04(C)(2)(a) or 7.04(C)(2)(b) in accordance with the Plan Administrator's expense policy.

(d) Charges to former Employee-Participants. The Plan Administrator may charge reasonable Plan expenses to the Accounts of former Employee-Participants, even if the Plan Administrator does not charge Plan expenses to the Accounts of current Employee-Participants. The Plan Administrator may charge different amounts or types of reasonable Plan expenses to the Accounts of former Employee-Participants, versus what it charges to the Accounts of current Employee-Participants. The Plan Administrator may charge the Accounts of former Employee-Participants by applying one of the Section 7.04(C)(2)(a) or (b) methods.

(e) ERISA compliance. This Section 7.04(C) does not authorize the Plan to charge a Participant for information that ERISA requires the Plan to furnish free of charge upon the Participant's request. In addition, the Plan Administrator as ERISA may require, must disclose the nature of any Plan expenses and the manner of charging of any Plan expenses to the Plan or to particular Participant Accounts and must apply its expense policy in a manner which is consistent with ERISA.

(D) ERISA Fee Recapture Account. The Plan Administrator in its discretion may use an ERISA Fee Recapture Account to pay non-settlor Plan Expenses and may allocate funds in the ERISA Recapture Account (or excess funds therein after payment of Plan Expenses) as Earnings. The Plan Administrator will exercise its discretion in a reasonable, uniform and nondiscriminatory manner.

(1) Definition of ERISA Fee Recapture Account. An ERISA Fee Recapture Account is an account designated to receive amounts which a Plan service provider receives in the form of 12b-1 fees, sub-transfer agency fees, shareholder servicing fees or similar amounts (also known as "revenue sharing"), which the service provider receives from a source other than the Plan and which the service provider may remit to the Plan.

(E) Late Trading and Market Timing Settlement. In the event the Plan becomes entitled to a settlement from a mutual fund or other investment relating to late trading, market timing or other activities, the Plan Administrator will allocate the settlement proceeds to Participants and Beneficiaries in accordance with FAB 2006-01.

7.05 <u>PARTICIPANT ADMINISTRATIVE PROVISIONS</u>.

(A) Beneficiary Designation. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Trustee will pay all or any portion of the Participant's Vested Account Balance (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant under Section 6.03(B)(1) also may designate the method of distribution of his/her Account to the Beneficiary. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's proper completion and filing of the form with the Plan Administrator, the form effectively revokes all designations filed prior to that date by the same Participant. This Section 7.05(A) also applies to the interest of a deceased Beneficiary or a deceased alternate payee where the Beneficiary or alternate payee has designated a Beneficiary.

(1) Automatic revocation of spousal designation. A divorce decree revokes the Participant's prior designation, if any, of his/her spouse or former spouse as his/her Beneficiary under the Plan unless: (a) a QDRO provides otherwise; or (b) the Employer in Appendix B elects otherwise. This Section 7.05(A)(1) applies solely to a Participant whose divorce becomes effective on or after the date the Employer executes this Plan unless: (i) the Plan is a Restated Plan and the prior Plan contained a provision to the same effect; or (ii) regardless of the application of (i), the Employer in Appendix A provides for a special Effective Date for this Section 7.05(A)(1).

(2) Coordination with QJSA/QPSA requirements. If Section 6.04 applies to the Participant, this Section 7.05 does not impose any special spousal consent requirements on the Participant's Beneficiary designation unless the Participant waives the QJSA or QPSA benefit. If the Participant waives the QJSA or QPSA benefit without spousal consent to the Participant's Beneficiary designation: (a) any waiver of the QJSA or of the QPSA is not valid; and (b) if the Participant dies prior to his/her Annuity Starting Date, the Participant's Beneficiary designation will apply only to the portion of the death benefit which is not payable as a QPSA. Regarding clause (b), if the Participant's surviving spouse is a primary Beneficiary under the Participant's Beneficiary designation, the Trustee will satisfy the spouse's interest in the Participant's death benefit first from the portion which is payable as a QPSA.

(3) Profit Sharing Plan exception. If the Plan is a Profit Sharing Plan which the Employer under Section 6.04(G) has elected in its Adoption Agreement to exempt all Exempt Participants from the QJSA and QPSA requirements of Section 6.04, the Beneficiary designation of a married Exempt Participant, as described in Section 6.04(G), is not valid unless the Participant's spouse consents (in the manner described in Section 6.04(A)(7)) to the Beneficiary designation. The spousal consent requirement in this Section 7.05(A)(3) does not apply if the Participant's spouse is the Participant's sole primary Beneficiary. A "sole primary Beneficiary" is the individual who has an unconditional right to all of the Participant's Account Balance upon the Participant's death.

(a) One-Year Marriage Rule. The Employer in its Adoption Agreement will elect whether to apply the "one-year marriage rule". If the Employer elects to apply the one-year marriage rule, the spousal consent requirement of this Section 7.05(A)(3) does not apply unless the Exempt Participant and his/her spouse were married throughout the one year period ending on the date of the Participant's death. If the Employer elects to apply the one-year marriage rule under this Section 7.05(A)(3), but the Participant is not an Exempt Participant (such that the QJSA and QPSA requirements apply to the Participant), the one-year marriage rule under Section 6.04(B) applies only to the QPSA.

(4) Limitation on frequency of Beneficiary changes. A Participant may change his/her Beneficiary in accordance with this Section 7.05(A) as often as the Participant wishes, unless the Employer in Appendix B elects to impose a minimum time interval between changes, but with an exception for certain major life events, such as death of a Beneficiary, divorce and other such events as the Plan Administrator reasonably may determine.

(5) Definition of spouse. The Employer in Appendix B may define the term "spouse" for all Plan purposes.

(B) Default Beneficiary. If: (i) a Participant fails to name a Beneficiary in accordance with Section 7.05(A); or (ii) the Beneficiary (and all contingent or successive Beneficiaries) whom the Participant designates predecease the Participant, are invalid for any reason, or disclaim the Participant's Vested Account Balance and the Plan Administrator has accepted the disclaimers as valid, then the Trustee (subject to any contrary provision in Appendix B under Section 7.05(C)) will distribute the Participant's Vested Account Balance in accordance with Section 6.03 in the following order of priority to:

(1) Spouse. The Participant's surviving spouse (without regard to the one-year marriage rule of Sections 6.04(B) and 7.05(A)(3)(a)), except where the spouse would be revoked as Beneficiary under Section 7.05(A)(1), had the Participant named the spouse as Beneficiary; and if no surviving spouse to

(2) Descendants. The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to

(3) Parents. The Participant's surviving parents, in equal shares; and if none to

(4) Estate. The Participant's estate.

(C) Administration of Default Provision. The Employer in Appendix B may specify a different list or ordering of the list of default beneficiaries than under Section 7.05(B); provided however, that if the Plan is a Profit Sharing Plan, and the Plan includes Exempt Participants, as to such Exempt Participants, the Employer may not specify a different default Beneficiary list or order unless the Participant's surviving spouse will be the sole primary Beneficiary. The Plan Administrator will direct the Trustee as to the distribution method and to whom the Trustee will make the distribution under Section 7.05(B).

(D) Death of Beneficiary. If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Vested Account Balance, the Trustee will distribute the remaining Vested Account Balance in the same manner as described in Sections 7.05(B) and (C) (applied as though the Beneficiary were the Participant) unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms.

(E) Simultaneous Death of Participant and Beneficiary. If a Participant and his/her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Plan Administrator will presume conclusively that the Beneficiary predeceased the Participant.

(F) Incapacitated Participant or Beneficiary. If, in the opinion of the Plan Administrator, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, at the direction of the Plan Administrator, the Trustee will make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative, upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

(G) Assignment or Alienation. Except as provided in Code §414(p) relating to QDROs (or a domestic relations order entered into before January 1, 1985) and in Code §401(a)(13) relating to certain voluntary, revocable assignments, judgments and settlements, neither a Participant nor a Beneficiary may anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee will not recognize any such anticipation, assignment or alienation. Except as provided by Code §401(a)(13), a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

(H) Information Available. Any Participant or Beneficiary without charge may examine the Plan description, copy of the latest annual report, any bargaining agreement, this Plan and Trust, and any contract or any other instrument which relates to the establishment or administration of the Plan or Trust. The Plan Administrator will maintain all of the items listed in this Section 7.05(H) in its office, or in such other place or places as it may designate from time to time in order to comply with ERISA, for examination during reasonable business hours. Upon the written request of a Participant or a Beneficiary, the Plan Administrator must furnish the Participant or Beneficiary with a copy of any item listed in this Section 7.05(H). The Plan Administrator may impose a reasonable copying charge upon the requesting person.

(I) Claims Procedure for Denial of Benefits. A Participant or a Beneficiary may file with the Plan Administrator a written claim for benefits, if the Participant or the Beneficiary disputes the Plan Administrator's determination regarding the Participant's or Beneficiary's Plan benefit. However, the Plan will distribute only such Plan benefits to Participants or Beneficiaries as the Plan Administrator in its discretion determines a Participant or Beneficiary is entitled to receive. The Plan Administrator will create a written claims procedure as part of (or which accompanies) the Plan's summary plan description. This Section 7.05(I) specifically incorporates the written claims procedure as from time to time published by the Plan Administrator as a part of the Plan, except that the Plan Administrator may amend the claims procedure without regard

to Section 11.02. If the Plan Administrator pursuant to the Plan's written claims procedure makes a final written determination denying a Participant's or Beneficiary's benefit claim, the Participant or Beneficiary to preserve the claim must file an action with respect to the denied claim not later than 180 days following the date of the Plan Administrator's final written determination.

(J) Inability to Determine Beneficiary. In the event that the Plan Administrator is unable to determine the identity of a Participant's Beneficiary under circumstances of competing claims or otherwise, the Plan Administrator may file an interpleader action seeking an order of the court as to the determination of the Beneficiary. The Plan Administrator, the Trustee and other Plan fiduciaries may act in reliance upon any proper order issued under this Section 7.05(J) in maintaining, distributing or otherwise disposing of a Participant's Account under the Plan terms, to any Beneficiary specified in the court's order.

7.06 PLAN LOANS.

(A) Loan Policy. The Plan Administrator, at any time and in its sole discretion, may establish, amend or terminate a policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be nondiscriminatory and must be in writing. The policy must include: (1) the identity of the person or positions authorized to administer the Participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 7.06(A) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 11.02.

(B) Requirements for Plan Loans. The Trustee, as directed by the Plan Administrator will make a Plan loan to a Participant or to a Beneficiary in accordance with the loan policy, under Section 7.06(A), provided: (1) loans are available to all Participants and Beneficiaries on a reasonably equivalent basis and are not available in a greater amount for HCEs than for NHCEs; (2) the loan is adequately secured and bears a reasonable rate of interest; (3) the loan provides for repayment within a specified time (except that the loan policy may suspend loan payments pursuant to Code §414(u)(4)); (4) the default provisions of the note permit offset of the Participant's Vested Account Balance only at the time when the Participant has a distributable event under the Plan, but without regard to whether the Participant consents to distribution as otherwise may be required under Section 6.01(A)(2); (5) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's Vested Account Balance; and (6) the loan otherwise conforms to the exemption provided by Code §4975(d)(1).

(C) Default as Distributable Event. The loan policy may provide a Participant's loan default is a distributable event with respect to the defaulted amount, irrespective of whether the Participant otherwise has incurred a distributable event at the time of default, except as to Restricted 401(k) Accounts or Restricted Pension Accounts under Section 6.01(C)(4) which the Participant used to secure his/her loan and which are not then distributable at the time of default. See Section 6.06.

(D) QJSA/QPSA Requirements. If the QJSA/QPSA requirements of Section 6.04 apply to the Participant, the Participant may not pledge any portion of his/her Account Balance that is subject to such requirements as security for a loan unless, within the 180 day period ending on the date the pledge becomes effective, the Participant's spouse, if any, consents (in a manner described in Section 6.04 other than the requirement relating to the consent of a subsequent spouse) to the security or, by separate consent, to an increase in the amount of security. See Section 6.04(D) regarding the affect of an outstanding loan pledge on the QJSA or QPSA benefit.

(E) Treatment of Loan as Participant-Directed. The Plan Administrator, to the extent provided in a written loan policy and consistent with Section 7.03(B)(3), will treat a Plan loan made to a Participant as a Participant-Directed Account, even if the Plan otherwise does not permit a Participant to direct his/her Account investments. Where a loan is treated as a Participant-Directed Account, the borrowing Participant's Account alone shares in any interest paid on the loan, and the Account alone bears any expense or loss it incurs in connection with the loan. The Trustee may retain any principal or interest paid on the borrowing Participant's loan in a Segregated Account (as described in Section 7.04(A)(2)(c)) on behalf of the borrowing Participant until the Trustee (or the Named Fiduciary, in the case of a nondiscretionary Trustee) deems it appropriate to add the loan payments to the Participant's Account under the Plan.

7.07 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable under the Plan or if the Plan has made a distribution, but the Participant for any reason does not cash the distribution check (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 7.07. The provisions of this Section 7.07 no longer apply if the Plan Administrator, prior to taking action to dispose of the lost Participant's Account under Section 7.07(A)(2) or 7.07(B)(2), is able to complete the distribution.

(A) Ongoing Plan. The provisions of this Section 7.07(A) apply if the Plan is ongoing.

(1) Attempt to Locate. The Plan Administrator must conduct a reasonable and diligent search for the Participant, using one or more of the search methods described in Section 7.07(C).

(2) Failure to locate/disposition of Account. If a lost Participant remains unlocated after 6 months following the date the Plan Administrator first attempts to locate the lost Participant using any of the search methods described in Section 7.07(C), the Plan Administrator may forfeit the lost Participant's Account, provided the Account is not subject to the Automatic Rollover rules of Section 6.08(D). If the Plan Administrator forfeits the lost Participant's Account, the forfeiture occurs at the end of the above-described 6-month period and the Plan Administrator will allocate the forfeiture in accordance with Section 3.07. The Plan Administrator under this Section 7.07(A)(2) will forfeit the entire Account of the lost Participant, including Elective Deferrals and Employee Contributions.

(3) Subsequent restoration of forfeiture. If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his/her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for Earnings occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, and then from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Employer in Appendix B may provide that the Plan Administrator will use Trust Fund Earnings for the Plan Year, if any, as a source of the restoration, or may modify the order of priority of the sources of restoration described in the previous sentence. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account.

(B) Terminating plan. The provisions of this Section 7.07(B) apply if the Plan is terminating.

(1) Attempt to locate. The Plan Administrator, to attempt to locate a lost Participant when the plan is terminating, must conduct a reasonable and diligent search for the Participant, using all four search methods described in clauses (1) through (4) of Section 7.07(C). In addition, the Plan Administrator may use a search method described in clause (5) of Section 7.07(C).

(2) Failure to locate/disposition of Account. If a lost Participant remains unlocated after a reasonable period the Plan Administrator will distribute the Participant's Account under Sections 7.07(B)(2)(a), (b) or (c) as applicable.

(a) No Annuity Contract/no other Defined Contribution Plan. If the terminating Plan does not provide for an Annuity Contract as a method of distribution and the Employer does not maintain another Defined Contribution Plan, the Plan Administrator will distribute the lost Participant's Account in an Automatic Rollover to an individual retirement plan under Section 6.08(D), unless the Plan Administrator determines it is impractical to complete an Automatic Rollover or is unable to locate an individual retirement plan provider willing to accept the rollover distribution. In such event, the Plan Administrator may: (i) distribute the Participant's Account to an interest-bearing insured bank account the Plan Administrator establishes in the Participant's name; or (ii) distribute the Participant's Account to the unclaimed property fund of the state of the Participant's last known address.

(b) Plan provides Annuity Contract/no other Defined Contribution Plan. If the terminating Plan provides for an Annuity Contract as a method of distribution and the Employer does not maintain another Defined Contribution Plan, the Plan Administrator will purchase an Annuity Contract payable to the lost Participant for delivery to the Participant's last known address reflected in the Plan's records.

(c) Employer maintains another Defined Contribution Plan. If the Employer maintains another Defined Contribution Plan, the Plan Administrator may, in lieu of taking the actions described in Sections 7.07(B)(2)(a) or (b), transfer the lost Participant's Account to the other Defined Contribution Plan.

(C) Search methods. The search methods described in this Section 7.07 are: (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail; (2) check with the administrator of other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts; (3) identify and contact the Participant's Designated Beneficiary under Section 7.05; (4) use the IRS letter forwarding program under Rev. Proc. 94-22 or the Social Security Administration search program; and (5) use a commercial locator service, credit reporting agencies, the internet or other search method. Regarding search methods (2) and (3) above, if the Plan Administrator encounters privacy concerns, the Plan Administrator may request that the Employer or other plan fiduciary (under (2)), or the Designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan Administrator.

(D) Uniformity. The Plan Administrator will apply Section 7.07 in a reasonable, uniform and nondiscriminatory manner, but in determining a specific course of action as to a particular Account, reasonably may take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors.

(E) Expenses of search. The Plan Administrator, in accordance with Section 7.04(C)(2)(b), may charge to the Account of a Participant the reasonable expenses incurred under this Section 7.07 and which are associated with the Participant's Account, without regard to whether or when the Plan Administrator actually locates or makes a distribution to the Participant.

(F) Alternative Disposition. The Plan Administrator under Sections 7.07(A) or (B) operationally may dispose of a lost Participant's Account in any reasonable manner. The Plan Administrator may adopt a policy under this Section 7.07 as it deems reasonable or appropriate to administer the Accounts of lost Participants, provided that: (1) the terms of any such policy must be uniform and nondiscriminatory; and (2) the Plan Administrator must administer the policy in a uniform and nondiscriminatory manner.

7.08 <u>PLAN CORRECTION</u>. The Plan Administrator, in conjunction with the Employer and Trustee, as applicable, may undertake such correction of Plan failures as the Plan Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a), to correct a fiduciary breach under ERISA or to unwind (correct) a prohibited transaction under the Code or ERISA. Without limiting the Plan Administrator's authority under the prior sentence, the Plan Administrator, as it determines to be reasonable and appropriate, may undertake or assist the Employer in undertaking correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") as described in Rev. Proc. 2013-12, or any successor program to EPCRS. The Plan Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the Employer, the Trustee or other

appropriate Plan fiduciary or Plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFCP") or any successor program to VFCP. If the Plan is a 401(k) Plan, the Plan Administrator to correct an operational failure (or if the allowable period for such correction has expired), may require the Trustee to distribute from the Plan Elective Deferrals, including Earnings thereon, and the Plan Administrator will treat any Matching Contributions and Earnings thereon relating to the distributed Elective Deferrals, as an Associated Matching Contribution under Section 3.07(A)(1). To the extent the Employer must make nonelective or matching contributions to the plan to correct a failure under EPCRS, other than a failure relating to the ADP test or ACP test (see Section 4.10), the Plan Administrator will use forfeitures to reduce the amount of such contribution.

7.09 PROTOTYPE/VOLUME SUBMITTER PLAN STATUS. If the Plan fails initially to qualify or to maintain qualification or if the Employer makes any amendment or modification to a provision of the Plan (other than a proper completion of an elective provision under the Adoption Agreement or an Appendix), the Employer no longer may participate under this Prototype or Volume Submitter Plan. The Employer also may not participate (or continue to participate) in this Prototype or Volume Submitter Plan if the Trustee or Custodian is not the Sponsor or Practitioner and does not have the written consent of the Sponsor or Practitioner required under Section 1.67, if any, to serve in the capacity of Trustee or Custodian. If the Employer is not entitled to participate under this Prototype or Volume Submitter Plan, the Plan is an individually-designed plan and the reliance procedures specified in the applicable Adoption Agreement no longer apply.

7.10 PLAN COMMUNICATIONS, INTERPRETATION, AND CONSTRUCTION.

(A) Plan Administrator's Discretion/Nondiscriminatory Administration. The Plan Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person. The Plan Administrator must exercise all of its Plan powers and discretion, and perform all of its duties in a uniform and nondiscriminatory manner.

(B) Written Communications. All Plan-related communications by any party must be in writing (which subject to Section 7.10(C) may include an electronic communication). All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Plan Administrator (or, as applicable, the Trustee) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period.

(C) Use of Electronic Media. The Plan Administrator using any electronic medium may give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible. A Participant or a Participant's spouse, to the extent authorized by the Plan Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof. Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Treas. Reg. §1.401(a)-21.

(D) Evidence. Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Administrator and the Trustee are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(E) Plan Terms Binding. The Plan is binding upon the Employer, Trustee, Plan Administrator, Custodian (and all other service providers to the Plan), upon Participants, Beneficiaries and all other persons entitled to benefits, and upon the successors and assigns of the foregoing persons. See Section 8.11(C) as to the Trust where the Employer in its Adoption Agreement elects to use a separate trust agreement.

(F) Employment Not Guaranteed. Nothing contained in this Plan, or with respect to the establishment of the Trust, or any modification or any amendment to the Plan or Trust, or in the creation of any Account, or with respect to the payment of any benefit, gives any Employee, Participant or any Beneficiary any right to employment or to continued employment by the Employer, or any legal or equitable right against the Employer, the Trustee, the Custodian, the Plan Administrator or any employee or agent thereof, except as expressly provided by the Plan or the Trust.

(G) Word Usage. Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural. Titles of Plan and Adoption Agreement sections are for reference only.

(H) State Law. The law of the state of the Employer's (or if there is a corporate Trustee, the Trustee's, or if the Plan is fully insured, the insurer's) principal place of business will determine all questions arising with respect to the provisions of the Plan and Trust. The Employer in Appendix B may elect to apply the law of another state or appropriate legal jurisdiction.

(I) Parties to Litigation. Except as otherwise provided, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust Fund or any fiduciary of the Plan. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon the Employer, the Plan Administrator, the Trustee, Custodian, Participants and Beneficiaries and upon their successors and assigns.

(J) Fiduciaries Not Insurers. The Trustee, the Plan Administrator and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Employer, the Plan Administrator and the Trustee to make any distribution from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

(K) Construction/Severability. The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with ERISA. To the extent permissible, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

7.11 DIVESTMENT OF EMPLOYER SECURITIES.

(A) Application and Effective Date of Article. This Section 7.11 only applies to a Plan that is an Applicable Defined Contribution Plan.

(1) Definition of Applicable Defined Contribution Plan. Except as provided herein or in Treas. Reg. §1.401(a)(35)-1, an Applicable Defined Contribution Plan means a Defined Contribution Plan that holds Publicly Traded Employer Securities.

(a) Exclusions. An Applicable Defined Contribution Plan does not include a one-participant plan, as defined in Code §401(a)(35)(E)(iv) or an employee stock ownership plan ("ESOP") as defined in Code §4975(e)(7) if: (i) the ESOP holds no contributions (or related earnings) that are (or were ever) subject to Code §§401(k) or 401(m); and (ii) the ESOP is a separate plan, for purposes of Code §414(l), from any other Defined Benefit Plan or Defined Contribution Plan maintained by the Employer.

(2) Definition of Publicly Traded Employer Securities. For purposes of this Article, a Publicly Traded Employer Security is an Employer security which is traded on a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1935 or which is traded on a foreign national securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority and the security is deemed by the Securities and Exchange Commission as having a "ready market" under SEC Rule 15c3-1.

(3) Effective date. The provisions of Code §401(a)(35) generally apply to Plan Years beginning after December 31, 2006. However, the provisions Treas. Reg. §1.401(a)(35)-1 are applicable to Plan Years beginning on or after January 1, 2011.

(B) Rule Applicable to Elective Deferrals, Employee Contributions and Rollovers. If any portion of an Applicable Individual's Account attributable to Elective Deferrals, Employee Contributions, or Rollover Contributions is invested in Publicly-Traded Employer Securities, then, except as otherwise provided herein, the Applicable Individual may elect to direct the Plan Administrator to divest any such Securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 7.11(D).

(1) Definition of Applicable Individual/Deferrals. For purposes of this Section 7.11(B), an Applicable Individual means: (i) a Participant; (ii) an alternate payee who has an Account under the Plan; or (iii) a Beneficiary.

(C) Rule Applicable to Employer Contributions (other than Elective Deferrals). If any portion of an Applicable Individual's Account attributable to Employer Contributions other than Elective Deferrals is invested in Publicly-Traded Employer Securities, then, except as otherwise provided herein, the Applicable Individual may elect to direct the Plan Administrator to divest any such Securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 7.11(D).

(1) Definition of Applicable Individual/Employer Contributions. For purposes of this Section 7.11(C), an Applicable Individual means: (i) a Participant who has completed at least three Years of Service; (ii) an alternate payee who has an Account under the Plan with respect to a Participant who has completed at least three Years of Service; or (iii) a Beneficiary with respect to a Participant who had completed at least three Years of Service. For this purpose, a Year of Service means in accordance with Section 5.05 relating to vesting. However, if the Plan provides for immediate vesting or applies the Elapsed Time Method in determining vesting, a Participant completes three Years of Service on the day immediately preceding the third anniversary of the Participant's Employment Commencement Date.

(2) Three-year phase-in applicable to Employer Contributions. For Employer securities acquired with Employer Contributions other than Elective Deferrals during a Plan Year beginning before January 1, 2007, the rule described in this Section 7.11(C) only applies to the percentage of the Publicly Traded Employer Securities (applied separately for each class of Securities) as follows:

Plan Year	Percentage
2007	33%
2008	66%
2009	100%

(3) Exception to phase-in for certain age 55 Participants. The 3-year phase-in rule of Section 7.11(C)(2) does not apply to a Participant who had attained age 55 and completed at least three Years of Service (as defined in Section 7.11(C)(1) above) before the first Plan Year beginning after December 31, 2005.

(D) Investment Options. For purposes of this Section 7.11, other investment options must include not less than three investment options, other than Publicly Traded Employer Securities, to which the Applicable Individual who has the right to divest under Section 7.11(B) or 7.11(C) may direct the proceeds from the divestment of such Securities. Each of the three investment options must be diversified and have materially different risk and return characteristics. For this purpose, investment options that constitute a broad range of investment alternatives within the meaning of DOL Regulation §2550.404c-1(b)(3) are treated as being diversified and having materially different risk and return characteristics. The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly.

(E) Restrictions or Conditions on Investments in Employer Securities. Except as permitted by Treas. Reg. §1.401(a)(35)-1(e), the Plan may not impose restrictions or conditions on the investment of Publicly Traded Employer

Securities which the Plan does not impose on the investment of other Plan assets.

ARTICLE VIII
TRUSTEE AND CUSTODIAN, POWERS AND DUTIES

8.01 ACCEPTANCE. By executing the Adoption Agreement, the Trustee or Custodian accepts the Trust created under the Plan and agrees to perform the obligations the Plan imposes on the Trustee or Custodian.

8.02 INVESTMENT POWERS AND DUTIES.

(A) Discretionary Trustee Powers. If the Employer in its Adoption Agreement designates the Trustee as a discretionary Trustee, then the Trustee has full discretion and authority with regard to the investment of the Trust Fund, except as to a Plan asset: (i) properly under the control or the direction of an Investment Manager, ancillary trustee or other Plan fiduciary; (ii) subject to proper Employer or Named Fiduciary direction of investment; or (iii) subject to proper Participant or Beneficiary direction of investment. The Trustee is authorized and empowered, but not by way of limitation, with the following powers:

(1) General powers. To invest consistent with any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate.

(2) Cash/liquidity. To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank or other institutional account at reasonable interest or without interest if the Trustee determines that such deposits are reasonable or necessary to facilitate a Plan transaction or for other purposes, but consistent with the Trustee's duties under Section 8.02(C).

(3) Trustee's common/collective funds. To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a state, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code §584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency.

(4) Transact in real/personal property. To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

(5) Borrowing. To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.

(6) Claims. To compromise, contest, arbitrate or abandon claims and demands affecting the investment of Trust assets, in the Trustee's discretion. However, nothing in this Section 8.02(A)(6) requires a Participant or Beneficiary to arbitrate any claim under the Plan.

(7) Voting/tender/exercise. To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights.

(8) Mineral rights. To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.

(9) Title. To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship. However, any securities held in a nominee or street name must be held on behalf of the Plan by: (a) a bank or trust company that is subject to supervision by the United States or a State or a nominee of such bank or trust company; (b) a broker or dealer registered under the Securities Exchange Act of 1934 or a nominee of such broker or dealer; or (c) a clearing agency as defined in Securities Exchange Act of 1934, Section 3(a)(23), or its nominee.

(10) Hold pending dispute resolution. To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication.

(11) Litigation. To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except the Trustee is not obliged nor required to do so unless indemnified to its satisfaction.

(12) Agents/reliance. The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee reasonably may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act reasonably or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(13) Employer stock/real property. The Trustee (or as applicable, Investment Manager, Employer, Participant, or Beneficiary) may invest in qualifying Employer securities or in qualifying Employer real property, as defined in and as limited by ERISA.

(a) Profit Sharing Plans/401(k) Plans. If the Employer's Plan is a Profit Sharing Plan or a 401(k) Plan, the aggregate investments in (acquisitions and holdings of) qualifying Employer securities and in qualifying Employer real property may comprise up to 100% of the value of Plan assets, unless the Employer in Appendix B elects to restrict such investments to 10% of the value of Plan assets determined immediately after the acquisition (or to some other percentage of value which is less than 100%). Notwithstanding the foregoing, except where permitted under ERISA §407(b)(2), if the Plan includes a 401(k) arrangement, a Participant's Elective Deferral Account accumulated in Plan Years beginning after December 31, 1998, including earnings thereon, may not be invested more than 10% by value in qualifying Employer securities and qualifying Employer real property, unless such investments are directed by the Participant or the Participant's Beneficiary.

(b) Voting/distribution. If the Plan invests in qualifying Employer securities, the Plan Administrator may adopt a uniform and nondiscriminatory policy providing for the exercise of voting rights, distribution restrictions, repurchase, put, call or right of first refusal rules, or other rights and restrictions affecting the qualifying Employer securities.

(14) Orphaned plan. If the Trustee determines that the Employer has abandoned the Plan, the Trustee (if qualified to so act) may appoint itself as a Qualified Termination Administrator ("QTA") under Section 11.05(B) for purposes of terminating the Plan and distributing all Plan Accounts. As a QTA, the Trustee may undertake all authorized acts to wind-up the Plan, including causing the Trust to pay from Trust assets to the QTA and to other service providers a reasonable fee for services rendered.

(15) Investment Policy. To adopt and to amend from time to time, an investment policy consistent with the Plan's funding policy described in Section 7.02(C)(9)

(16) Catch-all. To perform any and all other acts which in the Trustee's judgment are necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.

(B) Nondiscretionary (directed) Trustee/Custodian Powers. The Employer in its Adoption Agreement may designate the Trustee as a nondiscretionary Trustee. The Employer in its Adoption Agreement in addition to designating a discretionary or nondiscretionary Trustee, may appoint a Custodian to hold all or any portion of the Trust Assets. Except as otherwise provided herein: (i) a Custodian has all of the same powers and duties as a nondiscretionary Trustee; (ii) the nondiscretionary Trustee or Custodian has all of the same powers as a discretionary Trustee in Section 8.02(A) except that the nondiscretionary Trustee or Custodian only may exercise such powers pursuant to a proper written direction; and (iii) the nondiscretionary Trustee or Custodian has all the same duties as a discretionary Trustee under Section 8.02(C). A "proper written direction" means the written direction of a Plan fiduciary or of a Participant or Beneficiary with authority over the Trust asset which is the subject of the direction.

(1) Modification of powers/duties. The Employer and the nondiscretionary Trustee (or the Custodian) in a Nonstandardized Plan or Volume Submitter Adoption Agreement, on Appendix C may limit the powers or duties of the Custodian or the nondiscretionary Trustee to any combination of powers under Section 8.02(A) and to any combination of duties under Section 8.02(C) or otherwise may amend the Trust as described in Section 8.11.

(2) Limited responsibility. If there is a Custodian or a nondiscretionary Trustee under the Plan, then the Employer, in adopting this Plan, acknowledges and agrees:

(a) No discretion over Trust assets. The nondiscretionary Trustee or Custodian does not have any discretion as to the investment or the re-investment of the Trust Fund and the nondiscretionary Trustee or Custodian is acting solely as a directed fiduciary as to the assets comprising the Trust Fund.

(b) No review or recommendations. The nondiscretionary Trustee or the Custodian does not have any duty to review or to make recommendations regarding investments made pursuant to a proper written direction.

(c) No action unless direction. The nondiscretionary Trustee or the Custodian must retain any investment obtained upon a proper written direction until receipt of another proper written direction to dispose of such investment.

(d) No liability for following orders. The nondiscretionary Trustee or the Custodian is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any proper written direction.

(e) Indemnity. The Employer will indemnify, defend and hold the nondiscretionary Trustee or the Custodian harmless from any damages, costs or expenses, including reasonable attorneys' fees, which the nondiscretionary Trustee or the Custodian may incur as a result of any claim asserted against the nondiscretionary Trustee, the Custodian or the Trust arising out of the nondiscretionary Trustee's or Custodian's full and timely compliance with any proper written direction.

(3) Limitation of powers of certain Custodians. If a Custodian is a bank which, under its governing state law, does not possess trust powers, then Sections 8.02(A)(1), (3) as it relates to common trust funds or collective investment funds, (4), (5), (7), and (8), Section 8.09 and Article IX do not apply and the Custodian only has the power and the authority to exercise the remaining powers under Section 8.02(A) and to perform the duties under Section 8.02(C).

(4) QTA. Notwithstanding any other provision of this Section 8.02(B), a nondiscretionary Trustee or a Custodian may serve as a QTA under Section 8.02(A)(14) without regard to receipt of any proper written direction.

(5) Trustee references. Except as the Plan or the context otherwise require, "Trustee" includes nondiscretionary Trustee and Custodian.

(C) Duties. The Trustee or Custodian has the following duties:

(1) ERISA. If ERISA applies to the Plan and to the extent that ERISA so requires, to act: (a) solely in the interest of Participants and Beneficiaries for the exclusive purposes of providing benefits under the Plan and defraying the reasonable expenses of Plan administration; (b) with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent person acting in a like capacity and familiar with such matters; (c) by diversifying Trust investments so as to minimize the risk of large losses unless not prudent under the circumstances to do so; and (d) in accordance with the Plan to the extent that the Plan is consistent with ERISA.

(2) Investment policy. To coordinate its investment policy with Plan financial needs as communicated to it by the Plan Administrator.

(3) Trust accounting. To furnish to the Employer and to the Plan Administrator an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which statements are conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the statements or for which ERISA authorizes a longer period within which to object. The Trustee also may agree with the Employer or Plan Administrator to provide the information described in this Section 8.02(C) more frequently than annually.

(4) Trust valuation. If the Trustee is a discretionary Trustee, to value the Trust Fund as of each Accounting Date and as applicable, the value of the Trust assets within each Participant or Beneficiary Account. The Trustee also must value the Trust Fund on such other Valuation Dates as directed in writing by the Plan Administrator or as the Adoption Agreement may require. If the Trustee is a nondiscretionary Trustee (or in the case of Trust assets held by a Custodian) the Named Fiduciary will value the assets and will provide the valuation to the Trustee (Custodian) unless the Trustee (Custodian) and the Named Fiduciary agree that the Trustee (Custodian) will conduct the valuation. The Trustee (Custodian) may reasonably rely on any valuation the Named Fiduciary conducts and provides.

(5) Distributions. To credit and distribute the Trust Fund as the Plan Administrator directs. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the direction of the Plan Administrator. The Trustee must promptly notify the Plan Administrator of any unclaimed Plan payment or distribution and then dispose of the distribution in accordance with the Plan Administrator’s subsequent direction.

(6) Fees/expenses. To pay from the Trust Fund all reasonable Plan fees and expenses, and to allocate the fees and expenses to Plan Accounts, both as the Plan Administrator directs under Section 7.04(C)(2). Any fee or expense that the Employer pays, directly or indirectly, is not an Employer contribution to the Plan, provided the fee or the expense relates to the ordinary and necessary administration of the Trust Fund.

(7) Loans. To make loans to a Participant or to a Beneficiary in accordance with the Plan Administrator’s direction under Section 7.06.

(8) Records/statements. To keep the Trustee’s Plan records open to the inspection of the Plan Administrator and the Employer at all reasonable times and to permit the review or audit of such records from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee must furnish the Plan Administrator with whatever information relating to the Trust Fund the Plan Administrator considers necessary to perform its duties as Plan Administrator.

(9) Tax returns. To file all information and tax returns required of the Trustee.

(10) Incapacity. To follow the direction of the Plan Administrator with regard to distributions to any Participant or Beneficiary whom the Plan Administrator has determined to be incapacitated under Section 7.05(F). The Trustee also will provide any reasonable information and take any reasonable action that the Plan Administrator requests relating to a determination of incapacity or otherwise pertaining to the administration of the Account of any incapacitated person.

(11) Bond. The Trustee must provide a bond for the faithful performance of its duties under the Trust.

(D) Limitations Applicable to all Trustees.

(1) Receipt of contributions. A discretionary Trustee has the duty to collect employer contributions, except to the extent this duty is limited in Appendix C of the Employer’s Adoption Agreement. A nondiscretionary Trustee does not have the duty to collect employer contributions and the Employer represents and warrants that it either has responsibility as a “named fiduciary” (as defined in ERISA §402(a)(2)) or has properly delegated the responsibility to a Plan fiduciary, other than the nondiscretionary Trustee, for determining the correctness, amount and timing of contributions and for the collection of contributions. If this is a restated plan, this duty is effective no sooner than the later of the date the Employer signs this restatement or the date the Trustee or Special Trustee executes either the restatement or otherwise accepts its responsibilities under the restatement. In determining how to discharge any duty to collect contributions, a fiduciary should weigh the value of the Plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred. Among other factors, a fiduciary may take into account the Employer’s solvency in deciding whether to expend Plan assets to pursue a claim.

(2) Co-fiduciary liability. Each fiduciary under the Plan is responsible solely for his/her or its own acts or omissions. A fiduciary does not have any liability for another fiduciary’s breach of fiduciary responsibility with respect to the Plan and the Trust unless the fiduciary: (a) participates knowingly in or undertakes to conceal the breach; (b) has actual knowledge of the breach and fails to take reasonable remedial action to remedy the breach; or (c) through negligence in performing his/her or its

own specific fiduciary responsibilities that give rise to fiduciary status, the fiduciary has enabled the other fiduciary to commit a breach of the latter’s fiduciary responsibility.

(3) Limitation of Trustee liability.

(a) Apportionment of duties. The Named Fiduciary, the Trustee(s) and any properly appointed Investment Manager may execute a written agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager or Trustee(s) with respect to any part of the Trust Fund under the control of the Investment Manager or the Trustee(s).

(b) If Investment Manager. The Trustee is not liable for the acts or omissions of any Investment Manager the Named Fiduciary may appoint, nor is the Trustee under any obligation to invest or otherwise to manage any asset of the Trust Fund which is subject to the management of a properly appointed Investment Manager.

(c) If other appointed fiduciaries. The Trustee is not liable for the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 8.07. However, if a discretionary Trustee, pursuant to the delegation described in Section 8.07, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and the ancillary trustee must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with ERISA.

(d) Indemnity. The Employer and any Trustee may execute a written agreement as a part of this Plan, delineating any indemnification agreement among the parties.

(E) Multiple Trustees.

(1) Majority decisions. If more than two persons act as Trustee, a decision of the majority of such persons controls with respect to any decision regarding the administration or the investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustee. If there is more than one Trustee, the Trustees jointly will manage and control the assets of the Trust Fund (or those Trust assets as to which they act as Trustee).

(2) Allocation. Multiple Trustees may allocate among themselves specific responsibilities or obligations or may authorize one or more of them, either individually or in concert, to exercise any or all of the powers granted to the Trustee, or to perform any or all of the duties assigned to the Trustee under Article VIII.

(3) Signature. The signature of only one Trustee is necessary to effect any transaction on behalf of the Trust (or as to those Trust assets as to which the signatory acts as Trustee).

8.03 NAMED FIDUCIARY.

(A) Definition of Named Fiduciary. See Section 1.37.

(B) Duty of Named Fiduciary. The Named Fiduciary under the Plan has the sole responsibility to control and to manage the operation and administration of the Plan. If the Named Fiduciary is also the Trustee, the Named Fiduciary is solely responsible for the management and the control of the Trust Fund, except Trust assets properly: (1) under the control or the direction of an Investment Manager, ancillary trustee or other Plan fiduciary; or (2) subject to Employer or Participant direction of investment.

(C) Appointment of Investment Manager. The Named Fiduciary may appoint an Investment Manager. See Section 7.02(C)(8).

8.04 FORM OF DISTRIBUTION (CASH OR PROPERTY). The Trustee will make Plan distributions in the form of cash except where: (1) the required form of distribution is a QJSA or QPSA which has not been waived; (2) the Plan is a Restated Plan and under the prior Plan, distribution in the form of property ("in-kind distribution") is a Protected Benefit which the Employer has not eliminated by a Plan amendment under Section 11.02(C); (3) the Plan Administrator adopts a written policy which provides for in-kind distribution; or (4) the Employer is terminating the Plan, and in the reasonable judgment of the Trustee, some or all Plan assets, within a reasonable time for making final distribution of Plan assets, may not be liquidated to cash or may not be so liquidated without undue loss in value. The Plan Administrator's policy under clause (3) may restrict in-kind distributions to certain types of Trust investments or specify any other reasonable and nondiscriminatory condition or restriction applicable to in-kind distributions. Under clause (4), the Trustee will make Plan termination distributions to Participants and Beneficiaries in cash, in-kind or in a combination of these forms, in a reasonable and nondiscriminatory manner which may take into account the preferences of the distributees. All in-kind distributions will be made based on the current fair market value of the property, as determined by the Trustee, Custodian or Named Fiduciary.

8.05 TRUSTEE/CUSTODIAN FEES AND EXPENSES. A Trustee or a Custodian will receive reasonable compensation and reimbursement for reasonable Trust expenses actually incurred as Trustee or Custodian, as may be agreed upon from time to time by the Employer and the Trustee or the Custodian. No person who is receiving full pay from the Employer may receive compensation (except for reimbursement of Plan expenses) for services as Trustee or as Custodian. As the Plan Administrator directs following direction from the Employer under Section 7.04(C), such fees and expenses will be paid by the Employer, or the Trustee or Custodian will charge the Trust for the fees or expenses. If, within a reasonable time after a Plan related fee or expense is incurred (or if within the time specified in any agreement between the Plan and the Trustee regarding payment of a fee or expense) the Plan Administrator does not communicate the Employer's decision regarding payment or if the Employer does not pay the fee or expense, the Trustee or Custodian may charge the Trust for such reasonable fees and expenses as are not settlor expenses.

8.06 THIRD PARTY RELIANCE. A person dealing with the Trustee is not obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan is conclusive in favor of any person relying on the certificate.

8.07 APPOINTMENT OF ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY.

(A) Appointment. The Employer, in writing, may appoint any qualified person in any state to act as ancillary trustee with respect to a designated portion of the Trust Fund, subject to any consent required under Section 1.67. An ancillary trustee must acknowledge in a writing separate from the Employer's Adoption Agreement its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status under ERISA.

(B) Powers. The ancillary trustee has the rights, powers, duties and discretion as the Employer may delegate, subject to any limitations or directions specified in the agreement appointing the ancillary trustee and to the terms of the Plan or of ERISA. The Employer may delegate its responsibilities under this Section 8.07 to a discretionary Trustee under the Plan (subject to the acceptance by such discretionary Trustee of that delegation), but the Employer may not delegate its responsibilities to a nondiscretionary Trustee or to a Custodian. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 8.02. The delegated investment powers may include the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a state and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Employer also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 8.09.

(C) Resignation/Removal. The ancillary trustee may resign its position and the Employer may remove an ancillary trustee as provided in Section 8.08 regarding resignation and removal of the Trustee or Custodian. In the event of such resignation or removal, the Employer may appoint another ancillary trustee or may return the assets to the control and management of the Trustee.

(D) Independent Fiduciary. If the DOL requires engagement of an independent fiduciary to have control or management of all or a portion of the Trust Fund, the Employer will appoint such independent fiduciary, as directed by the DOL. The independent fiduciary will have the duties, responsibilities and powers prescribed by the DOL and will exercise those duties, responsibilities and powers in accordance with the terms, restrictions and conditions established by the DOL and, to the extent not inconsistent with ERISA, the terms of the Plan. The independent fiduciary must accept its appointment in writing and must acknowledge its status as a fiduciary of the Plan.

8.08 RESIGNATION AND REMOVAL.

(A) Resignation. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

(B) Removal. The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

(C) Successor Appointment. In the event of the resignation or the removal of a Trustee, where no other Trustee continues to serve, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee.

(1) Default Successor Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee. If state law prohibits the Employer from serving as successor Trustee, the appointed successor Trustee is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability company Employer, the sole proprietor of a proprietorship Employer, or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing.

(2) Default Successor Custodian. If the Employer removes and does not replace a Custodian, the Trustee will assume possession of Plan assets held by the former Custodian.

(D) Acceptance. Each successor Trustee succeeds its predecessor Trustee by accepting in writing its appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Administrator. For this purpose, the successor Trustee's execution of the Adoption Agreement constitutes the Trustee's acceptance of its appointment as successor Trustee. The successor Trustee will also execute such other documents, if any, as the Plan Administrator may reasonably require in connection therewith.

(E) Outgoing Trustee. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and must perform all acts necessary to vest the title to Plan assets of record in any successor Trustee. In addition, to the extent reasonably necessary for the ongoing administration of the Plan, at the request of the Plan Administrator and the successor Trustee, the resigning or removed Trustee must transfer records, provide information and otherwise cooperate in effecting the change of Trustees.

(F) Successor Powers. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under the Plan upon its predecessor.

(G) No Liability for Predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under ERISA. With the approval of the Employer and the Plan Administrator, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without liability.

8.09 INVESTMENT IN GROUP TRUST FUND. The Employer, by adopting this Plan, specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code §401(a), including a group trust fund that also permits the pooling of qualified plan assets with assets of an individual retirement account that is exempt from taxation under Code §408(e), assets of an eligible governmental plan under Code §457(b) that is exempt from taxation under Code §457(g), assets of a custodial account under Code §403(b)(7) or a retirement income account under Code §403(b)(9), or assets of a governmental plan under Code §401(a)(24). This authorization applies solely to a group trust fund exempt from taxation under Code §501(a) and the trust agreement of which satisfies the requirements of Rev. Rul. 81-100 (as modified and clarified by Rev. Rul. 2004-67 and Rev. Rul. 2011-1), or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund will govern any investment of Plan assets in that fund. To comply with Code §4975(d)(8) as to any group trust fund maintained by a disqualified person, including the Trustee, the following provisions apply: (A) a discretionary Trustee or a nondiscretionary Trustee may invest in any such fund at the direction of the Named Fiduciary who is independent of the Trustee and the Trustee's affiliates; (B) a discretionary Trustee or a nondiscretionary Trustee (the latter as directed) may invest in any such fund which the Employer specifies in Appendix C; and (C) notwithstanding (A) and (B) a discretionary Trustee may invest in its own funds as described in Section 8.02(A)(3).

8.10 COMBINING TRUSTS OF EMPLOYER'S PLANS. At the Employer's direction, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Balance under the qualified plans in which he/she is a participant.

8.11 AMENDMENT/SUBSTITUTION OF TRUST.

(A) Amendment/Standardized Plan. The Employer in its Standardized Plan may not amend any provision of Article VIII (or any other provision of the Plan related to the Trust) except the Employer in Appendix C (or in its Adoption Agreement as applicable) may specify the Trust year, the names of the Plan, the Employer, the Trustee, the Custodian, the Plan Administrator, other fiduciaries or the name of any pooled trust in which the Trust will participate.

(B) Amendment/Nonstandardized or Volume Submitter Plan. The Employer in its Nonstandardized or Volume Submitter Plan, in Appendix C (or in its Adoption Agreement as applicable): (1) may amend the Plan or Trust as described in Section 8.11(A); or (2) may amend or override the administrative provisions of Article VIII (or any other provision of the Plan related to the Trust), including provisions relating to Trust investment and Trustee powers or duties.

(1) Limitation. Any Trust amendment under clause (2) of Section 8.11(B): (a) must not conflict with any other provisions of the Plan (except as expressly are intended to override an existing Trust provision); (b) must not cause the Plan to violate Code §401(a); and (c) must be made in accordance with Rev. Proc. 2011-49 or any successor thereto.

(C) Substitution of Approved or Non-Approved Trust. The Employer subject to the conditions under Section 8.11(B)(1), in its Adoption Agreement may elect to substitute in place of Article VIII and the remaining Trust provisions of the basic plan document, any other trust or custodial account agreement that the IRS has approved for use with this Plan. The Employer also may elect to substitute in place of Article VIII and the remaining Trust provisions of the basic plan document, any other trust or custodial account agreement which has not been approved by the IRS for use with this Plan. However, substitution of a non-approved trust or custodial agreement will cause the Plan to lose reliance on its opinion or advisory letter and the Plan will become an individually designed plan. See Sections 7.09 and 11.02(B)(4). If the Employer elects to substitute an approved trust or a non-approved, the Trustee will not execute the Adoption Agreement but will instead execute the substituted trust. The Trustee of the substituted trust agrees to be bound by all remaining Plan terms, other than those terms which the substituted trust governs.

(D) Formalities. All Section 8.11 Trust amendments or substitutions are subject to Section 11.02. As such, the Trustee must execute the amendment or substituted trust.

8.12 CROSS-PAY PROVISION. In the event that more than one entity adopts the Plan, such that Employers in addition to the Signatory Employer become Participating Employers, whether such entities are Related Employers or are unrelated Employers, or both, all of the Plan assets must be available to pay benefits to all Participants and Beneficiaries, as described in Treas. Reg. §1.414(l)-1(b)(1), unless the Employer elects under Appendix B to limit such assets as are attributable to each Participating Employer to pay benefits only to the Participants (and their Beneficiaries) who are Employees of that Participating Employer.

ARTICLE IX
PROVISIONS RELATING TO INSURANCE AND INSURANCE COMPANY

9.01 INSURANCE BENEFIT.

(A) General. The Employer may elect to provide incidental life insurance benefits for Insurable Participants who consent to life insurance benefits by executing the appropriate insurance company application form. The Trustee will not purchase any incidental life insurance benefit for any Participant prior to a contribution allocation to the Participant's Account. At an insured Participant's written direction, the Trustee will use all or any portion of the Participant's Employee Contributions, if any, to pay insurance premiums covering the Participant's life.

(B) Insurance on Others. Unless the Plan is a Money Purchase Pension Plan, the Trustee may purchase life insurance for the benefit of the Participant on the life of a family member of the Participant.

(C) Amount and Type of Coverage. The Employer will direct the Trustee as to the insurance company and insurance agent through which the Trustee is to purchase the Contracts, the amount of the coverage and the applicable Dividend plan.

(D) Ownership. Each application for a Contract, and the Contracts themselves, must designate the Trustee as sole owner, with the right reserved to the Trustee to exercise any right or option contained in the Contracts, subject to the terms and provisions of this Plan. The Trustee must be the Contract named beneficiary for the Account of the insured Participant. The Trustee will hold all Contracts issued under the Plan as Trust assets.

(E) Distribution. Proceeds of Contracts paid to the Participant's Account under this Article IX are subject to the distribution requirements of Article VI. The Trustee will not retain any such proceeds for the benefit of the Trust.

(F) Premiums/Directed Investment. The Trustee will charge the premiums on any Contract covering the life of a Participant (or, as applicable, the family member of a Participant) against the Account of that Participant and will treat the Contract as a directed investment of the Participant's Account, even if the Plan otherwise does not permit a Participant to direct the investment of his/her own Account.

(G) Uniformity. The Trustee must arrange, where possible, for all Contracts issued on the lives of Participants under the Plan to have the same premium due date and all ordinary life insurance Contracts to contain guaranteed cash values with as uniform basic options as are possible to obtain.

(H) Custodians. The provisions of this Article IX are not applicable, and the Plan may not invest in Contracts, if a Custodian signatory to the Adoption Agreement is a bank which does not have trust powers from its governing state banking authority.

9.02 LIMITATIONS ON COVERAGE.

(A) Incidental Insurance Benefits. The aggregate of life insurance premiums paid for the benefit of a Participant, at all times, may not exceed the following percentages of the aggregate of the Employer Contributions (including Elective Deferrals and forfeitures) allocated to any Participant's Account: (1) 49% in the case of the purchase of ordinary life insurance Contracts; or (2) 25% in the case of the purchase of term life insurance or universal life insurance

Contracts. If the Trustee purchases a combination of ordinary life insurance Contract(s) and term life insurance or universal life insurance Contract(s), then the sum of one-half of the premiums paid for the ordinary life insurance Contract(s) and the premiums paid for the term life insurance or universal life insurance Contract(s) may not exceed 25% of the Employer Contributions allocated to any Participant's Account.

(B) Exception for Certain Profit Sharing Plans. If the Plan is a Profit Sharing Plan or a 401(k) Plan, the incidental insurance benefits requirement of Section 9.02(A) does not apply to the Plan if the Plan purchases life insurance benefits only from Employer Contributions accumulated in the Participant's Account for at least two years, measured from the allocation date.

(C) Exception for Other Amounts. The incidental insurance benefit requirement of Section 9.02(A) does not apply to Contracts purchased: (1) with Employee Contributions; (2) with Rollover Contributions; or (3) with Earnings on Employer Contributions.

9.03 DISPOSITION OF LIFE INSURANCE PROTECTION.

(A) Timing. The Trustee will not continue any life insurance protection beyond the later of the Participant's: (1) Annuity Starting Date under Section 6.01(A)(2)(h), or (2) Separation from Service. The Trustee, at the direction of the Plan Administrator, will make any transfer of Contract(s) as soon as administratively practicable after the date specified under this Section 9.03(A).

(B) Method. The Trustee may not transfer any Contract under this Section 9.03 which contains a method of payment not specifically authorized by Article VI or which fails to comply with the QJSA requirements, if applicable, of Section 6.04. In this regard, the Trustee either must convert such a Contract to cash and distribute the cash instead of the Contract, or before making the transfer, must require the Issuing Company to delete the unauthorized method of payment option from the Contract.

9.04 DIVIDENDS. Dividends are applied to the Participant's Account on whose life the Issuing Company has issued the Contract. Dividends are applied to premium reduction unless the Plan Administrator directs the Trustee to purchase insurance benefits or additional insurance benefits for the Participant.

9.05 LIMITATIONS ON INSURANCE COMPANY DUTIES.

(A) Not a Party to Plan. An insurance company, solely in its capacity as an Issuing Company: (1) is not a party to the Plan; and (2) is not responsible for the Plan's validity.

(B) No Responsibility for Others. An Issuing Company has no responsibility or obligation under the Plan to Participants or

Beneficiaries for any act required of the Employer, the Plan Administrator, the Trustee, the Custodian or any other service provider to the Plan (unless the Issuing Company also serves in such capacities).

(C) Plan Terms. No insurance company, solely in its capacity as an Issuing Company, need examine the terms of this Plan.

(D) Reliance/Discharge. For the purpose of making application to an Issuing Company and in the exercise of any right or option contained in any Contract, the Issuing Company may rely upon the signature of the Trustee and is held harmless and completely discharged in acting at the direction and authorization of the Trustee. An Issuing Company is discharged from all liability for any amount paid to the Trustee or paid in accordance with the direction of the Trustee, and is not obliged to see to the distribution or further application of any amounts the Issuing Company so pays.

9.06 RECORDS/INFORMATION. An Issuing Company must keep such records and supply to the Plan Administrator or Trustee such information regarding its Contracts as may be reasonably necessary for the proper administration of the Plan.

9.07 CONFLICT WITH PLAN. In the event of any conflict between the provisions of this Plan and the terms of any Contract issued in accordance with this Article IX, the provisions of the Plan control.

9.08 APPENDIX B OVERRIDE. The Employer in Appendix B may amend the provisions of this Article IX in any manner except as would be inconsistent with any other Plan provision.

9.09 DEFINITIONS. For purposes of this Article IX:

(A) Contract(s). Contract or Contracts means an ordinary life, term life or universal life insurance contract issued by an Issuing Company on the life of a Participant or other person as authorized under this Article IX.

(B) Dividends. Dividends means Contract dividends, refunds of premiums and other credits.

(C) Insurable Participant. Insurable Participant means a Participant to whom an insurance company, upon an application being submitted in accordance with the Plan, will issue insurance coverage, either as a standard risk or as a risk in an extra mortality classification.

(D) Issuing Company. Issuing Company is any life insurance company which has issued a Contract upon application by the Trustee under the terms of this Plan.

ARTICLE X
TOP-HEAVY PROVISIONS

10.01 DETERMINATION OF TOP-HEAVY STATUS.

(A) Only Employer Plan. If this Plan is the only qualified plan maintained by the Employer, the Plan is top-heavy for a Plan Year if the Top-Heavy Ratio as of the Determination Date exceeds 60%.

(B) If Other Plans. If the Employer maintains other qualified plans (including a simplified employee pension plan), or maintained another such plan now terminated, this Plan is top-heavy only if it is part of the Required Aggregation Group, and the Top-Heavy Ratio for the Required Aggregation Group and for the Permissive Aggregation Group, if any, each exceeds 60%.

(1) Count all aggregated plans. The Plan Administrator will calculate the Top-Heavy Ratio in the same manner as required by Section 10.06(K) taking into account all plans within the Aggregation Group. The Plan Administrator will calculate the Top-Heavy Ratio with reference to the Determination Dates that fall within the same calendar year. If an aggregated plan does not have a Valuation Date coinciding with the Determination Date, the Plan Administrator must value the Account Balance in the aggregated plan as of the most recent Valuation Date falling within the twelve-month period ending on the Determination Date, except as Code §416 and applicable Treasury regulations require for the first plan year and for the second plan year of a Defined Benefit Plan.

(2) Terminated plans. To the extent the Plan Administrator must take into account distributions to a Participant, the Plan Administrator must include distributions from a terminated plan which would have been part of the Required Aggregation Group if it were in existence on the Determination Date.

(3) Defined Benefit Plans/SEPs. The Plan Administrator will calculate the present value of accrued benefits under Defined Benefit Plans or the account balances under simplified employee pension plans included within the Aggregation Group in accordance with the terms of those plans and Code §416 and the applicable Treasury regulations.

(C) Defined Benefit Plans.

(1) Use of uniform accrual. If a Participant in a Defined Benefit Plan is a Non-Key Employee, the Plan Administrator will determine his/her accrued benefit under the accrual method, if any, which is applicable uniformly to all Defined Benefit Plans maintained by the Employer or, if there is no uniform method, in accordance with the slowest accrual rate permitted under the fractional rule accrual method described in Code §411(b)(1)(C).

(2) Actuarial assumptions. If the Employer maintains a Defined Benefit Plan, the Plan Administrator will use the actuarial assumptions (interest and mortality only) stated in that plan to calculate the present value of benefits from the Defined Benefit Plan.

(D) Application of Top-Heavy Rules. The top-heavy provisions of the Plan apply only for Plan Years in which Code §416 or the Plan otherwise requires application of the top-heavy rules. If applicable, the provisions of this Article X supersede any conflicting Plan or Adoption Agreement provisions, except as the context may otherwise require.

10.02 <u>TOP-HEAVY MINIMUM ALLOCATION</u>. The Top-Heavy Minimum Allocation requirement applies to the Plan only in a Plan Year for which the Plan is top-heavy.

(A) Allocation to Non-Keys. If the Plan is top-heavy in any Plan Year each Non-Key Employee who is a Participant (as described in Section 10.06(H)) and employed by the Employer on the last day of the Plan Year will receive a Top-Heavy Minimum Allocation for that Plan Year.

(B) Additional Contribution/Allocation as Required. The Plan Administrator first will allocate the Employer Contributions (and Participant forfeitures, if any) for the Plan Year in accordance with the provisions of its Adoption Agreement. The Employer then will contribute an additional amount for the Account of any Participant entitled under Section 10.02(A) to a Top-Heavy Minimum Allocation and whose contribution rate for the Plan Year is less than the Top-Heavy Minimum Allocation. The additional amount is the amount necessary to increase the Participant's allocation rate to the Top-Heavy Minimum Allocation. The Plan Administrator will allocate the additional contribution to the Account of the Participant on whose behalf the Employer makes the contribution.

(C) No Plan Allocations. If, for a Plan Year, there are no allocations of Employer Contributions or of forfeitures for any Key Employee, the Plan does not require any Top-Heavy Minimum Allocation for the Plan Year, unless a Top-Heavy Minimum Allocation applies because of the maintenance by the Employer of more than one plan.

10.03 <u>PLAN WHICH WILL SATISFY TOP-HEAVY</u>. If the Plan is top-heavy, the Plan Administrator will determine if the Plan satisfies the Top-Heavy Minimum Allocation requirement under this Section 10.03.

(A) Aggregation of Plans to Satisfy. The Plan Administrator will aggregate all qualified plans the Employer maintains to determine if the Plan satisfies the Top-Heavy Minimum Allocation requirement.

(B) More Than One Defined Contribution Plan. If the Employer maintains more than one Defined Contribution Plan in which a Non-Key Employee participates and the Non-Key Employee receives less than the Top-Heavy Minimum Allocation for a Plan Year in which the Plan is top-heavy, the Plan Administrator operationally will determine to which plan the Employer will make the necessary additional contribution. If the Plan Administrator elects for the Employer to make the additional contribution to this Plan, the Plan Administrator will allocate the contribution in accordance with Section 10.02(B). If the Plan Administrator elects for the Employer to make the additional contribution to another plan, the Plan Administrator must determine that the additional contribution is sufficient to satisfy the Top-Heavy Minimum Allocation.

(C) Defined Benefit Plan(s). If the Employer maintains one or more Defined Benefit Plans in addition to this Plan and a Non-Key Employee participates in both types of plans, the Plan Administrator operationally will determine if the Employer will make the necessary additional contribution to the Plan to satisfy the top-heavy Minimum Allocation Rate or if the Employer will provide a required top-heavy minimum benefit in the Defined Benefit Plan. If the Plan Administrator elects for the Employer to make the additional contribution to this Plan, the Top-Heavy Minimum Allocation is 5%, irrespective of the Highest Contribution Rate, and the Plan Administrator will allocate the contribution in accordance with Section 10.02(B). If the Plan Administrator elects for the Employer to satisfy the top-heavy minimum benefit in a Defined Benefit Plan, the Plan Administrator must determine that such top-heavy minimum benefit is sufficient to satisfy the top-heavy requirements in such Plan.

(D) Override. The Employer in Appendix B may specify overriding provisions which will apply to satisfy the requirements of Code §416 and the applicable regulations if the Employer maintains more than one qualified plan.

10.04 TOP-HEAVY VESTING. If the Employer in its Adoption Agreement does not elect immediate vesting, the Employer must elect a top-heavy vesting schedule, as defined in Section 5.03(A). The specified top-heavy vesting schedule applies to all Accounts and Contribution Types not already subject to greater vesting. The Employer in Appendix B also may elect a non-top-heavy vesting schedule and may further elect as to whether the top-heavy schedule applies to the Plan's first top-heavy Plan Year and to all subsequent Plan Years, or whether the non-top-heavy schedule applies as to non-top-heavy Plan Years. Any change in the Plan's vesting schedule resulting from this election is subject to Section 5.08, relating to vesting schedule amendments. As such, a Participant's vested percentage may not decrease as a result of a change in the Plan's top-heavy status in a subsequent Plan Year. When applicable, the relevant top-heavy vesting schedule applies to a Participant's entire Account Balance except as to those amounts which are already 100% Vested, and applies to such amounts accrued before the Plan became top-heavy.

10.05 SAFE HARBOR/SIMPLE PLAN EXEMPTION.

(A) Safe Harbor 401(k) Plan. If in any Plan Year: (1) the Plan Administrator allocates only Safe Harbor Contributions, Additional Matching Contributions and Elective Deferrals to the Plan; and (2) there are no forfeitures to allocate for the Plan Year or the Plan Administrator allocates forfeitures in the manner Section 3.07(A)(4) describes, the Plan will not be subject to the top-heavy requirements of this Article X for that Plan Year. In accordance with Section 3.07(A)(4), the Employer in its Adoption Agreement may elect to apply forfeitures in such a manner so as to preserve the top-heavy exemption under this Section 10.05(A). This Section 10.05(A) does not apply if the Employer in its Adoption Agreement elects eligibility for Elective Deferrals which is earlier than the one Year of Service and age 21 eligibility requirements the Employer elects to apply for the Safe Harbor Contributions, using the OEE rule under Section 4.06(C).

(B) SIMPLE 401(k) Plan. A SIMPLE 401(k) Plan under Section 3.10 is not subject to the provisions of this Article X.

10.06 DEFINITIONS. For purposes of applying the top-heavy provisions of the Plan:

(A) Compensation. Compensation means Compensation as determined under Section 4.05(F) for Code §415 purposes and includes Compensation for the entire Plan Year.

(B) Determination Date. Determination Date means for any Plan Year, the Accounting Date of the preceding Plan Year or, in the case of the first Plan Year of the Plan, the Accounting Date of the first Plan Year.

(C) Determination (look-back) Period. Determination Period means the 1-year period ending on the Determination Date. In the case of distributions made for a reason other than Severance from Employment, death or Disability, the determination period means the 5-year period ending on the Determination Date.

(D) Employer. Employer means the Employer that adopts this Plan and any Related Employer.

(E) Highest Contribution Rate. Highest Contribution Rate means for any Key Employee, all Employer Contributions (including Elective Deferrals, but not including Employer contributions to Social Security and not including Catch-Up Deferrals) and forfeitures allocated to the Participant's Account for the Plan Year, divided by his/her Compensation for the entire Plan Year. To determine a Key Employee's contribution rate, the Plan Administrator must treat all qualified top-heavy Defined Contribution Plans maintained by the Employer (or by any Related Employer) as a single plan.

(F) Key Employee. Key Employee means, as of any Determination Date, any Employee or former Employee (including a deceased former Employee) who, at any time during the Determination Period: (i) has annual Compensation exceeding $130,000 (as adjusted under Code §416(i)(1)(A)) and is an officer of the Employer; (ii) is a more than 5% owner of the Employer; or (iii) is a more than 1% owner of the Employer and has annual Compensation exceeding $150,000.

(1) Attribution. The constructive ownership rules of Code §318 as modified by Code §416(i)(1)(B)(i) (or the principles of that Code section, in the case of an unincorporated Employer) will apply to determine ownership in the Employer.

(2) Maximum Officers. The number of officers taken into account under Section 10.06(F) clause (i) will not exceed the greater of 3 or 10% of the total number (after application of the Code §414(q) exclusions) of Employees, and in no event will exceed 50 officers.

(3) Code/regulations. The Plan Administrator will make the determination of who is a Key Employee in accordance with Code §416(i)(1) and the applicable Treasury regulations.

(G) Non-Key Employee. Non-Key Employee means an Employee who is not a Key Employee.

(H) Participant. Participant means any Employee otherwise eligible to participate in the Plan, even if the Participant would not be entitled to other Plan allocations or would receive a lesser allocation under the Plan terms.

(I) Permissive Aggregation Group. Permissive Aggregation Group means the Required Aggregation Group plus any other qualified plans maintained by the Employer, but only if such group would satisfy in the aggregate the nondiscrimination requirements of Code §401(a)(4) and the coverage requirements of Code §410. The Plan Administrator will determine the Permissive Aggregation Group.

(J) Required Aggregation Group. Required Aggregation Group means: (1) each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (including terminated plans); and (2) any other qualified plan of the Employer which enables a plan described in clause (1) to meet the requirements of Code §401(a)(4) or of Code §410.

(K) Top-Heavy Ratio. Top-Heavy Ratio means a fraction, the numerator of which is the sum of the Account Balances of all Key Employees as of the Determination Date and the denominator of which is the sum of the Account Balances for all Employees as of the Determination Date.

(1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan (as defined in Code §408(k))) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the "determination date" has or has had accrued benefits, the top-heavy ratio for this Plan alone or for the "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the "determination date" (including any part of any Account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or Total and Permanent Disability), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or Total and Permanent Disability), both computed in accordance with Code §416 and the Regulations thereunder.

Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the "determination date," but which is required to be taken into account on that date under Code §416 and the Regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the "determination date" has or has had any accrued benefits, the top-heavy ratio for any "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the "present value" of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the "determination date," and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (1) above, and the "present value" of accrued benefits under the defined benefit plan or plans for all Participants as of the "determination date," all determined in accordance with Code §416 and the Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the "determination date" (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or Total and Permanent Disability).

(3) For purposes of (1) and (2) above, the value of Account balances and the "present value" of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the "determination date," except as provided in Code §416 and the Regulations thereunder for the first and second plan years of a defined benefit plan. The Account balances and accrued benefits of a Participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the 1-year period ending on the "determination date" will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code §416 and the Regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of Account balances and accrued benefits will be calculated with reference to the "determination dates" that fall within the same calendar year.

The accrued benefit of a Participant other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code §411(b)(1)(C).

In determining the Top-Heavy Ratio, the Plan Administrator will include and will exclude such amounts as are described below, and in accordance with Code §416 and the applicable Treasury regulations.

(1) Catch-Up Deferrals. The Plan Administrator will include Catch-Up Deferrals.

(2) DECs. The Plan Administrator will exclude DECs.

(3) Certain Contributions. The Plan Administrator will include any contribution not made, but due as of the Determination Date.

(4) Certain Distributions. The Plan Administrator will include any distributions made within the Determination Period.

(5) Former Key Employees. The Plan Administrator will exclude the Account Balance (and distributions, if any, of the Account Balance) of any Non-Key Employee who was formerly a Key Employee.

(6) No Service during 1-year look-back. The Plan Administrator will exclude the Account Balance (including

distributions, if any, of the Account Balance) of an individual who has not received credit for at least one Hour of Service with the Employer during the Determination Period, which for purposes of this Section 10.06(K)(6), means the 1-year period described in Section 10.06(C).

(7) Rollover Contributions and Transfers. The Plan Administrator, in accordance with Code §416 and the applicable Treasury regulations, will include unrelated Rollovers and Transfers which the Plan makes and related Rollovers and Transfers which the Plan receives. The Plan Administrator will exclude related Rollovers and Transfers which the Plan makes and unrelated Rollovers and Transfers which the Plan receives.

(L) Top-Heavy Minimum Allocation. Top-Heavy Minimum Allocation means an allocation equal to the lesser of 3% of the Non-Key Employee's Compensation for the Plan Year or the highest contribution rate for the Plan Year made on behalf of any Key Employee multiplied by the Non-Key Employee's Plan Year Compensation. For purposes of satisfying the Employer's Top-Heavy Minimum Allocation requirement, the Plan Administrator disregards the Elective Deferrals allocated to a Non-Key Employee's Account in determining the Non-Key Employee's allocation rate. To determine a Non-Key Employee's allocation rate, the Plan Administrator must treat all qualified top-heavy Defined Contribution Plans maintained by the Employer (or by any Related Employer) as a single plan. If a Defined Benefit Plan maintained by the Employer which benefits a Key Employee depends on this Plan to satisfy the nondiscrimination rules of Code §401(a)(4) or the coverage rules of Code §410 (or another plan benefiting the Key Employee so depends on such Defined Benefit Plan), the top-heavy minimum allocation is 3% of the Non-Key Employee's Compensation regardless of the contribution rate for the Key Employees.

ARTICLE XI
EXCLUSIVE BENEFIT, AMENDMENT, AND TERMINATION

11.01 EXCLUSIVE BENEFIT.

(A) No Reversion/Diversion. Except as provided under Section 3.01(H), the Employer does not have any beneficial interest in any asset of the Trust Fund and no part of any asset in the Trust Fund may ever revert to or be repaid to the Employer, either directly or indirectly; nor, prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, may any part of the corpus or income of the Trust Fund, or any asset of the Trust Fund, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries and for defraying reasonable expenses of administering the Plan.

(B) Initial Qualification. If the IRS, upon the Employer's application for initial approval (determination) of this Plan, determines the Trust created under the Plan is not a qualified trust exempt from Federal income tax, the Trustee, upon written notice from the Employer, will return the Employer Contributions and the Earnings thereon to the Employer. This Section 11.01(B) applies only if the Employer makes the application for determination by the time prescribed by law for filing the Employer's tax return for the Taxable Year in which the Employer adopted the Plan, or by such later date as the Secretary of the Treasury may prescribe. The Trustee must make the return of the Employer contribution under this Section 11.01(B) within one year of a final disposition of the Employer's request for initial determination as to the Plan. The Employer's Plan and Trust will terminate upon the Trustee's return of the Employer Contributions.

11.02 AMENDMENT BY EMPLOYER.

(A) Permitted Amendments. The Employer, consistent with this Section 11.02 and other applicable Plan provisions, has the right, at any time to amend or to restate the Plan including the Trust.

(1) Adoption Agreement/Appendix B overrides. The Employer may: (a) restate its Adoption Agreement (including converting the Plan to another type of plan using a different Adoption Agreement approved for use with the Prototype or Volume Submitter Plan); (b) amend the elective provisions of the Adoption Agreement (changing an existing election or making a new election) in any manner the Employer deems necessary or advisable; and (c) elect in Appendix B any or all of the basic plan overrides specified therein, including adding language to satisfy Code §§415 or 416 because of the required aggregation of multiple plans.

(2) Model amendments. The Employer may adopt model amendments published by the IRS (the adoption of which the IRS provides will not cause the Plan to be individually designed).

(3) Interim amendments. The Employer may make such good faith amendments as the Employer considers necessary to maintain the Plan's tax-qualified status.

(B) Amendment Formalities.

(1) Writing. The Employer must make all Plan amendments in writing. Each amendment must specify the amendment execution date and, if different from its execution date, must specify the amendment's retroactive, current or prospective Effective Date.

(2) Restatement. An Employer may amend its Plan by means of a complete restatement of its Adoption Agreement. To restate its Plan, the Employer must complete, and the Employer and Trustee or Custodian must execute, a new Adoption Agreement. See Section 8.11(C) if the Employer elects in its Adoption Agreement to adopt a separate approved trust agreement.

(3) Amendment (without restatement). An Employer may amend its Plan without completion of a new Adoption Agreement by either: (a) completion and substitution of one or more Adoption Agreement pages including a new Adoption Agreement Execution Page executed by the Employer and if applicable, executed by the Trustee or Custodian; or (b) other written instrument amending the Adoption Agreement executed by the Employer and if applicable, executed by the Trustee or Custodian. Except under Sections 4.08 or 8.11, to preserve the Plan's pre-approved status under Section 7.09, the substantive language of any amendment under Section 11.02(B)(3), clause (b) (amendment other than by substituted Adoption Agreement page) must reproduce without alteration, the relevant portion(s) of the Adoption Agreement text and elections which the Employer is amending or must have the substantive effect of doing so such as incorporating by reference the Adoption Agreement text into the amendment.

(4) Effect of certain alterations. Any restatement or amendment which is not permitted under this Section 11.02 or elsewhere in the Plan may result in the IRS treating the Plan as an individually designed plan. See Section 7.09 for the effect of certain amendments adopted by the Employer which will result in the Employer's Plan losing Prototype Plan or Volume Submitter Plan status.

(5) Operational discretion and policy changes not an amendment. A Plan amendment does not include the Plan Administrator's exercise of any operational discretion the Plan accords to the Administrator, including but not limited to, the Plan Administrator's adoption, modification or termination of any policy, rule or regulation in accordance with the Plan or any change to any Adoption Agreement checklist.

(6) Trustee/Custodian signature to amendment. The Trustee or Custodian must execute any Adoption Agreement for a Restated Plan and also must execute any Plan amendment which alters the Trust provisions of Article VIII or which otherwise affects the Trustee's or Custodian's duties under the Plan.

(7) Signatory Employer authority. The Signatory Employer alone may execute any Plan amendment under this Section 11.02, and such amendment is effective and binding upon existing Participating Employers. See Section 1.24(A).

(C) Impermissible Amendment/Protected Benefits.

(1) Exclusive benefit/no reversion. The Employer may not amend the Plan to permit any of the Trust Fund (other than as required to pay any Trust taxes and reasonable Plan administrative expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries. An amendment may not cause any portion of the Trust Fund to revert to the Employer or to become the Employer's property.

(2) Alteration of Plan Administrator or Trustee/Custodian duties. The Employer may not amend the Plan in any manner which affects the powers, duties or responsibilities of the Plan Administrator, the Trustee or the Custodian without the written consent of the affected party. See Section 11.02(B)(6).

(3) No cut-backs. An amendment (including the adoption of this Plan as a restatement of an existing plan) may not decrease a Participant's Account Balance, except to the extent permitted under Code §412(c)(8) (for plan years beginning on or before December 31, 2007), or Code §412(d)(2) (for plan years beginning after December 31, 2007), may not reduce or eliminate Protected Benefits determined immediately prior to the adoption date (or, if later, the Effective Date) of the amendment. An amendment reduces Protected Benefits even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in Code §§411(a)(3) through (11). However, a participant's Account Balance may be reduced to the extent permitted under Treas. Regs. 1.411(d)-3 and 1.411(d)-4. For purposes of this paragraph, a plan amendment which has the effect of decreasing a participant's Account Balance, with respect to benefits attributable to service before the amendment, shall be treated as reducing a Protected Benefit. An amendment reduces or eliminates Protected Benefits if the amendment has the effect of either: (a) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in Treasury regulations); or (b) eliminating an optional form of benefit. An amendment does not impermissibly eliminate a Protected Benefit relating to the method of distribution if after the amendment a Participant may receive a single sum payment at the same time or times as the method of distribution eliminated by the amendment and such payment is based on the same or a greater portion of the Participant's Account as the eliminated method of distribution. This Section 11.02(C)(3) applies to Transfers under 11.06 except as to certain Elective Transfers under 11.06(E).

(4) Disregard of amendment/tracking Protected Benefits. The Plan Administrator must disregard an amendment to the extent application of the amendment would fail to satisfy this Section 11.02(C). The Plan Administrator, in an Adoption Agreement checklist, may maintain a list of Protected Benefits which the Plan must preserve.

11.03 AMENDMENT BY PROTOTYPE SPONSOR/VOLUME SUBMITTER PRACTITIONER.

(A) General. The Sponsor, the M&P Mass Submitter (under Section 4.08 of Rev. Proc. 2011-49), or the Practitioner, without the Employer's consent, may amend the Plan and Trust (including any Adoption Agreement), from time to time on behalf of Employers who have previously adopted the Plan: (1) to conform the Plan and Trust to any changes to the Code, regulations, revenue rulings, other statements published by the IRS (including adoption of model, sample or other required good faith amendments that specifically provide that their adoption will not cause such plan to be individually designed); or (2) to make corrections to prior approved plans that may be applied to all employers who adopted the plan. The Sponsor, the M&P Mass Submitter or the Practitioner, also may amend the Plan and Trust (including any Adoption Agreement), from time to time effective as to employers who have not yet adopted the Plan.

(B) Notice to Employers. The Sponsor or Practitioner must make reasonable and diligent efforts to ensure adopting Employers have actually received and are aware of all Sponsor, Practitioner, or M & P Mass Submitter generated Plan amendments and that such Employers complete and sign new Adoption Agreements when necessary.

(C) Prohibited Amendments. Except under Section 11.03(A), the Sponsor or Practitioner may not amend the Plan in any manner which would modify any adopting Employer's Plan existing Adoption Agreement election without the Employer's written consent. In addition, the Sponsor or Practitioner may not amend the Plan in any manner which would violate Section 11.02(C).

(D) Sponsor and Practitioner limitations. A Sponsor or a Practitioner may no longer amend the Plan as to any adopting Employer as of the date: (1) the Employer amends its Plan in a manner as would result in the type of plan not permitted under the M & P program or under the Volume Submitter program; or (2) the IRS notifies the Sponsor or Practitioner that the Plan is being treated as an individually designed plan.

(E) M & P Mass Submitter Amendment. If the Sponsor does not adopt the amendments made by the M & P Mass Submitter, the Sponsor will no longer be the sponsor of an identical or minor modifier Prototype Plan of the Mass Submitter.

11.04 FROZEN PLAN/DISCONTINUANCE OF CONTRIBUTIONS.

(A) Employer Action to Freeze. The Employer subject to Section 11.02(C) and by proper Employer action has the right, at any time, to suspend or discontinue all contributions under the Plan and thereafter to continue to maintain the Plan as a Frozen Plan (subject to such suspension or discontinuance) until the Employer terminates the Plan. During any period while the Plan is frozen, the Plan Administrator will continue to: (1) allocate forfeitures, if any, in accordance with Section 3.07, irrespective of when the forfeitures occur; and (2) operate the Plan in accordance with its terms other than those related to the making and allocation of additional (new) contributions. If the Employer under a Profit Sharing Plan or a 401(k) Plan completely discontinues contributions (including Elective Deferrals), the Plan Administrator will treat the Plan as a Frozen Plan.

(B) Vesting. Upon the Employer's complete discontinuance of contributions to the Plan which is a Profit Sharing Plan or 401(k) Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article V.

(C) Not a Termination. A resolution or an amendment to discontinue all future contributions, but otherwise to continue

maintenance of this Plan, is not a Plan termination for purposes of Section 11.05.

11.05 PLAN TERMINATION.

(A) Employer Action to Terminate. The Employer subject to Section 11.02(C) and by proper Employer action has the right, at any time, to terminate this Plan and the Trust created and maintained under the Plan. Any termination of the Plan under this Section 11.05(A) is not effective until compliance with applicable notice requirements under ERISA, if any. The Plan will terminate upon the first to occur of the following:

(1) Specified date. The Effective Date of termination specified by proper Employer action; or

(2) Employer no longer exists. The Effective Date of dissolution or merger of the Employer, unless a successor makes provision to continue the Plan, in which event the successor must substitute itself as the Employer under this Plan.

(B) QTA Action to Terminate Abandoned Plan.

(1) Definition of Qualified Termination Administrator (QTA). A QTA is an entity which: (a) is eligible to serve as trustee or issuer of an individual retirement account or of an individual retirement annuity; and (b) holds the assets of the abandoned Plan.

(2) QTA procedure. A QTA, after making reasonable efforts to contact the Employer, may make a determination that the Employer has abandoned the Plan and give notice thereof to the DOL. The QTA then may: (i) update Plan records; (ii) calculate benefits; (iii) allocate assets and expenses; (iv) report to the DOL any delinquent contributions; (v) engage service providers and pay reasonable Plan expenses; (vi) provide required notice to Participants and Beneficiaries regarding the Plan termination; (vii) distribute Plan benefits; (viii) file the Form 5500 terminal report and give notice to the DOL of completion of the termination; and (ix) take all other reasonable and necessary actions to wind-up and terminate the Plan. A QTA will undertake all actions under this Section 11.05(B) in accordance with Prohibited Transaction Class Exemption 2006-06, relating to the QTA's services and compensation for services.

(C) Vesting. Upon either full or partial termination of the Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article V.

(D) General Procedure upon Termination. Upon termination of the Plan, the distribution provisions of Article VI remain operative, with the following exceptions:

(1) If no consent required. If the Participant's Vested Account Balance does not exceed $5,000 (or exceeds $5,000 but the Participant has attained the later of age 62 or Normal Retirement Age), the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 8.04) the Participant's Vested Account Balance to him/her in a Lump-Sum as soon as administratively practicable after the Plan termination.

(2) If consent required. If the Participant's Vested Account Balance exceeds $5,000 and the Participant has not attained the later of age 62 or Normal Retirement Age, the Participant or the Beneficiary may elect to have the Trustee commence distribution in cash (subject to Section 8.04) of his/her Vested Account Balance in a Lump-Sum as soon as administratively practicable after the Plan termination. If a Participant with consent rights under this Section 11.05(D)(2) does not elect an immediate Lump-Sum distribution with spousal consent if required, to liquidate the Trust, the Plan Administrator will instruct the Trustee or Custodian to purchase a deferred Annuity Contract for the Participant which protects the Participant's distribution rights under the Plan.

(3) Lower dollar amount. As provided in Section 6.09, the Employer in Appendix B may provide for a lower dollar threshold than $5,000 under this Section 11.05(D).

(E) Profit Sharing Plan. If the Plan is a Profit Sharing Plan, in lieu of applying Section 11.05(D) and the distribution provisions of Article VI, the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 8.04) each Participant's Vested Account Balance, in a Lump-Sum, as soon as administratively practicable after the Plan termination, irrespective of: (i) the amount of the Participant's Vested Account Balance: (ii) the Participant's age; and (iii) whether the Participant consents to the distribution.

(1) Limitations. This Section 11.05(E) does not apply if: (a) the Plan at termination provides for distribution of an Annuity Contract which is a Protected Benefit and which the Employer may not (or does not) eliminate by Plan amendment; or (b) as of the period between the Plan termination date and the final distribution of assets, the Employer maintains any other Defined Contribution Plan (other than an ESOP). If clause (b) applies, the Plan Administrator to facilitate Plan termination may direct the Trustee to transfer the Account of any non-consenting Participant to the other Defined Contribution Plan.

(F) 401(k) Plan Distribution Restrictions. If the Plan is a 401(k) Plan or if the Plan as the result of a Transfer holds Restricted 401(k) Accounts under Section 6.01(C)(4)(b), a Participant's Restricted 401(k) Accounts are distributable on account of Plan termination, as described in this Section 11.05, only if: (i) the Employer (including any Related Employer, determined as of the Effective Date of Plan termination) does not maintain an Alternative Defined Contribution Plan and the Plan Administrator distributes the Participant's entire Vested Account Balance in a Lump-Sum; or (ii) the Participant otherwise is entitled under the Plan to a distribution of his/her Vested Account Balance.

(1) Definition of Alternative Defined Contribution Plan. An Alternative Defined Contribution Plan is a Defined Contribution Plan (other than an ESOP, simplified employee pension plan, 403(b) plan, SIMPLE IRA or 457(b) or (f) plan) the Employer (or a Related Employer) maintains beginning at the Effective Date of the Plan termination and ending twelve months after the final distribution of Plan assets. However, a plan is not an Alternative Defined Contribution Plan if less than 2% of the Employees eligible to participate in the terminating Plan are eligible to participate (beginning 12 months prior to and ending 12 months after the Effective Date of the Plan termination) in the potential Alternative Defined Contribution Plan.

(G) Continuing Trust Provisions. The Trust will continue until the Trustee in accordance with the direction of the Plan Administrator has distributed all of the benefits under the Plan. On each Valuation Date, the Plan Administrator will credit any part of a Participant's Account Balance retained in the Trust with its share of Earnings. Upon termination of the Plan, any suspense account under Section 4.01 will revert to the Employer, subject to the conditions of the Treasury regulations permitting such a reversion.

(H) Lost Participants. The Trustee will distribute the Accounts of lost Participants in a terminating Plan in accordance with the Plan Administrator's direction under Section 7.07(B).

11.06 MERGER/DIRECT TRANSFER.

(A) Authority. The Trustee, at the direction of the Plan Administrator, possesses the specific authority to enter into merger agreements or direct transfer of assets agreements with the trustees of other retirement plans described in Code §401(a), and to accept the direct transfer of plan assets to the Trust, or to transfer Plan assets, as a party to any such agreement. This authority includes Nonelective Transfers described in Section 11.06(D) and Elective Transfers described in Section 11.06(E).

(B) Code §414(l) Requirements. The Trustee may not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan (or from the other plan to this Plan), unless immediately after the merger, consolidation or transfer, the surviving plan provides each Participant a benefit equal to or greater in amount than the benefit each Participant would have received had the transferring plan terminated immediately before the merger, consolidation, or transfer; provided that 100% immediate vesting is not required upon merger, consolidation or transfer, except if an Elective Transfer is made under Section 11.06(E)(3).

(C) Administration of Transferred Amount. The Trustee will hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustee must maintain a separate Employer Contribution Account for the benefit of the Employee on whose behalf the Trustee accepted the Transfer in order to reflect the value of the transferred assets and as necessary to preserve Protected Benefits.

(D) Nonelective Transfers. The Trustee, at the direction of the Plan Administrator, may enter into an agreement with the trustee of any other plan described in Section 11.06(A) to transfer as a Nonelective Transfer all or a portion of the Account(s) of one or more Participants to the other plan, or to receive Nonelective Transfers into the Plan. In the event of a Nonelective Transfer, the trustee of the transferee plan must preserve all Protected Benefits under the transferor plan, unless the trustee or other appropriate party takes proper action to eliminate any of such Protected Benefits.

(1) Definition of Nonelective Transfer. A Nonelective Transfer is a Transfer made without the consent or election of the affected Participant(s).

(E) Elective Transfers. The Trustee, at the direction of the Plan Administrator (and in accordance with the proper election of a Participant or Beneficiary), may enter into an agreement with the trustee of any other plan described in Section 11.06(A) to transfer as an Elective Transfer to the other plan or to receive as an Elective Transfer into this Plan, all or a portion of the Account of the electing Participant or Beneficiary. The specific requirements for an Elective Transfer depend upon the type of Elective Transfer that the Trustee will utilize to effect the Transfer, as described herein.

(1) Definition of Elective Transfer. An elective Transfer is a Transfer made at the election of a Participant (or, as applicable, a Beneficiary) and which satisfies the requirements of this Section 11.06(E).

(2) Code §411(d)(6)(D) Transfer. A Code §411(d)(6)(D) Transfer means a Transfer under Code §411(d)(6)(D) between Defined Contribution Plans, and which a Participant or Beneficiary elects following required statutory notice. Under this Section 11.06(E)(2), the Account need not be distributable at the time of Transfer and Protected Benefits specifically relating to distribution methods do not carry over to the transferee plan, except under Section 6.04 if applicable.

(3) Acquisition or employment change Transfer. An acquisition or employment change Transfer means a Transfer under Treas. Reg. §1.411(d)-4 Q/A-3(b), between such Defined Contribution Plans as described therein, and which a Participant elects. Under this Section 11.06(E)(3), the Account need not be distributable at the time of Transfer and Protected Benefits do not carry over to the transferee plan, except under Section 6.04 if applicable.

(4) Distributable event Transfer. A distributable event Transfer means a Transfer under Treas. Reg. §1.411(d)-4 Q/A-3(c), between Code §401(a) plans, and which a Participant elects. Under this Section 11.06(E)(4), the Account must be distributable at the time of Transfer, but not entirely as a Lump-Sum which is an Eligible Rollover Distribution. Protected Benefits do not carry over to the transferee plan.

(F) Pre-Participation Transfers. The Trustee, at the direction of the Plan Administrator, under this Section 11.06 may accept a Transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the Entry Date. If the Trustee accepts such a direct Transfer of plan assets, the Plan Administrator and the Trustee must treat the Employee as a limited Participant as described in Section 3.08(C).

ARTICLE XII
MULTIPLE EMPLOYER PLAN

12.01 ELECTION/OVERRIDING EFFECT. This Article XII does not apply unless the Employer establishes the Plan as a Multiple Employer Plan described in Code §413(c) under a Nonstandardized Adoption Agreement or under a Volume Submitter Adoption Agreement, notwithstanding Sections 12.01(A) or (B), below. If this Article XII does apply, then the rules of Code §413(c) and the related Treasury Regulations (which are incorporated by reference) will apply to the adopting Employer and each Participating Employer. The provisions of Article XII, if in effect, supersede any contrary provisions in the Plan or the Employer's Adoption Agreement.

(A) Election. If the Employer elects in its Adoption Agreement that the Plan is a Multiple Employer Plan, then the provisions of this Article XII will apply as of the Effective Date the Employer elects in its Adoption Agreement.

(B) Automatic Effect. If a Related Employer is a Participating Employer, and thereafter ceases to be a Related Employer (but is still a Participating Employer), then the provisions of this Article XII will apply thereafter until the Plan is no longer maintained by a Participating Employer which is not a Related Employer.

12.02 DEFINITIONS. The following definitions apply to this Article XII and supersede any conflicting definition in the Plan.

(A) Employee. Employee means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. The Employer in its Adoption Agreement or in a Participation Agreement may designate any Employee, or class or group of Employees, as an Excluded Employee under Section 1.22(D).

(B) Lead Employer. The Lead Employer means the Signatory Employer to the Adoption Agreement Execution Page, and does not include any Related Employer or Participating Employer except as described in the next sentence. The Lead Employer will be a Participating Employer only if the Lead Employer executes a Participation Agreement to the Adoption Agreement. The Lead Employer has the same meaning as the Signatory Employer for purposes of making Plan amendments and other purposes as described in Section 1.24(A) regardless of whether the Lead Employer is also a Participating Employer under this Article XII. As to the right of a Lead Employer to terminate the participation of a Participating Employer, see Section 12.11.

(C) Participating Employer. A "Participating Employer" is a trade or business which, with the consent of the Lead Employer, executes a Participation Agreement to the Adoption Agreement. A Participating Employer is an Employer for all purposes of the Plan except as provided in Section 1.24. A Participating Employer may, but need not be a Related Employer.

(D) Professional Employer Organization (PEO). A Professional Employer Organization (PEO) means an organization described in Rev. Proc. 2002-21. Plan references to Rev. Proc. 2002-21 also include any successor thereto. If the Lead Employer is a PEO, the term PEO is synonymous with the Lead Employer. If the Lead Employer is a PEO, then:

(1) Client Organization ("CO"). Each Participating Employer (other than the PEO) is a Client Organization as that term is used in Rev. Proc. 2002-21.

(2) Worksite Employee. A Worksite Employee means a person on the PEO's payroll who receives amounts from the PEO for providing services to a CO pursuant to a service agreement between the PEO and the CO. For all purposes of this Plan, a Worksite Employee will be deemed to be the Employee of the CO for whom the Worksite Employee performs services, and not an Employee of the PEO.

12.03 PARTICIPATING EMPLOYER ELECTIONS. In its Adoption Agreement, the Lead Employer will specify: (A) whether a Participating Employer may modify any of the Adoption Agreement elections; (B) which elections the Participating Employer may modify; and (C) any restrictions on the modifications. Any such modification will apply only to the Employees of that Participating Employer. The Participating Employer will make any such modification by election on its Participation Agreement to the Lead Employer's Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election has no effect on the Plan and the Participating Employer is bound by the Adoption Agreement terms as completed by the Lead Employer.

12.04 HCE STATUS. The Plan Administrator will determine HCE status under Section 1.22(E) separately with respect to each Participating Employer.

12.05 TESTING.

(A) Separate Status. The Plan Administrator will perform the tests listed in this Section 12.05(A) separately for each Participating Employer, with respect to the Employees of that Participating Employer. For this purpose, the Employees of a Participating Employer, and their allocations and Accounts, will be treated as though they were in a separate plan. Any Plan correction under Section 7.08 will only affect the Employees of the Participating Employer. The tests subject to this separate treatment are:

(1) ADP. The ADP test in Section 4.10(B).

(2) ACP. The ACP test in Section 4.10(C).

(3) Nondiscrimination. Nondiscrimination testing as described in Code §401(a)(4), the applicable Treasury regulations, and Sections 4.06 and 4.07.

(4) Coverage. Coverage testing as described in Code §410(b), the applicable Treasury regulations, and Sections 3.06(F) and 4.06.

(B) Transition Year. This Section 12.05(B) applies if as a result of a transaction or similar event a Participating Employer ceases to be a Related Employer in the middle of a Plan Year. In such a situation the Plan Administrator may perform the tests described in Section 12.05(A) (1) as though the Plan Year consisted of two Plan Years, before and after the transaction; or (2) on the basis of a single Plan Year, taking all for each

Participating Employer the Employees of Related Employers before the transaction, and disregarding Employees who are not Employees of Related Employers after the transaction.

(C) Joint Status. The Plan Administrator will perform the following tests for the Plan as whole, without regard to an Employee's employment by a particular Participating Employer:

(1) Annual Additions Limit. Applying the Annual Additions Limit in Section 4.05(B).

(2) Elective Deferral Limit. Applying the Elective Deferral Limit in Section 4.10(A).

(3) Catch-Up Limit. Applying the limit on Catch-Up Deferrals in Section 3.02(D).

12.06 TOP-HEAVY. The Plan will apply the provisions of Article X separately to each Participating Employer. The Plan will be considered separate plans for each Participating Employer and its Employees for purposes of determining whether such a separate plan is top-heavy or is entitled to the exemption described in Section 10.05. For purposes of applying Article X to a Participating Employer, the Participating Employer and any business which is a Related Employer to that Participating Employer are the "Employer." For purposes of Article X, the terms "Key Employee" and "Non-Key Employee" will refer only to the Employees of that Participating Employer and/or its Related Employers. If such a Participating Employer's separate Plan is top-heavy, then:

(A) Highest Contribution Rate. The Plan Administrator will determine the Highest Contribution Rate under Section 10.06(E) by reference to the Key Employees and their allocations in the separate plan of that Participating Employer;

(B) Top-Heavy Minimum Allocation. The Plan Administrator will determine the amount of any required Top-Heavy Minimum Allocation under Section 10.06(L) separately for that separate plan; and

(C) Plan Which Will Satisfy. The Participating Employer will make any additional contributions Section 10.03 requires.

12.07 COMPENSATION.

(A) Separate Determination. For the following purposes, described in this Section 12.07(A), the Plan Administrator will determine separately a Participant's Compensation for each Participating Employer. Under this determination, except as provided below, Compensation from a Participating Employer includes Compensation paid by a Related Employer of that Participating Employer.

(1) Nondiscrimination and coverage. All of the separate tests listed in Section 12.05(A).

(2) Top-Heavy. Application of the top-heavy rules in Article X.

(3) Allocations. Application of allocations under Article III. However, the Employer's Adoption Agreement elections control the extent to which Compensation for this purpose includes Compensation of Related Employers.

(4) HCE determination. The determination of an Employee's status as an HCE.

(B) Joint Status. For all Plan purposes other than those described in Section 12.07(A), including but not limited to determining the Annual Additions Limit in Section 4.05(B), Compensation includes all Compensation paid by or for any Participating Employer or Related Employer.

12.08 SERVICE. An Employee's Service includes all Hours of Service and Years of Service with any and all Participating Employers and their Related Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not incurred a Separation from Service or a Severance from Employment.

12.09 REQUIRED MINIMUM DISTRIBUTIONS. If a Participant is a more than 5% Owner (under Code §416(i) and Section 6.02(E)(7)(a)) of any Participating Employer for which the Participant is an Employee in the Plan Year that ends in the calendar year in which the Participant attains age 70 1/2, then the Participant's RBD under Section 6.02(E)(7) will be the April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

12.10 COOPERATION AND INDEMNIFICATION.

(A) Cooperation. Each Participating Employer agrees to timely provide to the Plan Administrator upon request all information the Plan Administrator deems necessary. Each Participating Employer will cooperate fully with the Plan Administrator, the Lead Employer, and with Plan fiduciaries and other proper Plan representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to Employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(B) Indemnity. Each Participating Employer will indemnify and hold harmless the Plan Administrator, the Lead Employer, the Plan, the Trustee, other Plan fiduciaries, other Participating Employers, Participants and Beneficiaries, and as applicable, their subsidiaries, officers, directors, shareholders, employees, and agents, and their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as all IRS or DOL Plan disqualification, fiduciary breach or other sanctions, compliance fees or penalties) arising out of or relating to: (1) the Participating Employer's noncompliance with any of the Plan's terms or requirements; or (2) the Participating Employer's intentional or negligent act or omission with regard to the Plan, including the failure to provide accurate, timely information requested by the Plan Administrator.

12.11 INVOLUNTARY TERMINATION. Unless the Lead Employer provides otherwise in Appendix B, the Lead Employer may terminate the participation of any Participating Employer (hereafter, "Terminated Employer") in this Plan. If the Lead Employer acts under this Section 12.11, the following will occur:

(A) Notice. The Lead Employer will give the Terminated Employer a notice of the Lead Employer's intent to terminate the

Terminated Employer's status as a Participating Employer of the Plan. The Lead Employer will provide such notice not less than 30 days prior to the Effective Date of termination unless the Lead Employer determines that the interests of Plan Participants requires earlier termination.

(B) Spin-off. The Lead Employer will establish a new Defined Contribution Plan, using the provisions of this Plan with any modifications contained in the Terminated Employer's Participation Agreement, as a guide to establish a new Defined Contribution Plan (the "Spin-off Plan"). The Lead Employer will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 11.06) the Accounts of the Employees of the Terminated Employer to the Spin-off Plan. The Terminated Employer will be the Employer, Plan Administrator, and Sponsor of the Spin-off Plan. The Trustee of the Spin-off Plan will be the person or entity designated by the Terminated Employer, or, in the absence of any such designation, the Terminated Employer itself. If state law prohibits the Terminated Employer from serving as Trustee, the Trustee is the president of a corporate Terminated Employer, the managing partner of a partnership Terminated Employer, the managing member of a limited liability company Terminated Employer, the sole proprietor of a proprietorship Terminated Employer, or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing. Notwithstanding the preceding sentence, the Lead Employer may designate a financial institution as Trustee if the Lead Employer, in its sole discretion, deems it necessary to protect the interests of the Participants. The Lead Employer may charge the Terminated Employer or the Accounts of the Employees of the Terminated Employer with the reasonable expenses of establishing the Spin-off Plan.

(C) Transfer. The Terminated Employer, in lieu of the Lead Employer's creation of the Spin-off Plan under Section 12.11(B), may elect a transfer under this Section 12.11(C) to effect the termination of its status as a Participating Employer. To elect this alternative, the Terminated Employer must give notice to the Lead Employer of its choice, and must supply any documentation which the Lead Employer reasonably may require as soon as is practical and before the Effective Date of termination. If the Lead Employer has not received such notice and any required documentation within ten (10) days prior to the stated date of termination, the Lead Employer may proceed with the Spin-off Plan under Section 12.11(B). The Lead Employer will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 11.06) the Accounts of the Employees of the Terminated Employer to a qualified plan the Terminated Employer maintains. The Terminated Employer must deliver to the Lead Employer in writing such identifying and other relevant information regarding the transferee plan and must provide such assurances as the Lead Employer may reasonably require that the transferee plan is a qualified plan.

(D) Participants. The Employees of the Terminated Employer will cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the Terminated Employer, as of the Effective Date of the termination. To the extent that these Employees have accrued but unpaid contributions as of such Effective Date, the Terminated Employer will pay such amounts to the Plan or to the Spin-off Plan no later than 30 days after the Effective Date of termination, unless the Terminated Employer has elected the transfer alternative under Section 12.11(C).

(E) Consent. By its execution of the Participation Agreement, the Terminated Employer specifically consents to the provisions of this Article XII, and in particular, this Section 12.11 and agrees to perform its responsibilities with regard to the Spin-off Plan, if necessary.

12.12 VOLUNTARY TERMINATION. A Participating Employer (hereafter "Withdrawing Employer") may voluntarily withdraw from participation in the Plan at any time. If and when a Withdrawing Employer wishes to withdraw, the following will occur:

(A) Notice. The Withdrawing Employer will inform the Lead Employer and the Plan Administrator of its intention to withdraw from the Plan. The Withdrawing Employer must give the notice not less than 30 days prior to the Effective Date of its withdrawal.

(B) Procedure. The Withdrawing Employer and the Lead Employer will agree upon procedures for the orderly withdrawal of the Withdrawing Employer from the Plan. Such procedures, as they relate to the Accounts of the Employees of the Withdrawing Employer, may include any alternative described in Sections 12.11(B) and (C).

(C) Costs. The Withdrawing Employer will bear all reasonable costs associated with withdrawal and transfer under this Section 12.12.

(D) Participants. The Employees of the Withdrawing Employer will cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the Withdrawing Employer, as of the Effective Date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of such Effective Date, the Withdrawing Employer will contribute such amounts to the Plan or the Spin-off Plan promptly after the Effective Date of withdrawal, unless the Accounts are transferred to a qualified plan the Withdrawing Employer maintains.

Volume Submitter 401(k) Plan

ADOPTION AGREEMENT #003
VOLUME SUBMITTER 401(k) PLAN

The undersigned Employer, by executing this Adoption Agreement, establishes a retirement plan and trust (collectively "Plan") under the Benefit Planning Consultants, Inc. Defined Contribution Volume Submitter Plan (basic plan document #08). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Volume Submitter Plan and Trust provisions. This Adoption Agreement, the basic plan document and any attached Appendices or agreements permitted or referenced therein, constitute the Employer's entire plan and trust document. *All "Election" references within this Adoption Agreement are Adoption Agreement Elections. All "Article" or "Section" references are basic plan document references. Numbers in parentheses which follow election numbers are basic plan document references.* Where an Adoption Agreement election calls for the Employer to supply text, the Employer (without altering the content of any existing printed text) may lengthen any space or line, or create additional tiers. When Employer-supplied text uses terms substantially similar to existing printed options, all clarifications and caveats applicable to the printed options apply to the Employer-supplied text unless the context requires otherwise. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

ARTICLE I
DEFINITIONS

1. EMPLOYER **(1.24)**.

Name: First Busey Corporation

Address: 100 W. University Ave., Champaign, Illinois 61820

Phone number: 217-365-4500

Taxpayer Identification Number (TIN): 37-1078406

E-mail *(optional)*:

Employer's Taxable Year *(optional)*: January 1 - December 31

2. PLAN **(1.42)**.

Name: First Busey Corporation Profit Sharing Plan and Trust

Plan number: 002 *(3-digit number for Form 5500 reporting)*

Trust EIN *(optional)*: 37-1170083

3. PLAN/LIMITATION YEAR **(1.44/1.34)**. Plan Year and Limitation Year mean the 12 consecutive month period (except for a short Plan/Limitation Year) ending every:

[*Note: Complete any applicable blanks under Election 3 with a specific date, e.g., June 30 OR the last day of February OR the first Tuesday in January. In the case of a Short Plan Year or a Short Limitation Year, include the year, e.g., May 1, 2014.*]

Plan Year *(Choose one of (a) or (b). Choose (c) if applicable.)*:

(a) **[X] December 31.**

(b) **[n/a] Fiscal Plan Year:** ending: .

(c) **[n/a] Short Plan Year:** commencing: and ending: .

Limitation Year *(Choose one of (d) or (e). Choose (f) if applicable.)*:

(d) **[X] Generally same as Plan Year.** The Limitation Year is the same as the Plan Year except where the Plan Year is a short year in which event the Limitation Year is always a 12 month period, unless the short Plan Year (and short Limitation Year) result from a Plan amendment.

(e) **[n/a] Different Limitation Year:** ending: .

(f) **[n/a] Short Limitation Year:** commencing: and ending: .

4. <u>EFFECTIVE DATE</u> **(1.20)**. The Employer's adoption of the Plan is a *(Choose one of (a) or (b). Complete (c) if new plan OR complete (c) and (d) if an amendment and restatement. Choose (e) and (f) if applicable.)*:

(a) **[n/a] New Plan.**

(b) **[X] Restated Plan.**

PPA RESTATEMENT (leave blank if not applicable)

(1) **[X]** This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes.

Initial Effective Date of Plan *(enter date)*

(c) **[X]** January 1, 1984 (hereinafter called the "Effective Date" unless 4(d) is entered below)

Restatement Effective Date *(If this is an amendment and restatement, enter effective date of the restatement.)*

(d) **[X]** January 1, 2016 (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. The Plan contains appropriate retroactive effective dates with respect to provisions for the appropriate laws if the Plan is a PPA Restatement.) (hereinafter called the "Effective Date")

[*Note*: *See Section 1.54 for the definition of Restated Plan. If this Plan is a PPA Restatement, the PPA restatement Effective Date may be a current date (as the basic plan document supplies the Effective Dates of various PPA and other provisions) or may be a retroactive date. If specific Plan provisions, as reflected in this Adoption Agreement and the basic plan documents, do not have the Effective Date stated in this Election 4, indicate as such in the election where called for or in Appendix A.*]

(e) **[n/a] Restatement of surviving and merging plans.** The Plan restates two (or more) plans *(Complete 4(c) and (d) above for this (surviving) Plan. Complete (1) below for the merging plan. Choose (2) if applicable. Unless otherwise noted, the restated Effective Date with regard to a merging plan is the later of the date of the merger or the restated Effective Date of this Plan.)*:

(1) **Merging plan.** The Plan was or will be merged into this surviving Plan as of: . The merging plan's restated Effective Date is: . The merging plan's original Effective Date was: .

[*See the Note under Election 4(d) if this document is the merging plan's PPA restatement.*]

(2) **[n/a] Additional merging plans.** The following additional plans were or will be merged into this surviving Plan *(Complete a. and b. as applicable.)*:

	Name of merging plan	Merger date	Restated Effective Date	Original Effective Date
a.				
b.				

(f) **[n/a] Special Effective Date for Elective Deferral provisions:**

[*Note: If Elective Deferral provision is not effective as of the Initial Effective Date or the Restatement Effective Date, enter the date as of which the Elective Deferral provision is effective. The Special Effective Date may not precede the date on which the Employer adopted the Plan.*]

5. <u>TRUSTEE</u> **(1.67)**. The Trustee executing this Adoption Agreement is *(Choose one or more of (a), (b), or (c). Choose (d) or (e) if applicable.)*:

(a) **[X] A discretionary Trustee.** See Section 8.02(A).

(b) **[n/a] A nondiscretionary (directed) Trustee or Custodian.** See Section 8.02(B).

(c) **[n/a] A Trustee under the:** *(specify name of trust)*, a separate trust agreement the Trustee has executed and that the IRS has approved for use with this Plan. Under this Election 5(c) the Trustee is not executing the Adoption Agreement and Article VIII of the basic plan document does not apply, except as indicated otherwise in the separate trust agreement. See Section 8.11(C).

(d) **[n/a] Permitted Trust amendments apply.** Under Section 8.11(B) the Employer has made certain permitted amendments to the Trust. Such amendments do not constitute a separate trust under Election 5(c). See Election 59 in Appendix C.

(e) **[n/a] Use of non-approved trust.** A Trustee under the: *(specify name of trust)*, a separate trust agreement the Trustee has executed for use with this Plan. Under this Election 5(e) the Trustee is not executing the Adoption Agreement and Article VIII of the basic plan document does not apply, except as indicated otherwise in the separate trust agreement. See Section 8.11(C). [*Caution: Election 5(e) will result in the Plan losing reliance on its Advisory Letter and the Plan will be an individually designed plan.*]

6. <u>CONTRIBUTION TYPES</u> **(1.12)**. The selections made below should correspond with the selections made under Article III of this Adoption Agreement. *(If this is a frozen Plan (i.e., all contributions have ceased), choose (a) only.)*:

Frozen Plan. See Sections 3.01(J) and 11.04.

(a) **[n/a] Contributions cease.** All Contributions have ceased or will cease (Plan is frozen).

(1) **[n/a] Effective date of freeze:** [*Note: Effective date is optional unless this is the amendment or restatement to freeze the Plan.*]

[*Note: Elections 20 through 30 and Elections 36 through 38 do not apply to any Plan Year in which the Plan is frozen.*]

Contributions. The Employer and/or Participants, in accordance with the Plan terms, make the following Contribution Types to the Plan/Trust *(Choose one or more of (b) through (h).)*:

(b) **[X] Pre-Tax Deferrals.** See Section 3.02 and Elections 20-23, and 34.

(1) **[X] Roth Deferrals.** See Section 3.02(E) and Elections 20, 21, and 23. [*Note: The Employer may not limit Elective Deferrals to Roth Deferrals only.*]

(c) **[n/a] Matching.** See Sections 1.35 and 3.03 and Elections 24-26. [*Note: The Employer may make an Operational QMAC without electing 6(c). See Section 3.03(C)(2). Do not elect for a safe harbor plan; use 6(e) instead.*]

(d) **[X] Nonelective.** See Sections 1.38 and 3.04 and Elections 27-29. [*Note: The Employer may make an Operational QNEC without electing 6(d). See Section 3.04(C)(2).*]

(e) **[X] Safe Harbor/Additional Matching.** The Plan is (or pursuant to a delayed election, may be) a safe harbor 401(k) Plan. The Employer will make (or under a delayed election, may make) Safe Harbor Contributions as it elects in Election 30. The Employer may or may not make Additional Matching Contributions as it elects in Election 30. See Election 26 as to matching Catch-Up Deferrals. See Section 3.05.

(f) **[n/a] Employee (after-tax).** See Section 3.09 and Election 36.

(g) **[n/a] SIMPLE 401(k).** The Plan is a SIMPLE 401(k) Plan. See Section 3.10. [*Note: The Employer electing 6(g) must elect a calendar year under 3(a) and may not elect any other Contribution Types except under Elections 6(b) and 6(h).*]

(h) **[n/a] Designated IRA.** See Section 3.12 and Election 37.

7. <u>DISABILITY</u> **(1.16)**. Disability means *(Choose one of (a) or (b).)*:

(a) **[X] Basic Plan.** Disability as defined in Section 1.16(A).

(b) **[n/a] Describe:**

[*Note: The Employer may elect an alternative definition of Disability for purposes of Plan distributions. However, the use of an alternative definition may result in loss of favorable tax treatment of the Disability distribution.*]

8. <u>EXCLUDED EMPLOYEES</u> **(1.22(D))**. The following Employees are not Eligible Employees but are Excluded Employees *(Choose one of (a), (b), or (c).)*:

[*Note: Regardless of the Employer's elections under Election 8: (i) Employees of any Related Employers (excluding the Signatory Employer) are Excluded Employees unless the Related Employer becomes a Participating Employer; and (ii) Reclassified Employees and Leased Employees are Excluded Employees unless the Employer in Appendix B elects otherwise. See Sections 1.22(B), 1.22(D)(3), and 1.24(D). However, in the case of a Multiple Employer Plan, see Section 12.02(B) as to the Employees of the Lead Employer.*]

(a) **[n/a] No Excluded Employees.** There are no additional excluded Employees under the Plan as to any Contribution Type *(skip to Election 9)*.

(b) **[X] Exclusions - same for all Contribution Types.** The following Employees are Excluded Employees for all Contribution Types *(Choose one or more of (e) through (j). Choose column (1) for each exclusion elected at (e) through (i).)*:

(c) **[n/a] Exclusions - different exclusions apply.** The following Employees are Excluded Employees for the designated Contribution Type *(Choose one or more of (d) through (j). Choose Contribution Type as applicable.)*:

[*Note: For this Election 8, unless described otherwise in Election 8(j), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals, Employee Contributions and Safe Harbor Contributions. Matching includes all Matching Contributions except Safe Harbor Matching Contributions. Nonelective includes all Nonelective Contributions except Safe Harbor Nonelective Contributions.*]

Exclusions			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(d)	[n/a]	**No exclusions.** No exclusions as to the designated Contribution Type.	**N/A** (See Election 8(a))		**[ ]**	**[ ]**	**[ ]**
(e)	[X]	**Collective Bargaining (union) Employees.** As described in Code §410(b)(3)(A). See Section 1.22(D)(1).	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(f)	[X]	**Non-Resident Aliens.** As described in Code §410(b)(3)(C). See Section 1.22(D)(2).	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**

(g)	[n/a]	**HCEs.** See Section 1.22(E). See Election 30(f) as to exclusion of some or all HCEs from Safe Harbor Contributions.	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(h)	[n/a]	**Hourly paid Employees.**	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**

(i)	[n/a]	**Part-Time/Temporary/Seasonal Employees.** See Section 1.22(D)(4). A Part-Time, Temporary or Seasonal Employee is an Employee whose regularly scheduled Service is less than *(specify a maximum of 1,000)* Hours of Service in the relevant Eligibility Computation Period. [*Note: The "relevant" Eligibility Computation Period is the Initial or Subsequent Eligibility Computation Period as defined in Section 2.02(C).*]	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**

[*Note: If the Employer under Election 8(i) elects to treat Part-Time, Temporary and Seasonal Employees as Excluded Employees and any such an Employee actually completes at least 1,000 Hours of Service during the relevant Eligibility Computation Period, the Employee becomes an Eligible Employee. See Section 1.22(D)(4).*]

(j) **[n/a] Describe exclusion category and/or Contribution Type:**
(e.g., Exclude Division B Employees OR Exclude salaried Employees from Discretionary Matching Contributions.)

[*Note: Any exclusion under Election 8(j), except as to Part-Time/Temporary/Seasonal Employees, may not be based on age or Service or level of Compensation. See Election 14 for eligibility conditions based on age or Service. The exclusions entered under Election 8(j) cannot result in the group of Nonhighly Compensated Employees (NHCEs) participating under the plan being only those NHCEs with the lowest amount of compensation and/or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b).*]

9. COMPENSATION **(1.11(B))**. The following base Compensation (as adjusted under Elections 10 and 11) applies in allocating Employer Contributions (or the designated Contribution Type) *(Choose one or more of (a) through (d) and choose Contribution Type as applicable. Choose (e) if applicable.)*:

[*Note: For this Election 9 all definitions include Elective Deferrals unless excluded under Election 11. See Section 1.11(D). Unless described otherwise in Election 9(d), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions. In applying any Plan definition which references Section 1.11 Compensation, where the Employer in this Election 9 elects more than one Compensation definition for allocation purposes, the Plan Administrator will use W-2 Wages for other Plan definitions of Compensation if the Employer has elected W-2 Wages for any Contribution Type or Participant group under Election 9. If the Employer has not elected W-2 Wages, the Plan Administrator for such other Plan definitions will use 415 Compensation. If the Plan is a Multiple Employer Plan, see Section 12.07. Election 9(d) below may cause allocation Compensation to fail to be nondiscriminatory under Treas. Reg. §1.414(s).*]

			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	[n/a]	**W-2 Wages (plus Elective Deferrals).** See Section 1.11(B)(1).	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(b)	[n/a]	**Code §3401 Federal Income Tax Withholding Wages (plus Elective Deferrals).** See Section 1.11(B)(2).	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(c)	[X]	**415 Compensation (simplified).** See Section 1.11(B)(3). [*Note: The Employer may elect an alternative "general 415 Compensation" definition by electing 9(c) and by electing the alternative definition in Appendix B. See Section 1.11(B)(4).*]	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(d)	[n/a]	**Describe Compensation by Contribution Type or by Participant group:**					

[*Note: Under Election 9(d), the Employer may: (i) elect Compensation from the elections available under Elections 9(a), (b), or (c), or a combination thereof as to a Participant group (e.g., W-2 Wages for Matching Contributions for Division A Employees and 415 Compensation in all other cases); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 9(a) (e.g., Compensation for Safe Harbor Matching Contributions means W-2 Wages and for Additional Matching Contributions means 415 Compensation).*]

(e)	[n/a]	**Allocate based on specified 12-month period.** The allocation of all Contribution Types (or specified Contribution Types) will be made based on Compensation within a specified 12-month period ending within the Plan Year as follows: .	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**

10. PRE-ENTRY/POST-SEVERANCE COMPENSATION **(1.11(H)/(I))**. Compensation under Election 9:

[*Note: For this Election 10, unless described otherwise in Elections 10(c) or (n), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions. Election 10(c) below may cause allocation Compensation to fail to be nondiscriminatory under Treas. Reg. §1.414(s).*]

Pre-Entry Compensation (Choose one of (a) or (b). Choose Contribution Type as applicable.):			**(1) All Contributions**		**(2) Elective Deferrals**	**(3) Matching**	**(4) Nonelective**
(a)	**[n/a]**	**Plan Year.** Compensation for the entire Plan Year which includes the Participant's Entry Date. [*Note: If the Employer under Election 9(e) elects to allocate some or all Contribution Types based on a specified 12-month period, Election 10(a) applies to that 12-month period in lieu of the Plan Year.*]	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(b)	**[X]**	**Participating Compensation.** Only Participating Compensation. See Section 1.11(H)(1).	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**

[*Note: Under a Participating Compensation election, in applying any Adoption Agreement elected contribution limit or formula, the Plan Administrator will count only the Participant's Participating Compensation. See Section 1.11(H)(1) as to plan disaggregation.*]

(c) **[n/a] Describe Pre-Entry Compensation by Contribution Type or by Participant group:**

[*Note: Under Election 10(c), the Employer may: (i) elect Compensation from the elections available under Pre-Entry Compensation or a combination thereof as to a Participant group (e.g., Participating Compensation for all Contribution Types as to Division A Employees, Plan Year Compensation for all Contribution Types to Division B Employees); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Pre-Entry Compensation (e.g., Compensation for Nonelective Contributions is Participating Compensation and for Safe Harbor Nonelective Contributions is Plan Year Compensation).*]

Post-Severance Compensation. The following adjustments apply to Post-Severance Compensation paid within any applicable time period as may be required *(Choose one of (d), (e), or (f).)*:

[*Note: Under the basic plan document, if the Employer does not elect any adjustments, post-severance compensation includes regular pay, leave cashouts, and deferred compensation, and excludes military and disability continuation payments.*]

(d) **[X] None.** The Plan includes post-severance regular pay, leave cashouts, and deferred compensation, and excludes post-severance military and disability continuation payments as to any Contribution Type except as required under the basic plan document *(skip to Election 11).*

(e) **[n/a] Same for all Contribution Types.** The following adjustments to Post-Severance Compensation apply to all Contribution Types *(Choose one or more of (h) through (n). Choose column (1) for each option elected at (h) through (m).)*:

(f) **[n/a] Adjustments - different conditions apply.** The following adjustments to Post-Severance Compensation apply to the designated Contribution Types *(Choose one or more of (g) through (n). Choose Contribution Type as applicable.)*:

Post-Severance Compensation:			**(1) All Contributions**		**(2) Elective Deferrals**	**(3) Matching**	**(4) Nonelective**
(g)	**[n/a]**	**None.** The Plan takes into account Post-Severance Compensation as to the designated Contribution Types as specified under the basic plan document.	**N/A** (See Election 10(d))		**[ ]**	**[ ]**	**[ ]**
(h)	**[n/a]**	**Exclude All.** Exclude all Post-Severance Compensation. [*Note: 415 testing Compensation (versus allocation Compensation) must include Post-Severance Compensation comprised of regular pay. See Section 4.05(F).*]	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(i)	**[n/a]**	**Regular Pay.** Exclude Post-Severance Compensation comprised of regular pay. See Section 1.11(I)(1)(a). [*Note: 415 testing Compensation (versus allocation Compensation) must include Post-Severance Compensation comprised of regular pay. See Section 4.05(F).*]	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(j)	**[n/a]**	**Leave cash-out.** Exclude Post-Severance Compensation comprised of leave cash-out. See Section 1.11(I)(1)(b).	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(k)	**[n/a]**	**Deferred Compensation.** Exclude Post-Severance Compensation comprised of deferred compensation.	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**

See Section 1.11(I)(1)(c).

(l)	[n/a]	**Salary continuation for military service.** Include Post-Severance Compensation comprised of salary continuation for military service. See Section 1.11(I)(2).	[ ]	**OR**	[ ]	[ ]	[ ]
(m)	[n/a]	**Salary continuation for disabled Participants.** Include Post-Severance Compensation comprised of salary continuation for disabled Participants. See Section 1.11(I)(3). *(Choose one of (1) or (2).)*:	[ ]	**OR**	[ ]	[ ]	[ ]

(1) **[n/a] For NHCEs only.**

(2) **[n/a] For all Participants.** The salary continuation will continue for the following fixed or determinable period: *(specify period)*.

(n) **[n/a] Describe Post-Severance Compensation by Contribution Type or by Participant group:**

[*Note: Under Election 10(n), the Employer may: (i) elect Compensation from the elections available under Post-Severance Compensation or a combination thereof as to a Participant group (e.g., Include regular pay Post-Severance Compensation for all Contribution Types as to Division A Employees, no Post-Severance Compensation for all Contribution Types to Division B Employees); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Pre-Entry Compensation (e.g., Compensation for Nonelective Contributions does not include any Post-Severance Compensation and for Safe Harbor Nonelective Contributions includes regular pay Post-Severance Compensation).*]

11. <u>EXCLUDED COMPENSATION</u> **(1.11(G))**. Apply the following Compensation exclusions to Elections 9 and 10 *(Choose one of (a), (b), or (c).)*:

(a) **[n/a] No exclusions.** Compensation as to all Contribution Types means Compensation as elected in Elections 9 and 10 *(skip to Election 12)*.

(b) **[X] Exclusions - same for all Contribution Types.** The following exclusions apply to all Contribution Types *(Choose one or more of (e) through (l). Choose column (1) for each option elected at (e) through (k).)*:

(c) **[n/a] Exclusions - different conditions apply.** The following exclusions apply for the designated Contribution Types *(Choose one or more of (d) through (l) below. Choose Contribution Type as applicable.)*:

[*Note: In a safe harbor 401(k) plan, allocations qualifying for the ADP or ACP test safe harbors must be based on a nondiscriminatory definition of Compensation. If the Plan applies permitted disparity, allocations also must be based on a nondiscriminatory definition of Compensation if the Plan is to avoid more complex testing. Elections 11(g) through (l) below may cause allocation Compensation to fail to be nondiscriminatory under Treas. Reg. §1.414(s). In a non-safe harbor 401(k) plan, Elections 11(g) through (l) which result in Compensation failing to be nondiscriminatory, may result in more complex nondiscrimination testing. For this Election 11, unless described otherwise in Election 11(l), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions.*]

Compensation Exclusions			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(d)	[n/a]	**No exclusions - limited.** No exclusion as to the designated Contribution Type(s).	**N/A** (See Election 11(a))		[ ]	[ ]	[ ]
(e)	[n/a]	**Elective Deferrals.** See Section 1.21.	**N/A**		**N/A**	[ ]	[ ]
(f)	[n/a]	**Fringe benefits.** As described in Treas. Reg. §1.414(s)-1(c)(3).	[ ]	**OR**	[ ]	[ ]	[ ]
(g)	[n/a]	**Compensation exceeding $.** Apply this election to *(Choose one of (1) or (2).)*:	[ ]	**OR**	[ ]	[ ]	[ ]

(1) **[n/a] All Participants.**
[*Note: If the Employer elects Safe Harbor Contributions under Election 6(e), the Employer may not elect 11(g)(1) to limit the Safe Harbor Contribution allocation to the NHCEs.*]

(2) **[n/a] HCE Participants only.**

(h)	[n/a]	**Bonus.**	[ ]	**OR**	[ ]	[ ]	[ ]
(i)	[n/a]	**Commission.**	[ ]	**OR**	[ ]	[ ]	[ ]
(j)	[n/a]	**Overtime.**	[ ]	**OR**	[ ]	[ ]	[ ]
(k)	[X]	**Related Employers.** See Section 1.24(C). *(If there are Related Employers, choose one or both of (1) and (2).)*:					
(1)		**[X] Non-Participating.** Compensation paid to	[X]	**OR**	[ ]	[ ]	[ ]

Employees by a Related Employer that is not a Participating Employer.

		(1)		(2)	(3)	(4)
(2)	**[n/a] Participating.** As to the Employees of any Participating Employer, Compensation paid by any other Participating Employer to its Employees. See Election 28(g)(2)a.	[ ]	**OR**	[ ]	[ ]	[ ]

(l) **[n/a]** **Describe Compensation exclusion(s):**

[*Note: Under Election 11(l), the Employer may: (i) describe Compensation from the elections available under Elections 11(d) through (k), or a combination thereof as to a Participant group (e.g., No exclusions as to Division A Employees and exclude bonus as to Division B Employees); (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately following Election 11(c) (e.g., Elective Deferrals means §125 cafeteria deferrals only OR No exclusions as to Safe Harbor Contributions and exclude bonus as to Nonelective Contributions); and/or (iii) describe another exclusion (e.g., Exclude shift differential pay).*]

12. <u>HOURS OF SERVICE</u> **(1.32)**. The Plan credits Hours of Service for the following purposes (and to the Employees described in Elections 12(d) or (e)) as follows *(Choose one or more of (a) through (e) as applicable.)*:

			(1) All Purposes		**(2) Eligibility**	**(3) Vesting**	**(4) Allocation Conditions**
(a)	**[X]**	**Actual Method.** See Section 1.32(A)(1).	**[X]**	**OR**	[ ]	[ ]	[ ]
(b)	**[n/a]**	**Equivalency Method:** *(e.g., daily, weekly, etc.).* See Section 1.32(A)(2).	[ ]	**OR**	[ ]	[ ]	[ ]
(c)	**[n/a]**	**Elapsed Time Method.** See Section 1.32(A)(3).	[ ]	**OR**	[ ]	[ ]	[ ]
(d)	**[n/a]**	**Actual (hourly) and Equivalency (salaried).** Actual Method for hourly paid Employees and Equivalency Method: *(e.g., daily, weekly, etc.)* for salaried Employees.	[ ]	**OR**	[ ]	[ ]	[ ]

(e) **[n/a] Describe method:**

[*Note: Under Election 12(e), the Employer may describe Hours of Service from the elections available under Elections 12(a) through (d), or a combination thereof as to a Participant group and/or Contribution Type (e.g., For all purposes, Actual Method applies to office workers and Equivalency Method applies to truck drivers).*]

13. <u>ELECTIVE SERVICE CREDITING</u> **(1.59(C))**. The Plan must credit Related Employer Service under Section 1.24(C) and also must credit certain Predecessor Employer/Predecessor Plan Service under Section 1.59(B). If the Plan is a Multiple Employer Plan, the Plan also must credit Service as provided in Section 12.08. The Plan also elects under Section 1.59(C) to credit as Service the following Predecessor Employer service *(Choose one of (a) or (b).)*:

(a) **[X]** **Not applicable.** No elective Predecessor Employer Service crediting applies.

(b) **[n/a] Applies.** The Plan credits the specified service with the following designated Predecessor Employers as Service for the Employer for the purposes indicated *(Choose one or both of (1) and (2) as applicable. Complete (3). Choose (4) if applicable.)*:

[*Note: Any elective Service crediting under this Election 13 must be nondiscriminatory*.]

(1) **[n/a] All purposes.** Credit as Service for all purposes, service with Predecessor Employer(s): *(insert as many names as needed).*

(2) **[n/a] Designated purposes.** Credit as Service, service with the following Predecessor Employer(s) for the designated purpose(s):

		(1) Eligibility	**(2) Vesting**	**(3) Contribution Allocation**
a.	**Employer:**	[ ]	[ ]	[ ]

b.	**Employer:**	[ ]	[ ]	[ ]
c.	**Employer:**	[ ]	[ ]	[ ]

(3) **Time period.** Subject to any exceptions noted under Election 13(b)(4), the Plan credits as Service under Elections 13(b)(1) or (2) *(Choose one or more of a., b., and c. as applicable.)*:

a. **[n/a] All.** All service, regardless of when rendered.

b. **[n/a] Service after.** All service, which is or was rendered after: *(specify date).*

c. **[n/a] Service before.** All service, which is or was rendered before: *(specify date).*

(4) **[n/a] Describe elective Predecessor Employer Service crediting:**

[*Note: Under Election 13(b)(4), the Employer may describe service crediting from the elections available under Elections 13(b)(1) through (3), or a combination thereof as to a Participant group and/or Contribution Type (e.g., For all purposes credit all service with X, but credit service with Y only on/after 1/1/05 OR Credit all service for all purposes with entities the Employer acquires after 12/31/04 OR Service crediting for X Company applies only for purposes of Nonelective Contributions and not for Matching Contributions).*]

ARTICLE II
ELIGIBILITY REQUIREMENTS

14. ELIGIBILITY **(2.01)**. To become a Participant in the Plan, an Eligible Employee must satisfy *(Choose one of (a), (b), or (c).)*:

[*Note: If the Employer under a safe harbor plan elects "early" eligibility for Elective Deferrals (e.g., less than one Year of Service and age 21), but does not elect early eligibility for any Safe Harbor Contributions, also see Election 30(g).*]

[*Note: No eligibility conditions apply to Prevailing Wage Contributions. See Section 2.01(D).*]

(a) **[n/a] No conditions.** No eligibility conditions as to all Contribution Types. Entry is on the Employment Commencement Date (if that date is also an Entry Date), or if later, upon the next following Plan Entry Date *(skip to Election 16)*.

(b) **[n/a] Eligibility - same for all Contribution Types.** To become a Participant in the Plan as to all Contribution Types, an Eligible Employee must satisfy the following eligibility conditions *(Choose one or more of (e) through (k). Choose column (1) for each option elected at (e) through (j).)*:

(c) **[X] Eligibility - different conditions apply.** To become a Participant in the Plan for the designated Contribution Types, an Eligible Employee must satisfy the following eligibility conditions (either as to all Contribution Types or as to the designated Contribution Type) *(Choose one or more of (d) through (k). Choose Contribution Type as applicable.)*:

[*Note: For this Election 14, unless described otherwise in Election 14(k), or the context otherwise requires, Elective Deferrals includes Pre-Tax Deferrals, Roth Elective Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Safe Harbor Matching Contributions under Section 3.05(E)(3) and Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions (except Safe Harbor Nonelective Contributions under Section 3.05(E)(2) and Operational QNECs under Section 3.04(C)(2)). Safe Harbor includes Safe Harbor Nonelective and Safe Harbor Matching Contributions. If the Employer elects more than one Year of Service as to Additional Matching, the Plan will not satisfy the ACP test safe harbor. See Section 3.05(F)(3).*]

Eligibility Conditions			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective	(5) Safe Harbor
(d)	**[n/a]**	**None.** Entry on the Employment Commencement Date (if that date is also an Entry Date) or if later, upon the next following Plan Entry Date.	**N/A** (See Election 14(a))		**[ ]**	**[ ]**	**[ ]**	**[ ]**
(e)	**[X]**	**Age** 21 *(not to exceed age 21)*.	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**
(f)	**[X]**	**One Year of Service.** See Election 16(a).	**[ ]**	**OR**	**[ ]**	**[ ]**	**[X]**	**[ ]**
(g)	**[n/a]**	**Two Years of Service** (without an intervening Break in Service). 100% vesting is required. [*Note: Two Years of Service does not apply to Elective Deferrals, Safe Harbor Contributions or SIMPLE Contributions.*]	**N/A**		**N/A**	**[ ]**	**[ ]**	**N/A**

(h)	**[n/a]**	**month(s)** *(not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions)*. If more than 12 months, 100% vesting is required. Service need not be continuous (no minimum Hours of Service required, and is mere passage of time). [*Note: While satisfying a months of service condition without an Hours of Service requirement involves the mere passage of time, the Plan need not apply the Elapsed Time Method in Election 12(c) above, and still may elect the Actual Method in 12(a) above.*]	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**
(i)	**[n/a]**	**month(s) with at least Hours of Service in each month** *(not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions)*. If more than 12 months, 100% vesting is required. If the Employee does not complete the designated Hours of	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**

Service each month during the specified monthly time period, the Employee is subject to the one Year of Service (or two Years of Service if elect more than 12 months) requirement as defined in Election 16. The months during which the Employee completes the specified Hours of Service *(Choose one of (1) or (2).)*:

(1) **[n/a] Consecutive.** Must be consecutive.

(2) **[n/a] Not consecutive.** Need not be consecutive.

(j) **[n/a]** **Hours of Service within the time period following the Employee's Employment Commencement Date** *(not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions)*. If more than 12 months, 100% vesting is required. If the Employee does not complete the designated Hours of Service during the specified time period (if any), the Employee is subject to the one Year of Service (or two Years of Service if elect more than 12 months) requirement as defined in Election 16. **[ ] OR [ ] [ ] [ ] [ ]**

[*Note: The Employer may leave the time period option blank in Election 14(j) if the Employer wishes to impose an Hour of Service requirement without specifying a time period within which an Employee must complete the required Hours of Service.*]

(k) **[n/a] Describe eligibility conditions:**

[*Note: The Employer may use Election 14(k) to describe different eligibility conditions as to different Contribution Types or Employee groups (e.g., As to all Contribution Types, no eligibility requirements for Division A Employees and one Year of Service as to Division B Employees). The Employer also may elect different ages for different Contribution Types and/or to specify different months or Hours of Service requirements under Elections 14(h), (i), or (j) as to different Contribution Types. Any election must satisfy Code §410(a).*]

15. <u>SPECIAL ELIGIBILITY EFFECTIVE DATE (DUAL ELIGIBILITY)</u> **(2.01(E))**. The eligibility conditions of Election 14 and the entry date provisions of Election 17 apply to all Employees unless otherwise elected below *(Choose (a) or (b) if applicable.)*:

[*Note: Elections 15(a) or (b) may trigger a coverage failure under Code §410(b).*]

(a) **[n/a] Waiver of eligibility conditions for certain Employees.** For all Contribution Types, the eligibility conditions and entry dates apply solely to an Eligible Employee employed or reemployed by the Employer after *(specify date)*. If the Eligible Employee was employed or reemployed by the Employer by the specified date, the Employee will become a Participant on the latest of: (i) the Effective Date; (ii) the restated Effective Date; (iii) the Employee's Employment Commencement Date or Re-Employment Commencement Date; or (iv) the date the Employee attains age *(not exceeding age 21)*.

[*Note: If the Employer does not wish to impose an age condition under clause (iv) as part of the requirements for the eligibility conditions waiver, leave the age blank.*]

(b) **[n/a] Describe special eligibility Effective Date(s):**

[*Note: Under Election 15(b), the Employer may describe special eligibility Effective Dates as to a Participant group and/or Contribution Type (e.g., Eligibility conditions apply only as to Nonelective Contributions and solely as to the Eligible Employees of Division B who were hired or reemployed by the Employer after January 1, 2012).*]

16. <u>YEAR OF SERVICE - ELIGIBILITY</u> **(2.02(A))**. *(Choose (a), (b), and (c) as applicable.)*:

[*Note: If the Employer under Election 14 elects a one or two Year(s) of Service condition (including any requirement which defaults to such conditions under Elections 14(i), (j), and (k)) or elects to apply a Year of Service for eligibility under any other Adoption Agreement election, the Employer should complete this Election 16. The Employer should not complete Election 16 if it elects the Elapsed Time Method for eligibility.*]

(a) **[X] Year of Service.** An Employee must complete 1,000 Hour(s) of Service during the relevant Eligibility Computation Period to receive credit for one Year of Service under Article II. [*Note: The number may not exceed 1,000. If left blank, the requirement is 1,000 Hours of Service.*]

(b) **[X] Subsequent Eligibility Computation Periods.** After the Initial Eligibility Computation Period described in Section 2.02(C)(2), the Plan measures Subsequent Eligibility Computation Periods as *(Choose one of (1), (2), or (3).)*:

(1) **[X] Plan Year.** The Plan Year beginning with the Plan Year which includes the first anniversary of the Employee's Employment Commencement Date.

(2) **[n/a] Anniversary Year.** The Anniversary Year, beginning with the Employee's second Anniversary Year.

(3) **[n/a] Split.** The Plan Year as described in Election 16(b)(1) as to: *(describe Contribution Type(s))* and the Anniversary Year as described in Election 16(b)(2) as to: *(describe Contribution Type(s)).*

[*Note: To maximize delayed entry under a two Years of Service condition for Nonelective Contributions or Matching Contributions, the Employer should elect to remain on the Anniversary Year for such contributions.*]

(c) **[n/a] Describe:**
(e.g., Anniversary Year as to Division A and Plan Year as to Division B.)

17. <u>ENTRY DATE</u> **(2.02(D))**. Entry Date means the Effective Date and *(Choose one or more of (a) through (g). Choose Contribution Types as applicable.)*:

[*Note: For this Election 17, unless described otherwise in Election 17(g), Elective Deferrals includes Pre-Tax Deferrals, Roth Elective Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions (except Operational QNECs under Section 3.04(C)(2)). Entry as to Prevailing Wage Contributions is on the Employment Commencement Date. See Section 2.02(D)(3).*]

			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	[n/a]	**Semi-annual.** The first day of the first month and of the seventh month of the Plan Year.	[ ]	OR	[ ]	[ ]	[ ]
(b)	[n/a]	**First day of Plan Year.**	[ ]	OR	[ ]	[ ]	[ ]
(c)	[X]	**First day of each Plan Year quarter.**	[ ]	OR	[ ]	[ ]	[X]
(d)	[n/a]	**The first day of each month.**	[ ]	OR	[ ]	[ ]	[ ]
(e)	[X]	**Immediate.** Upon Employment Commencement Date or if later, upon satisfaction of eligibility conditions.	[ ]	OR	[X]	[X]	[ ]
(f)	[n/a]	**First day of each payroll period.**	[ ]	OR	[ ]	[ ]	[ ]

(g) **[n/a] Describe Entry Date(s):**

[*Note: Under Election 17(g), the Employer may describe Entry Dates from the elections available under Elections 17(a) through (f), or a combination thereof as to a Participant group and/or Contribution Type or may elect additional Entry Dates (e.g., As to Matching Contributions excluding Additional Matching, immediate as to Division A Employees and semi-annual as to Division B Employees OR The earlier of the Plan's semi-annual Entry Dates or the entry dates under the Employer's medical plan).*]

18. <u>PROSPECTIVE/RETROACTIVE ENTRY DATE</u> **(2.02(D))**. An Employee after satisfying the eligibility conditions in Election 14 will become a Participant (unless an Excluded Employee under Election 8) on the Entry Date (if employed on that date) *(Choose one or more of (a) through (f). Choose Contribution Type as applicable.)*:

[*Note: Unless otherwise excluded under Election 8, an Employee who remains employed by the Employer on the relevant date must become a Participant by the earlier of: (i) the first day of the Plan Year beginning after the date the Employee completes the age and service requirements of Code §410(a); or (ii) 6 months after the date the Employee completes those requirements. For this Election 18, unless described otherwise in Election 18(f), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions, (except Operational QNECs under Section 3.04(C)(2)).*]

			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	[X]	**Immediately following or coincident with** the date the Employee completes the eligibility conditions.	[ ]	OR	[ ]	[ ]	[X]
(b)	[n/a]	**Immediately following** the date the Employee completes the eligibility conditions.	[ ]	OR	[ ]	[ ]	[ ]
(c)	[n/a]	**Immediately preceding or coincident with** the date the Employee completes the eligibility conditions.	N/A		N/A	[ ]	[ ]
(d)	[n/a]	**Immediately preceding** the date the Employee completes the eligibility conditions.	N/A		N/A	[ ]	[ ]
(e)	[n/a]	**Nearest** the date the Employee completes the	N/A		N/A	[ ]	[ ]

eligibility conditions.

(f) **[n/a] Describe retroactive/prospective entry relative to Entry Date:**

[*Note: Under Election 18(f), the Employer may describe the timing of entry relative to an Entry Date from the elections available under Elections 18(a) through (e), or a combination thereof as to a Participant group and/or Contribution Type (e.g., As to Matching Contributions excluding Additional Matching nearest as to Division A Employees and immediately following as to Division B Employees).*]

19. BREAK IN SERVICE - PARTICIPATION **(2.03)**. The one year hold-out rule described in Section 2.03(C) *(Choose one of (a), (b), or (c).)*:

(a) **[X] Does not apply.**

(b) **[n/a] Applies.** Applies to the Plan and to all Participants.

(c) **[n/a] Limited application.** Applies to the Plan, but only to a Participant who has incurred a Severance from Employment.

[*Note: The Plan does not apply the rule of parity under Code §410(a)(5)(D) unless the Employer in Appendix B specifies otherwise. See Section 2.03(D).*]

ARTICLE III
PLAN CONTRIBUTIONS AND FORFEITURES

20. ELECTIVE DEFERRAL LIMITATIONS **(3.02(A))**. The following limitations apply to Elective Deferrals under Election 6(b), which are in addition to those limitations imposed under the basic plan document *(Choose (a) or choose (b) and (c) as applicable.)*:

(a) **[X] None.** No additional Plan imposed limits *(skip to Election 21)*.

[*Note: The Employer under Election 20 may not impose a lower deferral limit applicable only to Catch-Up Eligible Participants and the Employer's elections must be nondiscriminatory. The elected limits apply to Pre-Tax Deferrals and to Roth Deferrals unless described otherwise. Under a safe harbor plan: (i) NHCEs must be able to defer enough to receive the maximum Safe Harbor Matching and Additional Matching Contribution under the Plan and must be permitted to defer any lesser amount; and (ii) the Employer may limit Elective Deferrals to a whole percentage of Compensation or to a whole dollar amount. See Section 1.57(C) as to administrative limitations on Elective Deferrals.*]

(b) **[n/a] Additional Plan limit(s).** *(Choose (1) and (2) as applicable. Complete (3) if (1) or (2) is chosen.)*:

(1) **[n/a] Maximum deferral amount.** A Participant's Elective Deferrals may not exceed: *(specify dollar amount and/or percentage of Compensation).*

(2) **[n/a] Minimum deferral amount.** A Participant's Elective Deferrals may not be less than: *(specify dollar amount and/or percentage of Compensation).*

(3) **Application of limitations.** The Election 20(b)(1) and (2) limitations apply based on Elective Deferral Compensation described in Elections 9 - 11. If the Employer elects Plan Year/Participating Compensation under column (1) and in Election 10 elects Participating Compensation, in the Plan Years commencing after an Employee becomes a Participant, apply the elected minimum or maximum limitations to the Plan Year. Apply the elected limitation based on such Compensation during the designated time period and only to HCEs as elected below. *(Choose a. or choose b. and c. as applicable. Under each of a., b., or c. choose one of (1) or (2). Choose (3) if applicable.)*:

			(1) Plan Year/Participating Compensation	(2) Payroll period	(3) HCEs only
a.	[n/a]	**Both.** Both limits under Elections 20(b)(1) and (2).	[ ]	[ ]	[ ]
b.	[n/a]	**Maximum limit.** The maximum amount limit under Election 20(b)(1).	[ ]	[ ]	[ ]
c.	[n/a]	**Minimum limit.** The minimum amount limit under Election 20(b)(2).	[ ]	[ ]	[ ]

(c) **[n/a] Describe Elective Deferral limitation(s):**

[*Note: Under Election 20(c), the Employer: (i) may describe limitations on Elective Deferrals from the elections available under Elections 20(a) and (b) or a combination thereof as to a Participant group (e.g., No limit applies to Division A Employees. Division B Employees may not defer in excess of 10% of Plan Year Compensation); (ii) may elect a different time period to which the limitations apply; and/or (iii) may apply a different limitation to Pre-Tax Deferrals and to Roth Deferrals.*]

21. AUTOMATIC DEFERRAL **(ACA/EACA/QACA) (3.02(B))**. The Automatic Deferral provisions of Section 3.02(B) *(Choose one of (a) or (b). Also see Election 34 regarding Automatic Escalation of Salary Reduction Agreements.)*:

(a) **[X] Do not apply.** The Plan is not an ACA, EACA, or QACA *(skip to Election 22)*.

(b) **[n/a] Apply.** The Automatic Deferral Effective Date is the effective date of automatic deferrals or, as appropriate, any subsequent amendment thereto. *(As to an EACA or QACA, this provision may not be effective earlier than Plan Years beginning on or after January 1, 2008). (Complete (1), (2), and (3). Complete (4) and (5) if an EACA or an EACA/QACA. Choose (6), (7), and/or (8) as applicable.)*:

(1) **Type of Automatic Deferral Arrangement.** The Plan is an *(Choose one of a., b., or c.)*:

a. **[n/a] ACA.** The Plan is an Automatic Contribution Arrangement (ACA) under Section 3.02(B)(1).

b. **[n/a] EACA.** The Plan is an Eligible Automatic Contribution Arrangement (EACA) under Section 3.02(B)(2).

c. **[n/a] EACA/QACA.** The Plan is a combination EACA and Qualified Automatic Contribution Arrangement (QACA) under Sections 3.02(B)(3) and 3.05(J).

[*Note: If the Employer chooses Elections 21(b)(1)c, the Employer also must choose election 6(e) and complete Election 30 as to the Safe Harbor Contributions under the QACA.*]

(2) **Participants affected.** The Automatic Deferral applies to *(Choose one of a., b., c., or d. Choose e. if applicable.)*:

a. **[n/a] All Participants.** All Participants, regardless of any prior Salary Reduction Agreement, unless and until they make a Contrary Election after the Automatic Deferral Effective Date.

b. **[n/a] Election of at least Automatic Deferral Percentage.** All Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral Effective Date provided that the Elective Deferral amount under the Agreement is at least equal to the Automatic Deferral Percentage.

c. **[n/a] No existing Salary Reduction Agreement.** All Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral Effective Date regardless of the Elective Deferral amount under the Agreement.

d. **[n/a] New Participants (not applicable to QACA).** Each Employee whose Entry Date is on or following the Automatic Deferral Effective Date.

e. **[n/a] Describe affected Participants (not applicable to QACA):**

[*Note: The Employer in Election 21(b)(2)e. may further describe affected Participants, e.g., non-Collective Bargaining Employees OR Division A Employees. However, for Plan Years commencing on or after January 1, 2010, all Employees eligible to defer must be Covered Employees to apply the 6-month correction period without excise tax under Code §4979.*]

(3) **Automatic Deferral Percentage/Scheduled increases.** *(Choose one of a., b., or c.)*:

a. **[n/a] Fixed percentage.** The Employer, as to each Participant affected, will withhold as the Automatic Deferral Percentage, % from the Participant's Compensation each payroll period unless the Participant makes a Contrary Election. The Automatic Deferral Percentage will or will not increase in Plan Years following the Plan Year containing the Automatic Deferral Effective Date (or, if later, the Plan Year or partial Plan Year in which the Automatic Deferral first applies to a Participant) as follows *(Choose one of d., e., or f.)*:

[*Note: In order to satisfy the QACA requirements, enter an amount between 6% and 10% if no scheduled increase.*]

b. **[n/a] QACA statutory increasing schedule.** The Automatic Deferral Percentage will be:

Plan Year of application to a Participant	Automatic Deferral Percentage
1	3 %
2	3 %
3	4 %
4	5 %
5 and thereafter	6 %

c. **[n/a] Other increasing schedule.** The Automatic Deferral Percentage will be:

Plan Year of application to a Participant	Automatic Deferral Percentage
	%
	%
	%
	%
	%

d. **[n/a] No scheduled increase.** The Automatic Deferral Percentage applies in all Plan Years.

e. **[n/a] Automatic increase.** The Automatic Deferral Percentage will increase by % per year up to a maximum of % of Compensation.

f. **[n/a] Describe increase:**

[*Note: To satisfy the QACA requirements, the Automatic Deferral Percentage must be: (i) a fixed percentage which is at least 6% and not more than 10% of Compensation; (ii) an increasing Automatic Deferral Percentage in accordance with the schedule under Election 20(b)(3)b.; or (iii) an alternative schedule which must require, for each Plan Year, an Automatic Deferral Percentage that is at least equal to the Automatic Deferral Percentage under the schedule in Election 21(b)(3)b. and which does not exceed 10%. See Section 3.02(B)(3).*]

(4) **EACA permissible withdrawal.** The permissible withdrawal provisions of Section 3.02(B)(2)(d) *(Choose one of a., b., or c.)*:

a. **[n/a] Do not apply.**

b. **[n/a] 90 day withdrawal.** Apply within 90 days of the first Automatic Deferral.

c. **[n/a] 30-90 day withdrawal.** Apply, within days of the first Automatic Deferral *(may not be less than 30 nor more than 90 days)*.

(5) **Contrary Election/Covered Employee.** For Plan Years beginning on or after January 1, 2010, any Participant who makes a Contrary Election *(Choose one of a. or b.; leave blank if an ACA or a QACA not subject to the ACP test.)*:

a. **[n/a] Covered Employee.** Is a Covered Employee and continues to be covered by the EACA provisions. [*Note: Under this Election, the Participant's Contrary Election will remain in effect, but the Participant must receive the EACA annual notice.*]

b. **[n/a] Not a Covered Employee.** Is not a Covered Employee and will not continue to be covered by the EACA provisions. [*Note: Under this Election, the Participant no longer must receive the EACA annual notice, but the Plan cannot use the six-month period for relief from the excise tax of Code §4979(f)(1).*]

(6) **Change Date.** The Elective Deferrals under Election 21(b)(3)b., c., e., or f. will increase on the following day each Plan Year:

a. **[n/a] First day of the Plan Year.**

b. **[n/a] Other:**
(must be a specified or definitely determinable date that occurs at least annually)

(7) **First Year of Increase.** The automatic increase under Election 21(b)(3)e. or f. will apply to a Participant beginning with the first Change Date after the Participant first has automatic deferrals withheld, unless a. is selected below:

a. **[n/a] The increase will apply as of the second Change Date thereafter.**

(8) **[n/a] Describe Automatic Deferral:**

[*Note: Under Election 21(b)(8), the Employer may describe Automatic Deferral provisions from the elections available under Election 21 and/or a combination thereof as to a Participant group (e.g., Automatic Deferrals do not apply to Division A Employees. All Division B Employee/Participants are subject to an Automatic Deferral Amount equal to 3% of Compensation effective as of January 1, 2013).*]

22. CODA **(3.02(C))**. The CODA provisions of Section 3.02(C) *(Choose one of (a) or (b).)*:

(a) **[X] Do not apply.**

(b) **[n/a] Apply.** For each Plan Year for which the Employer makes a designated CODA contribution under Section 3.02(C), a Participant may elect to receive directly in cash not more than the following portion (or, if less, the Elective Deferral Limit) of his/her proportionate share of that CODA contribution *(Choose one of (1) or (2).)*:

(1) **[n/a] All or any portion.**

(2) **[n/a] %**

23. CATCH-UP DEFERRALS **(3.02(D))**. The Plan permits Catch-Up Deferrals unless the Employer elects otherwise below. *(Choose (a) if applicable.)*

(a) **[n/a] Not Permitted.** May not make Catch-Up Deferrals to the Plan.

24. MATCHING CONTRIBUTIONS (EXCLUDING SAFE HARBOR MATCH AND ADDITIONAL MATCH UNDER SECTION 3.05) **(3.03(A))**. The Employer Matching Contributions under Election 6(c) are subject to the following additional elections regarding type (discretionary/fixed), rate/amount, limitations and time period (collectively, such elections are "the matching formula") and the allocation of Matching Contributions is subject to Section 3.06 except as otherwise provided *(Choose one or more of (a) through (g) as applicable; then, for the elected match, complete (1), (2), and/or (3) as applicable. If the Employer completes (2) or (3), also complete one of (4), (5), or (6).)*:

[*Note: If the Employer wishes to make any Matching Contributions that satisfy the ADP or ACP safe harbor, the Employer should make these Elections under Election 30, and not under this Election 24.*]

	(1) Match Rate/Amt [$/% of Elective Deferrals]	**(2) Limit on Deferrals Matched [$/% of Compensation]**	**(3) Limit on Match Amount [$/% of Compensation]**	**(4) Apply limit(s) per Plan Year ["true-up"]**	**(5) Apply limit(s) per payroll period [no "true-up"]**	**(6) Apply limit(s) per designated time period [no "true-up"]**
(a) **[n/a] Discretionary** — see Section 1.35(B) (*The Employer may, but is not required to complete (a)(1)-(6).*				**[ ]**	**[ ]**	**[ ]**

See the "Note" following Election 24.)

(b) **[n/a] Fixed** — uniform rate/amount			**[ ]**	**[ ]**	**[ ]**
(c) **[n/a] Fixed** — tiered	**Elective Deferral%**	**Matching Rate**	**[ ]**	**[ ]**	**[ ]**
	%	%			
	%	%			
	%	%			
	%	%			
(d) **[n/a] Fixed** — Years of Service	**Years of Service**	**Matching Rate**	**[ ]**	**[ ]**	**[ ]**
		%			
		%			
		%			
		%			

(1) "Years of Service" under this Election 24(d) means *(Choose one of a. or b.)*:

a. **[n/a] Eligibility.** Years of Service for eligibility in Election 16.

b. **[n/a] Vesting.** Years of Service for vesting in Elections 43 and 44.

(e) **[n/a] Fixed** — multiple formulas	Formula 1:	**[ ]**	**[ ]**	**[ ]**

	Formula 2:	**[ ]**	**[ ]**	**[ ]**
	Formula 3:	**[ ]**	**[ ]**	**[ ]**

(f) **[n/a] Related and Participating Employers.** If any Related and Participating Employers (or in the case of a Multiple Employer Plan, Participating Employers regardless of whether they are Related Employers) contribute Matching Contributions to the Plan, the following apply *(Complete (1) and (2).)*:

(1) **Matching formula.** The matching formula for the Participating Employer(s) *(Choose one of a. or b.)*:

a. **[n/a] All the same.** Is (are) the same as for the Signatory Employer under this Election 24.

b. **[n/a] At least one different.** Is (are) as follows: .

(2) **Allocation sharing.** The Plan Administrator will allocate the Matching Contributions made by the Signatory Employer and by any Participating Employer *(Choose one of a. or b.)*:

a. **[n/a] Employer by Employer.** Only to the Participants directly employed by the contributing Employer.

b. **[n/a] Across Employer lines.** To all Participants regardless of which Employer directly employs them and regardless of whether their direct Employer made Matching Contributions for the Plan Year.

[*Note: Unless the Plan is a Multiple Employer Plan, the Employer should not elect 24(f) unless there are Related Employers which are also Participating Employers. See Section 1.24(D).*]

(g) **[n/a] Describe:**
(The formula described must satisfy the definitely determinable requirement under Treas. Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

[*Note: See Section 1.35(A) as to Fixed Matching Contributions. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation. The matching rate/amount is the specified rate/amount of match for the corresponding Elective Deferral amount/percentage. Any Matching Contributions apply to Pre-Tax Deferrals and to Roth Deferrals unless described otherwise in Election 24(g). Matching Contributions for nondiscrimination testing purposes are subject to the targeting limitations. See Section 4.10(D). The Employer under Election 24(a) in its discretion may determine the amount of a Discretionary Matching Contribution and the matching contribution formula. Alternatively, the Employer in Election 24(a) may specify the Discretionary Matching Contribution formula.*]

25. <u>QMAC (PLAN-DESIGNATED)</u> **(3.03(C)(1))**. The following provisions apply regarding Plan-Designated QMACs *(Choose one of (a) or (b).)*:

[*Note: Regardless of its elections under this Election 25, the Employer under Section 3.03(C)(2) may elect for any Plan Year where the Plan is using Current Year Testing to make Operational QMACs which the Plan Administrator will allocate only to NHCEs for purposes of correction of an ADP or ACP test failure.*]

(a) **[n/a] Not applicable.** There are no Plan-Designated QMACs.

(b) **[n/a] Applies.** There are Plan-Designated QMACs to which the following provisions apply *(Complete (1) and (2).)*:

(1) **Matching Contributions affected.** The following Matching Contributions (as allocated to the designated allocation group under Election 25(b)(2)) are Plan-Designated QMACs *(Choose one of a. or b.)*:

a. **[n/a] All.** All Matching Contributions.

b. **[n/a] Designated.** Only the following Matching Contributions under Election 24: .

(2) **Allocation Group.** Subject to Section 3.06, allocate the Plan-Designated QMAC *(Choose one of a. or b.)*:

a. **[n/a] NHCEs only.** Only to NHCEs who make Elective Deferrals subject to the Plan-Designated QMAC.

b. **[n/a] All Participants.** To all Participants who make Elective Deferrals subject to the Plan-Designated QMAC.

The Plan Administrator will allocate all other Matching Contributions as Regular Matching Contributions under Section 3.03(B), except as provided in Sections 3.03(C)(2) or 3.05.

[*Note: See Section 4.10(D) as to targeting limitations applicable to QMAC nondiscrimination testing.*]

26. <u>MATCHING CATCH-UP DEFERRALS</u> **(3.03(D))**. If a Participant makes a Catch-Up Deferral, the Employer *(Choose one of (a) or (b); leave blank if Election 23(a) is selected.)*:

(a) **[X] Match.** Will apply to the Catch-Up Deferral *(Choose one of (1) or (2).)*:

(1) **[X] All.** All Matching Contributions.

(2) **[n/a] Designated.** The following Matching Contributions in Election 24: .

(b) **[n/a] No Match.** Will not match any Catch-Up Deferrals.

[*Note: Election 26 does not apply to a safe harbor 401(k) plan unless the Employer will apply the ACP test. See Elections 38(a)(2)b. In this case, Election 26 applies only to Additional Matching, if any. A safe harbor 401(k) Plan will apply the Basic Match, QACA Basic Match or Enhanced Match to Catch-Up Deferrals. If the Employer elects to apply the ACP test safe harbor under Election 38(a)(2)a., Election 26 does not apply and the Plan also will apply any Additional Match to Catch-Up Deferrals.*]

27. <u>NONELECTIVE CONTRIBUTIONS (TYPE/AMOUNT) INCLUDING PREVAILING WAGE CONTRIBUTIONS</u> **(3.04(A))**. The Employer Nonelective Contributions under Election 6(d) are subject to the following additional elections as to type and amount *(Choose one or more of (a) through (e) as applicable.)*:

(a) **[X] Discretionary.** An amount the Employer in its sole discretion may determine.

(b) **[n/a] Fixed.** *(Choose one or more of (1) through (3) as applicable.)*:

(1) **[n/a] Uniform %.** % of each Participant's Compensation, per *(e.g., Plan Year, month).*

(2) **[n/a] Fixed dollar amount.** $, per *(e.g., Plan Year, month, HOS, per Participant per month).*

(3) **[n/a] Describe:**
(The formula described must satisfy the definitely determinable requirement under Treas. Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

[*Note: The Employer under Election 27(b)(3) may specify any Fixed Nonelective Contribution formula not described under Elections 27(b)(1) or (2) (e.g., For each Plan Year, 2% of net profits exceeding $50,000, or The cash value of unused paid time off, as described in Section 3.04(A)(2)(a) and the Employer's Paid Time Off Plan) and/or the Employer may describe different Fixed Nonelective Contributions as applicable to different Participant groups (e.g., A Fixed Nonelective Contribution equal to 5% of Plan Year Compensation applies to Division A Participants and a Fixed Nonelective Contribution equal to $500 per Participant each Plan Year applies to Division B Participants).*]

(c) **[n/a] Prevailing Wage Contribution.** The Prevailing Wage Contribution amount(s) specified for the Plan Year or other applicable period in the Employer's Prevailing Wage Contract(s). The Employer will make a Prevailing Wage Contribution only to Participants covered by the Contract and only as to Compensation paid under the Contract. The Employer must specify the Prevailing Wage Contribution by attaching an appendix to the Adoption Agreement that indicates the contribution rate(s) applicable to the prevailing wage employment/job classification(s). If the Participant accrues an allocation of Employer Contributions (including forfeitures) under the Plan or any other Employer plan in addition to the Prevailing Wage Contribution, the Plan Administrator will *(Choose one of (1) or (2).)*:

(1) **[n/a] No offset.** Not reduce the Participant's Employer Contribution allocation by the amount of the Prevailing Wage Contribution.

(2) **[n/a] Offset.** Reduce the Participant's Employer Contribution allocation by the amount of the Prevailing Wage Contribution.

(d) **[X] Related and Participating Employers.** If any Related and Participating Employers (or in the case of a Multiple Employer Plan, Participating Employers regardless of whether they are Related Employers) contribute Nonelective Contributions to the Plan, the contribution formula(s) *(Choose one of (1) or (2).)*:

(1) **[X] All the same.** Is (are) the same as for the Signatory Employer under this Election 27.

(2) **[n/a] At least one different.** Is (are) as follows: .

[*Note: Unless the Plan is a Multiple Employer Plan, the Employer should not elect 27(d) unless there are Related Employers which are also Participating Employers. See Section 1.24(D). The Employer electing 27(d) also must complete Election 28(g) as to the allocation methods which apply to the Participating Employers.*]

(e) **[n/a] Describe:**
(The formula described must satisfy the definitely determinable requirement under Treas. Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

[*Note: Under Election 27(e), the Employer may describe the amount and type of Nonelective Contributions from the elections available under Election 27 and/or a combination thereof as to a Participant group (e.g., A Discretionary Nonelective Contribution applies to Division A Employees. A Fixed Nonelective Contribution equal to 5% of Plan Year Compensation applies to Division B Employees).*]

28. NONELECTIVE CONTRIBUTION ALLOCATION **(3.04(B))**. The Plan Administrator, subject to Section 3.06, will allocate to each Participant any Nonelective Contribution (excluding QNECs) under the following contribution allocation formula *(Choose one or more of (a) through (h) as applicable.)*:

(a) **[X] Pro rata.** As a uniform percentage of Participant Compensation.

(b) **[n/a] Permitted disparity.** In accordance with the permitted disparity allocation provisions of Section 3.04(B)(2), under which the following permitted disparity formula and definition of "Excess Compensation" apply *(Complete (1) and (2).)*:

(1) **Formula** *(Choose one of a., b., or c.)*:

a. **[n/a] Two-tiered.**

b. **[n/a] Four-tiered.**

c. **[n/a] Two-tiered**, except that the four-tiered formula will apply in any Plan Year for which the Plan is top-heavy.

(2) **Excess Compensation.** For purposes of Section 3.04(B)(2), "Excess Compensation" means Compensation in excess of the integration level provided below *(Choose one of a. or b.)*:

a. **[n/a] Percentage amount.** % *(not exceeding 100%)* of the Taxable Wage Base in effect on the first day of the Plan Year, rounded to the next highest $ *(not exceeding the Taxable Wage Base).*

b. **[n/a] Dollar amount.** The following amount: $ *(not exceeding the Taxable Wage Base in effect on the first day of the Plan Year).*

(c) **[n/a] Incorporation of contribution formula.** The Plan Administrator will allocate any Fixed Nonelective Contribution under Elections 27(b), 27(d), or 27(e), or any Prevailing Wage Contribution under Election 27(c), in accordance with the contribution formula the Employer adopts under those Elections.

(d) **[n/a] Classifications of Participants.** [*This is a nondesigned based safe harbor allocation method.*] In accordance with the **classifications** allocation provisions of Section 3.04(B)(3). (Complete *(1) and (2).)*:

(1) **Description of the classifications.** [*This is a nondesigned based safe harbor allocation method.*] The classifications are *(Choose one of a., b., or c.)*:

[*Note: Typically, the Employer would elect 28(d) where it intends to satisfy nondiscrimination requirements using "cross-testing" under Treas. Reg. §1.401(a)(4)-8. However, choosing this election does not necessarily require application of cross-testing and the Plan may be able to satisfy nondiscrimination as to its classification-based allocations by testing allocation rates.*]

a. **[n/a] Each in own classification.** Each Participant constitutes a separate classification.

b. **[n/a] NHCEs/HCEs.** Nonhighly Compensated Employee/Participants and Highly Compensated Employee/Participants.

c. **[n/a] Describe the classifications:**

[*Note: Any classifications under Election 28(d) must result in a definitely determinable allocation under Treas. Reg. §1.401-1(b)(1)(ii). The classifications cannot limit the NHCEs benefiting under the Plan only to those NHCE/Participants with the lowest Compensation and/or the shortest periods of Service and who may represent the minimum number of benefiting NHCEs necessary to pass coverage under Code §410(b). In the case of a self-employed Participant (i.e., sole proprietorships or partnerships), the requirements of Treas. Reg. §1.401(k)-1(a)(6) apply and the allocation method should not result in a cash or deferred election for the self-employed Participant. The Employer by the due date of its tax return (including extensions) must advise the Plan Administrator or Trustee in writing as to the allocation rate applicable to each Participant under Election 28(d)(1)a. or applicable to each classification under Elections 28(d)(1)b. or c. for the allocation Plan Year.*]

(2) **Allocation method within each classification.** Allocate the Nonelective Contribution within each classification as follows *(Choose one of a., b., or c.)*:

a. **[n/a] Pro rata.** As a uniform percentage of Compensation of each Participant within the classification.

b. **[n/a] Flat dollar.** The same dollar amount to each Participant within the classification.

c. **[n/a] Describe:**
(e.g., Allocate pro rata to NHCEs and flat dollar to HCEs.)

(e) **[n/a] Age-based.** [*This is a nondesigned based safe harbor allocation method.*] In accordance with the age-based allocation provisions of Section 3.04(B)(5). The Plan Administrator will use the Actuarial Factors based on the following assumptions *(Complete both (1) and (2).)*:

(1) **Interest rate.** *(Choose one of a., b., or c.)*:

a. **[n/a] 7.5%** b. **[n/a] 8.0%** c. **[n/a] 8.5%**

(2) **Mortality table.** *(Choose one of a. or b.)*:

a. **[n/a] UP-1984.** See Appendix D.

b. **[n/a] Alternative:** *(Specify 1983 GAM, 1983 IAM, 1971 GAM or 1971 IAM and attach applicable tables using such mortality table and the specified interest rate as replacement Appendix D.)*

(f) **[n/a] Uniform points.** In accordance with the uniform points allocation provisions of Section 3.04(B)(6). Under the uniform points allocation formula, a Participant receives *(Choose one or both of (1) and (2). Choose (3) if applicable.)*:

(1) **[n/a] Years of Service.** point(s) for each Year of Service. The maximum number of Years of Service counted for points is .

"Year of Service" under this Election 28(f) means *(Choose one of a. or b.)*:

a. **[n/a] Eligibility.** Years of Service for eligibility in Election 16.

b. **[n/a] Vesting.** Years of Service for vesting in Elections 43 and 44.

[*Note: A Year of Service must satisfy Treas. Reg. §1.401(a)(4)-11(d)(3) for the uniform points allocation to qualify as a safe harbor allocation under Treas. Reg. §1.401(a)(4)-2(b)(3).*]

(2) **[n/a] Age.** point(s) for each year of age attained during the Plan Year.

(3) **[n/a] Compensation.** point(s) for each $ *(not to exceed $200)* increment of Plan Year Compensation.

(g) **[X] Related and Participating Employers.** If any Related and Participating Employers (or in the case of a Multiple Employer Plan, Participating Employers regardless of whether they are Related Employers) contribute Nonelective **Contributions** to the Plan, the Plan Administrator will allocate the Nonelective Contributions made by the Participating Employer(s) under Election 27(d) *(Complete (1) and (2).)*:

(1) **Allocation Method.** *(Choose one of a. or b.)*:

a. **[X] All the same.** Using the same allocation method as applies to the Signatory Employer under this Election 28.

b. **[n/a] At least one different.** Under the following allocation method(s): .

(2) **Allocation sharing.** The Plan Administrator will allocate the Nonelective Contributions made by the Signatory Employer *and* by any Participating Employer *(Choose one of a. or b.)*:

a. **[n/a] Employer by Employer.** Only to the Participants directly employed by the contributing Employer.

b. **[X] Across Employer lines.** To all Participants regardless of which Employer directly employs them and regardless of whether their direct Employer made Nonelective Contributions for the Plan Year.

[*Note: Unless the Plan is a Multiple Employer Plan, the Employer should not elect 28(g) unless there are Related Employers which are also Participating Employers. See Section 1.24(D) and Election 27(d). If the Employer elects 28(g)(2)a., the Employer should also elect 11(k)(2), to disregard the Compensation paid by "Y" Participating Employer in determining the allocation of the "X" Participating Employer contribution to a Participant (and vice versa) who receives Compensation from both X and Y. If the Employer elects 28(g)(2)b., the Employer should not elect 11(k)(2). Election 28(g)(2)a. does not apply to Safe Harbor Nonelective Contributions.*]

(h) **[n/a] Describe:**
(The formula described must satisfy the definitely determinable requirement under Treas. Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

29. <u>QNEC (PLAN-DESIGNATED)</u> **(3.04(C)(1))**. The following provisions apply regarding Plan-Designated QNECs *(Choose one of (a) or (b).)*:

[*Note: Regardless of its elections under this Election 29, the Employer under Section 3.04(C)(2) may elect for any Plan Year where the Plan is using Current Year Testing to make Operational QNECs which the Plan Administrator will allocate only to NHCEs for purposes of correction of an ADP or ACP test failure.*]

(a) **[X] Not applicable.** There are no Plan-Designated QNECs.

(b) **[n/a] Applies.** There are Plan-Designated QNECs to which the following provisions apply *(Complete (1), (2), and (3).)*:

(1) **Nonelective Contributions affected.** The following Nonelective Contributions (as allocated to the designated allocation group under Election 29(b)(2)) are Plan-Designated QNECs *(Choose one of a. or b.)*:

a. **[n/a] All.** All Nonelective Contributions.

b. **[n/a] Designated.** Only the following Nonelective Contributions under Election 27: .

(2) **Allocation Group.** Subject to Section 3.06, allocate the Plan-Designated QNEC *(Choose one of a. or b.)*:

a. **[n/a]** **NHCEs only.** Only to NHCEs under the method elected in Election 29(b)(3).

b. **[n/a]** **All Participants.** To all Participants under the method elected in Election 29(b)(3).

(3) **Allocation Method.** The Plan Administrator will allocate a Plan-Designated QNEC using the following method *(Choose one of a., b., c., or d.)*:

a. **[n/a]** **Pro rata.**

b. **[n/a]** **Flat dollar.**

c. **[n/a]** **Reverse.** See Section 3.04(C)(3).

d. **[n/a]** **Describe:**
(The formula described must satisfy the definitely determinable requirement under Treas. Reg.§1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

[*Note: See Section 4.10(D) as to targeting limitations applicable to QNEC nondiscrimination testing.*]

30. SAFE HARBOR 401(k) PLAN (SAFE HARBOR CONTRIBUTIONS/ADDITIONAL MATCHING CONTRIBUTIONS) **(3.05)**. The Employer under Election 6(e) will (or in the case of the Safe Harbor Nonelective Contribution may) contribute the following Safe Harbor Contributions described in Section 3.05(E) and will or may contribute Additional Matching Contributions described in Section 3.05(F) *(Choose one of (a) through (e) when and as applicable. Complete (f) and (i). Choose (g), (h), and (j) as applicable.)*:

(a) **[n/a] Safe Harbor Nonelective Contribution (including QACA).** The Safe Harbor Nonelective Contribution equals % of a Participant's Compensation [*Note: The amount in the blank must be at least 3%. The Safe Harbor Nonelective Contribution applies toward (offsets) most other Employer Nonelective Contributions. See Section 3.05(E)(12).*]

(b) **[n/a] Safe Harbor Nonelective Contribution (including QACA)/delayed year-by-year election (maybe and supplemental notices).** In connection with the Employer's provision of the maybe notice under Section 3.05(I)(1), the Employer elects into safe harbor status by giving the supplemental notice and by making this Election 30(b) to provide for a Safe Harbor Nonelective Contribution equal to % *(specify amount at least equal to 3%)* of a Participant's Compensation. This Election 30(b) and safe harbor status applies for the Plan Year ending: *(specify Plan Year end)*, which is the Plan Year to which the Employer's maybe and supplemental notices apply.

[*Note: An Employer distributing the maybe notice can use election 30(b) without completing the year. Doing so requires the Plan to perform Current Year Testing unless the Employer decides to elect safe harbor status. If the Employer wishes to elect safe harbor status for a single year, the Employer must amend the Plan to enter the Plan Year end above.*]

(c) **[X] Basic Matching Contribution.** A Matching Contribution equal to 100% of each Participant's Elective Deferrals not exceeding 3% of the Participant's Compensation, plus 50% of each Participant's Elective Deferrals in excess of 3% but not in excess of 5% of the Participant's Compensation. See Sections 1.35(E) and 3.05(E)(4). *(Complete (1).)*:

(1) **Time period.** For purposes of this Election 30(c), "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: each payroll period. [*Note: The Employer must complete the blank line with the applicable time period for computing the Basic Match, such as "each payroll period," "each calendar month," "each Plan Year quarter" or "the Plan Year."*]

(d) **[n/a] QACA Basic Matching Contribution.** A Matching Contribution equal to 100% of a Participant's Elective Deferrals not exceeding 1% of the Participant's Compensation, plus 50% of each Participant's Elective Deferrals in excess of 1% but not in excess of 6% of the Participant's Compensation. *(Complete (1).)*: [*Note: This election is available only if the Employer has elected the QACA automatic deferrals provisions under Election 21.*]

(1) **Time period.** For purposes of this Election 30(d), "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: . [*Note: The Employer must complete the blank line with the applicable time period for computing the QACA Basic Match, such as "each payroll period," "each calendar month," "each Plan Year quarter" or "the Plan Year."*]

(e) **[n/a] Enhanced Matching Contribution (including QACA).** See Sections 1.35(F) and 3.05(E)(6). *(Choose one of (1) or (2) and complete (3) for any election.)*:

(1) **[n/a] Uniform percentage.** A Matching Contribution equal to % of each Participant's Elective Deferrals but not as to Elective Deferrals exceeding % of the Participant's Compensation.

(2) **[n/a] Tiered formula.** A Matching Contribution equal to the specified matching rate for the corresponding level of each Participant's Elective Deferral percentage. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation.

Elective Deferral Percentage	Matching Rate
%	%
%	%
%	%

(3) **Time period.** For purposes of this Election 30(e), "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: . [*Note: The Employer must complete the blank line with the applicable time period for computing the Enhanced Match, such as "each payroll period," "each calendar month," "each Plan Year quarter" or "the Plan Year."*]

[*Note: The matching rate may not increase as the Elective Deferral percentage increases and the Enhanced Matching formula otherwise must satisfy the requirements of Code §§401(k)(12)(B)(ii) and (iii) (taking into account Code §401(k)(13)(D)(ii) in the case of a QACA). If the Employer elects to satisfy the ACP safe harbor under Election 38(a)(2)a., the Employer also must limit Elective Deferrals taken into account for the Enhanced Matching Contribution to a maximum of 6% of Plan Year Compensation.*]

(f) **Participants who will receive Safe Harbor Contributions.** The allocation of Safe Harbor Contributions *(Choose one of (1), (2), or (3). Choose (4) if applicable.)*:

(1) **[X] Applies to all Participants.** Applies to all Participants except as may be limited under Election 30(g).

(2) **[n/a] NHCEs only.** Is limited to NHCE Participants only and may be limited further under Election 30(g). No HCE will receive a Safe Harbor Contribution allocation.

(3) **[n/a] NHCEs and designated HCEs.** Is limited to NHCE Participants and to the following HCE Participants and may be limited further under Election 30(g): .

[*Note: Any HCE allocation group the Employer describes under Election 30(f)(3) must be definitely determinable. (e.g., Division "A" HCEs OR HCEs who own more than 5% of the Employer without regard to attribution rules).*]

(4) **[n/a] Applies to all Participants except Collective Bargaining Employees.** Notwithstanding Elections 30(f)(1), (2) or (3), the Safe Harbor Contributions are not allocated to Collective Bargaining (union) Employees and may be further limited under Election 30(g).

(g) **[n/a] Early Elective Deferrals/delay of Safe Harbor Contribution.** The Employer may elect this Election 30(g) only if the Employer in Election 14 elects eligibility requirements for Elective Deferrals of less than age 21 and/or one Year of Service but elects age 21 and one Year of Service for Safe Harbor Matching or for Safe Harbor Nonelective Contributions. The Employer under this Election 30(g) applies the rules of Section 3.05(D) to limit the allocation of any Safe Harbor Contribution under Election 30 for a Plan Year to those Participants who the Plan Administrator in applying the OEE rule described in Section 4.06(C), treats as benefiting in the disaggregated plan covering the Includible Employees.

(h) **[n/a] Another plan.** The Employer will make the Safe Harbor Contribution to the following plan: .

(i) **Additional Matching Contributions.** See Sections 1.35(G) and 3.05(F). *(Choose one of (1) or (2).)*:

(1) **[n/a] No Additional Matching Contributions.** The Employer will not make any Additional Matching Contributions to its safe harbor Plan.

(2) **[X] Additional Matching Contributions.** The Employer will or may make the following Additional Matching Contributions to its safe harbor Plan. *(Choose a., b., and c. as applicable.)*:

a. **[n/a] Fixed Additional Matching Contribution.** The following Fixed Additional Matching Contribution *(Choose (i) and (ii) as applicable and complete (iii) for any election.)*:

(i) **[n/a] Uniform percentage.** A Matching Contribution equal to % of each Participant's Elective Deferrals but not as to Elective Deferrals exceeding % of the Participant's Compensation.

(ii) **[n/a] Tiered formula.** A Matching Contribution equal to the specified matching rate for the corresponding level of each Participant's Elective Deferral percentage. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation.

Elective Deferral Percentage	Matching Rate
%	%
%	%
%	%

(iii) **Time period.** For purposes of this Election 30(i)(2)a., "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: . [*Note: The Employer must complete the blank line with the* *applicable time period for computing the Additional Match, e.g., each payroll period, each calendar month, each Plan Year quarter OR the Plan Year. If the Employer elects a match under both (i) and (ii) and will apply a different time period to each match, the Employer may indicate as such in the blank line.*]

b. **[X] Discretionary Additional Matching Contribution.** The Employer may make a Discretionary Additional Matching Contribution. If the Employer makes a Discretionary Matching Contribution, the Discretionary Matching Contribution will not apply as to Elective Deferrals exceeding 6% of the Participant's Compensation *(complete the blank if applicable or leave blank).*

(i) **Time period.** For purposes of this Election 30(i)(2)b., "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: each Plan Year. [*Note: The Employer must complete the blank line with the applicable time period for computing the Additional Discretionary Matching Contribution, e.g., each payroll period, each calendar month, each Plan Year quarter OR the Plan Year. If the Employer fails to specify a time period, the Employer is deemed to have elected to compute its Additional Matching Contribution based on the Plan Year.*]

c. **[n/a] Describe Additional Matching Contribution formula and time period:** *(The formula described must satisfy the definitely determinable requirement under Treas. Reg. §1.401-1(b) and, if the Employer elects to satisfy the ACP safe harbor under Election 38(a)(2)a., the formula must comply with Section 3.05(G).)*

[*Note: If the Employer elects to satisfy the ACP safe harbor under Election 38(a)(2)a. then as to any and all Matching Contributions, including Fixed Additional Matching Contributions and Discretionary Additional Matching Contributions: (i) the matching rate may not increase as the Elective Deferral percentage increases; (ii) no HCE may be entitled to a greater rate of match than any NHCE; (iii) the Employer must limit Elective Deferrals taken into account for the Additional Matching Contributions to a maximum of 6% of Plan Year Compensation; (iv) the Plan must apply all Matching Contributions to Catch-Up Deferrals; and (v) in the case of a Discretionary Additional Matching Contribution, the contribution amount may not exceed 4% of the Participant's Plan Year Compensation.*]

(j) **[n/a] Multiple Safe Harbor Contributions in disaggregated Plan.** The Employer elects to make different Safe Harbor Contributions and/or Additional Matching Contributions to disaggregated parts of its Plan under Treas. Reg. §1.401(k)-1(b)(4) as follows: *(Specify contributions for disaggregated plans, e.g., as to collectively bargained employees a 3% Nonelective Safe Harbor Contribution applies and as to non-collectively bargained employees, the Basic Matching Contribution applies).*

31. ALLOCATION CONDITIONS **(3.06(B)/(C))**. The Plan does not apply any allocation conditions to: (i) Elective Deferrals; (ii) Safe Harbor Contributions; (iii) Additional Matching Contributions which will satisfy the ACP test safe harbor; (iv) Employee Contributions; (v) Rollover Contributions; (vi) Designated IRA Contributions; (vii) SIMPLE Contributions; or (viii) Prevailing Wage Contributions. To receive an allocation of Matching Contributions, Nonelective Contributions or Participant forfeitures, a Participant must satisfy the following allocation condition(s) *(Choose one of (a) or (b). Choose (c) if applicable.)*:

(a) **[n/a] No conditions.** No allocation conditions apply to Matching Contributions, to Nonelective Contributions or to forfeitures.

(b) **[X] Conditions.** The following allocation conditions apply to the designated Contribution Type and/or forfeitures *(Choose one or more of (1) through (7). Choose Contribution Type as applicable.)*:

[*Note: For this Election 31, except as the Employer describes otherwise in Election 31(b)(7) or as provided in Sections 3.03(C)(2) and 3.04(C)(2) regarding Operational QMACs and Operational QNECs, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions to which allocation conditions may apply. The Employer under Election 31(b)(7) may not impose an Hour of Service condition exceeding 1,000 Hours of Service in a Plan Year.*]

			(1) Matching, Nonelective and Forfeitures		**(2) Matching**	**(3) Nonelective**	**(4) Forfeitures**
(1)	[n/a]	**None.**	**N/A** (See Election 31(a))		[ ]	[ ]	[ ]
(2)	[n/a]	**501 HOS/terminees** (91 consecutive days if Elapsed Time). See Section 3.06(B)(1)(b).	[ ]	**OR**	[ ]	[ ]	[ ]
(3)	[n/a]	**Last day of the Plan Year.**	[ ]	**OR**	[ ]	[ ]	[ ]
(4)	[n/a]	**Last day of the Election 31(c) time period.**	[ ]	**OR**	[ ]	[ ]	[ ]
(5)	[X]	**1,000 HOS in the Plan Year** (182 consecutive days in Plan Year if Elapsed Time).	[ ]	**OR**	[ ]	[X]	[ ]
(6)	[n/a]	**(specify) HOS within the Election 31(c) time period,** (but not exceeding 1,000 HOS in a Plan Year).	[ ]	**OR**	[ ]	[ ]	[ ]

(7) **[X] Describe conditions:** Participants are required to be employed on the last day of the Plan Year in order to share in Nonelective Contributions except for Participants who prior to December 31, 2017 become "Transferred Employees" as defined in that certain Asset Purchase Agreement by and between Busey Bank (Seller) and MB Financial Bank, National Association (Buyer) dated as of August 25, 2017.

(e.g., Last day of the Plan Year as to Nonelective Contributions for Participating Employer "A" Participants. No allocation conditions for Participating Employer "B" Participants.)

(c) **[n/a] Time period.** Under Section 3.06(C), apply Elections 31(b)(4), (b)(6), or (b)(7) to the specified contributions/forfeitures based on each *(Choose one or more of (1) through (5). Choose Contribution Type as applicable.)*:

(1)	**[n/a]**	**Plan Year.**	[ ]	**OR**	[ ]	[ ]	[ ]
(2)	**[n/a]**	**Plan Year quarter.**	[ ]	**OR**	[ ]	[ ]	[ ]
(3)	**[n/a]**	**Calendar month.**	[ ]	**OR**	[ ]	[ ]	[ ]
(4)	**[n/a]**	**Payroll period.**	[ ]	**OR**	[ ]	[ ]	[ ]

(5) **[n/a] Describe time period:**

[*Note: If the Employer elects 31(b)(4) or (b)(6), the Employer must choose (c). If the Employer elects 31(b)(7), choose (c) if applicable.*]

32. ALLOCATION CONDITIONS - APPLICATION/WAIVER/SUSPENSION **(3.06(D)/(F))**. Under Section 3.06(D), in the event of Severance from Employment as described below, apply or do not apply Election 31(b) allocation conditions to the specified contributions/forfeitures as follows *(If the Employer elects 31(b), the Employer must complete Election 32. Choose one of (a) or (b). Complete (c).)*:

[*Note: For this Election 32, except as the Employer describes otherwise in Election 31(b)(7) or as provided in Sections 3.03(C)(2) and 3.04(C)(2) regarding Operational QMACs and Operational QNECs, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions to which allocation conditions may apply.*]

(a) **[X] Total waiver or application.** If a Participant incurs a Severance from Employment on account of or following death, Disability or attainment of Normal Retirement Age or Early Retirement Age *(Choose one of (1) or (2).)*:

(1) **[X] Do not apply.** Do not apply elected allocation conditions to Matching Contributions, to Nonelective Contributions or to forfeitures.

(2) **[n/a] Apply.** Apply elected allocation conditions to Matching Contributions, to Nonelective Contributions and to forfeitures.

(b) **[n/a] Application/waiver as to Contribution Types events.** If a Participant incurs a Severance from Employment, apply allocation conditions *except* such conditions are waived if Severance from Employment is on account of or following death, Disability or attainment of Normal Retirement Age or Early Retirement Age as specified, and as applied to the specified Contribution Types/forfeitures *(Choose one or more of (1) through (4). Choose Contribution Type as applicable.)*:

			(1) Matching, Nonelective and Forfeitures		**(2) Matching**	**(3) Nonelective**	**(4) Forfeitures**
(1)	**[n/a]**	**Death.**	[ ]	**OR**	[ ]	[ ]	[ ]
(2)	**[n/a]**	**Disability.**	[ ]	**OR**	[ ]	[ ]	[ ]
(3)	**[n/a]**	**Normal Retirement Age.**	[ ]	**OR**	[ ]	[ ]	[ ]
(4)	**[n/a]**	**Early Retirement Age.**	[ ]	**OR**	[ ]	[ ]	[ ]

(c) **Suspension.** The suspension of allocation conditions of Section 3.06(F) *(Choose one of (1) or (2).)*:

(1) **[X] Applies.** Applies as follows *(Choose one of a., b., or c.)*:

a. **[n/a] Both.** Applies both to Nonelective Contributions and to Matching Contributions.

b. **[X] Nonelective.** Applies only to Nonelective Contributions.

c. **[n/a] Match.** Applies only to Matching Contributions.

(2) **[n/a] Does not apply.**

33. FORFEITURE ALLOCATION METHOD **(3.07)**. *(Choose one of (a) or (b).)*:

[*Note: Even if the Employer elects immediate vesting, the Employer should complete Election 33. See Section 7.07.*]

(a) **[n/a] Safe harbor/top-heavy exempt.** Apply all forfeitures to Safe Harbor Contributions and Plan expenses in accordance with Section 3.07(A)(4).

(b) **[X] Apply to Contributions.** The Plan Administrator will allocate a Participant forfeiture attributable to all Contribution Types or attributable to all Nonelective Contributions or to all Matching Contributions as follows *(Choose one or more of (1) through (6) and choose Contribution Type as applicable. Choose (5) only in conjunction with at least one other election.)*:

			(1) All Forfeitures		(2) Nonelective Forfeitures	(3) Matching Forfeitures
(1)	**[n/a]**	**Additional Nonelective.** Allocate as additional Discretionary Nonelective Contribution	**[ ]**	**OR**	**[ ]**	**[ ]**
(2)	**[n/a]**	**Additional Match.** Allocate as additional Discretionary Matching Contribution.	**[ ]**	**OR**	**[ ]**	**[ ]**
(3)	**[X]**	**Reduce Nonelective.** Apply to Nonelective Contribution.	**[X]**	**OR**	**[ ]**	**[ ]**
(4)	**[n/a]**	**Reduce Match.** Apply to Matching Contribution.	**[ ]**	**OR**	**[ ]**	**[ ]**
(5)	**[X]**	**Plan expenses.** Pay reasonable Plan expenses. (See Section 7.04(C).)	**[X]**	**OR**	**[ ]**	**[ ]**

(6) **[n/a] Describe:**
(must satisfy the definitely determinable requirement under Treas. Reg. §1.401-1(b) and be applied in a uniform and nondiscriminatory manner; e.g., Forfeitures attributable to transferred balances from Plan X are allocated only to former Plan X participants.)

34. AUTOMATIC ESCALATION **(3.02(G))**. The Automatic Escalation provisions of Section 3.02(G) *(Choose one of (a) or (b). See Election 21 regarding Automatic Deferrals. Automatic Escalation applies to Participants who have a Salary Reduction Agreement in effect.)*:

(a) **[X] Do not apply.**

(b) **[n/a] Apply.** *(Complete (1), (2), (3), and if appropriate (4).)*:

(1) **Participants affected.** The Automatic Escalation applies to *(Choose one of a., b., or c.)*:

a. **[n/a] All Deferring Participants.** All Participants who have a Salary Reduction Agreement in effect to defer at least % of Compensation.

b. **[n/a] New Deferral Elections.** All Participants who file a Salary Reduction Agreement after the effective date of this Election, or, as appropriate, any amendment thereto, to defer at least % of Compensation.

c. **[n/a] Describe affected Participants:**

[*Note: The Employer in Election 34(b)(1)c. may further describe affected Participants, e.g., non-Collective Bargaining Employees OR Division A Employees. The group of Participants must be definitely determinable and if an EACA under Election 21, must be uniform.*]

(2) **Automatic Increases.** *(Choose one of a. or b.)*:

a. **[n/a] Automatic increase.** The Participant's Elective Deferrals will increase by % per year up to a maximum of % of Compensation unless the Participant has filed a Contrary Election after the effective date of this Election or, as appropriate, any amendment thereto.

b. **[n/a] Describe increase:**

[*Note: The Employer in Election 34(b)(2)b. may define different increases for different groups of Participants or may otherwise limit Automatic Escalation. Any such provisions must be definitely determinable.*]

(3) **Change Date.** The Elective Deferrals will increase on the following day each Plan Year:

a. **[n/a] First day of the Plan Year.**

b. **[n/a] Other:**
(must be a specified or definitely determinable date that occurs at least annually)

(4) **First Year of Increase.** The automatic escalation provision will apply to a participant beginning with the first Change Date after the Participant files a Salary Reduction Agreement (or, if sooner, the effective date of this Election, or, as appropriate, any amendment thereto), unless a. is selected below:

a. **[n/a] The escalation provision will apply as of the second Change Date thereafter.**

35. IN-PLAN ROTH ROLLOVER CONTRIBUTION **(3.08(E))**. The following provisions apply regarding In-Plan Roth Rollover Contributions *(Choose one of (a) or (b); also see Election 56(d)(1); leave blank if Election 6(b)(1) is not selected.)*:

(a) **[n/a] Not Applicable.** The Plan does not permit In-Plan Roth Rollover Contributions.

(b) **[X] Applies.** The Plan permits In-Plan Roth Rollover Contributions. *(Choose (1) if applicable.)*

(1) **[X] Effective Date.** January 1, 2012 (enter date not earlier than September 28, 2010; may be left blank if same as Plan or Restatement Effective Date).

36. EMPLOYEE (AFTER-TAX) CONTRIBUTIONS **(3.09)**. The following additional elections apply to Employee Contributions under Election 6(f). *(Choose one or both of (a) and (b) if applicable.)*:

(a) **[n/a] Additional limitations.** The Plan permits Employee Contributions subject to the following limitations, if any, in addition to those already imposed under the Plan:

[*Note: Any designated limitation(s) must be the same for all Participants and must be definitely determinable (e.g., Employee Contributions may not exceed the lesser of $5,000 dollars or 10% of Compensation for the Plan Year and/or Employee Contributions may not be less than $50 or 2% of Compensation per payroll period).*]

(b) **[n/a] Apply Matching Contribution.** For each Plan Year, the Employer's Matching Contribution made as to Employee Contributions is:

[*Note: The Employer Matching Contribution formula must be the same for all Participants and must be definitely determinable (e.g., A fixed Matching Contribution equal to 50% of Employee Contributions not exceeding 6% of Plan Year Compensation or A Discretionary Matching Contribution based on Employee Contributions).*]

37. DESIGNATED IRA CONTRIBUTIONS **(3.12)**. Under Election 6(h), a Participant may make Designated IRA Contributions. *(Complete (a) and (b).)*:

(a) **Type of IRA contribution.** A Participant's Designated IRA Contributions will be *(Choose one of (1), (2), or (3).)*:

(1) **[n/a] Traditional.**

(2) **[n/a] Roth.**

(3) **[n/a] Traditional/Roth.** As the Participant elects at the time of contribution.

(b) **Type of Account.** A Participant's Designated IRA Contributions will be held in the following form of Account(s) *(Choose one of (1), (2), or (3).)*:

(1) **[n/a] IRA.**

(2) **[n/a] Individual Retirement Annuity.**

(3) **[n/a] IRA/Individual Retirement Annuity.** As the Participant elects at the time of contribution.

ARTICLE IV
LIMITATIONS AND TESTING

38. ANNUAL TESTING ELECTIONS **(4.06(B))**. The Employer makes the following Plan specific annual testing elections under Section 4.06(B). *(Complete (a) and (b) as applicable. Leave (a) blank if the Plan is a SIMPLE 401(k) plan.)*:

(a) **[X] Nondiscrimination testing.** *(Choose one or more of (1), (2), and (3).)*:

(1) **[n/a] Traditional 401(k) Plan/ADP/ACP test.** The following testing method(s) apply:

[*Note: The Plan may "split test". For Current Year Testing, See Section 4.11(E). For Prior Year Testing, see Section 4.11(I) and, as to the first Plan Year, see Sections 4.10(B)(4)(f)(iv) and 4.10(C)(5)(e)(iv).*]

ADP Test *(Choose one of a. or b.)*

a. **[n/a] Current Year Testing.**

b. **[n/a] Prior Year Testing.**

ACP Test *(Choose one of c., d., or e.)*

c. **[n/a] Not applicable.** The Plan does not permit Matching Contributions or Employee Contributions and the Plan Administrator will not recharacterize Elective Deferrals as Employee Contributions for testing.

d. **[n/a] Current Year Testing.**

e. **[n/a] Prior Year Testing.**

(2) **[X] Safe Harbor Plan/No testing or ACP test only.** *(Choose one of a. or b.)*:

a. **[X] No testing.** ADP test safe harbor applies and if applicable, ACP test safe harbor applies.

b. **[n/a] ACP test only.** ADP test safe harbor applies, but Plan will perform ACP test as follows *(Choose one of (i) or (ii).)*:

(i) **[n/a] Current Year Testing.**

(ii) **[n/a] Prior Year Testing.**

(3) [**n/a**] **Maybe notice (Election 30(b)).** See Section 3.05(I).

[*Note: The Employer may make elections under both the Traditional 401(k) Plan and Safe Harbor Plan elections, in order to accommodate a Plan that applies both testing elections (e.g., Safe Harbor Includible Employees group and tested Otherwise Excludible Employees group, or Safe Harbor Plan with tested after-tax Employee Contributions). In the absence of an election regarding ADP or ACP tested contributions, Current Year Testing applies.*]

(b) **[n/a] HCE determination.** The Top-Paid Group election and the calendar year data election are not used unless elected below *(Choose one or both of (1) and (2) if applicable.)*:

(1) **[n/a] Top-paid group election applies.**

(2) **[n/a] Calendar year data election (fiscal year Plan only) applies.**

ARTICLE V
VESTING REQUIREMENTS

39. <u>NORMAL RETIREMENT AGE</u> **(5.01)**. A Participant attains Normal Retirement Age under the Plan on the following date *(Choose one of (a) or (b).)*:

(a) **[X] Specific age.** The date the Participant attains age 59 1/2. [*Note: The age may not exceed age 65.*]

(b) **[n/a] Age/participation.** The later of the date the Participant attains age or the anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan. [*Note: The age may not exceed age 65 and the anniversary may not exceed the 5th.*]

40. <u>EARLY RETIREMENT AGE</u> **(5.01)**. *(Choose one of (a) or (b).)*:

(a) **[X] Not applicable.** The Plan does not provide for an Early Retirement Age.

(b) **[n/a] Early Retirement Age.** Early Retirement Age is the later of: (i) the date a Participant attains age ; (ii) the date a Participant reaches his/her anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan; or (iii) the date a Participant completes Years of Service.

[*Note: The Employer should leave blank any of clauses (i), (ii), and (iii) which are not applicable.*]

"Years of Service" under this Election 40 means *(Choose one of (1) or (2) as applicable.)*:

(1) **[n/a] Eligibility.** Years of Service for eligibility in Election 16.

(2) **[n/a] Vesting.** Years of Service for vesting in Elections 43 and 44.

[*Note: Election of an Early Retirement Age does not affect the time at which a Participant may receive a Plan distribution. However, a Participant becomes 100% vested at Early Retirement Age.*]

41. <u>ACCELERATION ON DEATH OR DISABILITY</u> **(5.02)**. Under Section 5.02, if a Participant incurs a Severance from Employment as a result of death or Disability *(Choose one of (a), (b), or (c).)*:

(a) **[X] Applies.** Apply 100% vesting.

(b) **[n/a] Not applicable.** Do not apply 100% vesting. The Participant's vesting is in accordance with the applicable Plan vesting schedule.

(c) **[n/a] Limited application.** Apply 100% vesting, but only if a Participant incurs a Severance from Employment as a result of *(Choose one of (1) or (2).)*:

(1) **[n/a] Death.**

(2) **[n/a] Disability.**

42. <u>VESTING SCHEDULE</u> **(5.03)**. A Participant has a 100% Vested interest at all times in his/her Accounts attributable to: (i) Elective Deferrals; (ii) Employee Contributions; (iii) QNECs; (iv) QMACs; (v) Safe Harbor Contributions (other than QACA Safe Harbor Contributions); (vi) SIMPLE Contributions; (vii) Rollover Contributions; (viii) Prevailing Wage Contributions; (ix) DECs; and (x) Designated IRA Contributions. The following vesting schedule applies to Regular Matching Contributions, to Additional Matching Contributions (irrespective of ACP testing status), to Nonelective Contributions (other than Prevailing Wage Contributions) and to QACA Safe Harbor Contributions. *(Choose (a) or choose one or both of (b) and (c) as applicable.)*:

(a) **[n/a] Immediate vesting.** 100% Vested at all times in all Accounts.

[*Note: Unless <u>all</u> Contribution Types are 100% Vested, the Employer should not elect 42(a). If the Employer elects immediate vesting under 42(a), the Employer should not complete the balance of Election 42 or Elections 43 and 44 (except as noted therein). The Employer must elect 42(a) if the eligibility*

Service condition under Election 14 as to all Contribution Types (except Elective Deferrals and Safe Harbor Contributions) exceeds one Year of Service or more than 12 months. The Employer must elect 42(b)(1) as to any Contribution Type where the eligibility service condition exceeds one Year of Service or more than 12 months. The Employer should elect 42(b) if any Contribution Type is subject to a vesting schedule.]

(b) **[X] Vesting schedules:** Apply the following vesting schedules *(Choose one or more of (1) through (6). Choose Contribution Type as applicable.)*:

		(1) All Contributions		(2) Nonelective	(3) Regular Matching	(4) Additional Matching (See Section 3.05(F))	(5) QACA Safe Harbor
(1) **[n/a]**	**Immediate vesting.**	**N/A** (See Election 42(a))		**[ ]**	**[ ]**	**[ ]**	**[ ]**
(2) **[n/a]**	**6-year graded.**	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**N/A**
(3) **[n/a]**	**3-year cliff.**	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**N/A**
(4) **[X]**	**Modified schedule:**	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**N/A**

Years of Service	Vested%
Less than 1	a. 0%
1	b. 20%
2	c. 40%
3	d. 60%
4	e. 80%
5	f. 100%
6 or more	100%

		(1) All Contributions		(2) Nonelective	(3) Regular Matching	(4) Additional Matching (See Section 3.05(F))	(5) QACA Safe Harbor
(5) **[n/a]**	**2-year cliff.**	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**
(6) **[n/a]**	**Modified 2-year schedule:**	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**

Years of Service	Vested%
Less than 1	a.
1	b.
2	100%

[*Note: If the Employer does not elect 42(a), the Employer under 42(b) must elect immediate vesting or must elect one of the specified alternative vesting schedules. The Employer must elect either 42(b)(5) or (6) as to QACA Safe Harbor Contributions. The modified top-heavy schedule of Election 42(b)(4) must satisfy Code §411(a)(2)(B). If the Employer elects Additional Matching under Election 30(i), the Employer should elect vesting under the Additional Matching column in this Election 42(b). That election applies to the Additional Matching even if the Employer has given the maybe notice but does not give the supplemental notice for any Plan Year and as to such Plan Years, the Plan is not a safe harbor plan and the Matching Contributions are not Additional Matching Contributions. If the Plan's Effective Date is before January 1, 2007, the Employer may wish to complete the override elections in Appendix B relating to the application of non-top-heavy vesting.*]

(c) **[n/a] Special vesting provisions:**

[*Note: The Employer under Election 42(c) may describe special vesting provisions from the elections available under Election 42 and/or a combination thereof as to a: (i) Participant group (e.g., Full vesting applies to Division A Employees OR to Employees hired on/before "x" date. 6-year graded vesting applies to Division B Employees OR to Employees hired after "x" date.); and/or (ii) Contribution Type (e.g., Full vesting applies as to Discretionary Nonelective Contributions. 6-year graded vesting applies to Fixed Nonelective Contributions). Any special vesting provision must satisfy Code §411(a) and must be nondiscriminatory.*]

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43. YEAR OF SERVICE - VESTING **(5.05)**. *(Complete both (a) and (b).)*:

[*Note: If the Employer elects the Elapsed Time Method for vesting the Employer should not complete this Election 43. If the Employer elects immediate vesting, the Employer should not complete Election 43 or Election 44 unless it elects to apply a Year of Service for vesting under any other Adoption Agreement election.*]

(a) **Year of Service.** An Employee must complete at least 1,000 Hours of Service during a Vesting Computation Period to receive credit for a Year of Service under Article V. [*Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.*]

(b) **Vesting Computation Period.** The Plan measures a Year of Service based on the following 12-consecutive month period *(Choose one of (1) or (2).)*:

(1) **[X] Plan Year.**

(2) **[n/a] Anniversary Year.**

44. EXCLUDED YEARS OF SERVICE - VESTING **(5.05(C))**. *(Choose (a) or (b).)*:

(a) **[X] None.** None other than as specified in Section 5.05(C)(1).

(b) **[n/a] Exclusions.** The Plan excludes the following Years of Service for purposes of vesting *(Choose one or more of (1) through (4).)*:

(1) **[n/a] Age 18.** Any Year of Service before the Vesting Computation Period during which the Participant attained the age of 18.

(2) **[n/a] Prior to Plan establishment.** Any Year of Service during the period the Employer did not maintain this Plan or a predecessor plan.

(3) **[n/a] Rule of Parity.** Any Year of Service excluded under the rule of parity. See Plan Section 5.06(C).

(4) **[n/a] Additional exclusions.** The following Years of Service:

[*Note: The Employer under Election 44(b)(4) may describe vesting service exclusions provisions available under Election 44 and/or a combination thereof as to a: (i) Participant group (e.g., No exclusions apply to Division A Employees OR to Employees hired on/before "x" date. The age 18 exclusion applies to Division B Employees OR to Employees hired after "x" date.); or (ii) Contribution Type (e.g., No exclusions apply as to Discretionary Nonelective Contributions. The age 18 exclusion applies to Fixed Nonelective Contributions). Any exclusion specified under Election 44(b)(4) must comply with Code §411(a)(4). Any exclusion must be nondiscriminatory.*]

ARTICLE VI
DISTRIBUTION OF ACCOUNT BALANCE

45. MANDATORY DISTRIBUTION **(6.01(A)(1)/6.08(D))**. The Plan provides or does not provide for Mandatory Distribution of a Participant's Vested Account Balance following Severance from Employment, as follows *(Choose one of (a) or (b). Choose (c) if applicable.)*:

(a) **[n/a] No Mandatory Distribution.** The Plan will not make a Mandatory Distribution following Severance from Employment.

(b) **[X] Mandatory Distribution.** The Plan will make a Mandatory Distribution following Severance from Employment. *(Complete (1) and (2). Choose (3) unless the Employer elects to limit Mandatory Distributions to $1,000 including Rollover Contributions under Elections 45(b)(1)b. and 45(b)(2)b.)*:

(1) **Amount limit.** As to a Participant who incurs a Severance from Employment and who will receive distribution before attaining the later of age 62 or Normal Retirement Age, the Mandatory Distribution maximum amount is equal to *(Choose one of a., b., or c.)*:

a. **[X] $5,000.**

b. **[n/a] $1,000.**

c. **[n/a] Specify amount:** $ *(may not exceed $5,000).*

[*Note: This election only applies to the Mandatory Distribution maximum amount. For other Plan provisions subject to a $5,000 limit, see election 56(g)(7) in Appendix B.*]

(2) **Application of Rollovers to amount limit.** In determining whether a Participant's Vested Account Balance exceeds the Mandatory Distribution dollar limit in Election 45(b)(1), the Plan *(Choose one of a. or b.)*:

a. **[X] Disregards Rollover Contribution Account.**

b. **[n/a] Includes Rollover Contribution Account.**

(3) **[X] Amount of Mandatory Distribution subject to Automatic Rollover.** A Mandatory Distribution to a Participant before attaining the later of age 62 or Normal Retirement Age is subject to Automatic Rollover under Section 6.08(D) *(Choose one of a. or b.)*:

a. **[X] Only if exceeds $1,000.** Only if the amount of the Mandatory Distribution exceeds $1,000, which for this purpose must include any Rollover Contributions Account.

b. **[n/a] Specify lesser amount.** Only if the amount of the Mandatory Distribution is at least: $ *(specify $1,000 or less)*, which for this purpose must include any Rollover Contributions Account.

(c) **[n/a] Required distribution at Normal Retirement Age.** A severed Participant may not elect to delay distribution beyond the later of age 62 or Normal Retirement Age.

46. SEVERANCE DISTRIBUTION TIMING **(6.01)**. Subject to the timing limitations of Section 6.01(A)(1) in the case of a Mandatory Distribution, or in the case of any Distribution Requiring Consent under Section 6.01(A)(2), for which consent is received, the Plan Administrator will instruct the Trustee to distribute a Participant's Vested Account Balance as soon as is administratively practical following the time specified below *(Choose one or more of (a) through (i) as applicable; choose (j) if applicable.)*:

[*Note: If a Participant dies after Severance from Employment but before receiving distribution of all of his/her Account, the elections under this Election 46 no longer apply. See Section 6.01(B) and Election 50.*]

			(1) Mandatory Distribution	**(2) Distribution Requiring Consent**
(a)	**[X]**	**Immediate.** Immediately following Severance from Employment.	**[X]**	**[X]**
(b)	**[n/a]**	**Next Valuation Date.** After the next Valuation Date following Severance from Employment.	**[ ]**	**[ ]**
(c)	**[n/a]**	**Plan Year.** In the Plan Year following Severance from Employment *(e.g., next or fifth).*	**[ ]**	**[ ]**
(d)	**[n/a]**	**Plan Year quarter.** In the Plan Year quarter following Severance from Employment *(e.g., next or fifth).*	**[ ]**	**[ ]**
(e)	**[n/a]**	**Contribution Type Accounts.** *(specify timing)* as to the Participant's Account(s) and *(specify timing)* as to the Participant's Account(s) *(e.g., As soon as is practical following Severance from Employment as to the Participant's Elective Deferral Account and as soon as is practical in the next Plan Year following Severance from Employment as to the Participant's Nonelective and Matching Accounts).*	**[ ]**	**[ ]**

(f) **[n/a]** **Vesting controlled timing.** If the Participant's total Vested Account Balance exceeds $, distribute (specify timing) and if the Participant's total Vested Account Balance does not exceed $, distribute (specify timing). **[ ]** **[ ]**

(g) **[n/a]** **Distribute at Normal Retirement Age.** As to a Mandatory Distribution, distribute not later than 60 days after the beginning of the Plan Year following the Plan Year in which the previously severed Participant attains the earlier of Normal Retirement Age or age 65. [*Note: An election under column (2) only will have effect if the Plan's NRA is less than age 62.*] **[ ]** **[ ]**

(h) **[n/a]** **No buy-back/vesting controlled timing.** Distribute as soon as is practical following Severance from Employment if the Participant is fully Vested. Distribute as soon as is practical following a Forfeiture Break in Service if the Participant is not fully Vested. **[ ]** **[ ]**

(i) **[n/a]** **Describe Severance from Employment distribution timing:**

[*Note: The Employer under Election 46(i) may describe Severance from Employment distribution timing provisions from the elections available under Election 46 and/or a combination thereof as to any: (i) Participant group (e.g., Immediate distribution after Severance from Employment applies to Division A Employees OR to Employees hired on/before "x" date. Distribution after the next Valuation Date following Severance from Employment applies to Division B Employees OR to Employees hired after "x" date.); (ii) Contribution Type and Participant group (e.g., As to Division A Employees, immediate distribution after Severance from Employment applies as to Elective Deferral Accounts and distribution after the next Valuation Date following Severance from Employment applies to Nonelective Contribution Accounts); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 46(i) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) comply with Code §401(a)(14) timing requirements; (iv) be nondiscriminatory and (v) preserve Protected Benefits as required.*]

(j) **[n/a] Acceleration.** Notwithstanding any later specified distribution date in Election 46, a Participant may elect an earlier distribution following Severance from Employment *(Choose (1) and (2) as applicable.)*:

(1) **[n/a] Disability.** If Severance from Employment is on account of Disability or if the Participant incurs a Disability following Severance from Employment.

(2) **[n/a] Hardship.** If the Participant incurs a hardship under Section 6.07(B) following Severance from Employment.

47. <u>IN-SERVICE DISTRIBUTIONS/EVENTS</u> **(6.01(C))**. A Participant may elect an In-Service Distribution of the designated Contribution Type Accounts based on any of the following events in accordance with Section 6.01(C) *(Choose one of (a) or (b).)*:

[*Note: If the Employer elects any In-Service Distribution option, a Participant may elect to receive as many In-Service Distributions per Plan Year (with a minimum of one per Plan Year) as the Plan Administrator's In-Service Distribution form or policy may permit. If the form or policy is silent, the number of In-Service Distributions is not limited. Prevailing Wage Contributions are treated as Nonelective Contributions. See Section 6.01(C)(4)(d) if the Employer elects to use Prevailing Wage Contributions to offset other contributions.*]

(a) **[n/a] None.** The Plan does not permit any In-Service Distributions except as to any of the following (if applicable): (i) RMDs under Section 6.02; (ii) Protected Benefits; and (iii) Designated IRA Contributions. Also see Section 6.01(C)(4)(e) with regard to Rollover Contributions, Employee Contributions and DECs.

(b) **[X]** **Permitted.** In-Service Distributions are permitted as follows from the designated Contribution Type Accounts *(Choose one or more of (1) through (9).)*:

[*Note: Unless the Employer elects otherwise in Election (b)(9) below, Elective Deferrals under Election 47(b) includes Pre-Tax and Roth Deferrals and Matching Contributions includes Additional Matching Contributions (irrespective of the Plan's ACP testing status).*]

			(1) All Contrib.		**(2) Elective Deferrals**	**(3) Safe Harbor Contrib.**	**(4) QNECs**	**(5) QMACs**	**(6) Matching Contrib.**	**(7) Nonelective/ SIMPLE**
(1)	**[n/a]**	**None.** Except for Election 47(a) exceptions.	**N/A** (See Election 47(a))		**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**
(2)	**[X]**	**Age** *(Choose one or both of a. and b.)*:								
	a.	**[X] Age** 59 1/2 *(must be at least 59 1/2).*	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**
	b.	**[n/a] Age** *(may be less than 59 1/2).*	**N/A**		**N/A**	**N/A**	**N/A**	**N/A**	**[ ]**	**[ ]**
(3)	**[X]**	**Hardship** *(Choose one or both of a. and b.)*:								

	a.	**[X] Hardship (safe harbor).** See Section 6.07(A).	**N/A**		**[X]**	**N/A**	**N/A**	**N/A**	**[X]**	**[X]**
	b.	**[n/a] Hardship (non-safe harbor).** See Section 6.07(B).	**N/A**		**[ ]**	**N/A**	**N/A**	**N/A**	**[ ]**	**[ ]**
(4)	**[n/a]**	**Disability.**	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**
(5)	**[n/a]**	**year contributions.** *(specify minimum of two years)* See Section 6.01(C)(4)(a)(i).	**N/A**		**N/A**	**N/A**	**N/A**	**N/A**	**[ ]**	**[ ]**
(6)	**[n/a]**	**months of participation.** *(specify minimum of 60 months)* See Section 6.01(C)(4)(a)(ii).	**N/A**		**N/A**	**N/A**	**N/A**	**N/A**	**[ ]**	**[ ]**
(7)	**[X]**	**Qualified Reservist Distribution.** See Section 6.01(C)(4)(b)(iii).	**N/A**		**[X]**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

(8)	**[X]**	**Deemed Severance Distribution.** See Section 6.11.	**[X]**		**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**

(9) **[X]** **Describe:** In-Service Distributions upon attainment of Age 59 1/2 and Hardship Distributions from the Roth source shall be limited to "Qualified Distributions" within the meaning of Code Section 402A(d)(2) only.

[*Note: The Employer under Election 47(b)(9) may describe In-Service Distribution provisions from the elections available under Election 47 and/or a combination thereof as to any: (i) Participant group (e.g., Division A Employee Accounts are distributable at age 59 1/2 OR Accounts of Employees hired on/before "x" date are distributable at age 59 1/2. No In-Service Distributions apply to Division B Employees OR to Employees hired after "x" date.); (ii) Contribution Type (e.g., Discretionary Nonelective Contribution Accounts are distributable on Disability. Fixed Nonelective Contribution Accounts are distributable on Disability or Hardship (non-safe harbor)); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 47(b)(9) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Sections 6.01(C)(4) and 11.02(C)(3).*]

48. <u>IN-SERVICE DISTRIBUTIONS/ADDITIONAL CONDITIONS</u> **(6.01(C))**. The following additional conditions apply to In-Service Distributions under Election 47(b) *(Choose one of (a) or (b).)*:

(a) **[X]** **Additional conditions.** *(Choose one or more of (1) through (3) as applicable.)*:

(1) **[X]** **100% vesting required.** A Participant may not receive an In-Service Distribution unless the Participant is 100% Vested in the distributing Account. This restriction applies to *(Choose one or more of a. or b.)*:

a. **[X]** **Hardship distributions.** Distributions based on hardship.

b. **[X]** **Other In-Service.** In-Service distributions other than distributions based on hardship.

(2) **[n/a]** **Minimum amount.** A Participant may not receive an In-Service Distribution in an amount which is less than: $ *(specify amount not exceeding $1,000).*

(3) **[X] Describe other conditions:** The additional limitations indicated above do not apply to distributions for deemed severance of employment, but the amount of the distribution may not exceed the vested amount in the distributing account.

[*Note: An Employer's election under Election 48(a)(3) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Section 6.01(C)(4).*]

(b) **[n/a] No other conditions.** A Participant may elect to receive an In-Service Distribution upon any Election 47(b) event without further condition, provided that the amount distributed may not exceed the Vested amount in the distributing Account.

49. <u>POST-SEVERANCE AND LIFETIME RMD DISTRIBUTION METHODS</u> **(6.03)**. A Participant whose Vested Account Balance exceeds $5,000 (or any lesser amount elected in Appendix B, Election 56(g)(7)): (i) who has incurred a Severance from Employment and will receive a distribution; or (ii) who remains employed but who must receive lifetime RMDs, may elect distribution under one of the following method(s) of distribution described in Section 6.03 and subject to any Section 6.03 limitations. *(Choose one or more of (a) through (f) as applicable.)*:

[*Note: If a Participant dies after Severance from Employment but before receiving distribution of all of his/her Account, the elections under this Election 49 no longer apply. See Section 6.01(B) and Election 50.*]

(a) **[X] Lump-Sum.** See Section 6.03(A)(3).

(b) **[X] Installments only if Participant subject to lifetime RMDs.** A Participant who is required to receive lifetime RMDs may receive installments payable in monthly, quarterly or annual installments equal to or exceeding the annual RMD amount. See Sections 6.02(A) and 6.03(A)(4)(a).

(c) **[n/a] Installments.** See Section 6.03(A)(4).

(d) **[n/a] Alternative Annuity:** .
See Section 6.03(A)(5).

[*Note: Under a Plan which is subject to the joint and survivor annuity distribution requirements of Section 6.04 (Election 51(b)), the Employer may elect under 49(d) to offer one or more additional annuities (Alternative Annuity) to the Plan's QJSA, QPSA or QOSA. If the Employer elects under Election 51(a) to exempt Exempt Participants from the joint and survivor annuity requirements, the Employer should not elect to provide an Alternative Annuity under 49(d).*]

(e) **[n/a] Ad-Hoc distributions.** See Section 6.03(A)(6).

[*Note: If an Employer elects to permit Ad-Hoc distributions the option must be available to all Participants.*]

(f) **[X] Describe distribution method(s):** A Participant may request a partial distribution in an amount no less than $100.00. Notwithstanding the above, a Participant who is required to receive lifetime RMDs may receive installments payable in annual installments only, equal to or exceeding the annual RMD amount.

[*Note: The Employer under Election 49(f) may describe Severance from Employment distribution methods from the elections available under Election 49 and/or a combination thereof as to any: (i) Participant group (e.g., Division A Employee Accounts are distributable in a Lump-Sum OR Accounts of Employees hired after "x" date are distributable in a Lump-Sum. Division B Employee Accounts are distributable in a Lump-Sum or in Installments OR Accounts of Employees hired on/before "x" date are distributable in a Lump-Sum or in Installments.); (ii) Contribution Type (e.g., Discretionary Nonelective Contribution Accounts are distributable in a Lump-Sum. Fixed Nonelective Contribution Accounts are distributable in a Lump-Sum or in Installments); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 49(f) must: (i) be objectively determinable; (ii) not be subject to Employer, Plan Administrator or Trustee discretion; (iii) be nondiscriminatory; and (iv) preserve Protected Benefits as required.*]

50. <u>BENEFICIARY DISTRIBUTION ELECTIONS</u> **(6.01(B))**. Distributions following a Participant's death will be made as follows *(Choose one of (a), (b), or (c); choose (d) if applicable.)*:

(a) **[X] Immediate.** As soon as practical following the Participant's death.

(b) **[n/a] Next Calendar Year.** At such time as the Beneficiary may elect, but in any event on or before the last day of the calendar year which next follows the calendar year of the Participant's death.

(c) **[n/a] As Beneficiary elects.** At such time as the Beneficiary may elect, consistent with Section 6.02.

(d) **[n/a] Describe:**

[*Note: The Employer under Election 50(d) may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under election 50(c), or include special provisions related to certain beneficiaries, (e.g., a surviving spouse). However, any election under Election 50(d) must require distribution to commence no later than the Section 6.02 required date.*]

51. <u>JOINT AND SURVIVOR ANNUITY REQUIREMENTS</u> **(6.04)**. The joint and survivor annuity distribution requirements of Section 6.04 *(Choose one of (a) or (b).)*:

(a) **[X] Profit sharing exception.** Do not apply to an Exempt Participant, as described in Section 6.04(G)(1), but apply to any other Participants (or to a portion of their Account as described in Section 6.04(G)) *(Complete (1).)*:

(1) **One-year marriage rule.** Under Section 7.05(A)(3) relating to an Exempt Participant's Beneficiary designation under the profit sharing exception *(Choose one of a. or b.)*:

a. **[X] Applies.** The one-year marriage rule applies.

b. **[n/a] Does not apply.** The one-year marriage rule does not apply.

(b) **[n/a] Joint and survivor annuity applicable.** Section 6.04 applies to all Participants *(Complete (1).)*:

(1) **One-year marriage rule.** Under Section 6.04(B) relating to the QPSA *(Choose one of a. or b.)*:

a. **[n/a] Applies.** The one-year marriage rule applies.

b. **[n/a] Does not apply.** The one-year marriage rule does not apply.

ARTICLE VII
ADMINISTRATIVE PROVISIONS

52. ALLOCATION OF EARNINGS **(7.04(B))**. For each Contribution Type provided under the Plan, the Plan allocates Earnings using the following method *(Choose one or more of (a) through (f). Choose Contribution Type as applicable.)*:

[*Note: Elective Deferrals/Employee Contributions also includes Rollover Contributions, Transfers, DECs and Designated IRA Contributions, Matching Contributions includes all Matching Contributions and Nonelective Contributions includes all Nonelective Contributions, unless described otherwise in Election 52(f).*]

			(1) All Contributions		**(2) Elective Deferrals/ Employee Contributions**	**(3) Matching Contributions**	**(4) Nonelective Contributions**
(a)	**[n/a]**	**Daily.** See Section 7.04(B)(4)(a).	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(b)	**[n/a]**	**Balance forward.** See Section 7.04(B)(4)(b).	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**

(c)	**[n/a]**	**Balance forward with adjustment.** See Section 7.04(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period % of the contributions made during the following Valuation Period: .	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(d)	**[n/a]**	**Weighted average.** See Section 7.04(B)(4)(d). If not a monthly weighting period, the weighting period is: .	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(e)	**[X]**	**Participant-Directed Account method.** See Section 7.04(B)(4)(e).	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**

(f) **[n/a] Describe Earnings allocation method:**

[*Note: The Employer under Election 52(f) may describe Earnings allocation methods from the elections available under Election 52 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts); and/or (iv) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be subject to Earnings allocation in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 52(f) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; and (iii) be nondiscriminatory.*]

ARTICLE VIII
TRUSTEE AND CUSTODIAN, POWERS AND DUTIES

53. VALUATION OF TRUST **(8.02(C)(4))**. In addition to the last day of the Plan Year, the Trustee (or Named Fiduciary as applicable) must value the Trust Fund on the following Valuation Date(s) *(Choose one or more of (a) through (d). Choose Contribution Type as applicable.)*:

[*Note: Elective Deferrals/Employee Contributions also include Rollover Contributions, Transfers, DECs and Designated IRA Contributions, Matching Contributions includes all Matching Contributions and Nonelective Contributions includes all Nonelective Contributions, unless described otherwise in

Election 53(d).]

			(1) All Contributions		(2) Elective Deferrals/ Employee Contributions	(3) Matching Contributions	(4) Nonelective Contributions
(a)	**[X]**	**No additional Valuation Dates.**	**[X]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(b)	**[n/a]**	**Daily Valuation Dates.** Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee is conducting business.	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(c)	**[n/a]**	**Last day of a specified period.** The last day of each of the Plan Year.	**[ ]**	**OR**	**[ ]**	**[ ]**	**[ ]**
(d)	**[n/a]**	**Specified Valuation Dates:**					

[*Note: The Employer under Election 53(d) may describe Valuation Dates from the elections available under Election 53 and/or a combination thereof as to any: (i) Participant group (e.g., No additional Valuation Dates apply to Division A Employees OR to Employees hired after "x" date. Daily Valuation Dates apply to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., No additional Valuation Dates apply as to Discretionary Nonelective Contribution Accounts. The last day of each Plan Year quarter applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., No additional Valuation Dates apply to investments placed with vendor A and Daily Valuation Dates apply to investments placed with vendor B OR Daily Valuation Dates apply to Participant-Directed Accounts and no additional Valuation Dates apply to pooled Accounts); and/or (iv) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be subject to Trust valuation in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 53(d) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; and (iii) be nondiscriminatory.*]

ARTICLE XII
MULTIPLE EMPLOYER PLAN

54. MULTIPLE EMPLOYER PLAN **(12.01/12.02/12.03)**. The Employer makes the following elections regarding the Plan's Multiple Employer Plan status and the application of Article XII *(Choose one of (a) or (b).)*:

(a) **[X]** **Not applicable.** The Plan is not a Multiple Employer Plan and Article XII does not apply.

(b) **[n/a] Applies.** The Plan is a Multiple Employer Plan and the Article XII Effective Date is: . The Employer makes the following additional elections *(Choose (1) if applicable.)*:

(1) **[n/a] Participating Employer may modify.** See Section 12.03. A Participating Employer in the Participation Agreement may modify Adoption Agreement elections applicable to each Participating Employer (including electing to not apply Adoption Agreement elections) as follows *(Choose one of a. or b. Choose c. if applicable.)*:

a. **[n/a] All.** May modify all elections.

b. **[n/a] Specified elections.** May modify the following elections: *(specify by election number)*.

c. **[n/a] Restrictions.** May modify subject to the following additional restrictions: *(Specify restrictions. Any restrictions must be definitely determinable and may not violate Code §412 or the regulations thereunder.)*.

[*Note: If Election (b)(1) above is not chosen, Participating Employers may not modify any Adoption Agreement elections. The Participation Agreement must be consistent with this Election 54(b)(1). Any Participating Employer election in the Participation Agreement which is not permitted under this Election 54(b)(1) is of no force or effect and the applicable election in the Adoption Agreement applies.*]

EXECUTION PAGE

The Employer, by executing this Adoption Agreement, hereby agrees to the provisions of this Plan and Trust.

Employer: First Busey Corporation

Date: ______________________

Signed: ______________________

____

[*print name/title*]

The Trustee (and Custodian, if applicable), by executing this Adoption Agreement, hereby accepts its position and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee (or Custodian) under the Volume Submitter Plan and Trust. If the Employer under Elections 5(c) or 5(e) will use a separate Trust, the Trustee need not execute this Adoption Agreement.

Discretionary Trustee(s): Busey Trust Company, Trustee

Date: ______________________

Signed: ______________________

____
[*print name/title*]

Nondiscretionary Trustee(s): ______________________

Date: ______________________

Signed: ______________________

____
[*print name/title*]

Custodian(s) *(Optional)*: ______________________

Date: ______________________

Signed: ______________________

____
[*print name/title*]

Use of Adoption Agreement. Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the basic plan document referenced by its document number on Adoption Agreement page one.

Execution for Page Substitution Amendment Only. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) AC5 of the Administrative Checklist and addition of two Participation Agreements effective October 1, 2017, immediately following the closing of the merger with Mid Illinois Bancorp, Inc. The Participation Agreement for South Side Trust & Savings Bank of Peoria will remain in effect until it ceases to exist (projected for March 2018) and the Participation Agreement for Mid Illinois Insurance Services, Inc. will remain in effect for as long as it is a member of Employer's controlled group , by substitute Adoption Agreement page number(s) 2 of the Administrative Checklist and addition of two Participation Agreements . The Employer should retain all Adoption Agreement Execution Pages and amended pages. [*Note: The Effective Date may be retroactive or may be prospective*.]

Volume Submitter Plan Sponsor. The Volume Submitter Plan Sponsor identified on the first page of the basic plan document will notify all adopting Employers of any amendment to this Volume Submitter Plan or of any abandonment or discontinuance by the Volume Submitter Plan Sponsor of its maintenance of this Volume Submitter Plan. For inquiries regarding the adoption of the Volume Submitter Plan, the Volume Submitter Plan Sponsor's intended meaning of any Plan provisions or the effect of the Advisory Letter issued to the Volume Submitter Plan Sponsor, please contact the Volume Submitter Plan Sponsor at the following address and telephone number: 2110 Clearlake Blvd., Suite 200 Champaign, Illinois 61822, 217-355-2300 .

Reliance on Sponsor Advisory Letter. The Volume Submitter Plan Sponsor has obtained from the IRS an Advisory Letter specifying the form of this Adoption Agreement and the basic plan document satisfy, as of the date of the Advisory Letter, Code §401. An adopting Employer may rely on the Volume Submitter Sponsor's IRS Advisory Letter *only* to the extent provided in Rev. Proc. 2011-49. The Employer may not rely on the Advisory Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Advisory Letter and in Rev. Proc. 2011-49 or subsequent guidance. In order to have reliance in such circumstances or

with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.

ACCEPTANCE OF SPECIAL TRUSTEE
(only applicable if Special Trustee is appointed in Appendix C)

I, the undersigned, accept the appointment as Special Trustee of the First Busey Corporation Profit Sharing Plan and Trust (Plan), and agree to all of the obligations, responsibilities and duties imposed upon the Special Trustee under the Plan and Trust. The sole responsibility of the Special Trustee is to collect contributions owed to the Plan. No other Trustee has the responsibility to collect contributions owed to the Plan.

Amy Randolph

SPECIAL TRUSTEE | DATE SIGNED

APPENDIX A
SPECIAL RETROACTIVE OR PROSPECTIVE EFFECTIVE DATES

55. SPECIAL EFFECTIVE DATES **(1.20)**. The Employer elects or does not elect Appendix A special Effective Date(s) as follows. *(Choose (a) or one or more of (b) through (s) as applicable.)*:

[*Note: If the Employer elects 55(a), do not complete the balance of this Election 55.*]

(a) **[X] Not applicable.** The Employer does not elect any Appendix A special Effective Dates.

[*Note: The Employer may use this Appendix A to specify an Effective Date for one or more Adoption Agreement elections which does not correspond to the Plan's new Plan or Restated Plan Effective Date under Election 4. As to Restated Plans, for periods prior to: (i) the below-specified special Effective Date(s); or (ii) the Restated Plan's general Effective Date under Election 4, as applicable, the Plan terms in effect prior to its restatement under this Adoption Agreement control for purposes of the designated provisions.*]

(b) **[n/a] Trustee (1.67).** The Trustee provisions under Election 5 or Appendix C are effective: .

(c) **[n/a] Contribution Types (1.12).** The Contribution Types under Election(s) 6 are effective: .

(d) **[n/a] Excluded Employees (1.22(D)).** The Excluded Employee provisions under Election(s) 8 are effective: .

(e) **[n/a] Compensation (1.11).** The Compensation definition under Election(s) *(specify 9-11 as applicable)* are effective: .

(f) **[n/a] Hour of Service/Elective Service Crediting (1.32/1.59(C)).** The Hour of Service and/or elective Service crediting provisions under Election(s) *(specify 12-13 as applicable)* are effective: .

(g) **[n/a] Eligibility (2.01-2.03).** The eligibility provisions under Election(s) *(specify 14-19 as applicable)* are effective: .

(h) **[n/a] Elective Deferrals (3.02(A)-(D)).** The Elective Deferral provisions under Election(s) *(specify 20-23 as applicable)* are effective: .

(i) **[n/a] Matching Contributions (3.03).** The Matching Contribution provisions under Election(s) *(specify 24-26 as applicable)* are effective: .

(j) **[n/a] Nonelective Contributions (3.04).** The Nonelective Contribution provisions under Election(s) *(specify 27-29 as applicable)* are effective: .

(k) **[n/a] 401(k) safe harbor (3.05).** The 401(k) safe harbor provisions under Election(s) 30 are effective: .

(l) **[n/a] Allocation conditions (3.06).** The allocation conditions under Election(s) *(specify 31-32 as applicable)* are effective: .

(m) **[n/a] Forfeitures (3.07).** The forfeiture allocation provisions under Election(s) 33 are effective: .

(n) **[n/a] Employee Contributions (3.09).** The Employee Contribution provisions under Election(s) 36 are effective: .

(o) **[n/a] Testing elections (4.06(B)).** The testing elections under Election(s) 38 are effective: .

(p) **[n/a] Vesting (5.03).** The vesting provisions under Election(s) *(specify 39-44 as applicable)* are effective: .

(q) **[n/a] Distributions (6.01, 6.03 and 6.04).** The distribution elections under Election(s) *(specify 45-51 as applicable)* are effective: .

(r) **[n/a] Earnings/Trust valuation (7.04(B)/8.02(C)(4)).** The Earnings allocation and Trust valuation provisions under Election(s) *(specify 52-53 as applicable)* are effective: .

(s) **[n/a] Special Effective Date(s) for other elections** *(specify elections and dates)*: .

APPENDIX B
BASIC PLAN DOCUMENT OVERRIDE ELECTIONS

56. BASIC PLAN OVERRIDES. The Employer elects or does not elect to override various basic plan provisions as follows *(Choose (a) or choose one or more of (b) through (l) as applicable.)*:

[*Note: If the Employer elects 56(a), do not complete the balance of this Election 56.*]

(a) **[n/a] Not applicable.** The Employer does not elect to override any basic plan provisions.

[*Note: The Employer at the time of restating its Plan with this Adoption Agreement may make an election on Appendix A (Election 55(s)) to specify a special Effective Date for any override provision the Employer elects in this Election 56. If the Employer, after it has executed this Adoption Agreement, later amends its Plan to change any election on this Appendix B, the Employer should document the Effective Date of the Appendix B amendment on the Execution Page or otherwise in the amendment.*]

(b) **[n/a] Definition (Article I) overrides.** *(Choose one or more of (1) through (8) as applicable.)*:

(1) **[n/a] W-2 Compensation exclusion of paid/reimbursed moving expenses (1.11(B)(1)).** W-2 Compensation excludes amounts paid or reimbursed by the Employer for moving expenses incurred by an Employee, but only to the extent that, at the time of payment, it is reasonable to believe that the Employee may deduct these amounts under Code §217.

(2) **[n/a] Alternative (general) 415 Compensation (1.11(B)(4)).** The Employer elects to apply the alternative (general) 415 definition of Compensation in lieu of simplified 415 Compensation.

(3) **[n/a] Inclusion of Deemed 125 Compensation (1.11(C)).** Compensation under Section 1.11 includes Deemed 125 Compensation.

(4) **[n/a] Pre-Regulatory inclusion of Post-Severance Compensation (1.11(I) and 4.05(F)).** Prior to the first Limitation Year beginning on or after July 1, 2007 (the Effective Date of the final 415 regulations), the Plan includes Post-Severance Compensation within the meaning of Prop. Treas. Reg. §1.415(c)-2(e) as described in Sections 1.11(I) and 4.05(F) as follows *(Choose one or both of a. and b.)*:

a. **[n/a] Include for 415 testing.** Include for 415 testing and for other testing which uses 415 Compensation. This provision applies effective as of *(specify a date which is no earlier than January 1, 2005).*

b. **[n/a] Include for allocations.** Include for allocations as follows *(specify affected Contribution Type(s) and any adjustments to Post-Severance Compensation used for allocation)*: .
This provision applies effective as of *(specify a date which is no earlier than January 1, 2002).*

(5) **[n/a] Inclusion of Deemed Disability Compensation (1.11(K)).** Include Deemed Disability Compensation. *(Choose one of a. or b.)*:

a. **[n/a] NHCEs only.** Apply only to disabled NHCEs.

b. **[n/a] All Participants.** Apply to all disabled Participants. The Employer will make Employer Contributions for such disabled Participants for:

(specify a fixed or determinable period).

(6) **[n/a] Treatment of Differential Wage Payments (1.11(L)).** In lieu of the provisions of Section 1.11(L), the Employer elects the following *(Choose one or more of a., b., c., and d. as applicable.)*:

a. **[n/a] Effective date.** The inclusion is effective for Plan Years beginning after *(may not be earlier than December 31, 2008).*

b. **[n/a] Elective Deferrals only.** The inclusion only applies to Compensation for purposes of Elective Deferrals.

c. **[n/a] Not included.** The inclusion does not apply to Compensation for purposes of any Contribution Type.

d. **[n/a] Other:**
(specify other Contribution Type Compensation which includes Differential Wage Payments)

(7) **[n/a] Leased Employees (1.22(B)).** *(Choose one or both of a. and b. if applicable.)*:

a. **[n/a] Inclusion of Leased Employees (1.22(B)).** The Employer for purposes of the following Contribution Types, does not exclude Leased Employees:
(specify Contribution Types).

b. **[n/a] Offset if contributions to leasing organization plan (1.22(B)(2)).** The Employer will reduce allocations to this Plan for any Leased Employee to the extent that the leasing organization contributes to or provides benefits under a leasing organization plan to or for the Leased Employee and which are attributable to the Leased Employee's services for the Employer. The amount of the offset is as follows:

[*Note: The election of an offset under this Election 56(b)(7)b. may require that the Employer aggregate its plan with the leasing organization's plan for coverage and nondiscrimination testing.*]

(8) **[n/a] Inclusion of Reclassified Employees (1.22(D)(3)).** The Employer for purposes of the following Contribution Types, does not exclude Reclassified Employees (or the following categories of Reclassified Employees): *(specify Contribution Types and/or categories*

of Reclassified Employees).

(c) **[n/a] Rule of parity - participation (Article II) override (2.03(D)).** For purposes of Plan participation, the Plan applies the "rule of parity" under Code §410(a)(5)(D).

(d) **[n/a] Contribution/allocation (Article III) overrides.** *(Choose one or more of (1) through (9) as applicable.)*:

(1) **[n/a] Roth overrides.** *(Choose one or more of a., b., c., or d. as applicable.)*:

a. **[n/a] Treatment of Automatic Deferrals as Roth Deferrals (3.02(B)).** The Employer elects to treat Automatic Deferrals as Roth Deferrals in lieu of treating Automatic Deferrals as Pre-Tax Deferrals.

b. **[n/a] In-Plan Roth Rollovers limited to In-Service only (3.08(E)(2)(a)).** Only Participants who are Employees may elect to make an In-Plan Roth Rollover Contribution.

c. **[n/a] Vested In-Plan Roth Rollovers (3.08(E)(2)(b)).** Distributions related to In-Plan Roth Rollovers may only be made from accounts which are fully Vested.

d. **[n/a] Source of In-Plan Roth Rollover Contribution (3.08(E)(3)(b)).** The Plan permits an In-Plan Roth Rollover only from the following qualifying sources *(Choose one or more.)*:

(i) **[n/a]** Elective Deferrals

(ii) **[n/a]** Matching Contributions (including any Safe Harbor Matching Contributions and Additional Matching Contributions)

(iii) **[n/a]** Nonelective Contributions

(iv) **[n/a]** QNECs (including any Safe Harbor Nonelective Contributions)

(v) **[n/a]** Rollovers

(vi) **[n/a]** Transfers

(vii) **[n/a]** Other:
(specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

(2) **[n/a] No offset of Safe Harbor Contributions to other allocations (3.05(E)(12)).** Any Safe Harbor Nonelective Contributions allocated to a Participant's account will *not* be applied toward (offset) any allocation to the Participant of a non-Safe Harbor Nonelective Contribution.

(3) **[n/a] Short Plan Year or allocation period (3.06(B)(1)(c)).** The Plan Administrator *(Choose one of a. or b.)*:

a. **[n/a] No pro-ration.** Will *not* pro-rate Hours of Service in any short allocation period.

b. **[n/a] Pro-ration based on months.** Will pro-rate any Hour of Service requirement based on the number of months in the short allocation period.

(4) **[n/a] Limited waiver of allocation conditions for rehired Participants (3.06(G)).** The allocation conditions the Employer has elected in the Adoption Agreement do not apply to rehired Participants in the Plan Year they resume participation, as described in Section 3.06(G).

(5) **[n/a] Associated Match forfeiture timing (3.07(A)(1)(c)).** Forfeiture of associated matching contributions occurs in the Testing Year.

(6) **[n/a] Safe Harbor top-heavy exempt fail-safe (3.07(A)(4)).** In lieu of ordering forfeitures as (a), (b), and (c) under Section 3.07(A)(4), the Employer establishes the following forfeiture ordering rules *(Specify the ordering rules, for example, (b), (c), and (a).)*:
.

(7) **[n/a] HEART Act continued benefit accrual (3.11(K)).** The Employer elects to apply the benefit accrual provisions of Section 3.11(K). The provisions are effective as of *(Choose one of a. or b.; and choose c. if the provisions no longer are effective.)*:

a. **[n/a] 2007 Effective Date.** The first day of the 2007 Plan Year.

b. **[n/a] Other Effective Date.** *(may not be earlier than the first day of the 2007 Plan Year)*.

c. **[n/a] No longer effective.** The provisions no longer apply effective as of .

(8) **[n/a] Classifications allocation formula (3.04(B)(3)).** If a Participant shifts from one classification to another during a Plan Year, the Plan Administrator will apportion the Participant's allocation during that Plan Year *(Choose one of a., b., or c.)*:

a. **[n/a] Months in each classification.** Pro rata based on the number of months the Participant spent in each classification.

b. **[n/a] Days in each classification.** Pro rata based on the number of days the Participant spent in each classification.

c. **[n/a] One classification only.** The Employer in a nondiscriminatory manner will direct the Plan Administrator to place the Participant in only one classification for the entire Plan Year during which the shift occurs.

(9) **[n/a] Suspension (3.06(F)(3)).** The Plan Administrator in applying Section 3.06(F) will *(Choose one or more of a., b., and c. as applicable.)*:

a. **[n/a] Re-order tiers.** Apply the suspension tiers in Section 3.06(F)(2) in the following order: *(specify order)*.

b. **[n/a] Hours of Service tie-breaker.** Apply the greatest Hours of Service as the tie-breaker within a suspension tier in lieu of applying the lowest Compensation.

c. **[n/a] Additional/other tiers.** Apply the following additional or other tiers: *(specify suspension tiers and ordering).*

(e) **[n/a] Testing (Article IV) overrides.** *(Choose one or both of (1) and (2) as applicable.)*:

(1) **[n/a] First few weeks rule for Code §415 testing Compensation (4.05(F)(1)).** The Plan applies the first few weeks rule in Section 4.05(F)(1).

(2) **[n/a] Post-Severance Compensation for Code §415 testing Compensation (4.05(F)).** The Employer elects the following adjustments to Post-Severance Compensation for purposes of determining 415 testing Compensation *(Choose one or more of a. through d.)*:

[*Note: Under the basic plan document, if the Employer does not elect any adjustments, post-severance compensation includes leave cashouts and deferred compensation, and excludes military and disability continuation payments.*]

a. **[n/a] Exclude leave cash-outs.** See Section 1.11(I)(1)(b).

b. **[n/a] Exclude deferred compensation.** See Section 1.11(I)(1)(c).

c. **[n/a] Include salary continuation for military service.** See Section 1.11(I)(2).

d. **[n/a] Include salary continuation for disabled Participants.** See Section 1.11(I)(3). *(Choose one of (i) or (ii).)*:

(i) **[n/a] For Nonhighly Compensated Employees only.**

(ii) **[n/a] For all Participants.** In which case the salary continuation will continue for the following fixed or determinable period: .

(f) **[n/a] Vesting (Article V) overrides.** *(Choose one or more of (1) through (6) as applicable.)*:

(1) **[n/a] Application of non-top-heavy vesting and top-heavy vesting (5.03(A)(2)).** The Employer makes the following elections regarding the application of non-top-heavy vesting and top-heavy vesting *(Choose a., b., and c. as applicable.)*:

a. **[n/a] Election of non-top-heavy vesting.** As to Plan Years where permitted and in such Plan Years when the Plan is not top-heavy, the following vesting schedule(s) apply. See Section 5.03(B). *(Choose one or more of (i), (ii), or (iii) as applicable and complete (iv) and (v).)*:

(i) **[n/a] 5-year cliff.**

(ii) **[n/a] 7-year graded.**

(iii) **[n/a] Modified non-top-heavy.** A modified non-top-heavy schedule as follows:

[*Note: A modified non-top-heavy schedule must satisfy Code §411(a)(2).*]

(iv) **Application to Contribution Types.** Apply the elected non-top-heavy vesting schedule *(Choose one of A. or B.)*:

A. **[n/a] All.** To all Contribution Types subject to vesting (other than QACA Safe Harbor Contributions).

B. **[n/a] Describe application to affected Contribution Type(s):**

(v) **Application of top-heavy and non-top-heavy schedules.** *(Choose one of A. or B.)*:

A. **[n/a] Apply top-heavy schedule in all Plan Years once top-heavy.**

B. **[n/a] Apply top-heavy schedule only in top-heavy Plan Years.**

b. **[n/a] Election to eliminate HOS requirement post-EGTRRA or post-PPA for top-heavy vesting.** The top-heavy vesting schedule(s) apply *(Choose one or both of (i) and (ii).)*:

(i) **[n/a] No post-EGTRRA HOS requirement for Matching.** To all Participants even if they do not have one Hour of Service in a Plan Year beginning after December 31, 2001.

(ii) **[n/a] No post-PPA HOS requirement for affected other Employer Contributions.** To all Participants even if they do not have one Hour of Service in a Plan Year beginning after December 31, 2006.

c. **[n/a] Election to apply top-heavy vesting only as to post-EGTRRA or post-PPA contributions.** The top-heavy vesting schedule(s) apply *(Choose one or both of (i) and (ii).)*:

(i) **[n/a] Post-EGTRRA Matching Contributions.** Only to Regular Matching Contributions and Additional Matching Contributions made in Plan Years beginning after December 31, 2001 and to the associated Earnings.

(ii) **[n/a] Post-PPA other Employer Contributions.** Only to non-Matching Contributions made in Plan Years beginning after December 31, 2006, and to the associated Earnings.

(2) **[n/a] Alternative "grossed-up" vesting formula (5.03(C)(2)).** The Employer elects the alternative vesting formula described in Section 5.03(C)(2).

(3) **[n/a] Source of Cash-Out forfeiture restoration (5.04(B)(5)).** To restore a Participant's Account Balance as described in Section 5.04(B)(5), the Plan Administrator, to the extent necessary, will allocate from the following source(s) and in the following order *(Specify, in order, one or more of the following: Forfeitures, Earnings, and/or Employer Contribution)*: .

(4) **[n/a] Deemed Cash-Out of 0% Vested Participant (5.04(C)).** The deemed cash-out rule of Section 5.04(C) does not apply to the Plan.

(5) **[n/a] Accounting for Cash-Out repayment; Contribution Type (5.04(D)(2)).** In lieu of the accounting described in Section 5.04(D)(2), the Plan Administrator will account for a Participant's Account Balance attributable to a Cash-Out repayment *(Choose one of a. or b.)*:

a. **[n/a] Nonelective rule.** Under the nonelective rule.

b. **[n/a] Rollover rule.** Under the rollover rule.

(6) **[n/a] One-year hold-out rule - vesting (5.06(D)).** The one-year hold-out Break in Service rule under Code §411(a)(6)(B) applies.

(g) **[X] Distribution (Article VI) overrides.** *(Choose one or more of (1) through (9) as applicable.)*:

(1) **[n/a] Restriction on In-Service Rollover Distributions (6.01(C)).** A Participant shall be entitled to receive a distribution of Rollover Contributions, Employee Contributions and DECs *(Choose one or more of a. through d. as applicable.)*:

a. **[n/a] Deferrals.** Under the same provisions which apply to Elective Deferrals.

b. **[n/a] Match.** Under the same provisions which apply to Matching Contributions.

c. **[n/a] Nonelective.** Under the same provisions which apply to Nonelective Contributions.

d. **[n/a] Other:**

[Note*: The Employer under Election 56(g)(1)d. may describe In-Service Rollover Distribution restrictions using the options available for In-Service Distributions under Election 47 and/or a combination thereof as to all Participants or as to any: (i) Participant group (e.g., Division A Rollover Accounts are distributable at age 59 1/2 OR Rollover Accounts of Employees hired on/before "x" date are distributable at age 59 1/2. No In-Service Rollover Distributions apply to Division B Employees OR to Employees hired after "x" date). An Employer's election under Election 56(g)(1)d. must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Sections 6.01(C)(4) and 11.02(C)(3).*]

(2) **[X] Elections related to In-Plan Roth Rollovers (6.01(C)(7)).** *(Choose one or more of a. through c. as applicable.)*:

a. **[n/a] In-Service Roth Rollover events.** The Employer elects to permit In-Service Distributions under the following conditions solely for purposes of making an In-Plan Roth Rollover Contribution *(Choose one or more of (i) through (iv); select (v) if applicable.)*:

(i) **[n/a] Age.** The Participant has attained age .

(ii) **[n/a] Participation.** The Participant has months of participation *(specify minimum of 60 months)*. Section 6.01(C)(4)(a)(ii).

(iii) **[n/a] Seasoning.** The amounts being distributed have accumulated in the Plan for at least years *(at least 2)*. See Section 6.01(C)(4)(a)(i).

(iv) **[n/a] Other** (describe):
(must be definitely determinable and not subject to Employer discretion (e.g., age 50, but only with respect to Nonelective Contributions, and not Matching Contributions))

[*Note: Regardless of any election above to the contrary, In-Plan Roth Rollover Contributions are not permitted from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and accounts attributable to Safe Harbor Contributions prior to age 59 1/2.*]

(v) **[n/a] Distribution for withholding.** A Participant may elect to have a portion of the amount that may be distributed as an In-Plan Roth Rollover Contribution distributed solely for purposes of federal or state income tax withholding related to the In-Plan Roth Rollover Contribution.

b. **[n/a] Minimum amount.** The minimum amount that may be rolled over is *(may not exceed $1,000)*.

c. **[X] No transfer of loans.** Loans may not be distributed as part of an In-Plan Roth Rollover Contribution. (if not selected, any loans may be transferred)

(3) **[n/a] Elections related to Required Minimum Distributions.** *(Choose one or more of a. through c. as applicable.)*:

a. **[n/a] RMD overrides if Participant dies before DCD (6.02(B)(1)(e)).** If the Participant dies before the DCD and the Beneficiary is a designated Beneficiary, the RMD distribution rules are modified as follows *(Choose one of (i) through (iv).)*:

(i) **[n/a] Election of 5-year rule.** If a Designated Beneficiary does not make a timely election, the 5-year rule applies in lieu of the Life Expectancy rule.

(ii) **[n/a] Life Expectancy rule.** The Life Expectancy rule applies to the Designated Beneficiary. See Section 6.02(B)(1)(d).

(iii) **[n/a] 5-year rule.** The 5-year rule applies to the Beneficiary. See Section 6.02(B)(1)(c).

(iv) **[n/a] Other:**
(Describe, e.g., the 5-year rule applies to all Beneficiaries other than a surviving spouse Beneficiary.)

b. **[n/a] RBD definition (6.02(E)(7)(c)).** In lieu of the RBD definition in Section 6.02(E)(7)(a) and (b), the Plan Administrator *(Choose one of (i) or (ii).)*:

(i) **[n/a] SBJPA definition indefinitely.** Indefinitely will apply the pre-SBJPA RBD definition.

(ii) **[n/a] SBJPA definition to specified date.** Will apply the pre-SBJPA definition until *(the stated date may not be earlier than January 1, 1997)*, and thereafter will apply the RBD definition in Sections 6.02(E)(7)(a) and (b).

c. **[n/a] 2009 RMD waiver elections (6.02(F)).** In lieu of the 2009 RMDs suspension (subject to a Participant or Beneficiary election to continue), as provided in Section 6.02(F) *(Choose one of (i) through (iii) if applicable. Choose (iv) or (v) if applicable.)*:

(i) **[n/a] RMDs continued unless election.** 2009 RMDs are continued as provided in Section 6.02(F)(2), unless a Participant or Beneficiary otherwise elects.

(ii) **[n/a] RMDs continued - no election.** 2009 RMDs are continued as provided in Section 6.02(F)(3), without regard to a waiver. No election is available to Participants or Beneficiaries.

(iii) **[n/a] Other:**
(Describe, e.g., the Plan suspended 2009 RMDs and did not offer an election or the Plan changed from one treatment of 2009 RMDs to another treatment during 2009.)

Treatment as Eligible Rollover Distribution. For purposes of 2009 RMDs, the Plan also will treat the following distributions as Eligible Rollover Distributions *(Choose (iv) or (v), if applicable. If the Employer elects neither (iv) nor (v), then a direct rollover for 2009 will be offered only for distributions that would be Eligible Rollover Distributions without regard to Code §401(a)(9)(H).)*:

(iv) **[n/a]** 2009 RMDs and Extended 2009 RMDs, both as defined in Section 6.02(F).

(v) **[n/a]** 2009 RMDs, as defined in Section 6.02(F), but only if paid with an additional amount that is an Eligible Rollover Distribution without regard to Code §401(a)(9)(H).

(4) **[n/a] Distribution Methods** *(Choose one or both of a. and b. if applicable.)*:

a. **[n/a] Default Distribution Methods (6.03(B)(2)).** If a Participant or Beneficiary does not make a timely election as to distribution method and timing the Plan Administrator will direct the Trustee to distribute using the following method and timing:

(Describe, e.g., Installments sufficient to satisfy RMD beginning at the Required Beginning Date. The selected method and timing must not be discriminatory and must be an option the plan makes available to participants and/or beneficiaries.)

b. **[n/a] Beneficiary Distribution Methods (6.03(A)(2)).** The Plan will distribute to the Beneficiary under the following distribution method(s). If more than one method is elected, the Beneficiary may choose the method of distribution:

(i) **[n/a] Lump-Sum.** See Section 6.03(A)(3).

(ii) **[n/a] Installments sufficient to satisfy RMD.** See Section 6.03(A)(4)(a).

(iii) **[n/a] Ad-Hoc sufficient to satisfy RMD.** See Section 6.03(A)(6).

(iv) **[n/a] Other:**
(Describe, e.g., Lump-Sum or Installments for surviving spouse Beneficiaries, Lump-Sum only for all other Beneficiaries.)

(5) **[n/a] Annuity Distributions (6.04).** *(Choose one or both of a. and b. if applicable.)*:

a. **[n/a] Modification of QJSA (6.04(A)(3)).** The Survivor Annuity percentage will be %. *(Specify a percentage between 50% and 100%.)*

b. **[n/a] Modification of QPSA (6.04(B)(2)).** The QPSA percentage will be %. *(Specify a percentage between 50% and 100%.)*

(6) **[n/a] Hardship Distributions (6.07).** *(Choose one or both of a. and b. if applicable.)*:

a. **[n/a] Restriction on hardship source; grandfathering (6.07(E)).** The hardship distribution limit includes grandfathered amounts.

b. **[n/a] Hardship acceleration.** The existence of a hardship occurring after Separation from Service/Severance from Employment will be determined under the non-safe harbor rules of Section 6.07(B).

(7) **[n/a] Replacement of $5,000 amount (6.09).** All Plan references (except in Sections 3.02(D), 3.10 and 3.12(C)(2)) to "$5,000" will be $. *(Specify an amount less than $5,000.)*

(8) **[X] Beneficiary's hardship need (6.07(H)).** Effective August 17, 2006 *(Specify date not earlier than August 17, 2006)*, a Participant's hardship includes an immediate and heavy financial need of the Participant's primary Designated Beneficiary under the Plan, as described in Section 6.07(H).

(9) **[n/a] Non-spouse beneficiary rollover not permitted before required (6.08(G)).** For distributions after December 31, 2006, and before (*Specify a date not later than January 1, 2010)*, the Plan does not permit a Designated Beneficiary other than the Participant's surviving spouse to elect to roll over a death benefit distribution.

(h) **[n/a] Administrative overrides (Article VII).** *(Choose one or more of (1) through (7) as applicable.)*:

(1) **[n/a] Contributions prior to accrual or precise determination (7.04(B)(5)(b)).** The Plan Administrator will allocate Earnings described in Section 7.04(B)(5)(b) as follows *(Choose one of a., b., or c.)*:

a. **[n/a] Treat as contribution.** Treat the Earnings as an Employer Matching or Nonelective Contribution and allocate accordingly.

b. **[n/a] Balance forward.** Allocate the Earnings using the balance forward method described in Section 7.04(B)(4)(b).

c. **[n/a] Weighted average.** Allocate the Earnings on Matching Contributions using the weighted average method in a manner similar to the method described in Section 7.04(B)(4)(d).

(2) **[n/a] Automatic revocation of spousal designation (7.05(A)(1)).** The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.

(3) **[n/a] Limitation on frequency of Beneficiary designation changes (7.05(A)(4)).** Except in the case of a Participant incurring a major life event, a period of at least must elapse between Beneficiary designation changes. *(Specify a period of time, e.g., 90 days OR 12 months.)*

(4) **[n/a] Definition of "spouse" (7.05(A)(5)).** The following definition of "spouse" applies: *(Specify a definition.)*

(5) **[n/a] Administration of default provision; default Beneficiaries (7.05(C)).** The following list of default Beneficiaries will apply: *(Specify, in order, one or more Beneficiaries who will receive the interest of a deceased Participant.)*

(6) **[n/a] Subsequent restoration of forfeiture-sources and ordering (7.07(A)(3)).** Restoration of forfeitures will come from the following sources, in the following order *(Specify, in order, one or more of the following: Forfeitures, Employer Contribution, Trust Fund Earnings.)*

(7) **[n/a] State law (7.10(H)).** The law of the following state will apply: *(Specify one of the 50 states or the District of Columbia, or other appropriate legal jurisdiction, such as a territory of the United States or an Indian tribal government.)*

(i) **[n/a] Trust and insurance overrides (Articles VIII and IX).** *(Choose one or more of (1) through (3) if applicable.)*:

(1) **[n/a] Employer securities/real property in Profit Sharing Plans/401(k) Plans (8.02(A)(13)(a)).** The Plan limit on investment in qualifying Employer securities/real property is %. *(Specify a percentage which is less than 100%.)*

(2) **[n/a] Provisions relating to insurance and insurance company (9.08).** The following provisions apply: *(Specify such language as necessary to accommodate life insurance Contracts the Plan holds.)*

[*Note: The provisions in this Election 56(i)(2) may override provisions in Article IX of the Plan, but must be consistent with all other provisions of the Plan.*]

(3) **[n/a] Cross-pay when more than one entity adopts Plan not applicable (8.12).** The cross-pay provisions of Section 8.12 do not apply.

(j) **[n/a] Code Section 415 (Article XI) override (11.02(A)(1), 4.02(F)).** Because of the required aggregation of multiple plans, to satisfy Code §415, the following overriding provisions apply:
(Specify such language as necessary to satisfy §415, e.g., the Employer will reduce Additional Additions to this plan before reducing Annual Additions to other plans.)

(k) **[n/a] Code Section 416 (Article XI) override (11.02(A)(1), 10.03(D)).** Because of the required aggregation of multiple plans, to satisfy Code §416, the following overriding provisions apply:
(Specify such language as necessary to satisfy §416, e.g., If an Employee participates in this Plan and another Plan the Employer maintains, the Employer will satisfy any Top-Heavy Minimum Allocation in this Plan and not the other plan.)

(l) **[n/a] Multiple Employer Plan (Article XII) overrides.** *(Choose (1) if applicable.)*:

(1) **[n/a] No involuntary termination for Participating Employer (12.11).** The Lead Employer may not involuntarily terminate the participation of any Participating Employer under Section 12.11.

APPENDIX C
LIST OF GROUP TRUST FUNDS/PERMISSIBLE TRUST AMENDMENTS

57. **[n/a]** INVESTMENT IN GROUP TRUST FUND **(8.09)**. The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds under Section 8.02(A)(3)), may invest in any of the following group trust funds: . *(Specify the names of one or more group trust funds in which the Plan can invest.)*

[*Note: A discretionary or nondiscretionary Trustee also may invest in any group trust fund authorized by an independent Named Fiduciary.*]

58. **[X]** DUTY TO COLLECT **(8.02(D)(1))**. Amy Randolph is hereby appointed as a Trustee for the Plan, and is referred to as the Special Trustee. The sole responsibility of the Special Trustee is to collect contributions the Employer owes to the Plan. No other Trustee has any duty to ensure that the contributions received comply with the provisions of the Plan or is obliged to collect any contributions from the Employer. No Trustee, other than the Special Trustee, is obliged to ensure that funds deposited are deposited according to the provisions of the Plan. The Special Trustee will execute a form accepting its position and agreeing to its obligations hereunder.

59. **[n/a]** PERMISSIBLE TRUST AMENDMENTS **(8.11)**. The Employer makes the following amendments to the Trust as permitted under Rev. Proc. 2011-49, Sections 5.09 and 14.04 *(Choose one or more of (a) through (c) as applicable.)*:

[*Note: Any amendment under this Election 59 must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). The amendment may override, add to, delete or otherwise modify the Trust provisions. Do not use this Election 59 to substitute another pre-approved trust for the Trust. See Election 5(c) as to a substitute trust.*]

(a) **[n/a] Investments.** The Employer amends the Trust provisions relating to Trust investments as follows: .

(b) **[n/a] Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows: .

(c) **[n/a] Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows: .

APPENDIX D
TABLE I: ACTUARIAL FACTORS
UP-1984
Without Setback

Number of years from attained age at the end of Plan Year until Normal Retirement Age	7.50%	8.00%	8.50%
0	8.458	8.196	7.949
1	7.868	7.589	7.326
2	7.319	7.027	6.752
3	6.808	6.506	6.223
4	6.333	6.024	5.736
5	5.891	5.578	5.286
6	5.480	5.165	4.872
7	5.098	4.782	4.491
8	4.742	4.428	4.139
9	4.412	4.100	3.815
10	4.104	3.796	3.516
11	3.817	3.515	3.240
12	3.551	3.255	2.986
13	3.303	3.014	2.752
14	3.073	2.790	2.537
15	2.859	2.584	2.338
16	2.659	2.392	2.155
17	2.474	2.215	1.986
18	2.301	2.051	1.831
19	2.140	1.899	1.687
20	1.991	1.758	1.555
21	1.852	1.628	1.433
22	1.723	1.508	1.321
23	1.603	1.396	1.217
24	1.491	1.293	1.122
25	1.387	1.197	1.034
26	1.290	1.108	0.953

27	1.200	1.026	0.878
28	1.116	0.950	0.810
29	1.039	0.880	0.746
30	0.966	0.814	0.688
31	0.899	0.754	0.634
32	0.836	0.698	0.584
33	0.778	0.647	0.538
34	0.723	0.599	0.496
35	0.673	0.554	0.457
36	0.626	0.513	0.422
37	0.582	0.475	0.389
38	0.542	0.440	0.358
39	0.504	0.407	0.330
40	0.469	0.377	0.304
41	0.436	0.349	0.280
42	0.406	0.323	0.258
43	0.377	0.299	0.238
44	0.351	0.277	0.219
45	0.327	0.257	0.202

Note: A Participant's Actuarial Factor under Table I is the factor corresponding to the number of years until the Participant reaches his/her Normal Retirement Age under the Plan. A Participant's age as of the end of the current Plan Year is his/her age on his/her last birthday. For any Plan Year beginning on or after the Participant's attainment of Normal Retirement Age, the factor for "zero" years applies.

APPENDIX D
TABLE II: ADJUSTMENT TO ACTUARIAL FACTORS FOR NORMAL RETIREMENT AGE OTHER THAN 65
UP-1984
Without Setback

Normal Retirement Age	7.50%	8.00%	8.50%
55	1.2242	1.2147	1.2058
56	1.2043	1.1959	1.1879
57	1.1838	1.1764	1.1694
58	1.1627	1.1563	1.1503
59	1.1411	1.1357	1.1305
60	1.1188	1.1144	1.1101
61	1.0960	1.0925	1.0891
62	1.0726	1.0700	1.0676
63	1.0488	1.0471	1.0455
64	1.0246	1.0237	1.0229
65	1.0000	1.0000	1.0000
66	0.9752	0.9760	0.9767
67	0.9502	0.9518	0.9533
68	0.9251	0.9274	0.9296
69	0.8998	0.9027	0.9055
70	0.8740	0.8776	0.8810
71	0.8478	0.8520	0.8561
72	0.8214	0.8261	0.8307
73	0.7946	0.7999	0.8049
74	0.7678	0.7735	0.7790
75	0.7409	0.7470	0.7529
76	0.7140	0.7205	0.7268
77	0.6874	0.6942	0.7008
78	0.6611	0.6682	0.6751
79	0.6349	0.6423	0.6494
80	0.6090	0.6165	0.6238

Note: Use Table II only if the Normal Retirement Age for any Participant is not 65. If a Participant's Normal Retirement Age is not 65, adjust Table I by multiplying *all* factors applicable to that Participant in Table I by the appropriate Table II factor.

PPD ADOPTION AGREEMENT
ADMINISTRATIVE CHECKLIST
2017

This Administrative Checklist ("AC") is not part of the Adoption Agreement or Plan but is for the use of the Plan Administrator in administering the Plan. Relius software also uses the AC and the following Supporting Forms Checklist ("SFC") in preparing the Plan's SPD and some administrative forms, such as the Loan Policy, if applicable.

The plan document preparer need not complete the AC but may find it useful to do so. The preparer may modify the AC, including adding items, without affecting reliance on the Plan's opinion or advisory letter since the AC is not part of the approved Plan. Any change to this AC is not a Plan amendment and is not subject to any Plan provision or to Applicable Law regarding the timing or form of Plan amendments. However, the Plan Administrator's administration of any AC item must be in accordance with applicable Plan terms and with Applicable Law.

The AC reflects the Plan policies and operation as of the date set forth above and may also reflect Plan policies and operation pre-dating the specified date.

AC1. PLAN LOANS **(7.06)**. The Plan permits or does not permit Participant Loans as follows *(Choose one of (a) or (b).)*:

(a) **[ ] Does not permit.**

(b) **[X] Permitted pursuant to the Loan Policy.** See SFC Election 74 to complete Loan Policy.

AC2. PARTICIPANT DIRECTION OF INVESTMENT **(7.03(B))**. The Plan permits Participant direction of investment or does not permit Participant direction of investment as to some or all Accounts as follows *(Choose one of (a) or (b).)*:

(a) **[ ] Does not permit.** The Plan does not permit Participant direction of investment of any Account.

(b) **[X] Permitted as follows.** The Plan permits Participant direction of investment. *(Complete (1) through (4).)*:

(1) **Accounts affected.** *(Choose a. or choose one or more of b. through f.)*:

a. **[X] All Accounts.**

b. **[ ] Elective Deferral Accounts (Pre-tax and Roth) and Employee Contributions.**

c. **[ ] All Nonelective Contribution Accounts.**

d. **[ ] All Matching Contribution Accounts.**

e. **[ ] All Rollover Contribution and Transfer Accounts.**

f. **[ ] Specify Accounts:**

(2) **Restrictions on Participant direction** *(Choose one of a. or b.)*:

a. **[X] None.** Provided the investment does not result in a prohibited transaction, give rise to UBTI, create administrative problems or violate the Plan terms or Applicable Law.

b. **[ ] Restrictions:**

(3) **ERISA §404(c).** *(Choose one of a. or b.)*:

a. **[X] Applies.**

b. **[ ] Does not apply.**

(4) **QDIA (Qualified Default Investment Alternative).** *(Choose one of a. or b.)*:

a. **[X] Applies.** See SFC Election 122 for details.

b. **[ ] Does not apply.**

AC3. ROLLOVER CONTRIBUTIONS **(3.08)**. The Plan permits or does not permit Rollover Contributions as follows *(Choose one of (a) or (b).)*:

(a) **[ ] Does not permit.**

(b) **[X] Permits.** Subject to approval by the Plan Administrator and as further described below *(Complete (1) and (2).)*:

(1) **Who may roll over.** *(Choose one of a. or b.)*:

a. **[ ] Participants only.**

b. **[X] Eligible Employees or Participants.**

(2) **Sources/Types.** The Plan will accept a Rollover Contribution *(Choose one of a. or b.)*:

a. **[X] All.** From any Eligible Retirement Plan and as to all Contribution Types eligible to be rolled into this Plan.

b. **[ ] Limited.** Only from the following types of Eligible Retirement Plans and/or as to the following Contribution Types:

.

AC4. PLAN EXPENSES **(7.04(C))**. The Employer will pay or the Plan will be charged with non-settlor Plan expenses as follows *(Choose one of (a) or (b).)*:

(a) **[ ] Employer pays all expenses except those intrinsic to Trust assets which the Plan will pay (e.g., brokerage commissions).**

(b) **[X] Plan pays some or all non-settlor expenses.** See SFC Election 119 for details.

AC5. RELATED AND PARTICIPATING EMPLOYERS/MULTIPLE EMPLOYER PLAN **(1.24(C)/(D))**. There are or are not Related Employers and Participating Employers as follows *(Complete (a) through (d).)*:

(a) **Related Employers.** *(Choose one of (1) or (2).)*:

(1) **[ ] None.**

(2) **[X] Name(s) of Related Employers:** FirsTech; Busey Bank; Busey Trust Company; First Community Financial Bank; South Side Trust & Savings Bank of Peoria; & Mid Illinois Insurance Services, Inc.

(b) **Participating (Related) Employers.** *(Choose one of (1) or (2).)*:

(1) **[ ] None.**

(2) **[X] Name(s) of Participating Employers:** FirsTech; Busey Bank; Busey Trust Company; First Community Financial Bank; South Side Trust & Savings Bank of Peoria; & Mid Illinois Insurance Services, Inc. See SFC Election 76 for details.

(c) **Former Participating Employers.** *(Choose one of (1) or (2).)*:

(1) **[ ] None.**

(2) **[X] Applies.**

Name(s)	Date of cessation
Busey Bank, N.A.; Busey Financial Services; Pulaski Bank	2009-Merged into Busey Bank; 1/1/2008; 2016 Merger
Herget Bank, N.A.; Preferred Home Lending, LLC; Metro Home Lending, LLC; Ambassador Mortgage Lending, LLC	03/08/15; Sold 03/31/17; Dissolved 10/27/16 & 03/31/17

(d) **Multiple Employer Plan status.** *(Choose one of (1) or (2).)*:

(1) **[X] Does not apply.**

(2) **[ ] Applies.** The Signatory Employer is the Lead Employer and at least one Participating Employer is not a Related Employer. (Complete a.)

a. **Name(s) of Participating Employers** (other than Related Employers described above): . See SFC Election 76 for details.

AC6. TOP-HEAVY MINIMUM-MULTIPLE PLANS **(10.03)**. If the Employer maintains another plan, this Plan provides that the Plan Administrator operationally will determine in which plan the Employer will satisfy the Top-Heavy Minimum Contribution (or benefit) requirement as to Non-Key Employees who participate in such plans and who are entitled to a Top-Heavy Minimum Contribution (or benefit). This Election documents the Plan Administrator's operational election. *(Choose (a) or choose one of (b) or (c).)*:

(a) **[X] Does not apply.**

(b) **[ ] If only another Defined Contribution Plan.** Make the Top-Heavy Minimum Allocation *(Choose one of (1) or (2).)*:

(1) **[ ] To this Plan.**

(2) **[ ] To another Defined Contribution Plan:** (plan name)

(c) **[ ] If one or more Defined Benefit Plans.** Make the Top-Heavy Minimum Allocation or provide the top-heavy minimum benefit *(Choose one of (1), (2), or (3).)*:

(1) **[ ] To this Plan.** Increase the Top-Heavy Minimum Allocation to 5%.

(2) **[ ] To another Defined Contribution Plan.** Increase the Top-Heavy Minimum Allocation to 5% and provide under the: (name of other Defined Contribution Plan).

(3) **[ ] To a Defined Benefit Plan.** Provide the 2% top-heavy minimum benefit under the: (name of Defined Benefit Plan) and applying the following interest rate and mortality assumptions: .

AC7. SELF-EMPLOYED PARTICIPANTS **(1.22(A))**. One or more self-employed Participants with Earned Income benefits in the Plan as follows *(Choose one of (a) or (b).)*:

(a) **[X] None.**

(b) **[ ] Applies.**

AC8. <u>PROTECTED BENEFITS</u> **(11.02(C))**. The following Protected Benefits no longer apply to all Participants or do not apply to designated amounts/Participants as indicated, having been eliminated by a Plan amendment *(Choose one of (a) or (b).)*:

(a) **[ ] Does not apply.** No Protected Benefits have been eliminated.

(b) **[X] Applies.** Protected Benefits have been eliminated as follows *(Choose one or more of rows (1) through (4) as applicable. Choose one of columns (1), (2), or (3), and complete column (4).)*:

	(1) All Participants/ Accounts	(2) Post-E.D. Contribution Accounts only	(3) Post-E.D. Participants only	(4) Effective Date (E.D.)
(1) **[ ] QJSA/QPSA distributions**	**[ ]**	**[ ]**	**[ ]**	
(2) **[X] Installment distributions**	**[X]**	**[ ]**	**[ ]**	December 1, 2011
(3) **[ ] In-kind distributions**	**[ ]**	**[ ]**	**[ ]**	
(4) **[ ] Specify:**				

AC9. <u>LIFE INSURANCE</u> **(9.01)**. The Trust invests or does not invest in life insurance Contracts as follows *(Choose one of (a) or (b).)*:

(a) **[X] Does not apply.**

(b) **[ ] Applies.** Subject to the limitations and other provisions in Article IX and/or Appendix B.

AC10. <u>DISTRIBUTION OF CASH OR PROPERTY</u> **(8.04)**. The Plan provides for distribution in the form of *(Choose one of (a) or (b).)*:

(a) **[X] Cash only.** Except where property distribution is required or permitted under Section 8.04.

(b) **[ ] Cash or property.** At the distributee’s election and consistent with any Plan Administrator policy under Section 8.04.

AC11. <u>EMPLOYER SECURITIES/EMPLOYER REAL PROPERTY</u> **(8.02(A)(13))**. The Trust invests or does not invest in qualifying Employer securities and/or qualifying Employer real property as follows *(Choose one of (a) or (b).)*:

(a) **[ ] Does not apply.**

(b) **[X] Applies.** Such investments are subject to the limitations of Section 8.02(A)(13) and/or Appendix B.

Exhibit 10.2

FIRST BUSEY CORPORATION
EMPLOYEES' STOCK OWNERSHIP PLAN AND TRUST
Amended and Restated January 1, 2017

Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602

FIRST BUSEY CORPORATION
EMPLOYEES' STOCK OWNERSHIP PLAN AND TRUST

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THIS FIRST BUSEY CORPORATION EMPLOYEES' STOCK OWNERSHIP PLAN AND TRUST is made at Urbana, Illinois, as of the Effective Date stated herein, between First Busey Corporation ("Employer") and Busey Trust Company ("Trustee").

ARTICLE I
Purpose

The Employer, having previously established this employee stock ownership plan and supporting trust, effective January 1, 1984 as amended and restated effective January 1, 1997, as amended and restated effective January 1, 2007, as amended and restated January 1, 2012 to provide retirement savings for its employees and the employees of its subsidiaries or affiliates who elect to adopt the Plan, in accordance with the provisions of the Internal Revenue Code of 1986, as amended from time to time ("Code"), and in accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended from time to time ("Act"). The Plan was frozen effective March 20, 2014. The Employer now desires to amend and restate the Plan as provided herein as of January 1, 2017. This Plan is intended to be an employee stock ownership plan ("ESOP"), as defined in Code Section 4975(e)(7), for the primary purpose of investing in Employer Stock; and

The Trustee hereby agrees to hold and dispose of all property received in accordance with the terms of this Plan.

ARTICLE II
Definitions

2.1 Definitions

Where the following words and phrases appear in this Plan, they shall have the respective meanings set forth in this Article, unless the context clearly indicates to the contrary.

(a) Account: Unless otherwise specifically denoted by the context, collectively, a Participant's ESOP Stock Account and ESOP Cash Account.

(b) Accounting Method: The accrual method as provided in Code Section 446(c)(2), which generally requires that in the computation of taxable income, income is to be included for the Plan Year when all events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy, and deductions are allowable for the Plan Year in which all events have occurred which establish the liability giving rise to such deduction and the amount thereof can be determined with reasonable accuracy.

(c) Adjustment Factor: The cost of living adjustment factor prescribed by the Secretary of Treasury under Code Sections 401(a)(17) and 415(d).

(d) Annual Additions: The total amount of Employer Contributions and Forfeitures allocated to the Accounts of a Participant for a Plan Year, except that if, with respect to any Plan Year, no more than one-third of Employer Contributions which are deductible under Code Section 404(a)(9) are allocated to the Accounts of Highly Compensated Employees during Plan Year, any Employer ESOP Contributions which are applied by the Trustee to pay interest on an Acquisition Loan for such Plan Year, or to release any Financed Shares which are allocated as Forfeitures shall not be included in computing Annual Additions. Notwithstanding the foregoing, Annual Additions shall not include restorative payments as defined under Treasury Regulation Section 1.415(c)-1(b)(2)(ii)(C).

(e) Authorized Leave of Absence: Any absence authorized by the Employer under the Employer's standard personnel practices provided that all persons under similar circumstances must be treated alike in the granting of such Authorized Leaves of Absence and provided further that the Employee returns or retires within the period of authorized absence. An absence due to service in the Armed Forces of the United States shall be considered an Authorized Leave of Absence provided that the Employee complies with all of the requirements of federal law in order to be entitled to reemployment and provided further that the Employee returns to employment with the Employer within the period provided by such law.

(f) Beneficiary: A person or persons (natural or otherwise) designated by a Participant to receive any death benefit payable under this Plan.

(g) Break in Service: A Plan Year during which a Participant does not complete more than five hundred (500) Hours of Employment with the Employer.

(h) Compensation: A Participant's wages, salaries, fees for professional services and other amounts received (with regard to whether or not an amount is paid in cash) for personnel services actually rendered on the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions or insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Regulation 1.6(c)) for a Plan Year.

Compensation shall exclude (a) (1) contributions made by the Employer to a Plan of deferred compensation to the extent that, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (2) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (3) any distributions from a plan deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of

forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which receive special tax benefits; or contributions made by the Employer (whether or not under salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

For purposes of this Section, the determination of Compensation shall be calculated by including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

Notwithstanding any other provision of the Plan to the contrary, the annual compensation of each Employee taken into account under the Plan shall not exceed $270,000, as adjusted each year by the Adjustment Factor.

Compensation shall include the following types of compensation paid after an Employee's severance from employment with the Employer, provided the amounts are paid by the later of two and one-half ($2^1/_2$) months after severance from employment or the end of the Limitation Year that includes the date of severance from employment: (i) payments that would have been otherwise included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer; (ii) payments for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued; and

(iii) payments received by a Participant pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued his employment with the Employer and only to the extent that the payment is includible in the Employee's gross income. Compensation shall not include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) and payments made to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

Compensation shall include amounts includible in an Employee's gross income under the rules of Code Sections 409A and 457(f)(1)(A) or because the amounts are constructively received by the Employee.

Compensation shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

Compensation shall not include amounts earned prior to the date an Employee becomes a Participant in the Plan under Section 3.1.

(i) Defined Contribution Dollar Limitation: The lesser of:

(i) $54,000, as adjusted by the Adjustment Factor; or

(ii) 100% of the Participant's Compensation.

In a Limitation Year of less than twelve (12) months, the Defined Contribution Dollar Limitation is adjusted by multiplying it by the following fraction where the numerator is the number of months (including any fractional parts of a month) in the short Limitation Year and the denominator is twelve (12).

(j) Disability: The inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. The permanence and degree of such impairment must be supported by medical evidence.

(k) Distributee: A Participant, Former Participant or Beneficiary who receives a distribution pursuant to Article VII.

(l) Effective Date: January 1, 2017 the date on which the provisions of this amended and restated Plan document became effective.

(m) Employee: A person employed by the Employer or any other corporation which may, in accordance with Code Sections 1563(a)(1) and 415(h), be periodically deemed to be a member of a controlled group of corporations together with the Employer that have specifically adopted this Plan in writing, during the period of the Employer's controlled group status, or a common law employee of any trade or business (whether or not incorporated) under "common control", as defined in Code Section 414(c), or a leased employee as defined below. A person covered by a collective bargaining agreement with the Employer shall not be considered an Employee and is not eligible to participate in the Plan. A person who is a nonresident alien and who does not receive any earned income (as defined in Code Section 911(d)(2)) from the Employer which constitutes United States source income (as defined in Code Section 861(a)(3)) shall not be considered an Employee and is not eligible to participate in the Plan.

A "Leased Employee" means any person (other than an Employee of the Employer) who pursuant to an agreement between the Employer and any other person ("Leasing Organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under the primary direction or control of the Employer. Contributions or benefits provided a Leased Employee by the Leasing Organization which are attributable to services performed for the Employer shall

be treated as provided by the Employer. A Leased Employee shall not be considered an Employee of the Employer if:

(1) such employee is covered by a money purchase pension plan providing:

(A) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3);

(B) immediate participation; and

(C) full and immediate vesting.

(2) leased employees do not constitute more than twenty percent (20%) of the Employer's non-highly compensated work force.

Employees classified by the Employer as independent contractors who are subsequently determined by the Internal Revenue Service to be Employees shall not be considered Employees of the Employer.

(n) Employer: First Busey Corporation, an Illinois corporation, the subsidiaries of First Busey Corporation who have adopted the Plan and any other entity that, with the consent of First Busey Corporation, adopts the Plan. First Busey Corporation is a "C corporation" as the corporation has not made an election under Code Section 1362.

(o) Employer ESOP Contribution: The property periodically contributed to the Trust by the Employer, provided however, that effective for Plan Years beginning on or after January 1, 2014, no contributions shall be made to the Trust by the Employer.

(p) Employment Commencement Date: The date on which an Employee first performs an Hour of Employment.

(q) Entry Date: January 1, April 1, July 1, and October 1 of each calendar year, provided that no Entry Date shall occur after January 1, 2014.

(r) ERISA (or Act): The Employee Retirement Income Security Act of 1974, as amended from time to time.

(s) ESOP Account: The account maintained for a Participant or Former Participant to reflect his share of the Employer Stock (as defined in Section 4.2) purchased with his ESOP Cash Account, his share of Employer ESOP Contributions made in Employer Stock, released Financed Shares, Employer Stock Forfeitures allocated to such account and any Employer Stock attributable to earnings on such stock.

(t) ESOP Cash Account: The account maintained for a Participant or Former Participant to reflect his share, if any, of Employer ESOP Contributions made in cash, any cash dividends on Employer Stock (as defined in Section 4.2) allocated and credited to his ESOP Account (other than currently distributable dividends) and his share of corresponding cash Forfeitures and any income, gains, losses, appreciation or depreciation attributable thereto.

(u) Execution Date: The date upon which the last party to sign this Plan, signs this Plan.

(v) Fiduciaries: Any person or persons who exercise any discretionary authority or discretionary control respecting management of the Plan or exercise any authority or control respecting management or disposition of its assets; or renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has authority or responsibility to do so; or has any discretionary authority or discretionary responsibility in the administration of the Plan.

(w) Five-Percent Owner: An individual who owns more than five percent (5%) of the outstanding stock of the Employer, or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer.

(x) Former Participant: A Participant whose employment with the Employer has terminated for any reason but who has a vested account balance under the Plan which has not been paid in full and, therefore, is continuing to participate in the allocation of Trust Income.

(y) Highly Compensated Employee: An Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

(1) was a Five Percent Owner at any time during the “determination year” or the “look-back year”; or

(2) for the “look-back year” had “415 Compensation” from the Employer in excess of $120,000. The $120,000 amount is adjusted in accordance with the Adjustment Factor.

The “determination year” means the Plan Year for which testing is being performed, and the “look-back year” means the immediately preceding twelve (12) month period.

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, will be made in accordance with Code Section 414(q) and the regulations thereunder.

For purposes of this subsection, the term “415 Compensation” means compensation within the meaning of Code Section 415(c)(3).

(z) Income: The net gain or loss of the Trust from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities, other investment transactions and expenses paid from the Trust. In determining the Income of the Trust as of any date, assets shall be valued on the basis of their then fair market value.

(aa) Late Retirement Date: A Participant’s actual retirement date after having achieved normal retirement date.

(bb) Limitation Year: The 12-month period commencing on January 1 and ending on the following December 31. If the Plan is terminated effective as of a date other than the last day of the Plan’s Limitation Year, then the Plan is treated as if it has been amended to change the ending date of its Limitation Year to be the effective date of the termination.

(cc) Normal Retirement Date: The date a Participant attains age 60. Effective January 1, 2008, the date a Participant attains age 59 $^{1}/_{2}$.

(dd) Participant: An Employee participating in the Plan in accordance with the provisions of Section 3.1.

(ee) Plan: The First Busey Corporation Employees’ Stock Ownership Plan, the Plan set forth herein, as amended from time to time.

(ff) Plan Administrator: The Employer or such other party appointed to such office pursuant to Article X.

(gg) Related Defined Contribution Plan: Any defined contribution plan (as defined in Code Section 414(i)) which is maintained by the Employer.

(hh) Spouse: a person who is in a legal union with the Employee that is recognized as a marriage in the state the legal union was established.

(ii) Trust (Or Trust Fund or Fund): The fund known as the First Busey Corporation Employees' Stock Ownership Trust, maintained in accordance with the terms of the trust agreement, as from time to time amended, which constitutes a part of this Plan.

(jj) Valuation Date: December 31 of each Year, or the date on which a special valuation is made. For transactions between the Plan and a disqualified person (as defined in Code Section 4975(e)(2)), the Valuation Date shall be the date of the transaction. For all other transactions, the valuation shall be the most recent Valuation Date.

(kk) Year (or Plan Year): The 12-month period commencing on January 1 and ending on the following December 31.

2.2 Construction

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and not to any particular provision or Section. Article and Section headings are included for convenience of reference and are not intended to add to, or subtract from, the terms of the Plan.

ARTICLE III
Eligibility, Participation and Service

3.1 Commencement of Participation

Each Employee, shall become a Participant on the first Entry Date occurring on or after the date he attains the age of Twenty-One (21) and completes one (1) Year of Service (as determined in accordance with Section 3.2(a) below). Commencing March 20, 2014, no Employee who is not already a Participant in the Plan shall become a Participant.

Each Employee who has satisfied the eligibility requirements as of the Effective Date shall become a Participant on the Effective Date. However, any Employee who was a Participant in the Plan prior to the effective date of this amendment and restatement shall continue to participate in the Plan.

3.2 Service

(a) Eligibility

An Employee's eligibility for benefits under the Plan shall be based on his Years of Service. Subject to the reemployment provisions of Section 3.4, an Employee will be credited with a Year of Service if he accrues 1,000 or more Hours of Employment during the consecutive12-month period beginning with his date of hire.

If an Employee does not accrue 1,000 hours of Employment during the consecutive 12 month period beginning with his date of hire, the period of measurement for accrual of a Year of Service shall shift to the Plan Year which includes the first anniversary of the Employee's date of hire.

(b) Vesting

The vested portion of a Participant's ESOP Account and ESOP Cash Account shall be based on his Years of Service as determined for vesting purposes. Subject to the reemployment

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provisions of Section 3.4, a Participant will be credited with a Year of Service for each Plan Year during which he accrues 1,000 or more Hours of Employment. Each Participant in the Plan as of March 20, 2014 shall be 100% vested in his or her ESOP Account and ESOP Cash Account.

(c) Prior Service

For purposes of this Section 3.2, service with the following entities shall be recognized and the Participant shall enter the Plan as of the date specified if the eligibility requirements were met with the predecessor employer:

(i) First of America Bank Illinois, Gibson City Branch — January 1, 1996;

(ii) First of America Bank Illinois, Paxton Branch — January 1, 1996;

(iii) The Busey Corporation — January 1, 1998;

(iv) Nord Insurance Agency — January 1, 1998;

(v) First Federal Savings and Loan Association of Bloomington — January 1, 2000;

(vi) Secord Asset Management, Inc. — July 1, 2000;

(vii) Crown Bank - October 1, 2003;

(viii) First Capital Bank- June 1, 2004;

(ix) Tarpon Coast National Bank - August 1, 2005; and

(x) Main Street Bank — January 1, 2008.

3.3 Hours of Employment

Under this Article III, Hours of Employment include the following:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer.

(b) Up to 501 hours for any single continuous period during which the Employee performs no duties but is directly or indirectly paid or entitled to payment by the Employer (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty or leave of absence; excluding, however, any period for which a payment is made or due under this Plan or under a plan maintained solely for the purpose of complying with worker's compensation or unemployment compensation or disability insurance laws, or solely to reimburse the Employee for medical or

medically-related expenses. An Employee shall be deemed to be "directly or indirectly paid, or entitled to payment by the Employer" regardless of whether such payment is (i) made by or due from the Employer directly, or (ii) made indirectly through a trust fund, insurer or other entity to which the Employer contributes or pays premiums.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in the foregoing subparagraph (b).

The foregoing provisions shall be administered in accordance with Department of Labor rules set forth in Section 2530.200b-2 of the Rules and Regulations for Minimum Standards for Employee Benefit Plans.

3.4 Participation and Service Upon Reemployment

Participation in the Plan shall cease upon termination of employment with the Employer. Termination of employment may have resulted from retirement, death, voluntary or involuntary termination of employment, unauthorized absence, or by failure to return to active employment with the Employer or to retire by the date on which an Authorized Leave of Absence expired.

Upon the reemployment of any person who had previously been employed by the Employer, such Employee shall re-enter the Plan as a Participant on the date of his reemployment with the Employer. An Employee who satisfies the eligibility requirements of Section 3.2(a) but who incurs a termination of employment prior to becoming a Participant will become a Participant on the later of the Entry Date on which he would have entered the Plan had he not incurred a termination of employment or the date of his re-employment. Any Employee who incurs a termination of employment prior to satisfying the eligibility requirements of Section 3.2(a) becomes a Participant in accordance with Article III of the Plan. This paragraph shall not apply after March 20, 2014.

3.5 Inactive Status

In the event that any Participant shall fail, in any Plan Year of his employment, to accumulate 1,000 Hours of Employment, he shall be placed on inactive status as of the end of such Year. In such case, the Participant shall not share in the Employer ESOP Contribution for any such Year. However, a Participant on inactive status shall continue to receive Income allocations in accordance with Section 6.2(b). In the event the Participant accumulates 1,000 Hours of Employment in a subsequent Year, he shall revert to active status with full rights and privileges under this Plan restored.

3.6 Maternity and Paternity Leave

Notwithstanding any provision in the Plan to the contrary, a Qualified Maternity and Paternity Leave shall not be considered a Break in Service, subject to the following limitations:

(a) During the period of absence, the Participant shall be credited with the lesser of (i) the number of Hours of Employment that would have been credited but for the period of absence, or (ii) 501 Hours of Employment. If the actual number of Hours of Employment for this purpose is unknown, the Hours of Employment shall be estimated, assuming 8 Hours of Employment per workday.

(b) The Participant must be given credit for Hours of Employment pursuant to this Section only (i) in the Year in which the absence begins if the credit is necessary to prevent a Break in Service for that Year, or (ii) in the following Year.

For the purpose of this Section, "Qualified Maternity and Paternity Leave" means an absence from work:

(1) by reason of the pregnancy of the Participant;

(2) by reason of the birth of a child of the Participant;

(3) by reason of the placement of a child pursuant to the adoption of that child by the Participant; or

(4) for the purpose of caring for the child during the period immediately following the child's birth or adoption by the Participant.

ARTICLE IV
Contributions

4.1 Annual Employer ESOP Contributions

Subject to the conditions and limitations of the Plan, for each Plan Year, the Employer will contribute to the Trustee cash equal to, or Employer Stock having an aggregate fair market value equal to, such amount, if any, as the Board of Directors of the Employer shall determine by resolution; provided, however, that the Employer shall contribute an amount in cash not less than the amounts required to enable the Trustee (together with dividends used to repay an Acquisition Loan in accordance with Article IX) to discharge any indebtedness incurred with respect to an Acquisition Loan (as described in Section 4.3 below) payable during the Plan Year in connection with the financed purchase of Employer Stock and to release securities encumbered under such indebtedness. If any part of an Employer's contribution under this Section 4.1 for any Plan Year is in cash for purposes other than discharging an Acquisition Loan indebtedness, such cash shall be applied by the Trustee to: (i) the purchase of Employer Stock at such time as the Trustee may decide in its discretion; or (ii) the payment of expenses pursuant to Section 11.7; or (iii) to cover distribution obligations as provided herein. In no event will an Employer's contribution under this Section 4.1 for any Plan Year exceed the lesser of:

(a) the maximum amount deductible by the Employer as an expense for Federal income tax purposes; or

(b) the maximum amount which, together with the amount of the Employer's contributions which are to be credited to the ESOP Accounts of Participants from a Suspense Account for that Year, can be credited for that year in accordance with the contribution limitation provisions of Section 6.3.

An Employer's ESOP Contribution under this Section 4.1 for any Plan Year shall be due on the last day of that year and, if not paid by the end of that year, shall be payable to the Trustee as soon thereafter as practicable, but not later than the time prescribed for filing the Employer's Federal income tax return for that Year, including any extensions of time, without interest.

Effective for Plan Years beginning on or after January 1, 2014, no contributions shall be made by the Employer to the Plan.

4.2 Employer Stock

For purposes of the Plan, the term "Employer Stock" means common stock issued by the Employer which is either readily tradable on an established securities market or has combination voting powers and dividend rates equal to or in excess of:

(a) that class of common stock of the Employer having the greatest voting power; and

(b) that class of common stock of the Employer having the greatest dividend rights.

Non-callable preferred stock shall be treated as Employer Stock if such stock is convertible at any time into stock which meets the requirements of (a) and (b) next above and if such conversion is at a conversion price which (as of the date of the acquisition by the Plan) is reasonable. For purposes of the last preceding sentence, preferred stock shall be treated as non-callable if, after the call, there will be a reasonable opportunity for a conversion which meets the requirements of the last preceding sentence.

4.3 Acquisition Loans

An installment obligation incurred by the Trustee in connection with the purchase of Employer Stock shall constitute an "Acquisition Loan." The Trustee may incur Acquisition Loans from time to time to finance the acquisition of Employer Stock for the Trust to repay such Acquisition Loan or to repay a prior Acquisition Loan. The proceeds of an Acquisition Loan must be used within a reasonable time after their receipt. Shares of Employer Stock acquired by the Trustee with the proceeds of an Acquisition Loan shall be described as "Financed Shares". An Acquisition Loan shall be for a specific term, shall bear a reasonable rate of interest, shall be primarily for the benefit of the Participants, Former Participants and Beneficiaries, and shall not be payable on demand except in the event of default. In the event of a default upon an Acquisition Loan, the assets transferred in satisfaction of the Acquisition Loan shall not exceed the amount of the default. An Acquisition Loan may be secured by a collateral pledge of the Financed Shares so acquired and any other Plan assets which are a permissible security within the provisions of Treasury Regulation Section 54.4975-7(b). No other assets of the Plan or Trust

may be pledged as collateral for an Acquisition Loan, and no lender shall have recourse against any other Trust assets. The released Financed Shares shall be allocated to ESOP Accounts in accordance with the provisions of Section 6.2. Repayment of principal and interest on any Acquisition Loan shall be made by the Trustee only from Employer Contributions paid in cash to enable the Trustee to repay such loan, earnings attributable to such contributions, and any cash dividends received by the Trustee on Financed Shares and shall not exceed an amount equal to the sum of such contributions and earnings received during or prior to the year less such payments in prior years. Such contributions and earnings shall be accounted for separately in the Plan's accounting records until an Acquisition Loan is repaid. Financed Shares shall initially be credited to a "Loan Suspense Account" and shall be transferred, at the election of the Trustee, for allocation to the ESOP Accounts of Participants (1) only as payments of principal and interest, or (2) if the requirements of Treasury Regulation Section 54.4975-7(b)(8)(ii) are met, principal payments only. The number of Financed Shares to be released from the Loan Suspense Account for allocation to ESOP Accounts for each Plan Year shall be based upon the ratio that the payments of principal and interest (or, if the requirements of Treasury Regulation Section 54.4975-7(b)(8)(ii) are met, principal payments only), on the Acquisition Loan for the Plan Year bears to the total projected payments of principal and interest remaining to be paid as of the beginning of the current Plan Year (or, if the requirements of Treasury Regulation Section 54.4975-7(b)(8)(ii) are met, principal payments only), on the Acquisition Loan over the duration of the Acquisition Loan repayment period.

Financed Shares acquired with the proceeds of an Acquisition Loan shall not be subject to a put, call or other option, or buy-sell or similar arrangement while held by and when distributed from the Plan, whether or not the Plan is then an ESOP.

ARTICLE V
Participant Contributions and Rollover Contributions

5.1 Participant Contributions

Contributions to the Plan by Participants are not permitted.

5.2 Rollover Contributions

Rollover Contributions to the Plan by Participants are not permitted.

ARTICLE VI
Allocations to Participants' Accounts

6.1 Individual Accounts

The Plan Administrator shall create and maintain adequate records to disclose the interest in the Trust of each Participant, Former Participant and Beneficiary. Such records shall be in the form of individual Accounts, and credits and charges shall be made to such Accounts in the manner herein described. Distributions and withdrawals made from an Account shall be charged to the Account as of the date made.

6.2 Account Adjustments

(a) Adjustment to ESOP Accounts

As of each Valuation Date, the Trustee shall charge to the appropriate Account of each Participant, Former Participant or Beneficiary all distributions and payments made to him, or on his behalf, since the last preceding Valuation Date that have not been previously charged.

(b) Adjustment to ESOP Cash Accounts

For each Plan Year, subject to the provisions of Article X, the Trustee shall credit to the ESOP Cash Account of each Participant, Former Participant or Beneficiary any cash dividends paid to the Trustee on shares of Employer Stock held in that person's ESOP Account as of the record date for such cash dividends.

As of each Valuation Date, the Trustee shall:

(1) First, charge to the appropriate Account of the Participant, Former Participant or Beneficiary all distributions and payments made to him, or on his behalf, since the last preceding Valuation Date that have not been charged previously;

(3) Next, allocate and credit to the Account of each Participant any unallocated dividends, according to the balance of each Participant's ESOP Account as of the immediately preceding Valuation Date, after adjustment pursuant to Section 6.2(a) above; and

(4) Finally, allocate and credit to the ESOP Cash Account of each Participant, Former Participant or Beneficiary any other income, gains or losses of the Trust Fund on a pro rata basis, according to the balance of each ESOP Cash Account as of the immediately preceding Valuation Date, after adjustment pursuant to Paragraph (1) and (2) above.

6.3 Limitation on Allocations to Participants

Notwithstanding any other provisions of the Plan, the Annual Additions credited to a Participant's Accounts under this Plan and any related defined contribution plan in accordance with the provisions of this Article VI for any Plan Year shall not exceed the Defined Contribution Dollar Limitation as defined herein.

In the event a Participant herein is also a Participant at any time in another defined contribution plan maintained by the Employer or another employer, the sum of Annual Additions under all such plans credited to a Participant's Accounts in any Plan Year shall not exceed the Defined Contribution Dollar limitation, but such limitations shall first be applied to reduce the Annual Additions under another defined contribution plan before being applied to reduce the Annual Additions under this Plan.

Notwithstanding any provision herein to the contrary, if no more than one third (1/3) of the Employer Contributions with respect to a particular Plan Year are allocated to Highly Compensated Employees, then Annual Additions for the purpose of this Section with respect to such Year shall not include:

(a) Forfeitures of Employer Stock, if such stock was acquired with the proceeds of an Acquisition Loan, or

(b) Employer Contributions which are used for the purpose of paying interest on an Acquisition Loan and which are allocated as a Participant's Accounts.

The following paragraph applies for Limitation Years beginning before January 1, 2009. In the event the Annual Additions credited to a Participant's Account exceed the Defined Contribution Dollar Limitation, then the Plan shall place the excess Annual Additions into an unallocated account, similar to the suspense account described in Treasury Regulation Section 1.415-6(b)(6)(iii) effective for Limitation Years beginning before July 1, 2007. Employer shall use the unallocated account to make future Employer ESOP Contributions. Employer shall not make Employer ESOP Contributions from any other source while any amount remains in the unallocated account pursuant to this Section 6.3.

The following paragraph applies for Limitation Years beginning on or after January 1, 2009. If the Annual Additions exceed the Defined Contribution Dollar Limit for any Participant, then the Plan may only correct the excess Annual Addition in accordance with the rules set forth in the Employee Plans Compliance Resolution System (EPCRS) of the Internal Revenue Service, as set forth in Revenue Procedure 2006-27, 2006-22 I.R.B. 945, or any superseding guidance.

6.4 Top-Heavy Provisions

The following provisions shall become effective in any Year in which the Plan is determined to be a Top-Heavy Plan.

(a) Determination of Top-Heavy: The Plan will be considered a Top-Heavy Plan for the Year if as of the last day of the preceding Year ("Determination Date"), (1) the value of the Accounts of Participant's who are Key Employees (but not including any allocations to be made as of such last day of the Year except contributions actually made on or before that date and allocated pursuant to Section 6.2) exceeds 60% of the value of the Accounts of all Participants (but not including any allocations to be made as of such last day of the Year except contributions actually made on or before that date and allocated pursuant to Section 6.2) (the "60% Test") or (2) the Plan is part of a Required Aggregation Group and the Required Aggregation Group is top-heavy. However, and notwithstanding the results of the 60% Test, the Plan shall not be considered a Top-Heavy Plan for any Year in which the Plan is a part of a Required or Permissive Aggregation Group which is not top-heavy.

For the purposes of making the "60% Test" for any Plan Year, the value of the Participant's Accounts computed above shall include distributions under the Plan with respect to all Employees during the five-year period ending as of the Determination Date.

(b) Minimum Allocations: Notwithstanding the provisions of Section 6.2, for any Year during which the Plan is deemed a Top Heavy Plan, the Employer ESOP Contribution for such Year allocated to each Participant's Account shall not be less than the lesser of (i) three percent (3%) of each Participant's Compensation for the Year, or (ii) each Participant's pro rata share of the Employer ESOP Contribution allocated according to the ratio that each Participant's Compensation for the Year bears to the total Compensation of all Participants.

Each Non-Key Employee who has not terminated employment as of the end of the Year will receive this minimum allocation regardless of his Compensation and regardless of whether he has accrued 1,000 Hours of Employment during the Year.

If the Employer maintains another qualified plan which, along with the Plan, is also deemed to be a Top Heavy Plan, the minimum contribution required pursuant to this subsection (b) shall be made to the other qualified plan.

(c) Definitions:

(1) "Key Employee" means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year is:

(i) an officer of the Employer having annual Compensation greater than $175,000 (as adjusted in accordance with the Adjustment Factor);

(ii) one of the ten employees having annual Compensation for a Plan Year greater than the 415 Compensation limit and owning both more than one-half percent interest and the largest interests in the Employer;

(iii) a Five Percent Owner of the Employer; or

(iv) a one percent owner of the Employer with annual Compensation from the Employer of more than $150,000.

For this purpose, annual compensation means compensation within the meaning of Code Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

(2) "Non-Key Employee" means any Participant who is not a Key Employee.

(3) "Required Aggregation Group" means each employee benefit plan of the Employer in which a Key Employee is a Participant and will include any other plan of such Employer which enables the Plan to meet the requirements of Code Section 401(a)(4) or Code Section 410.

(4) "Permissive Aggregation Group" means each employee benefit plan of the Employer in which a Key Employee is a Participant and consideration of which would not affect the ability of the Plan to meet the requirements of Code Section 401(a)(4) and Code Section 410.

(d) Determination of present values and amounts. This Section (d) shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of Employees as of the determination date.

(i) Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code Section 416 (g)(2) during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period.”

(ii) Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the determination date shall not be taken into account.

ARTICLE VII
Benefits

7.1 Retirement, Death or Disability

If a Participant’s employment with the Employer is terminated on or after his Normal Retirement Date, or if his employment is terminated at an earlier age because of death or Disability, he or his surviving Beneficiary shall be vested in, and entitled to receive, the entire amount in each of his Accounts valued as of the Valuation Date coincident with or next following the date on which the Participant’s employment terminates.

Payment of benefits due under this Section shall be made in accordance with Section 7.4.

7.1A In-Service Distributions

If a Participant is still employed by the Employer after he attains age 65, the Participant shall be entitled to receive an amount equal to the vested percentage of the balance of his ESOP Account and ESOP Cash Account, if any. Such percentage shall be determined in accordance with the schedule stated in Section 7.2.

Payment of benefits due under this Section shall be made in accordance with Section 7.4.

7.2 Other Termination of Employment

If a Participant’s employment with the Employer is terminated before his Normal Retirement Date for any reason other than Disability or death, the Participant shall be entitled to an amount equal to the vested percentage of the balance of his ESOP Account and ESOP Cash Account, if any. Such percentage shall be determined in accordance with the following schedule:

Years of Service	Vested Percentage	Forfeited Percentage
less than 1	0%	100%
1 but less than 2	20	80
2 but less than 3	40	60
3 but less than 4	60	40
4 but less than 5	80	20
5 or more years	100	0

Notwithstanding any provision herein to the contrary, all Participants in the Plan who are actively employed with the Employer as of December 31, 2006 shall be 100% vested in their accounts as of that date. Employees who became participants herein after January 1, 2007 shall be subject to the vesting schedule set forth above. Notwithstanding any provision herein to the contrary, Employees who became Participants on or after January 1, 2007 and are Participants on or after January 1, 2008 shall be subject to the vesting schedule set forth above.

A Participant shall be fully vested in the shares of Employer Stock allocated to his ESOP account pursuant to Article X.

Effective March 20, 2014, all Participants in the Plan shall be 100% vested in their Accounts as of that date.

7.3 Forfeiture Accounts and Forfeitures

Effective March 20, 2014, if any amount is forfeited by a Participant under the de minimis amount distribution rule, then such amount shall be used to pay Plan expenses. The portions of a Former Participant’s Account that are not distributable to him by reason of the provisions of Section 7.2 (“Forfeiture”) shall be credited, respectively, to a Cash Forfeiture Account and a Stock Forfeiture Account established and maintained by the Trustee in the

Participant’s name as of the Valuation Date coincident with or next following the date of his termination of employment. The Forfeiture shall be first charged against a Former Participant’s ESOP Cash Account and deposited into the Cash Forfeiture Account with any balance charged against his ESOP Account and deposited into the Stock Forfeiture Account. These Forfeiture Accounts shall be distributed in accordance with the following rules:

(a) If the Former Participant is reemployed by the Employer before he incurs a one (1)-year Break in Service, his ESOP Account and ESOP Cash Account shall be reinstated as of the date he again performs an Hour of Service for the Employer.

(b) If the Former Participant incurs a one (1)-year Break in Service, his Forfeiture Accounts shall be held by the Trustee until the earlier to occur of the following:

(1) The date the Former Participant receives a distribution of the vested portion of his Accounts; or

(2) The date the Former Participant incurs five (5) consecutive one (1)-year Breaks in Service.

At that time, his Forfeiture Accounts shall be reallocated among the other Participants as of the Valuation Date coincident with or next following the occurrence of such Break in accordance with the provisions of Section 6.2.

For the purpose of this Section, "balance" shall be determined on the basis of the number of applicable shares of Employer Stock in the case of a Former Participant's ESOP Account or Stock Forfeiture Account.

7.4 Manner of Making Payments

Distribution of a vested ESOP Account will be made in whole shares of Employer Stock. Distribution of a Participant's vested ESOP Cash Account will be made in cash. Distribution of a vested Account will normally be made by either of the following methods, at the election of the Participant:

(a) By payment in a lump sum; or

(b) By payment in a series of substantially equal installments over a period of 5 years.

However, the maximum period over which the distribution of a ESOP Account may be made shall be increased by 1 year, up to 5 additional years, for each $215,000 (or fraction thereof) by which such Participant's ESOP Account balance exceeds $1,080,000 (as adjusted in accordance with the Adjustment Factor). A Participant or Former Participant may, however, elect in writing to receive a longer distribution period, subject to the limitations of Section 7.5. If a distribution of such Accounts is made to or for the benefit of a Participant's or Former Participant's Beneficiary on account of the Participant's death before commencement of payment in accordance with either paragraph (a) or (b) next above, such distribution will

normally be completed within 5 years after the death of a Participant or Former Participant, subject to the limitations in Section 7.5.

Where distribution of the Accounts of a Participant or Former Participant has commenced prior to that person's death, the remaining portions of such Accounts as of his date of death will be distributed to that person's Beneficiary at least as rapidly as the installment payments otherwise selected by the Participant or Former Participant prior to death. The Participant or Former Participant shall select the method by which his benefits will be distributed to him. A Participant or Former Participant, if he so desires, may select the method by which his benefits will be paid to his Beneficiary. If the Participant or Former Participant does not file an election to select the method by which his benefits will be distributed, the Trustee shall distribute the Participant's or Former Participant's benefits, to him or his Beneficiary, in the form of a lump sum. Furthermore, under regulations prescribed by the Secretary of the Treasury pursuant to Code Section 401(a)(9), any amount paid to a child of a deceased Participant or Former Participant shall be treated as if it has been paid to the surviving spouse of the Participant or Former Participant if such amount will become payable to the surviving spouse upon such child reaching the age of majority (or other designated event permitted under said regulations).

If a Participant or Former Participant becomes entitled to a distribution from the Plan pursuant to Section 7.2 and the value of such Participant's vested Accounts does not exceed $5,000 the value of the Participant's benefit hereunder shall be distributed in accordance with Section 7.9.

7.5 Time for Distribution

Except as provided in Section 7.1A, distribution of a Participant's Accounts will be made or commenced as soon as practicable following a Participant's termination of employment, but not later than the 60th day next following the close of the Plan Year during which the Participant attains his Normal Retirement Date or, if later, during which his termination of employment occurs, subject to the following limitations:

(a) Time and Manner of Distribution

(1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's Accounts will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the

calendar year in which the Participant would have attained age 70 1/2, if later;

(ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died;

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's Accounts will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death;

(iv) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this section will apply as if the surviving spouse were the Participant.

For purposes of this subsection (2) and section (d) below, unless subsection (iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section (i).

(3) Forms of Distribution. Unless the Participant's Accounts are distributed in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with sections (b) and (c).

(b) Required Minimum Distributions During Participant's Lifetime.

(1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse=s birthdays in the distribution calendar year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this section (b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(c) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(a) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death reduced by one for each subsequent year.

(b) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(c) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death,

the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in section (1) above;

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's Accounts will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death;

(iii) Death of Surviving Spouse Before Distribution to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section (a)(2)(i), this section (iii) will apply as if the surviving spouse were the Participant.

(d) Definitions

(1) Designated Beneficiary. The individual who is designated as the beneficiary under section 7.6 of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401 (a)(9)-1, Q&A-4, of the Treasury regulations.

(2) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar

year in which distributions are required to begin under section (a)(2). The required minimum Distribution Calendar Year will be on or before the Participant's Required Beginning Date. The required minimum distribution for the Participant's first distribution for other Distribution Calendar Years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(3) Life Expectancy. Life Expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(4) Participant's Account Balance. The Account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year ("Valuation Calendar Year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of the dates in the Valuation Calendar Year after the Valuation Date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

(5) Required Beginning Date. April 1 of the calendar year following the later of: (i) the calendar year in which the Participant attains age 70 1/2 or (ii) the calendar year in which the Participant retires. Subsection (ii) shall not apply to Participants who are Five Percent Owners.

(6) For purposes of this Section 7.5, the term Participant shall include Former Participant.

(e) 2009 Required Minimum Distributions

Notwithstanding anything to contrary, a Participant, Former or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions pursuant to a written election.

(f) ESOP Provisions

Notwithstanding any provision in the Plan to the contrary, and unless a Participant elects otherwise, the distribution of amounts representing the Employer Stock allocated to his ESOP Account balance will commence not later than one (1) year after the end of the Plan Year:

i. during which a Participant's employment with the Employer is terminated on or after his Normal Retirement Date, or during which his employment is terminated at any time due to death or Disability; or

ii. which is the fifth Plan Year following the Plan Year during which a Participant terminates employment pursuant to Section 7.2 (subject to the reemployment provisions of Section 3.4).

Notwithstanding any provision in the Plan to the contrary, cash distributions to a Distributee of the value of Employer Stock acquired with an Acquisition Loan which has not been fully repaid need not commence until the Plan Year in which the Acquisition Loan is fully paid unless an earlier date is otherwise required under Code Sections 401(a)(9) and 401(a)(14) or the Plan Administrator determines, pursuant to reasonable exercise of its discretion, that such a distribution is appropriate.

7.6 Designation of Beneficiary

Each Participant or Former Participant from time to time may designate any person or persons (who may be designated contingently or successively and who may be an entity other than a natural person) as his Beneficiary or Beneficiaries to whom his Plan benefits are paid if he dies before receipt of all such benefits. Each Beneficiary designation shall be in the form prescribed by the Plan Administrator and will be effective only when filed with the Plan Administrator during the Participant's lifetime. Each Beneficiary designation filed with the Plan Administrator will cancel all Beneficiary designations previously filed with the Plan Administrator. If a Participant is married, any Beneficiary designation of someone other than the Participant's spouse must include the consent of the Participant's spouse. Any election that does not include the spouse's consent shall be deemed invalid and the Participant's benefits shall be distributed as if no beneficiary designation had been executed.

In order to be effective, a spouse's consent must satisfy the following requirements:

(a) It must be in writing;

(b) It must designate a beneficiary which may not be changed without spousal consent; and

(c) It must acknowledge the effect of such election and be witnessed by a plan representative or notary public.

If any Participant or Former Participant fails to designate a Beneficiary in the manner provided above, or if the Beneficiary designated by a deceased Participant dies before him or before complete distribution of the Participant's benefits, the Plan Administrator will direct the Trustee to distribute such Participant's benefits (or the balance thereof) in accordance with the following order of priority:

(i) To his surviving spouse, or if there be none surviving;

(ii) To his surviving children in equal parts, provided, however, that children by blood, marriage or adoption shall be considered children of the Participant or of his children, as the case may be, or if there be none surviving;

(iii) To his surviving mother and father, in equal parts, or if there be none surviving;

(iv) To the estate of the last to die of the Participant and any designated beneficiaries.

7.7 Missing Participants or Beneficiaries

Each Participant, Former Participant and each Beneficiary must file with the Employer from time to time in writing his post office address and each change of post office address. Any communication, statement or notice addressed to a Participant, Former Participant or Beneficiary at his last post office address filed with the Employer, or if no address is filed with the Employer then, in the case of a Participant, at his last post office address as shown on the Employer's records, will be binding on the Participant or Former Participant and his Beneficiary for all purposes of the Plan. The Employer, the Plan Administrator and the Trustee are not required to search for or locate a Participant, Former Participant or designated Beneficiary.

7.8 Pre-Retirement Diversification Rights

During a Qualifying Election Period, a Participant may elect to direct the Trustee to diversify twenty-five percent (25%) of the value of the Employer Stock held in the Participant's Accounts. This election can be made only during the Participant's Qualifying Election Period. For this purpose, "Qualifying Election Period" means the Plan Year during which a Participant attains age fifty-five (55) and accrues ten (10) Years of Service while a Participant, and the five (5) succeeding Plan Years.

At the end of each Plan Year during the Qualifying Election Period, a Participant can diversify twenty-five percent (25%) of the value of his Accounts, reduced by amounts previously diversified. At the end of the last Plan Year during the Qualifying Election Period, the Participant can diversify fifty percent (50%) of his Accounts, less amounts previously diversified. The Participant must make this election within ninety (90) days after the end of the applicable Plan Year. At the discretion of the Trustee, the diversification requirement may be satisfied by any of the following methods:

(a) distributing to the Participant an amount equal to the amount for which the Participant elected diversification;

(b) substituting for the amount of Employer Stock for which the Participant elects diversification an equivalent amount of other assets, pursuant to the Participant's investment direction pursuant to the rules contained in Section 11.4; or

(c) providing the option of transferring the portion of the Account for which diversification is elected into a qualified plan that provides for employee-directed investment.

The Trustee must complete diversification within ninety (90) days after the Participant's Qualifying Election Period has expired.

7.9 Payment of Small Benefits

Upon eligibility for benefits, if the vested portion of a Former Participant's Accounts is $5,000 or less, the Plan Administrator will direct that the vested portion of such Accounts be paid in cash in the form of a lump sum to the Former Participant, or where required pursuant to the terms of the Plan, to the Former Participant's Beneficiary. Notwithstanding the forgoing, if the vested portion of a Former Participant's Account is between $5,000 and $1,000, the Plan Administrator will direct that the vested portion of such Accounts be paid in cash to an individual retirement account established by the Employer in accordance with Section 7.10 unless otherwise directed by the Former Participant.

7.10 Direct Rollover of Eligible Rollover Distributions

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit an eligible distributee's election under this Section, an eligible distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the eligible distributee in a direct rollover.

(b) Definitions.

(1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the eligible distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the eligible distributee or the joint lives (or joint life expectancies) of the eligible distributee and the eligible distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any distribution that is considered to be made on account of hardship as contemplated by applicable sections of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). A portion of a distribution shall not fail to be an eligible rollover distribution merely

because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

2009 RMDs and Extended 2009 RMDs (as defined in Section 7.5(f) of the Plan) shall be considered an eligible rollover distribution.

(2) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a) that accepts the eligible distributee's eligible rollover distribution and agrees to separately account for amounts transferred into such plan from this Plan, an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, an individual retirement account described in Code Section 408A(e) or an inherited individual retirement account or annuity described in Code Section 402(c)(11). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. The definition of eligible retirement plan shall also apply in the case of a distribution to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

For distributions made after December 31, 2007, an eligible retirement plan shall include a Roth IRA described in Code Section 408A(b).

(3) Eligible Distributee: An eligible distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are eligible distributees with regard to the interest of the spouse or former spouse.

Eligible Distributee shall also include a beneficiary of the employee or former employee, other than the employee's surviving spouse, who elects to have an eligible rollover distribution distributed directly to an inherited individual retirement account or annuity.

(4) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the eligible distributee.

ARTICLE VIII
Voting of Employer Stock

All Employer Stock held in the Trust shall generally be voted by the Trustee. With respect to any corporate matter which involves the voting of Employer Stock for the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all of the assets of a trade or business, or such other transactions which may be prescribed by regulation, each Participant, Former Participant or Beneficiary may be entitled to direct the Trustee as to the exercise of any voting rights attributable to shares of Employer Stock then allocated to his Employer ESOP Account, but only to the extent required by Code Sections 401(a)(22) and 409(e)(3) and the regulations thereunder. If Participants Former Participant and Beneficiary are entitled to so direct the Trustee as to the voting of Employer Stock allocated to their ESOP Accounts, all allocated Employer Stock as to which such instructions have been received (which may include an instruction to abstain) shall be voted in accordance with such instructions. However, the Trustee shall vote any shares of unallocated Employer Stock in the Trust Fund, or any allocated Employer Stock as to which no voting instructions have been received. The necessary voting provisions of any other applicable provisions of the Code are hereby incorporated herein by reference, and any contrary provision contained in this Article VIII shall be of no force or effect.

ARTICLE IX
Rights and Restrictions on Employer Stock

9.1 Right of First Refusal

This Section 9.1 shall only apply while Employer Stock is not listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, or quoted on a system sponsored by a national securities association registered under Section 15A(b) of the Securities Exchange Act of 1934. Subject to the provisions of the last sentence of this Section 9.1, shares of the Employer Stock distributed by the Trustee shall be subject to a "Right of First Refusal". The Right of First Refusal shall provide that, prior to any subsequent transfer, such Employer Stock must first be offered in writing to the Employer and, if then refused by the Employer, to the Trust, at the then fair market value, as determined by an Independent Appraiser (as defined in Code Section 401(a)(28)). A bona fide written offer from an independent prospective buyer shall be deemed to be the fair market value of such Employer Stock for this purpose unless the value per share, as determined by the Trustee as of the most recent Valuation Date, is greater. The Employer and the Trustee shall have a total of fourteen (14) days (from the date the Employer received the offer) to exercise the Right of First Refusal on the same terms offered by the prospective buyer. A Distributee entitled to a distribution of Employer Stock may be required to execute an appropriate stock transfer agreement (evidencing the Right of First Refusal) prior to receiving a certificate for Employer Stock. No Right of First Refusal shall be exercisable by reason of any of the following transfers:

(a) the transfer upon the death of a Distributee of any shares of Employer Stock to his legal representatives, heirs and legatees; provided, however, that any proposed sale or other disposition of any such shares of any legal representative, heir or legatee shall remain subject to the Right of First Refusal;

(b) the transfer by a Distributee in accordance with the Put Option pursuant to Section 9.2 below; or

(c) the transfer while the Employer Stock is listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, or quoted on a system sponsored by a national securities association registered under Section 15A(b) of the Securities Exchange Act of 1934.

9.2 Put Option

Since Employer Stock is listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, a Distributee that receives a distribution of his Account in the form of Employer Stock shall not have any put option rights.

9.3 Share Legend

Shares of Employer Stock held or distributed by the Trustee may include such legend restrictions on transferability as the Employer may reasonably require in order to assure compliance with applicable Federal and State securities laws.

9.4 Restrictions on Transferability

Except as provided in this Article and applicable law, Employer Stock acquired with the proceeds of an exempt loan shall not be subject to a put, call or other option or buy-sell or similar arrangement while held or distributed by the Trustee. The provisions of this Section shall continue to be applicable to such Employer Stock even if the Plan ceases to be an employee stock ownership plan under Code Section 4975(e)(7) or the exempt loan is repaid.

9.5 Prohibited Arrangements

The Trustee shall not be required to acquire any shares of Employer Stock from a particular shareholder at an indefinite time determined upon the happening of an event (such as the death of a shareholder).

ARTICLE X
Dividends

10.1 Dividends Credited to ESOP Cash Accounts

Any cash dividends paid with respect to shares of Employer Stock allocated to ESOP Accounts may, as determined by the Plan Administrator and directed in writing to the Trustee by

the Plan Administrator, be allocated among and credited to ESOP Cash Accounts of the Participants, Former Participants or Beneficiaries; provided, however, that the dividends paid with respect to Employer Stock allocated to ESOP Accounts shall be allocated among and credited to ESOP Cash Accounts, pro rata, according to the number of shares of Employer Stock held in the respective ESOP Accounts on the date the dividends are paid.

10.2 Dividends Paid to Participants

Any cash dividends paid with respect to shares of Employer Stock allocated to ESOP Accounts may, as determined by the Plan Administrator, be paid directly in cash to Participants, Former Participants or Beneficiaries or, if first paid to the Trustee, within ninety (90) days after the end of the Plan Year in which paid to the Trustee.

10.3 Dividends Used to Repay Acquisition Loan

Any cash dividends paid with respect to shares of Employer Stock allocated to ESOP Accounts or held in the Loan Suspense Account may (as required by applicable Acquisition Loan documentation or, if not so required, as determined by the Plan Administrator and directed in writing to the Trustee) be used by the Trustee to repay the balance of an outstanding Acquisition Loan. Any Financed Shares released from the Loan Suspense Account by reason of dividends paid with respect to Employer Stock held in the Loan Suspense Account shall be allocated and credited to Participants' ESOP Accounts, pro rata, in the same manner as contributions and forfeitures are allocated pursuant to Section 6.2(c) with respect to dividends totaling up to the fair market value of the Financed Shares so released. To the extent that the fair market value of the Financed Shares so released from the Loan Suspense Account exceeds the amount of dividends with respect to such shares, such excess shall be allocated, pro rata, according to the combined value of each Participant's ESOP Account and ESOP Cash Account, pursuant to Section 6.2(b). Any Financed Shares released from the Loan Suspense Account by reason of dividends paid with respect to Employer Stock allocated to ESOP Accounts shall be allocated among and credited to the ESOP Accounts of Participants, Former Participants or Beneficiaries, pro rata, according to the number of shares of Employer Stock held in such Accounts on the date the dividends are paid.

ARTICLE XI
Administration

11.1 Authority

The Employer shall be empowered to appoint and remove the Trustee and the Plan Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants, Former Participants and Beneficiaries in accordance with the terms of the Plan.

The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal

periodic review by the Employer or by a qualified person specifically designated by the Employer through day-to-day conduct and evaluation, or through other appropriate ways.

11.2 Assignment and Designation of Administrative Authority

The Employer shall appoint one or more Plan Administrators. Any person including, but not limited to, the directors, shareholders, officers and employees of the Employer shall be eligible to serve as a Plan Administrator. A Plan Administrator may resign by delivering its written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Plan Administrator if no date is specified.

The Employer, upon the resignation or removal of a Plan Administrator, shall promptly designate in writing a successor to this position. If the Employer does not appoint a Plan Administrator, the Employer shall function as the Plan Administrator.

11.3 Powers, Duties and Responsibilities of the Plan Administrator

The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants, Former Participants and Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan in accordance with its terms and shall have the power to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Plan Administrator shall be conclusive and binding upon all persons. The Plan Administrator may correct any defect, supply any information or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of this Plan; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 401(a) and shall comply with the terms of ERISA and all regulations issued pursuant thereto. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under this Plan.

The Plan Administrator shall be charged with the duties of the general administration of the Plan including, but not limited to, the following:

(a) to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder;

(b) to compute, certify and direct the Trustee with respect to the amount and the kind of benefits to which any Participant, Former Participant or Beneficiary shall be entitled hereunder;

(c) to authorize and direct the Trustee with respect to all non-discretionary or otherwise directed disbursements from the Fund;

(d) to maintain all necessary records for the administration of the Plan;

(e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;

(f) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Fund; and

(g) to assist any Participant, Former Participant or Beneficiary regarding his rights, benefits or elections available under the Plan.

11.4 Records and Reports

The Plan Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Former Participants, Beneficiaries and others as required by law.

11.5 Appointment of Advisors

The Plan Administrator, or the Trustee with the consent of the Plan Administrator, may appoint and/or hire counsel, specialists and advisers and other persons as the Plan Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan.

11.6 Information from Employer

To enable the Plan Administrator to perform its functions, the Employer shall supply full and timely information to the Plan Administrator on all matters relating to the Participants, and the Plan Administrator shall advise the Trustee of such of the foregoing facts as may be pertinent to the Trustee's duties under the Plan. The Plan Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

11.7 Payment of Expenses

All expenses of administration may be paid out of the Fund unless paid by the Employer, including any expenses incident to the functioning of the Plan Administrator, including but not limited to, fees of accountants, counsel, and other specialists, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Fund; however, the Employer may reimburse the Fund for any administration expense incurred pursuant to the above. Any administration expense paid to the Fund as a reimbursement shall not be considered as an Employer ESOP Contribution.

11.8 Claims Procedure

The Plan Administrator shall make all determinations as to the right of any person to a benefit. Any denial by the Plan Administrator of a claim for benefits under the Plan by a Participant, Former Participant or Beneficiary shall be stated in writing by the Plan

Administrator and delivered or mailed to the Participant, Former Participant or Beneficiary; and such notice shall set forth the specific reasons for the denial, written to the best of the Plan Administrator's ability in a manner that may be understood without legal or actuarial counsel. In addition, the Plan Administrator shall afford a reasonable opportunity to any Participant, Former Participant or Beneficiary whose claim for benefits has been denied for a review of the decision denying the claim and, in the event of continued disagreement, either party may appeal to the Employer, whose decision shall be final.

11.9 Authorization of Benefit Payments

The Plan Administrator shall issue directions to the Trustee concerning all benefits which are to be paid from the Trust Fund pursuant to the provisions of the Plan, and warrants that all such directions are in accordance with this Plan.

11.10 Application and Forms for Benefits

The Plan Administrator may require a Participant, Former Participant or Beneficiary to complete and file with the Plan Administrator an application for a benefit and all other forms approved by the Plan Administrator, and to furnish all pertinent information requested by the Plan Administrator. The Plan Administrator may rely upon all such information so furnished it, including the applicant's current mailing address.

11.11 Facility of Payment

Whenever, in the opinion of the Employer and the Plan Administrator, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal Disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Trustee may be directed to make payments to such person or to his legal representative or to a relative or friend of such person for his benefit, or to apply the payment for the benefit of such person in such manner as the Employer and the Plan Administrator consider advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

11.12 Indemnification of the Plan Administrator

The Plan Administrator shall be indemnified by the Employer and not from the Trust Fund against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

11.13 Military Leave

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). The Beneficiary of an Employee who dies while performing qualified military

service (as defined in Code Section 414(u)) shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Employee resumed and then terminated employment on account of death.

ARTICLE XII
Trust Fund

12.1 Deposit of Contributions

All contributions under this Plan shall be paid to the Trustee and deposited in the Trust Fund. However, all contributions made by the Employer are expressly conditioned upon the initial qualification of the Plan under the Internal Revenue Code. Upon the Employer's request, a contribution which was made due to a good faith mistake of fact, or conditioned upon the initial qualification of the Plan, shall be returned to the Employer within one year after the payment of the contribution or the denial of the qualification, whichever is applicable.

12.2 Exclusive Benefit

Except as provided above, all assets of the Trust Fund shall be retained for the exclusive benefit of Participants, Former Participants and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer and shall not revert to or inure to the benefit of the Employer.

12.3 Trustee's Powers

The Trustee shall be responsible for the investment and management of the Fund and shall have the following powers, rights and duties, in addition to those provided elsewhere in the Plan or that may be granted by law, to be exercised without court order:

(a) to receive and to hold all contributions paid to it under the Plan; provided, however, that the Trustee shall have no duty to require any contributions to be made to it, to determine that the contributions received by it comply with the provisions of the Plan or with any resolution of the Board of Directors of the Employer providing therefore;

(b) to retain in cash (pending investment, reinvestment or the payment of dividends) such reasonable amount as may be required for the proper administration of the Trust and to invest such cash as provided herein;

(c) to make payments from the Trust Fund to such persons, in such manner, at such times and in such amounts as the Plan Administrator shall direct without inquiring as to whether a payee is entitled to the payment, or as to whether a payment is proper, and without liability for a payment made in good faith without actual notice or knowledge of the changed condition or status of the payee;

(d) as directed by the Plan Administrator, to borrow from any lender (including the Employer or a shareholder of Employer Stock) to finance the acquisition of Employer Stock, giving its note as Trustee with such reasonable interest and security (which shall only consist of Employer Stock to the extent that proceeds of the loan are used to purchase Employer Stock or to refinance a prior Acquisition Loan) for the loan as may be appropriate or necessary, provided that such borrowing shall comply with the applicable provisions of the Plan;

(e) to vote any stocks (including Employer Stock as provided in Article VIII of the Plan), bonds or other securities held in the Trust, or otherwise consent to or request any action on the part of the issuer in person or by proxy;

(f) as directed by the Plan Administrator, to deposit securities in any voting trust, or with any protective or like committee, or with a trustee or with depositories designated thereby;

(g) as directed by the Plan Administrator, to contract or otherwise enter into transactions between itself, as Trustee, and the Employer or any shareholder, for the purpose of acquiring or selling Employer Stock and, absent any direction by the Plan Administrator, to retain such Employer Stock;

(h) as directed by the Plan Administrator, to compromise, contest, arbitrate, settle or abandon claims and demands;

(i) as directed by the Plan Administrator, to begin, maintain or defend any litigation necessary in connection with the investment, reinvestment and administration of the Trust;

(j) to retain any funds or property subject to any dispute without liability for the payment of interest, or to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction;

(k) to report to the Plan Administrator and the Employer as of the last day of each Plan Year, as of any Valuation Date (or as soon thereafter as practicable), or at such other times as may be required under the Plan, the then fair market value of all property held in the Trust Fund, reduced by any liabilities other than liabilities to Participants, Former Participants and Beneficiaries, as determined by the Trustee;

(l) to furnish to the Plan Administrator and the Employer an annual written account and accounts for such other periods as may be required under the Plan, showing the value of the Trust Fund at the end of the period, all investments, receipts, disbursements and other transactions made by the Trustee during the accounting period, and such other information as the Trustee may possess which the Plan Administrator or the Employer require in order to comply with Section 103 of the Act. All accounts of the Trustee shall be kept in accordance with the Accounting

Method. If, during the term of this Trust Agreement, the Department of Labor issues regulations under ERISA regarding the valuation of securities or other assets for purposes of the reports required by ERISA, the Trustee shall use such valuation methods for purposes of the accounts described by this subparagraph. All valuations of shares of Employer Stock which are not publicly traded on a national securities market or exchange, shall be made by an "Independent Appraiser" (as described in Code Section 401(a)(28));

(m) to pay any estate, inheritance, income or other tax, charge or assessment attributable to any benefit which, as directed by the Plan Administrator, it shall or may be required to pay out of such benefit; and to require before making any payment such release or other document from any taxing authority and such indemnity from the intended payee as the Trustee shall deem necessary for its protection;

(n) to employ agents, attorneys, actuaries, accountants or other persons (who also may be employed by or may represent the Employer) for such purposes as the Trustee considers desirable;

(o) to assume, until advised to the contrary, that the Trust is qualified under Code Section 401(a) and is entitled to tax exemption under Code Section 501(a);

(p) to have the authority to invest and reinvest the assets of the Trust Fund in real or personal property of any kind, except that assets attributable to Employer contributions shall, at such time or times as directed by the Plan Administrator, primarily be invested in Employer Stock; and

(q) to perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust Fund.

12.4 Trustee Expenses

The Trustee shall be paid such reasonable compensation as shall periodically be agreed upon in writing by the Employer and the Trustee. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Fund unless paid or advanced by the Employer. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Fund or the income thereof, shall be paid from the Fund.

12.5 Exercise of Trustee's Duties

The Trustee shall discharge its duties hereunder solely in the interest of the Plan Participants and other persons entitled to benefits under the Plan; and:

(a) for the exclusive purpose of:

(i) providing benefits to Participants and other persons entitled to benefits under the Plan; and

(ii) defraying reasonable expenses of administering the Plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(c) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of ERISA.

12.6 Investment in Employer Stock

(a) Stock Dividends, Splits and Other Capital Reorganizations

Any Employer Stock received by the Trustee as a stock split or dividend or as a result of a reorganization or other recapitalization of the Employer shall be allocated as of each Valuation Date under the Plan in proportion to the Employer Stock to which it is attributable.

(c) Voting of Shares and Tender or Exchange Offers

Employer Stock held in the Trust Fund shall be voted by the Trustee in the manner set forth in Article VIII of the Plan. If any tender or exchange or similar offer to purchase all or any portion of outstanding Employer Stock is made by any person, the Trustee, in its sole discretion and consistent with its duties described in Section 11.3, will decide to accept or reject the offer with respect to the shares of Employer Stock held in the Trust Fund.

12.7 Audit

If an audit of the Plan's records shall be required by ERISA and the regulations thereunder for any Plan Year, the Plan Administrator shall direct the Trustee to engage an independent certified public accountant for that purpose. The certified public accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Plan Administrator and the Trustee a report of its audit setting forth its opinion as to whether each of the following statements, schedules or lists, or any others that are required to be filed with the Plan's annual report, are presented fairly in accordance with generally accepted accounting principles applied on a consistent basis:

(a) statement of the assets and liabilities of the Plan;

(b) statement of changes in net assets available to the Plan;

(c) statement of receipts and disbursements, a schedule of all assets held for investment purposes, a schedule of all loans or fixed income obligations in default at the close of the Plan Year;

(d) a list of all leases in default or uncollectible during the Plan Year;

(e) the most recent annual statement of assets and liabilities of any bank common or collective trust fund in which Plan assets are invested or such information regarding separate accounts or trusts with a bank or insurance company as the Trustee and the Plan Administrator deem necessary; and,

(f) a schedule of each transaction or series of transactions involving an amount in excess of three percent (3%) of Plan assets.

If some or all of the information necessary to enable the Plan Administrator to comply is maintained by a bank, insurance company, or similar institution, regulated and supervised and subject to periodic examination by a state or federal agency, it shall transmit and certify the accuracy of that information to the Plan Administrator within one hundred twenty (120) days after the end of the Plan Year or such other date as may be prescribed under regulations of the Secretary of Labor.

12.8 Removal or Resignation of Trustee

The Trustee may be removed by the Employer at any time upon not less than thirty (30) days prior written notice specifying the removal date. The Trustee may resign at any time upon not less than thirty (30) days written notice to the Employer specifying the resignation date. Upon such removal or resignation of the Trustee, the Employer shall appoint a successor Trustee who shall have the same powers and duties as those conferred upon the currently named Trustee. Before turning over the Fund to a successor Trustee, a Trustee is authorized to reserve such reasonable sum of money as it may deem advisable to provide for any sums chargeable against the Fund for which it may be liable, and for the payment of its fees and expenses in connection with the settlement of its account or otherwise.

12.9 Clerical Functions

The Employer may appoint and/or hire consultants, accountants or other assistants to perform any clerical, record keeping or non-discretionary functions of the Trustee, subject to the direction and supervision of the Trustee.

12.10 Valuation

The Trust Fund shall be valued at each Valuation Date, but at least annually, using any reasonable valuation procedure in accordance with the Accounting Method. Such valuation shall take into account the fair market value of the Trust Fund as of the Valuation Date, pursuant to Code regulations.

The Valuation required pursuant to this Section shall be made pursuant to an independent appraisal, in accordance with Code Section 401(a)(28)(C).

ARTICLE XIII
Withdrawals and Participant Loans

13.1 In-Service Withdrawals.

Except as provided in Section 7.1A, a Participant may not make withdrawals from his Account for any reason while employed by the Employer.

13.2 Loans

Participants are not permitted to borrow from or against all or any portion of their Accounts.

ARTICLE XIV
Amendments and Action by Employer

14.1 Amendments

The Employer reserves the right to make from time to time any amendment or amendments to this Plan which do not cause any part of the Trust Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants, Former Participants or their Beneficiaries, provided, however, that the Employer may make any amendment it determines necessary or desirable, with or without retroactive effect, to comply with ERISA.

14.2 Action by Employer

Any action by the Employer under this Plan, including an action to amend or terminate the Plan, may be made by resolution of the Board of Directors of the Employer, or by action of any person or persons duly authorized by the Board of Directors of the Employer to take such action.

ARTICLE XV
Successor Employer and Merger or Consolidation of Plans

15.1 Successor Employer

In the event of the dissolution, merger, consolidation or reorganization of the Employer, provision may be made by which the Plan and Trust will be continued by the successor; and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all of the powers, duties and responsibilities of the Employer under the Plan.

15.2 Conditions Applicable to Mergers or Consolidations of Plans

In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust Fund to another trust fund held under, any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the assets of the Trust Fund applicable to such Participants shall be merged or consolidated with or transferred to the other trust fund only if:

(a) Each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated); and the determination of such benefits shall be made in the manner and at the time prescribed in regulations issued under ERISA;

(b) Resolutions of the Employer, or of any new or successor employer of the affected Participants, shall authorize such transfer of assets; and, in the case of the new or successor employer of the affected Participants, its resolutions shall include an assumption of liabilities with respect to such Participants' inclusion in the new employer's plan; and

(c) Such other plan and trust are qualified under Code Sections 401(a) and 501(a).

ARTICLE XVI
Plan Termination

16.1 Right to Terminate

In accordance with the procedures set forth in this Article, the Employer may terminate the Plan at any time. In the event of the dissolution, merger, consolidation or reorganization of the Employer, or in the event of complete discontinuance of contributions to the Plan, the Plan shall terminate and the Trust Fund shall be liquidated unless the Plan is continued by a successor to the Employer in accordance with Section 15.1.

16.2 Partial Termination

Upon termination of the Plan by the Employer with respect to a group of Participants, the Trustee shall, in accordance with the directions of the Plan Administrator, allocate and segregate for the benefit of the Participants then or theretofore employed by the Employer with respect to which the Plan is being terminated the proportionate interest of such Participants in the Trust Fund. The funds so allocated and segregated shall be used by the Trustee to pay benefits to or on behalf of Participants in accordance with Section 16.3.

16.3 Liquidation of the Trust Fund

Upon termination or partial termination of the Plan, the Accounts of all Employees affected thereby shall become fully vested, and the Plan Administrator may direct the Trustee: (a) to continue to administer the Trust Fund and pay account balances in accordance with Section 7.4, to Participants affected by the termination upon their termination of employment or to their Beneficiaries upon such a Participant's death, until the Trust Fund has been liquidated, or (b) to distribute the assets remaining in the Trust Fund, after payment of any expenses properly chargeable thereto, to Participants, Former Participants and Beneficiaries in proportion to their respective account balances.

In case the Plan Administrator directs liquidation of the Trust Fund pursuant to (a) above, the expenses of administering the Plan and Trust, if not paid by the Employer, shall be paid from the Trust Fund.

16.4 Manner of Distribution

To the extent that no discrimination in value results, any distribution after termination of the Plan may be made, in whole or in part, in cash, in securities or other assets in kind, or in nontransferable annuity contracts, as the Plan Administrator (in its discretion) may determine. All non-cash distributions shall be valued at fair market value at the date of distribution.

ARTICLE XVII
Participating Employers

17.1 Adoption by Other Employers

Anything contained herein to the contrary notwithstanding, with the consent of the Employer, any other employer may adopt this Plan and participate herein by an instrument adopting the provisions of this Plan.

17.2 Requirements of Participating Employers
In such event:

(a) each such employer shall be required to use the same Trustee as provided in this Plan;

(b) the Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by all employers;

(c) the transfer of any Participant from or to an employer participating in this Plan shall not affect such Participant's rights under the Plan, and the Participant's rights under the Plan and the Participant's Account balances as well as his accumulated service time with the transferor or predecessor and his length of participation in the Plan, shall continue to his credit;

(d) any contributions made by another employer, as provided for in this Plan, shall be paid to and held by the Trustee for the exclusive benefit of the employees of such employer and the Beneficiaries of such employees, subject to all the terms and conditions of this Plan. On the basis of information furnished by the Plan Administrator, the Trustee shall keep separate books and records concerning the affairs of each employer and as to the account balances of the Participants of each employer;

(e) in the event of termination of employment of any transferred Employee, any portion of the Employer Contribution Account of such Employee which has not been vested under the provisions of this Plan shall be allocated by the Trustee at the direction of the Plan Administrator to the respective equities of the employers for whom such Employee has rendered service in the proportion that each employer has contributed toward the benefits of such Employee. The amount so allocated shall be retained by the Trustee and shall be used to reduce the contribution by the respective employer for the next succeeding year or years; and

(f) any expenses of the Trust Fund which are to be paid by the employer or borne by the Trust Fund shall be paid by each employer in the same proportion that the total amount standing to the credit of all Participants employed by such employer bears to the total standing to the credit of all Participants.

17.3 Designation of Agent

Each employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee and the Plan Administrator for the purpose of this Plan, each employer shall be deemed to have designated irrevocably the undersigned Employer as its agent. Unless the context of the plan clearly indicates the contrary, the word "Employer" shall be deemed to include each employer as related to its adoption of the Plan.

17.4 Employee Transfers

If an Employee is transferred between employers who have adopted the Plan, the Employee involved shall carry with him his accumulated service and eligibility. No such transfer shall effect a termination of employment hereunder, and the employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the employer from whom the Employee was transferred.

17.5 Amendment

Amendment of this Plan by the Employer when there shall be another employer hereunder shall only be by the written action of each and every employer and with the consent of the Trustee where such consent is necessary in accordance with the terms of this Plan.

17.6 Discontinuance of Participation

Any employer shall be permitted to discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Trustee shall thereafter transfer, deliver and assign that portion of the Trust Fund allocable to the Participants of such employer to the employer as shall have been designated by such employer, in the event that it has established a separate qualified plan for its Employees. If no successor is designated, the trustee shall retain such assets for the Employees of such employer as otherwise provided in this Plan. In no event shall any part of the Trust as it relates to such employer be used or diverted for purposes other than for the exclusive benefit of the employees of such employer.

17.7 Plan Administrator's Authority

The Plan Administrator shall have authority to make any and all necessary rules or regulations binding upon all employers and all Participants to effectuate the purpose of this Article.

ARTICLE XVIII
General

18.1 Non-guarantee of Employment

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

18.2 Rights to Trust Assets

No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust Fund. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust Fund and none of the Fiduciaries shall be liable therefore in any manner.

18.3 Non-alienation of Benefits

Except with respect to federal income tax withholding, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse of former spouse or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any

right to benefits payable hereunder, shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

Notwithstanding the above, the Plan Administrator may direct the Trustee to comply with a Qualified Domestic Relations Order requiring the segregation of all or a portion of a Participant's or Former Participant's Accounts for the benefit of an alternate payee.

"Qualified Domestic Relations Order" ("Qualified Order") means a judgment, decree or order (including approval of a property settlement agreement) that (a) relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Participant or Former Participant and (b) is made pursuant to a state domestic relations law (including a community property law). Such judgment, decree or order must create or recognize the existence of an alternate payee's right to, or assign to an alternate payee the right to receive all or a portion of the benefits payable to a Participant or Former Participant under the Plan, provided that the judgment, decree or order contains the following information:

(a) the name and last known mailing address of the Participant or Former Participant and each alternate payee covered by the order;

(b) the amount or percentage of the Participant's or Former Participant's Accounts to be paid to any alternate payee, or the manner in which such amount or percentage is to be determined;

(c) the number of payments or the period to which the order applies; and

(d) each plan to which the order relates. In addition, an order will be a Qualified Order only if:

(i) it does not require a plan to provide any type of benefit or option not otherwise provided under the plan;

(ii) it does not require a plan to provide benefits in excess of a Participant's or Former Participant's Accounts; and

(iii) it does not require payment of benefits to an alternate payee in lieu of payment of benefits to another alternate payee pursuant to a prior Qualified Order.

An order will be deemed to be a Qualified Order, even though it requires payment of benefits to an alternate payee when a Participant has not yet terminated employment and, has not reached his Earliest Retirement Age, provided the Qualified Order so provides. "Earliest Retirement Age" means the earliest date on which, under the Plan, the Participant could elect to receive benefits.

18.4 Non-forfeitability of Benefits

Subject only to the specific provisions of this Plan, nothing shall be deemed to divest a Participant of his right to the nonforfeitable benefit to which he becomes entitled in accordance with the provisions of this Plan.

18.5 Election Not To Participate

Notwithstanding any provision to the contrary, a Participant may not elect to forgo participation in the Plan with respect to any Plan Year.

18.6 Legal Action

In the event any claim, suit or proceeding is brought regarding the Plan to which the Trustee or the Plan Administrator may be a party, and such claim, suit or proceeding is resolved in favor of the Trustee or Plan Administrator, they shall be entitled to be reimbursed from the Fund for any and all costs, attorneys' fees and other expenses pertaining thereto incurred by them for which they shall have become liable. Necessary parties to any accounting, litigation or other proceedings shall include only the Trustee, the Plan Administrator and the Employer. The settlement or judgment in any such case in which the Employer is duly served or cited shall be binding upon all the Participants under the Plan, the Beneficiaries and their respective estates, as well as upon all persons claiming by, through or under them.

18.7 Prohibition Against Diversion of Funds

It shall be impossible by operation of the Plan, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of the Fund to be used for or diverted to purposes other than the exclusive benefit of Participants, former Participants or their Beneficiaries.

18.8 Bonding

Every Fiduciary, except a bank or an insurance company, unless exempted by the Act and regulations thereunder, shall be bonded in an amount not less than ten percent (10%) of the amount of the funds such Fiduciary handles; however, the minimum bond shall be One Thousand Dollars ($1,000) and the maximum bond One Million Dollars ($1,000,000). The amount of funds handled shall be determined at the beginning of each Plan Year by the amount of funds handled by such person, group or class to be covered and their predecessors, if any, during the preceding Plan Year, or if there is no preceding Plan

Year, then by the amount of the funds to be handled during the then current Plan Year. The bond shall provide protection to the Plan against any loss by reason of acts of fraud or dishonesty by the Fiduciary alone or in connivance with others. The surety shall be a corporate surety company, as such term is used in Act Section 412(a)(2), and the bond shall be in a form approved by the Secretary of Labor.

Notwithstanding anything in this Plan to the contrary, the cost of such bonds shall be an expense of and may, at the election of the Plan Administrator, be paid from the Fund or by the Employer.

18.9 Integration

This Plan supersedes any prior agreements and understandings between the parties and represents the complete agreement of the parties with respect to this plan of benefits only; however, this Plan may be amended from time to time pursuant to the written agreement of the parties.

18.10 Invalid Provision

If any term or provision of this Plan or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Plan, or the application of such term or provision to such persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Plan shall be valid and shall be enforced to the fullest extent permitted by law.

18.11 Governing Law

The interpretation of the terms and provisions of this Plan shall be governed by the Laws of the State of Illinois where it has been executed, except where preempted by federal law. Proper venue for resolution of disputes shall be Circuit Court in Champaign County, Illinois (for disputes subject to state law) and Federal District Court in Urbana, Illinois (for disputes subject to federal law).

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Employer:	Trustee:
FIRST BUSEY CORPORATION	**BUSEY TRUST COMPANY**
By: __________	By: __________
Its: __________	Its: __________
Date: __________	Date: __________

Plan No. 003

First Busey Corporation Employees’ Stock Ownership Trust
Employer Identification Number: 37-6312057

FIRST BUSEY CORPORATION
2010 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AWARD

The Participant specified below has been granted this Restricted Stock Unit Award (the "**Award**") by First Busey Corporation, a Nevada corporation (the "**Company**"), under the terms of the First Busey Corporation 2010 Equity Incentive Plan (the "**Plan**"). The Award is subject to the Plan and the following terms and conditions (the "**Award Terms**"):

Section 1. <u>Award</u>. In accordance with the Plan, the Company hereby grants to the Participant the Award of restricted stock units (each, an "**RSU**"), where each RSU represents the right to receive one share of Stock in the future, subject to the Award Terms. The Award is in all respects limited and conditioned by the Plan and as provided herein.

Section 2. <u>Terms of Restricted Stock Unit Award</u>. The following words and phrases relating to the Award have the following meanings:

(a) The "**Participant**" is

(b) The "**Grant Date**" is

(c) The number of "**RSUs**" is

Except for terms defined herein, any capitalized term in the Award Terms has the meaning ascribed to that term under the Plan.

Section 3. <u>Restricted Period</u>. The Award Terms evidence the Company's grant to the Participant, as of the Grant Date, on the terms and conditions described in the Award Terms and in the Plan, of a number of RSUs, each of which represents the right of the Participant to receive one share of Stock free of restrictions once the Restricted Period ends.

(a) Subject to the Award Terms, the "**Restricted Period**" shall begin on the Grant Date and end on the fifth anniversary of the Grant Date (but only if the Participant has not had a Termination of Service before the end of the Restricted Period).

(b) Notwithstanding the foregoing provisions of this **Section 3**, the Restricted Period for the RSUs shall end immediately, and the RSUs shall be fully earned and vested immediately upon (i) a Change in Control that occurs on or before the Participant's Termination of Service, or (ii) the Participant's Termination of Service due to the Participant's Disability or death. "**Disability**" means the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, or is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering the Company's employees.

(c) Notwithstanding the foregoing provisions of this **Section 3**, in the event of the Participant's Retirement, the Restricted Period for a pro rata portion of the RSUs shall end immediately, and such pro rata portion of the RSUs shall be earned and vested immediately as of the date of Retirement. The pro rata portion of the RSUs that shall become vested under this section shall be equal to (i) the number of RSUs subject to the Award, multiplied by (ii) the number of full months the Participant was employed following the Grant Date divided by 60. "**Retirement**" means the (A) Participant's voluntary Termination of Service on or after attaining the age of 62; and (B) the Participant does not provide services for a financial institution following the Termination of Service.

(d) In the event the Participant's Termination of Service, other than as provided in **Section 3(b)** or **Section 3(c)** above, occurs prior to the expiration of the Restricted Period, the Participant shall forfeit all rights, title and interest in and to any RSUs still subject to the Restricted Period as of the Participant's Termination of Service.

Section 4. <u>Settlement of Units</u>. Delivery of shares of Stock or other amounts in connection with the Award shall be subject to the following:

(a) *Delivery of Stock.* The Company shall deliver to the Participant one Share free and clear of any restrictions in settlement of each of the vested and unrestricted RSUs within 30 days following the end of the Restricted Period, *provided, however*, that if the end of the Restricted Period occurs within the 30 days preceding the end of a calendar year, such settlement shall occur on the 30th day following the end of the Restricted Period. Notwithstanding the foregoing, if the Participant is deemed a "specified employee" within the meaning of Code Section 409A, as determined by the Committee, at a time when the Participant becomes eligible for settlement of the RSUs upon "separation from service" within the meaning of Code Section 409A and according to Company policy, as may be in effect, then to the extent necessary to prevent any accelerated or additional tax under Code Section 409A, such settlement will be delayed until the earlier of: (a) the date that is the first day of the seventh month following the Participant's Termination of Service, and (b) the Participant's death.

(b) *Compliance with Applicable Laws.* Notwithstanding any other provision of the Award Terms or the Plan, the Company shall have no obligation to deliver any shares of Stock or make any other distribution of benefits in connection with the Award or the Plan unless such delivery or distribution complies with all applicable laws and the applicable requirements of any securities exchange or similar entity.

(c) *Certificates.* To the extent the Award Terms and the Plan provide for the issuance of shares of Stock, the issuance may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the applicable requirements of any securities exchange or similar entity.

Section 5. <u>Withholding</u>. All deliveries of shares of Stock pursuant to the Award shall be subject to withholding of all applicable taxes. The Company shall have the right to require the Participant (or if applicable, permitted assigns, heirs or Designated Beneficiaries) to remit to the Company an amount sufficient to satisfy any tax requirements prior to the delivery of any shares of Stock in connection with the Award. At the election of the Participant, subject to any rules and limitations as may be established by the Committee, such withholding obligations may be satisfied through the surrender of shares of Stock that the Participant already owns, or to which the Participant is otherwise entitled under the Plan.

Section 6. **Non-Transferability of Award**. Except as otherwise provided in the Plan, the Participant shall not sell, assign, transfer, pledge, hypothecate, mortgage, encumber or otherwise dispose of any RSUs during the Restricted Period.

Section 7. **Dividend Equivalents**. The Participant shall be entitled to receive a payment of additional RSUs equal in value to any dividends and distributions paid with respect to the RSUs (other than dividends and distributions that may be issued with respect to shares of Stock by virtue of any corporate transaction, to the extent covered in Section 3.4 of the Plan) during the Restricted Period and during the period following the end of the Restricted Period and prior to the date of settlement of the Award ("**Dividend Equivalents**"); *provided, however,* that no Dividend Equivalents shall be payable to or for the benefit of the Participant with respect to record dates for such dividends or distributions occurring before the Grant Date or on or after the date, if any, on which the Participant has forfeited the RSUs. Dividend Equivalents shall be provided at the time the respective dividends or distributions are paid and shall be subject to the same restrictions applicable to the underlying RSUs.

Section 8. **No Rights as Shareholder**. The Participant shall not have any rights of a shareholder with respect to the RSUs, including but not limited to voting rights, prior to the settlement of the RSUs pursuant to **Section 4(a)** above and issuance of a stock certificate or its equivalent as provided herein.

Section 9. **Heirs and Successors**. The Award Terms shall be binding upon, and inure to the benefit of, the Company and its successors and assigns, and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company's assets or business. If any rights of the Participant or benefits distributable to the Participant under the Award Terms have not been settled or distributed, respectively, at the time of the Participant's death, such rights shall be settled and payable to the Designated Beneficiary, and such benefits shall be distributed to the Designated Beneficiary, in accordance with the provisions of the Award Terms and the Plan. The **"Designated Beneficiary"** shall be the beneficiary or beneficiaries designated by the Participant in a writing filed with the Committee in such form as the Committee may require. The designation of beneficiary may be amended or revoked from time to time by the Participant in accordance with the procedures established by the Committee. If a Participant fails to designate a beneficiary, or if the Designated Beneficiary does not survive the Participant, any rights that would have been payable to the Participant shall be payable to the legal representative of the estate of the Participant. If a Participant designates a beneficiary and the Designated Beneficiary survives the Participant but dies before the settlement of the Designated Beneficiary's rights under the Award Terms, then any rights that would have been payable to the Designated Beneficiary shall be payable to the legal representative of the estate of the Designated Beneficiary.

Section 10. **Administration**. The authority to manage and control the operation and administration of the Award Terms and the Plan is vested in the Committee, and the Committee has all powers with respect to the Award Terms as it has with respect to the Plan. Any

interpretation of the Award Terms or the Plan by the Committee and any decision made by it with respect to the Award Terms or the Plan shall be final and binding on all persons.

Section 11. **Plan Governs**. Notwithstanding anything in the Award Terms to the contrary, the Award Terms are subject to the terms of the Plan, a copy of which may be obtained by the Participant from the Corporate Secretary of the Company. The Award Terms are subject to all interpretations, amendments, rules and regulations promulgated by the Committee from time to time pursuant to the Plan. Notwithstanding anything in the Award Terms to the contrary, in the event of any discrepancies between the corporate records of the Company and the Award Terms, the corporate records of the Company shall control.

Section 12. **Not an Employment Contract**. The Award shall not confer on the Participant any right with respect to continuance of employment or other service with the Company or any Subsidiary, nor shall it interfere in any way with any right the Company or any Subsidiary may otherwise have to terminate or modify the terms of such Participant's employment or other service at any time.

Section 13. **Amendment**. The Award Terms may be amended in accordance with the provisions of the Plan, and may otherwise be amended in writing by the Participant and the Company without the consent of any other person.

Section 14. **Governing Law**. The Award Terms, the Plan, and all actions taken in connection herewith and therewith shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to principles of conflict of laws, except as superseded by applicable federal law.

Section 15. **Section 409A**. The Award is intended to comply with Code Section 409A and the Award shall be administered and interpreted in accordance with such intent. The committee reserves the right (including the right to delegate such right) to unilaterally amend the Award Terms without the consent of the Participant in order to maintain compliance with Code Section 409A; and the Participant's receipt of the Award constitutes the Participant's acknowledgement of and consent to such rights of the Committee.

Section 16. **Clawback**. The Award and any amount or benefit received hereunder shall be subject to potential cancellation, recoupment, rescission, payback or other action in accordance with the terms of any applicable Company clawback policy (the **"Policy")** or any applicable law, as may be in effect from time to time. The Participant's receipt of the Award constitutes the Participant's acknowledgment of and consent to the Company's application, implementation and enforcement of (i) the Policy or any similar policy established by the Company that may apply to the Participant and (ii) any provision of applicable law relating to cancellation, rescission, payback or recoupment of compensation, as well as the Participant's express agreement that the Company may take such actions as may be necessary to effectuate the Policy, any similar policy or applicable law without further consideration or action.

IN WITNESS WHEREOF, the Company has caused the Award Terms to be executed in its name and on its behalf, all as of the Grant Date, and the Participant acknowledges understanding and acceptance of, and agrees to, the Award Terms.

FIRST BUSEY CORPORATION

By: ______________________________

Its: President & CEO

PARTICIPANT

____

Date

Exhibit 10.36

THIRD AMENDMENT
TO THE
FIRST COMMUNITY FINANCIAL PARTNERS, INC.
AMENDED AND RESTATED 2008 EQUITY INCENTIVE PLAN

WHEREAS, First Community Financial Partners, Inc. (the "**Company**") maintains the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan (the "**Plan**");

WHEREAS, pursuant to Article 6 of the Plan, the Board of Directors (the "**Board**") of the Company has reserved to itself the power, authority and discretion to amend the Plan from time-to-time;

WHEREAS, the Board has determined that it is in the best interest of the Company to amend the Plan in order to revise the option exercise and tax withholding provisions; and

WHEREAS, the Board has duly authorized the undersigned officer to carry out the foregoing.

NOW, THEREFORE, effective as of July 2, 2017, the Plan be and hereby is amended in the following particulars:

1. The last sentence of Section 2.2 shall be deleted and replaced with the following new sentence:

   "The payment of the Exercise Price of an option shall be by cash or, subject to limitations imposed by applicable law, by any of the following means unless otherwise determined by the Committee from time to time: (a) by tendering, either actually or by attestation, shares of Stock acceptable to the Committee and valued at Fair Market Value as of the day of exercise; (b) by irrevocably authorizing a third party, acceptable to the Committee, to sell shares of Stock acquired upon exercise of the option and to remit to the Company no later than the third business day following exercise a sufficient portion of the sale proceeds to pay the entire Exercise Price and any tax withholding resulting from such exercise; (c) by payment through a net exercise such that, without the payment of any funds, the Participant may exercise the option and receive the net number of shares of Stock equal in value to (i) the number of shares of Stock as to which the option is being exercised, multiplied by (ii) a fraction, the numerator of which is the Fair Market Value (on the date of exercise) less the Exercise Price, and the denominator of which is such Fair Market Value (the number of net shares of Stock to be received shall be rounded down to the nearest whole number of shares of Stock); (d) by personal, certified or cashiers' check; (e) by other property deemed acceptable by the Committee or (f) by any combination thereof."

2. The last sentence of Section 7.9 shall be deleted and replaced with the following new sentence:

   "Except as otherwise provided by the Committee, such withholding obligations may be satisfied: (a) through cash payment by the Participant; (b) through the surrender of shares of Stock that the Participant already owns; or (c) through the surrender of shares of Stock to which the Participant is otherwise entitled under the Plan; *provided, however*, that except as otherwise specifically provided by the Committee, such shares under clause (c) may not be used to satisfy more than the maximum individual statutory tax rate for each applicable tax jurisdiction."

3. In all other respects the Plan shall remain in full force and effect.

* * * * *

IN WITNESS WHEREOF, the Company has caused this Third Amendment to be executed by its duly authorized officer this 20th day of June, 2017.

FIRST COMMUNITY FINANCIAL PARTNERS, INC.

By: /s/ Patrick J. Roe

Its: President and COO

Exhibit 10.38

FIRST AMENDMENT
TO THE
FIRST COMMUNITY FINANCIAL PARTNERS, INC.
<u>2016 EQUITY INCENTIVE PLAN</u>

WHEREAS, First Community Financial Partners, Inc. (the "**Company**") maintains the First Community Financial Partners, Inc. 2016 Equity Incentive Plan (the "**Plan**");

WHEREAS, pursuant to Article 6 of the Plan, the Board of Directors (the "**Board**") of the Company has reserved to itself the power, authority and discretion to amend the Plan from time-to-time;

WHEREAS, the Board has determined that it is in the best interest of the Company to amend the Plan in order to revise the tax withholding provisions; and

WHEREAS, the Board has duly authorized the undersigned officer to carry out the foregoing.

NOW, THEREFORE, effective as of July 2, 2017, the Plan be and hereby is amended in the following particulars:

1. The last sentence of Section 7.8 shall be deleted and replaced with the following new sentence:

   "Except as otherwise provided by the Committee, such withholding obligations may be satisfied: (a) through cash payment by the Participant; (b) through the surrender of Shares that the Participant already owns; or (c) through the surrender of Shares to which the Participant is otherwise entitled under the Plan; *provided, however,* that except as otherwise specifically provided by the Committee, such Shares under clause (c) may not be used to satisfy more than the maximum individual statutory tax rate for each applicable tax jurisdiction."

2. In all other respects the Plan shall remain in full force and effect.

* * * * *

IN WITNESS WHEREOF, the Company has caused this First Amendment to be executed by its duly authorized officer this 20th day of June, 2017.

FIRST COMMUNITY FINANCIAL PARTNERS, INC.

By: /s/ Patrick J. Roe

Its: President and COO

FIRST COMMUNITY FINANCIAL PARTNERS, INC.
2016 EQUITY INCENTIVE PLAN

RESTRICTED STOCK UNIT AWARD

The Participant specified below has been granted this Restricted Stock Unit Award (the "**Award**") by First Busey Corporation, a Nevada corporation (the "**Company**"), under the terms of the First Community Financial Partners, Inc. 2016 Equity Incentive Plan (the "**Plan**"). The Award is subject to the Plan and the following terms and conditions (the "**Award Terms**"):

Section 1. Award. In accordance with the Plan, the Company hereby grants to the Participant the Award of restricted stock units (each, an "**RSU**"), where each RSU represents the right to receive one share of Stock in the future, subject to the Award Terms. The Award is in all respects limited and conditioned by the Plan and as provided herein.

Section 2. Terms of Restricted Stock Unit Award. The following words and phrases relating to the Award have the following meanings:

(a) The "**Participant**" is

(b) The "**Grant Date**" is

(c) The number of "**RSUs**" is

Except for terms defined herein, any capitalized term in the Award Terms has the meaning ascribed to that term under the First Busey Corporation 2010 Equity Incentive Plan (the "**Busey 2010 Plan**"). Notwithstanding anything herein to the contrary, to the extent that terms of the Plan conflict with the terms of the Busey 2010 Plan, the terms of the Plan are hereby modified to conform to the terms of the Busey 2010 Plan.

Section 3. Restricted Period. The Award Terms evidence the Company's grant to the Participant, as of the Grant Date, on the terms and conditions described in the Award Terms and in the Plan, of a number of RSUs, each of which represents the right of the Participant to receive one share of Stock free of restrictions once the Restricted Period ends.

(a) Subject to the Award Terms, the "**Restricted Period**" shall begin on the Grant Date and end on the fifth anniversary of the Grant Date (but only if the Participant has not had a Termination of Service before the end of the Restricted Period).

(b) Notwithstanding the foregoing provisions of this **Section 3**, the Restricted Period for the RSUs shall end immediately, and the RSUs shall be fully earned and vested immediately upon (i) a Change in Control that occurs on or before the Participant's Termination of Service, or (ii) the Participant's Termination of Service due to the Participant's Disability or death. "**Disability**" means the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, or is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering the Company's employees.

(c) Notwithstanding the foregoing provisions of this **Section 3**, in the event of the Participant's Retirement, the Restricted Period for [a pro rata portion of] the RSUs shall end immediately, and such [pro rata portion of the] RSUs shall be earned and vested immediately as of the date of Retirement. [The pro rata portion of the RSUs that shall become vested under this section shall be equal to (i) the number of RSUs subject to the Award, multiplied by (ii) the number of full months the Participant was employed following the Grant Date divided by 60.] ["**Retirement**" means (A) the Participant incurs a Termination of Service (other than for Cause) after attaining age 62; and (B) the Participant does not become employed at any time by a Financial Institution (as defined in the Participant's employment agreement) within 150 miles of an office operated by the Company or any of its affiliates.] ["**Retirement**" means the (A) Participant's voluntary Termination of Service on or after attaining the age of 62; and (B) the Participant does not provide services for a financial institution following the Termination of Service.]

(d) In the event the Participant's Termination of Service, other than as provided in **Section 3(b)** or **Section 3(c)** above, occurs prior to the expiration of the Restricted Period, the Participant shall forfeit all rights, title and interest in and to any RSUs still subject to the Restricted Period as of the Participant's Termination of Service.

Section 4. Settlement of Units. Delivery of shares of Stock or other amounts in connection with the Award shall be subject to the following:

(a) *Delivery of Stock.* The Company shall deliver to the Participant one Share free and clear of any restrictions in settlement of each of the vested and unrestricted RSUs within 30 days following the end of the Restricted Period, *provided, however,* that if the end of the Restricted Period occurs within the 30 days preceding the end of a calendar year, such settlement shall occur on the 30th day following the end of the Restricted Period. Notwithstanding the foregoing, if the Participant is deemed a "specified employee" within the meaning of Code Section 409A, as determined by the Committee, at a time when the Participant becomes eligible for settlement of the RSUs upon "separation from service" within the meaning of Code Section 409A and according to Company policy, as may be in effect, then to the extent necessary to prevent any accelerated or additional tax under Code Section 409A, such settlement will be delayed until the earlier of: (a) the date that is the first day of the seventh month following the Participant's Termination of Service, and (b) the Participant's death.

(b) *Compliance with Applicable Laws.* Notwithstanding any other provision of the Award Terms or the Plan, the Company shall have no obligation to deliver any shares of Stock or make any other distribution of benefits in connection with the Award or the Plan unless such delivery or distribution complies with all applicable laws and the applicable requirements of any securities exchange or similar entity.

(c) *Certificates.* To the extent the Award Terms and the Plan provide for the issuance of shares of Stock, the issuance may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the applicable requirements of any securities exchange or similar entity.

Section 5. **Withholding**. All deliveries of shares of Stock pursuant to the Award shall be subject to withholding of all applicable taxes. The Company shall have the right to require the Participant (or if applicable, permitted assigns, heirs or Designated Beneficiaries) to remit to the Company an amount sufficient to satisfy any tax requirements prior to the delivery of any shares of Stock in connection with the Award. At the election of the Participant, subject to any rules and limitations as may be established by the Committee, such withholding obligations may be satisfied through the surrender of shares of Stock that the Participant already owns, or to which the Participant is otherwise entitled under the Plan.

Section 6. **Non-Transferability of Award**. Except as otherwise provided in the Plan, the Participant shall not sell, assign, transfer, pledge, hypothecate, mortgage, encumber or otherwise dispose of any RSUs during the Restricted Period.

Section 7. **Dividend Equivalents**. The Participant shall be entitled to receive a payment of additional RSUs equal in value to any dividends and distributions paid with respect to the RSUs (other than dividends and distributions that may be issued with respect to shares of Stock by virtue of any corporate transaction, to the extent covered in Section 3.4 of the Plan) during the Restricted Period and during the period following the end of the Restricted Period and prior to the date of settlement of the Award ("**Dividend Equivalents**"); *provided, however,* that no Dividend Equivalents shall be payable to or for the benefit of the Participant with respect to record dates for such dividends or distributions occurring before the Grant Date or on or after the date, if any, on which the Participant has forfeited the RSUs. Dividend Equivalents shall be provided at the time the respective dividends or distributions are paid and shall be subject to the same restrictions applicable to the underlying RSUs.

Section 8. **No Rights as Shareholder**. The Participant shall not have any rights of a shareholder with respect to the RSUs, including but not limited to voting rights, prior to the settlement of the RSUs pursuant to **Section 4(a)** above and issuance of a stock certificate or its equivalent as provided herein.

Section 9. **Heirs and Successors**. The Award Terms shall be binding upon, and inure to the benefit of, the Company and its successors and assigns, and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company's assets or business. If any rights of the Participant or benefits distributable to the Participant under the Award Terms have not been settled or distributed, respectively, at the time of the Participant's death, such rights shall be settled and payable to the Designated Beneficiary, and such benefits shall be distributed to the Designated Beneficiary, in accordance with the provisions of the Award Terms and the Plan. The "**Designated Beneficiary**" shall be the beneficiary or beneficiaries designated by the Participant in a writing filed with the Committee in such form as the Committee may require. The designation of beneficiary may be amended or revoked from time to time by the Participant in accordance with the procedures established by the Committee. If a Participant fails to designate a beneficiary, or if the Designated Beneficiary does not survive the Participant, any rights that would have been payable to the Participant shall be payable to the legal representative of the estate of the

Participant. If a Participant designates a beneficiary and the Designated Beneficiary survives the Participant but dies before the settlement of the Designated Beneficiary's rights under the Award Terms, then any rights that would have been payable to the Designated Beneficiary shall be payable to the legal representative of the estate of the Designated Beneficiary.

Section 10. **Administration**. The authority to manage and control the operation and administration of the Award Terms and the Plan is vested in the Committee, and the Committee has all powers with respect to the Award Terms as it has with respect to the Plan. Any interpretation of the Award Terms or the Plan by the Committee and any decision made by it with respect to the Award Terms or the Plan shall be final and binding on all persons.

Section 11. **Plan Governs**. Notwithstanding anything in the Award Terms to the contrary, the Award Terms are subject to the terms of the Plan, a copy of which may be obtained by the Participant from the Corporate Secretary of the Company. The Award Terms are subject to all interpretations, amendments, rules and regulations promulgated by the Committee from time to time pursuant to the Plan. Notwithstanding anything in the Award Terms to the contrary, in the event of any discrepancies between the corporate records of the Company and the Award Terms, the corporate records of the Company shall control.

Section 12. **Not an Employment Contract**. The Award shall not confer on the Participant any right with respect to continuance of employment or other service with the Company or any Subsidiary, nor shall it interfere in any way with any right the Company or any Subsidiary may otherwise have to terminate or modify the terms of such Participant's employment or other service at any time.

Section 13. **Amendment**. The Award Terms may be amended in accordance with the provisions of the Plan, and may otherwise be amended in writing by the Participant and the Company without the consent of any other person.

Section 14. **Governing Law**. The Award Terms, the Plan, and all actions taken in connection herewith and therewith shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to principles of conflict of laws, except as superseded by applicable federal law.

Section 15. **Section 409A**. The Award is intended to comply with Code Section 409A and the Award shall be administered and interpreted in accordance with such intent. The committee reserves the right (including the right to delegate such right) to unilaterally amend the Award Terms without the consent of the Participant in order to maintain compliance with Code Section 409A; and the Participant's receipt of the Award constitutes the Participant's acknowledgement of and consent to such rights of the Committee.

Section 16. **Clawback**. The Award and any amount or benefit received hereunder shall be subject to potential cancellation, recoupment, rescission, payback or other action in accordance with the terms of any applicable Company clawback policy (the "**Policy**") or any applicable law, as may be in effect from time to time. The Participant's receipt of the Award constitutes the Participant's acknowledgment of and consent to the Company's application, implementation and enforcement of (i) the Policy or any similar policy established by the

Company that may apply to the Participant and (ii) any provision of applicable law relating to cancellation, rescission, payback or recoupment of compensation, as well as the Participant's express agreement that the Company may take such actions as may be necessary to effectuate the Policy, any similar policy or applicable law without further consideration or action.

IN WITNESS WHEREOF, the Company has caused the Award Terms to be executed in its name and on its behalf, all as of the Grant Date, and the Participant acknowledges understanding and acceptance of, and agrees to, the Award Terms.

FIRST BUSEY CORPORATION

By: ______________________________

Its: President & CEO

PARTICIPANT

____

Date

Exhibit 21.1

List of Subsidiaries of First Busey Corporation and State of Incorporation/Organization

Direct:

Busey Bank - Illinois
South Side Trust & Savings Bank of Peoria - Illinois
Busey Wealth Management, Inc. - Illinois
First Busey Statutory Trust II - Delaware
First Busey Statutory Trust III - Delaware
First Busey Statutory Trust IV - Delaware
Pulaski Financial Statutory Trust I - Connecticut
Pulaski Financial Statutory Trust II - Delaware

Indirect:

Busey Trust Company, Inc. - Illinois
Busey Capital Management, Inc. - Illinois
Echo Holdings I, LLC - Florida
Echo Holdings II, LLC - Florida
Echo Holdings III, LLC - Florida
Echo Properties I, LLC - Florida
Echo Properties II, LLC - Florida
Echo Properties III, LLC - Florida
Echo Properties IV, LLC - Florida
Echo Properties V, LLC - Florida
Echo Properties VI, LLC - Florida
Echo Properties VII, LLC - Florida
Echo Properties VIII, LLC - Florida
Echo Properties IX, LLC - Florida
Echo Properties X, LLC - Florida
Echo Properties XI, LLC - Florida
Echo Properties XII, LLC - Florida
Echo Properties XIII, LLC - Florida
Echo Resources LLC - Illinois
First Community OREO LLC - Illinois
First Community OREO LLC III - Illinois
FirsTech, Inc. — Illinois
Mid Illinois Insurance Services Inc. - Illinois
Pillar Properties I, LLC - Illinois
Pillar Properties II, LLC - Illinois
Pillar Properties III, LLC - Illinois
Pillar Properties IV, LLC - Illinois
Pillar Properties V, LLC - Illinois
Pillar Properties VI, LLC - Illinois
Pillar Properties VII, LLC - Illinois
Pillar Properties VIII, LLC - Illinois
Pillar Properties IX, LLC - Illinois
Pillar Properties X, LLC - Illinois
Pillar Properties XI, LLC - Illinois
Pillar Properties XII, LLC - Illinois
Pillar Properties XIII, LLC - Illinois
Pillar Properties XIV, LLC - Illinois
Pillar Properties XV, LLC - Illinois
Pillar Properties XVI, LLC - Illinois
Pillar Properties XVII, LLC - Illinois
Pillar Properties XVIII, LLC - Illinois
Pillar Properties XIX, LLC - Illinois
Pillar Properties XX, LLC - Illinois
Priority Property Holdings, LLC - Missouri
Pulaski Service Corporation - Missouri

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (No. 333-167683, 333-145097, 333-115237 and 333-79217) on Forms S-8 and the Registration Statements (No. 333-221428 and 333-158358) on Forms S-3 of First Busey Corporation of our reports dated February 28, 2018 relating to the Consolidated Financial Statements and the effectiveness of internal control over financial reporting of First Busey Corporation, appearing in this Annual Report on Form 10-K of First Busey Corporation for the year ended December 31, 2017.

/s/ RSM US LLP

Champaign, Illinois
February 28, 2018

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Van A. Dukeman, President and Chief Executive Officer of First Busey Corporation, certify that:

1) I have reviewed this Annual Report on Form 10-K of First Busey Corporation;

2) Based on my knowledge, this Annual Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Annual Report;

3) Based on my knowledge, the Financial Statements, and other financial information included in this Annual Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Annual Report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Annual Report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of Financial Statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual Report based on such evaluation; and

   d) disclosed in this Annual Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ VAN A. DUKEMAN

Van A. Dukeman
President and Chief Executive Officer

Date: February 28, 2018

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Robin N. Elliott, Chief Financial Officer of First Busey Corporation, certify that:

1) I have reviewed this Annual Report on Form 10-K of First Busey Corporation;

2) Based on my knowledge, this Annual Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Annual Report;

3) Based on my knowledge, the Financial Statements, and other financial information included in this Annual Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Annual Report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Annual Report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual Report based on such evaluation; and

   d) disclosed in this Annual Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ ROBIN N. ELLIOTT

Robin N. Elliott
Chief Financial Officer

Date: February 28, 2018

EXHIBIT 32.1

The following certification is provided by the undersigned Chief Executive Officer of First Busey Corporation on the basis of such officer's knowledge and belief for the sole purpose of complying with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

CERTIFICATION

I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the accompanying Annual Report of First Busey Corporation on Form 10-K for the year ended December 31, 2017, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Annual Report fairly presents, in all material respects, the financial condition and results of operations of First Busey Corporation as of and for the periods covered by the Annual Report.

/s/ VAN A. DUKEMAN

Van A. Dukeman
President and Chief Executive Officer

Date: February 28, 2018

EXHIBIT 32.2

The following certification is provided by the undersigned Chief Financial Officer of First Busey Corporation on the basis of such officer's knowledge and belief for the sole purpose of complying with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

CERTIFICATION

I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the accompanying Annual Report of First Busey Corporation on Form 10-K for the year ended December 31, 2017, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Annual Report fairly presents, in all material respects, the financial condition and results of operations of First Busey Corporation as of and for the periods covered by the Annual Report.

/s/ ROBIN N. ELLIOTT

Robin N. Elliott
Chief Financial Officer

Date: February 28, 2018