

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**Current Report  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 6, 2017**

**First Busey Corporation**

(Exact name of registrant as specified in charter)

<b>Nevada</b> (State or other jurisdiction of incorporation)	<b>0-15950</b> (Commission File Number)	<b>37-1078406</b> (I.R.S. Employer Identification No.)
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**100 W. University Ave.**  
**Champaign, Illinois 61820**  
(Address of principal executive offices) (Zip code)

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

**N/A**  
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Item 1.01 Entry into a Material Definitive Agreement.

On February 6, 2017, First Busey Corporation, a Nevada corporation ("First Busey"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with First Community Financial Partners, Inc., an Illinois corporation ("First Community"), pursuant to which First Community will merge into First Busey, with First Busey as the surviving corporation (the "Merger"). A copy of the press release announcing the execution of the Merger Agreement is attached hereto as Exhibit 99.1.

Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger, First Community shareholders will have the right to receive 0.396 shares of common stock of First Busey and \$1.35 in cash for each share of common stock of First Community. The stock consideration is subject to adjustment if First Busey's stock price fluctuates more than 22.5% at the time of closing from the time of signing. Based upon First Busey's 5-day volume weighted average closing share price of \$29.31 as of February 3, 2017, the implied per share purchase price is \$12.95 with an aggregate transaction value of approximately \$235.8 million.

It is anticipated that First Community Financial Bank, First Community's wholly-owned bank subsidiary, will be merged with and into First Busey's bank subsidiary, Busey Bank, at a date following the completion of the holding company merger. At the time of the bank merger, First Community Bank's banking offices will become branches of Busey Bank. As of December 31, 2016, First Community had total consolidated assets of \$1.3 billion, total loans and leases of \$991.6 million and total deposits of \$1.1 billion.

The Merger Agreement contains customary representations and warranties of both parties and customary conditions to the parties' obligations to close the transaction, as well as agreements to cooperate in the process of consummating the transaction. The Merger Agreement also contains provisions limiting the activities of First Community and First Community Bank which are outside the ordinary and usual course of business, including restrictions on employee compensation, certain acquisitions and dispositions of assets and liabilities, and solicitations relating to alternative acquisition proposals, pending the completion of the Merger.

The Merger is anticipated to be completed in mid-2017, and is subject to the satisfaction of customary closing conditions in the Merger Agreement and the approval of the appropriate regulatory authorities and of the shareholders of First Community. Certain of the directors and officers of First Community have executed voting agreements in which they have agreed to vote their shares of First Community common stock in favor of approval of the Merger Agreement.

The information set forth above does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, which is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The representations, warranties and covenants of each party set forth in the Merger Agreement have been made only for purposes of, and were and are solely for the benefit of the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Accordingly, the representations and warranties may not describe the actual state of affairs at the date they were made or at any other time, and investors should not rely on them as statements of fact. In addition, such representations and warranties (i) will not survive the consummation of the Merger, and (ii) were made only as of the date of the Merger Agreement or such other date as is specified in the Merger Agreement. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the parties' public disclosures. Accordingly, the Merger Agreement is included with this filing only to provide investors with information regarding the terms of the Merger Agreement, and not to provide investors with any other factual information regarding First Busey or First Community, their respective affiliates or their respective businesses. The Merger Agreement should not be read alone, but should instead be read in conjunction with the other information regarding First Busey, First Community, their respective affiliates or their respective businesses, the Merger Agreement and the Merger that will be contained

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in, or incorporated by reference into, the Registration Statement on Form S-4 that will include a proxy statement of First Community and a prospectus of First Busey, as well as in the Forms 10-K, Forms 10-Q and other documents that each of First Busey and First Community file with or furnish to the Securities and Exchange Commission ("SEC").

#### **Item 8.01 Other Events.**

In connection with the execution of the Merger Agreement discussed in Item 1.01 above, First Busey and First Community issued a joint press release. A copy of the press release is attached hereto as Exhibit 99.1, which is incorporated herein by reference.

From time to time on and after February 6, 2017, First Busey and First Community intend to provide supplemental information regarding the proposed transaction to analysts and investors in connection with certain presentations. A copy of the supplementary information is attached hereto as Exhibit 99.2, which is incorporated herein by reference.

#### **Special Note Concerning Forward-Looking Statements**

This Current Report on Form 8-K may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 with respect to the financial condition, results of operations, plans, objectives, future performance and business of First Busey and First Community. Forward-looking statements, which may be based upon beliefs, expectations and assumptions of First Busey's and First Community's management and on information currently available to management, are generally identifiable by the use of words such as "believe," "expect," "anticipate," "plan," "intend," "estimate," "may," "will," "would," "could," "should" or other similar expressions. Additionally, all statements in this Current Report on Form 8-K, including forward-looking statements, speak only as of the date they are made, and neither First Busey nor First Community undertakes any obligation to update any statement in light of new information or future events. A number of factors, many of which are beyond the ability of First Busey and First Community to control or predict, could cause actual results to differ materially from those in its forward-looking statements. These factors include, among others, the following: (i) the possibility that any of the anticipated benefits of the proposed transaction between First Busey and First Community will not be realized or will not be realized within the expected time period; (ii) the risk that integration of operations of First Community with those of First Busey will be materially delayed or will be more costly or difficult than expected; (iii) the inability to complete the proposed transaction due to the failure of the required shareholder approval; (iv) the failure to satisfy other conditions to completion of the proposed transaction, including receipt of required regulatory and other approvals; (v) the failure of the proposed transaction to close for any other reason; (vi) the effect of the announcement of the transaction on customer relationships and operating results; (vii) the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events; (viii) the strength of the local, national and international economy; (ix) changes in state and federal laws, regulations and governmental policies concerning First Busey's and First Community's general business (including the impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the extensive regulations to be promulgated thereunder, as well as the rules adopted by the federal bank regulatory agencies to implement Basel III); (x) changes in interest rates and prepayment rates of First Busey's and First Community's assets; (xi) increased competition in the financial services sector and the inability to attract new customers; (xii) changes in technology and the ability to develop and maintain secure and reliable electronic systems; (xiii) the loss of key executives or employees; (xiv) changes in consumer spending; (xv) unexpected results of acquisitions, including the acquisition of First Community; (xvi) unexpected outcomes of existing or new litigation involving First Busey or First Community; (xvii) the economic impact of any future terrorist threats or attacks; (xviii) the economic impact of exceptional weather occurrences such as tornadoes, hurricanes, floods, and blizzards; and (xix) changes in accounting policies and practices. These risks and uncertainties should be considered in evaluating forward-looking statements and undue reliance should not be placed on such statements. Additional information concerning First Busey and First Community and their respective business,

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including additional factors that could materially affect First Busey's and First Community's financial results, are included in First Busey's and First Community's filings with the SEC.

#### **Additional Information**

First Busey will file a registration statement on Form S-4 with the SEC in connection with the proposed transaction. The registration statement will include a proxy statement of First Community that also constitutes a prospectus of First Busey, which will be sent to the shareholders of First Community. First Community's shareholders are advised to read the proxy statement/prospectus when it becomes available because it will contain important information about First Busey, First Community and the proposed transaction. When filed, this document and other documents relating to the merger filed by First Busey and First Community can be obtained free of charge from the SEC's website at [www.sec.gov](http://www.sec.gov). These documents also can be obtained free of charge by accessing First Busey's website at [www.busey.com](http://www.busey.com) under the tab "Investors Relations" and then under "SEC Filings" or by accessing First Community's website at [www.fcbankgroup.com](http://www.fcbankgroup.com) under "Investor Relations" and then under "SEC Filings." Alternatively, these documents, when available, can be obtained free of charge from First Busey upon written request to First Busey Corporation, Corporate Secretary, 100 W. University Avenue, Champaign, Illinois 61820 or by calling (217) 365-4544, or from First Community, upon written request to First Community Financial Partners, Inc., Corporate Secretary, 2801 Black Road, Joliet, Illinois 60435 or by calling (815) 725-1885.

#### **Participants in this Transaction**

First Busey, First Community and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from shareholders in connection with the proposed transaction under the rules of the SEC. Information about these participants may be found in the definitive proxy statement of First Busey relating to its 2016 Annual Meeting of Stockholders filed with the SEC on April 14, 2016 and the definitive proxy statement of First Community relating to its 2016 Annual Meeting of Shareholders filed with the SEC on April 8, 2016. These definitive proxy statements can be obtained free of charge from the sources indicated above. Additional information regarding the interests of these participants will also be included in the proxy statement/prospectus regarding the proposed transaction when it becomes available.

#### **Item 9.01. Financial Statements and Exhibits.**

##### **(d) Exhibits.**

2.1 Agreement and Plan of Merger by and between First Busey Corporation and First Community Financial Partners, Inc., dated February 6, 2017\*

99.1 Press Release, dated February 6, 2017

99.2 Investor Presentation, dated February 6, 2017

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

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**Signatures**

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

Date: February 6, 2017

**FIRST BUSEY CORPORATION**

By: /s/ ROBIN N. ELLIOTT

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Name: Robin N. Elliott  
Title: *Chief Operating Officer and Chief Financial Officer*

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**BETWEEN**  
**FIRST BUSEY CORPORATION**  
**AND**  
**FIRST COMMUNITY FINANCIAL PARTNERS, INC.**  
**FEBRUARY 6, 2017**

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## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (together with all exhibits and schedules, this "**Agreement**") is entered into as of February 6, 2017, by and between First Busey Corporation, a Nevada corporation ("**Acquiror**"), and First Community Financial Partners, Inc., an Illinois corporation (the "**Company**").

### RECITALS

**A.** The boards of directors of the Company and Acquiror have determined that it is in the best interests of their respective companies and their stockholders to consummate the strategic business combination transaction provided for herein, pursuant to which the Company will, subject to the terms and conditions set forth herein, merge with and into Acquiror (the "**Merger**"), with Acquiror as the surviving entity in the Merger (sometimes referred to in such capacity as the "**Surviving Entity**").

**B.** The parties intend that the Merger qualify as a "reorganization" under the provisions of Section 368(a) of the Code, and that this Agreement be and hereby is adopted as a "plan of reorganization" within the meaning of Sections 354 and 361 of the Code.

**C.** As an inducement to Acquiror to enter into this Agreement, the directors and executive officers of the Company in office as of the date of this Agreement have, concurrently with the execution of this Agreement, entered into a Voting and Support Agreement in substantially the form attached hereto as Exhibit A.

**D.** As further inducement to Acquiror to enter into this Agreement, the Company's Chief Executive Officer has, concurrently with the execution of this Agreement, entered into an Employment Agreement, by and among Acquiror, Acquiror Bank and such Chief Executive Officer, which becomes effective as of the Effective Time and governs the terms of continuing employment for such executive.

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

### AGREEMENTS

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

#### ARTICLE 1 THE MERGER

**Section 1.1** *The Merger.* Provided that this Agreement shall not prior thereto have been terminated in accordance with its express terms, upon the terms and subject to the conditions of this Agreement and in accordance with the applicable provisions of the NRS and the IBCA, at the Effective Time, the Company shall be merged with and into Acquiror pursuant to the provisions of, and with the effects provided in, the NRS and the IBCA, the separate corporate existence of the Company shall cease and Acquiror will be the Surviving Entity.

**Section 1.2** *Effective Time; Closing.*

(a) Provided that this Agreement shall not prior thereto have been terminated in accordance with its express terms, the closing of the Merger (the "**Closing**") shall occur through the mail or at a place that is mutually acceptable to Acquiror and the Company, or if they fail to agree, at the offices of Barack Ferrazzano Kirschbaum & Nagelberg LLP, located at 200 West Madison Street, Suite 3900, Chicago, Illinois 60606, at 10:00 a.m., local time, on the date that is five (5) Business Days after the satisfaction or waiver (subject to applicable Legal Requirements) of the latest to

occur of the conditions set forth in **Article 8** and **Article 9** (other than those conditions that by their nature are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of those conditions) or at such other time and place as Acquiror and the Company may agree in writing (the "**Closing Date**"). Subject to the provisions of **Article 10**, failure to consummate the Merger on the date and time and at the place determined pursuant to this **Section 1.2** will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

(b) The parties hereto agree to file on the Closing Date articles of merger with the Nevada Secretary of State (the "**Nevada Articles of Merger**"), and articles of merger with the Illinois Secretary of State (the "**Illinois Articles of Merger**"). The Merger shall become effective as of the date and time specified in the Nevada Articles of Merger (the "**Effective Time**").

**Section 1.3 Effects of the Merger.** At and after the Effective Time, the Merger shall have the effects set forth in the applicable provisions of the NRS and the IBCA. Without limiting the generality of the foregoing, at the Effective Time, all of the property, rights, privileges, powers and franchises of the Company shall be vested in the Surviving Entity, and all debts, liabilities and duties of the Company shall become the debts, liabilities and duties of the Surviving Entity.

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

**Section 1.5 Bank Merger.** The parties will cooperate and use their reasonable best efforts to effect the Bank Merger at a time to be determined following the Merger. At the effective time of the Bank Merger, the separate existence of the Bank will terminate. Acquiror Bank will be the surviving bank and will continue its existence under applicable Legal Requirements. The Bank Merger shall be accomplished pursuant to the statutory bank merger agreement in form attached hereto as Exhibit B.

**Section 1.6 Alternative Structure.** Notwithstanding anything to the contrary contained in this Agreement, before the Effective Time, the parties may mutually agree to change the method of effecting the Contemplated Transactions if and to the extent that they deem such a change to be desirable; *provided*, that: (a) any such change shall not affect the U.S. federal income tax consequences of the Merger to holders of Company Common Stock; and (b) no such change shall (i) alter or change the amount or kind of the consideration to be issued to holders of Company Common Stock as consideration in the Merger, (ii) materially impede or delay consummation of the Merger, or (iii) require submission to or approval of the Company's stockholders after the Merger has been approved by the Company's stockholders. If the parties agree to make such a change, they shall execute appropriate documents to reflect the change.

## ARTICLE 2 CONVERSION OF SECURITIES IN THE MERGER

### **Section 2.1 Consideration.**

(a) At the Effective Time, by virtue of the Merger and without any action on the part of Acquiror, the Company, or the holder of any shares of Company Common Stock and subject to **Section 2.3**, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time, except for shares of Company Common Stock owned by the Company or Acquiror (in each case other than shares of Company Common Stock held in any Company Benefit Plan or related trust accounts or otherwise held in a fiduciary or agency capacity or as a result of debts previously contracted) shall be converted into the right to receive (collectively, the "**Merger Consideration**"): (i) 0.396 (the "**Exchange Ratio** ") fully paid and nonassessable shares of

Acquiror Common Stock (the "**Stock Consideration**"); and (ii) \$1.35 (the "**Cash Consideration**"); provided however, that the Exchange Ratio shall be subject to adjustment as follows:

(i) if the Final Acquiror Market Value shall be less than \$22.71, Acquiror shall have the option, in its sole discretion, upon providing notice of its election to the Company within two (2) Business Days of the Determination Date, to adjust the Exchange Ratio to equal the quotient obtained by dividing \$8.99 by the Final Acquiror Market Value.

(ii) if the Final Acquiror Market Value shall be less than \$22.71, and Acquiror has not exercised its option pursuant to **Section 2.1(a)(i)** to adjust the Exchange Ratio within two (2) Business Days of the Determination Date, the Company shall have the option, in its sole discretion, upon providing notice of its election to Acquiror within four (4) Business Days of the Determination Date, to accept the Exchange Ratio without further adjustment.

(iii) if the Final Acquiror Market Value shall be greater than \$35.90, the Exchange Ratio shall be adjusted to equal the quotient obtained by dividing \$14.22 by the Final Acquiror Market Value.

Notwithstanding anything contained herein to the contrary, if an adjustment to the Exchange Ratio pursuant to this **Section 2.1** would require the Acquiror to issue more than 19.9% of the issued and outstanding shares of Acquiror Common Stock at the Effective Time, then Acquiror shall have the right to adjust the Exchange Ratio so that the Acquiror would only be required to issue no more than 19.9% of the Acquiror Common Stock, and the Acquiror shall increase the Cash Consideration to reflect, on a per share basis, the aggregate value of the total number of shares that otherwise would have been issuable, valued at the Final Acquiror Market Value.

For purposes of this Agreement, the following terms shall have the following meanings:

"**Determination Date**" means the first date on which all Requisite Regulatory Approvals (and waivers, if applicable) necessary for consummation of the Merger have been received (disregarding any waiting period).

"**Final Acquiror Market Value**" means the weighted average of the daily closing sales prices of a share of Acquiror Common Stock as reported on the NASDAQ Global Select Market for the five (5) consecutive trading days immediately preceding the Determination Date.

(b) Notwithstanding anything in this **Section 2.1** to the contrary, at the Effective Time and by virtue of the Merger, each share of Company Common Stock held in the Company's treasury will be cancelled and no shares of Acquiror Common Stock or other consideration will be issued or paid in exchange therefor.

(c) Notwithstanding anything contained herein to the contrary, if, between the date hereof and the Effective Time, there is declared (with an effective time prior to the Effective Time) or effected a reorganization, reclassification, recapitalization, stock split (including a reverse stock split), split-up or stock dividend (including any dividend or distribution of securities convertible in Acquiror Common Stock), combination, exchange or readjustment of shares with respect to, or rights issued in respect of, Acquiror Common Stock, the Exchange Ratio shall be proportionately adjusted to provide to the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such event.

**Section 2.2 Cancellation of Shares.** At the Effective Time, the shares of Company Common Stock will no longer be outstanding and will automatically be cancelled and will cease to exist. Certificates (it being understood that any reference herein to a "certificate" shall be deemed to include reference to a book-entry account statements relating to the ownership of Company Common Stock) that represented Company Common Stock before the Effective Time will be deemed for all purposes

to represent only the right to receive: (a) evidence of book-entry notation representing the number of whole shares of Acquiror Common Stock into which they were converted pursuant to this **Article 2**; (b) cash equal to the Cash Consideration; (c) cash in lieu of fractional shares which the shares of Company Common Stock represented by such certificate have been converted into the right to receive pursuant to **Section 2.1** and **Section 2.3**, without any interest thereon; and (d) any dividends or distributions that the holder thereof has the right to receive pursuant to **Section 2.4(f)**.

**Section 2.3 No Fractional Shares.** Notwithstanding anything to the contrary contained in this Agreement, no fractional shares of Acquiror Common Stock shall be issued as Merger Consideration in the Merger. Each holder of Company Common Stock who would otherwise be entitled to receive a fractional share of Acquiror Common Stock pursuant to this **Article 2** shall instead be entitled to receive an amount in cash (without interest) rounded to the nearest whole cent, determined by multiplying the Closing Acquiror Common Stock Price by the fractional share of Acquiror Common Stock to which such former holder would otherwise be entitled.

**Section 2.4 Exchange of Certificates.**

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

(b) At or prior to the Effective Time, Acquiror shall authorize the issuance of and shall make available to the Exchange Agent, for the benefit of the holders of Company Common Stock for exchange in accordance with this **Article 2**: (i) a sufficient number of shares of Acquiror Common Stock for payment of the Stock Consideration pursuant to **Section 2.1**, (ii) sufficient cash for payment of the Cash Consideration pursuant to **Section 2.1**; (iii) sufficient cash for payment of cash in lieu of any fractional shares of Acquiror Common Stock in accordance with **Section 2.3**; and (iv) sufficient cash for the payment of the Company equity awards as required to pursuant to **Section 2.5**. Such amount of cash and shares of Acquiror Common Stock, together with any dividends or distributions with respect thereto paid after the Effective Time, are referred to in this **Article 2** as the "**Conversion Fund**."

(c) Within two (2) Business Days after the Closing Date, Acquiror shall cause the Exchange Agent to mail to each holder of record of one or more certificates representing shares of Company Common Stock ("**Company Stock Certificates**") a letter of transmittal ("**Letter of Transmittal**"), in a form to be agreed by the parties, which specifies, among other things, that delivery shall be effected, and risk of loss and title to Company Stock Certificates shall pass, only upon delivery of such certificates to the Exchange Agent, together with instructions for use in effecting the surrender of Company Stock Certificates pursuant to this Agreement.

(d) Upon proper surrender of a Company Stock Certificate for exchange to the Exchange Agent, together with a properly completed and duly executed Letter of Transmittal, the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor his, her or its Merger Consideration plus cash in lieu of any fractional shares of Acquiror Common Stock in accordance with **Section 2.3** deliverable in respect of the shares of Company Common Stock represented by such Company Stock Certificate; thereupon such Company Stock Certificate shall forthwith be cancelled. No interest will be paid or accrued on any portion of the Merger Consideration deliverable upon surrender of a Company Stock Certificate.

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

(f) No dividends or other distributions declared with respect to Acquiror Common Stock and payable to the holders of record thereof after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate until the holder thereof shall surrender such Company Stock Certificate in accordance with this **Article 2**. Promptly after the surrender of a Company Stock Certificate in accordance with this **Article 2**, the record holder thereof shall be entitled to receive any such dividends or other distributions, without interest thereon, which theretofore had become payable with respect to shares of Acquiror Common Stock into which the shares of Company Common Stock represented by such Company Stock Certificate were converted at the Effective Time pursuant to **Section 2.1**. No holder of an unsurrendered Company Stock Certificate shall be entitled, until the surrender of such Company Stock Certificate, to vote the shares of Acquiror Common Stock into which such holder's Company Common Stock shall have been converted.

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

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

### **Section 2.5** *Company Equity Awards.*

#### (a) *Company Stock Options.*

(i) Subject to the provisions of this Agreement, and except as set forth in **Section 2.5(a)(ii)**, at the Effective Time, Acquiror shall assume the Company Stock Plans, and by virtue of the Merger and without any action on the part of the holders thereof, each option granted by the Company to purchase shares of Company Common Stock granted under the Company Stock Plans, whether vested or unvested (each, a "**Company Stock Option**") that is outstanding and unexercised immediately prior to the Effective Time shall be converted into an option award to purchase Acquiror Common Stock with respect to the number of whole shares of Acquiror Common Stock that is equal to the number of shares of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time multiplied by the Option Exchange Ratio (rounded down to the nearest whole share), at an exercise price per share of Acquiror Common Stock (rounded up to the nearest whole cent) equal to the exercise price for each share of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time divided by the Option Exchange Ratio, subject to the terms and conditions of the Company Stock Plan, if any,

pursuant to which such Company Stock Option was granted and/or any associated award agreement. It is intended that the conversion of the Company Stock Options under this **Section 2.5(a)(i)** shall comply with Sections 409A and 424 of the Code, to the extent applicable, and this **Section 2.5(a)(i)** shall be construed consistent with such intent.

(ii) Notwithstanding the provisions of **Section 2.5(a)(i)**, the Company shall take all requisite action so that, at the Effective Time, each Company Stock Option granted to a participant for service as a member of the Company Board or a member of the board of directors of the Bank (each, a "**Director Company Stock Option**"), whether vested or unvested, that is outstanding immediately prior to the Effective Time shall cease to represent a Director Company Stock Option and shall be cashed out by virtue of the Merger into an amount of cash for each share of Company Common Stock subject to the Director Company Stock Option equal to (a) the Company Final Closing Price, minus (b) the amount of the exercise price of the Director Company Stock Option. In connection with the cash out of the Director Company Stock Option, the Company shall require the holder of such options to execute a stock option cancellation agreement prior to payment of such consideration.

(b) *Cash Out of Restricted Stock Units.* The Company shall take all requisite action so that, at the Effective Time, each vested restricted stock unit representing the right to receive one share of Company Common Stock in the future, subject solely to service vesting, granted under the Company Stock Plans (each, a "**Company RSU**"), including Company RSUs that vest per their terms due to the merger, that is outstanding immediately prior to the Effective Time shall cease to represent a Company RSU and shall be cashed out by virtue of the Merger into an amount of cash for each share of Company Common Stock subject to the Company RSU equal to the Company Final Closing Price. The portion of any unvested Company RSUs that does not vest in connection with the Merger shall be cancelled as of the Effective Time. In connection with the cash out of the Company RSUs the Company shall require the holder of such restricted stock units to execute a restricted stock unit cancellation agreement prior to payment of such consideration.

(c) *Cash Out of Performance Units.* The Company shall take all requisite action so that, at the Effective Time, each vested performance unit representing the right to receive one share of Company Common Stock in the future, subject to a performance vesting condition, granted under the Company Stock Plans (each, a "**Company Performance Unit**"), including Company Performance Units that vest per their terms due to the Merger (assuming target level of performance through the Effective Time), that is outstanding immediately prior to the Effective Time shall cease to represent a Company Performance Unit and shall be cashed out by virtue of the Merger into an amount of cash for each share of Company Common Stock subject to the Company Performance Unit equal to the Company Final Closing Price. The portion of any unvested Company Performance Unit that does not vest in connection with the Merger shall be cancelled as of the Effective Time. In connection with the cash out of the Company Performance Units the Company shall require the holder of such performance units to execute a performance unit cancellation agreement prior to payment of such consideration.

(d) At or prior to the Effective Time, the Company, the Company Board and its compensation committee, as applicable, shall adopt any resolutions and take any actions that are reasonably necessary to effectuate the provisions of this **Section 2.5**.

**Section 2.6 Warrants.** At the Effective Time, each warrant issued by the Company on March 12, 2013, in connection with the Company's subordinated debentures, due March 12, 2023 (each a "**Warrant**" and, collectively, the "**Warrants**"), as listed and described in **Section 2.6** of the Company Disclosure Schedules, that is outstanding and unexercised immediately prior to the Effective Time shall be converted into a warrant to purchase Acquiror Common Stock with respect to the number of whole shares of Acquiror Common Stock that is equal to the number of shares of Company Common Stock



subject to such Warrant purchasable and receivable immediately prior to the Effective Time pursuant to the terms thereof multiplied by the Warrant Exchange Ratio (rounded down to the nearest whole share), at an exercise price per share of Acquiror Common Stock (rounded up to the nearest whole cent) equal to the exercise price for each share of Company Common Stock subject to such Warrant immediately prior to the Effective Time divided by the Warrant Exchange Ratio, subject to the terms and conditions of the Warrant. Acquiror and the Company shall each use their reasonable best efforts to comply with the terms of the Warrants. The Company shall use its best efforts to cause each holder of a Warrant to exercise such Warrant at or prior to the Effective Time.

**Section 2.7 Dissenting Shares.** Notwithstanding any other provision of this Agreement to the contrary, shares of Company Common Stock that are outstanding immediately prior to the Effective Time and which are held by stockholders who shall have not voted in favor of the Merger or consented thereto in writing and who properly shall have demanded payment of the fair value for such shares in accordance with the IBCA (collectively, the "**Dissenters' Shares**") shall not be converted into or represent the right to receive the Merger Consideration. Such stockholders instead shall be entitled to receive payment of the fair value of such shares held by them in accordance with the provisions of the IBCA, except that all Dissenters' Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or otherwise lost their rights as dissenting stockholders under the IBCA shall thereupon be deemed to have been converted into and to have become exchangeable, as of the Effective Time, for the right to receive, without any interest thereon, the Merger Consideration upon surrender in the manner provided in **Section 2.4** of the certificate(s) that, immediately prior to the Effective Time, evidenced such shares. The Company shall give Acquiror: (a) prompt notice of any written demands for payment of fair value of any shares of Company Common Stock, attempted withdrawals of such demands and any other instruments served pursuant to the IBCA and received by the Company relating to stockholders' dissenters' rights; and (b) the opportunity to participate in all negotiations and proceedings with respect to demands under the IBCA consistent with the obligations of the Company thereunder. The Company shall not, except with the prior written consent of Acquiror, (x) make any payment with respect to such demand, (y) offer to settle or settle any demand for payment of fair value or (z) waive any failure to timely deliver a written demand for payment of fair value or timely take any other action to perfect payment of fair value rights in accordance with the IBCA.

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

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

**Section 3.1 Company Organization.** The Company: (a) is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Illinois and is also in good standing in each other jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a Material Adverse Effect on the Company; (b) is registered with the Federal Reserve as a bank holding company under the Bank Holding Company Act of 1956, as amended; and (c) has full power and authority, corporate and otherwise, to operate as a bank holding company and to own, operate and lease its properties as presently owned, operated and leased, and to carry on its business as it is now being conducted. The copies of the Company Articles of Incorporation and Company Bylaws and all amendments thereto set forth in the Company SEC Reports are true, complete and correct, and in full force and effect as of the date of this Agreement. The Company has no subsidiary other than the subsidiaries listed on Exhibit 21 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2015.

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

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

**Section 3.4** *No Conflict.* Neither the execution nor delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time): (a) assuming receipt of the Company Stockholder Approval, contravene, conflict with or result in a violation of any provision of the articles of incorporation, certificate of formation or charter (or similar organizational documents) or bylaws or operating agreement, each as in effect on the date hereof, or any currently effective resolution adopted by the board of directors, stockholders, manager or members of, the Company or any of its Subsidiaries; (b) assuming receipt of the Requisite Regulatory Approvals, contravene, conflict with or result in a violation of any Legal Requirement or any Order to which the Company or any of its Subsidiaries, or any of their respective assets that are owned or used by them, may be subject, except for any contravention, conflict or violation that is permissible by virtue of obtaining the Requisite Regulatory Approvals; or (c) except as listed on **Section 3.4(c)** of the Company Disclosure Schedules, contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, or which would result in the creation of any material lien, charge or encumbrance upon or with respect to any of the assets owned or used by the Company or its Subsidiaries under, any Company Material Contract, except (in case of clause (c)) for such contraventions, conflicts, breaches or defaults that, either individually or in the aggregate, would not

reasonably be expected to have a Material Adverse Effect on the Company. Except for: (a) the filing of applications, filings and notices, as applicable, with the Federal Reserve and approval of such applications, filings and notices; (b) the filing of applications, filings and notices, as applicable, with the Illinois State Department of Financial and Professional Regulation, Division of Banking and approval of such applications, filings and notices; (c) the filing of any required applications, filings or notices with the FDIC and approval of such applications, filings and notices; (d) the filing with the SEC of the Proxy Statement in definitive form and of the Registration Statement and declaration of effectiveness of the Registration Statement; (e) the filing of the Nevada Articles of Merger with the Nevada Secretary of State pursuant to the NRS and the filing of the Illinois Articles of Merger with the Illinois Secretary of State pursuant to the IBCA; and (f) such filings and approvals as are required to be made or obtained under the securities or "Blue Sky" laws of various states in connection with the issuance of the shares of Acquiror Common Stock pursuant to this Agreement and the listing of additional shares of Acquiror Common Stock on the NASDAQ Global Select Market, no consents or approvals of or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality are necessary in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

### **Section 3.5** *Company Capitalization.*

(a) The authorized capital stock of the Company currently consists exclusively of: (i) 60,000,000 shares of Company Common Stock, of which, as of December 31, 2016 (the "**Company Capitalization Date**"), 17,242,645 shares were issued and outstanding; and (ii) 1,000,000 shares of the Company's preferred stock, \$1.00 par value per share ("**Company Preferred Stock**"), of which no shares were designated and outstanding as of the Company Capitalization Date. The Company does not have outstanding any bonds, debentures, notes or other debt obligations having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) with the stockholders of the Company on any matter. All of the issued and outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

(b) As of the Company Capitalization Date, no shares of Company Capital Stock were reserved for issuance except for: (i) 1,870,853 shares of Company Common Stock reserved for issuance in connection with stock options, restricted stock units, or other equity awards under the Company Stock Plans; (ii) 1,677,550 shares of Company Common Stock reserved for issuance pursuant to future awards under Company Stock Plans; and (iii) 169,750 shares of Company Common Stock reserved for issuance in connection with the Warrants.

(c) Except as listed on **Section 3.5(c)** of the Company Disclosure Schedules, other than awards under the Company Stock Plans that are outstanding as of the date of this Agreement, no equity-based awards were outstanding as of the Company Capitalization Date. Since the Company Capitalization Date through the date hereof, the Company has not: (i) issued or repurchased any shares of Company Common Stock or Company Preferred Stock or other equity securities of the Company, other than in connection with the exercise of the Company Equity Awards that were outstanding on the Company Capitalization Date or settlement thereof, in each case in accordance with the terms of the relevant the Company Stock Plan; or (ii) issued or awarded any options, stock appreciation rights, restricted shares, restricted stock units, deferred equity units, awards based on the value of Company Common Stock or any other equity-based awards. From the Company Capitalization Date through the date of this Agreement, neither the Company nor any of its Subsidiaries has: (A) accelerated the vesting of or lapsing of restrictions with respect to any stock-based compensation awards or long-term incentive compensation awards; (B) with respect to executive officers of the Company or its Subsidiaries, entered into or amended any employment, severance, change in control or similar agreement (including any agreement providing for the

reimbursement of excise taxes under Section 4999 of the Code); or (C) adopted or materially amended any Company Stock Plan.

(d) None of the shares of Company Common Stock were issued in violation of any federal or state securities laws or any other applicable Legal Requirement. As of the date of this Agreement there are: (i) other than outstanding Company Equity Awards and the Warrants, no outstanding subscriptions, Contracts, conversion privileges, options, warrants, calls or other rights obligating the Company or any of its Subsidiaries to issue, sell or otherwise dispose of, or to purchase, redeem or otherwise acquire, any shares of capital stock of the Company or any of its Subsidiaries; and (ii) no contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of Company Common Stock or any equity security of the Company or its Subsidiaries or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of the Company or its Subsidiaries. Except as permitted by this Agreement, since the Company Capitalization Date, no shares of Company Common Stock have been purchased, redeemed or otherwise acquired, directly or indirectly, by the Company or any of its Subsidiaries and no dividends or other distributions payable in any equity securities of the Company or any of its Subsidiaries have been declared, set aside, made or paid to the stockholders of the Company. Other than its Subsidiaries, the Company does not own, nor has any Contract to acquire, any equity interests or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

**Section 3.6** *Company Subsidiary Capitalization.* All of the issued and outstanding shares of capital stock or other equity ownership interests of each Subsidiary of the Company are owned by the Company, directly or indirectly, free and clear of any material liens, pledges, charges, claims and security interests and similar encumbrances, and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. No Subsidiary of the Company has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of capital stock or any other equity security of such Subsidiary or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of such Subsidiary. No Subsidiary of the Company owns or has any Contract to acquire, any equity interests or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

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

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

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

(c) The Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 that are applicable to it or any of its Subsidiaries. The Company maintains a system of disclosure controls and procedures as defined in Rule 13a-15 and 15d-15 under the Exchange Act that are designed to provide reasonable assurance that information required to be disclosed by the Company in reports that the Company is required to file under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management to allow timely decisions regarding required disclosures. As of December 31, 2016, to the Knowledge of the Company, such controls and procedures were effective, in all material respects, to provide such reasonable assurance.

(d) The Company and its consolidated Subsidiaries have established and maintained a system of internal control over financial reporting (within the meaning of Rule 13a-15 and Rule 15d-15 under the Exchange Act) ("**Internal Control Over Financial Reporting**"). The Company's certifying officers have evaluated the effectiveness of the Company's Internal Control Over Financial Reporting as of the end of the period covered by the most recently filed quarterly report on Form 10-Q of the Company under the Exchange Act (the "**Company Evaluation Date**"). The Company presented in such quarterly report the conclusions of the certifying officers about the effectiveness of the Company's Internal Control Over Financial Reporting based on their evaluations as of the Company Evaluation Date. Since the Company Evaluation Date, there have been no changes in the Company's Internal Control Over Financial Reporting that have materially affected, or are reasonably likely to materially affect, the Company's Internal Control Over Financial Reporting. The Company has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(e) The Company and each of its Subsidiaries has filed all forms, reports and documents required to be filed since January 1, 2014, with all applicable federal or state securities or banking authorities except to the extent failure would not have a Material Adverse Effect on the Company and its Subsidiaries. Such forms, reports and documents: (i) complied as to form in all material respects with applicable Legal Requirements; and (ii) did not at the time they were filed, after giving effect to any amendment thereto filed prior to the date hereof, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date.

(f) To the Knowledge of the Company, there has not been any event or occurrence since January 1, 2014 that would result in a determination that the Bank is not an eligible depository institution as defined in 12 C.F.R. § 303.2(r).

**Section 3.8 Books and Records.** The books of account, minute books, stock record books and other records of the Company and its Subsidiaries are complete and correct in all material respects and have been maintained in accordance with the Company's business practices and all applicable Legal Requirements, including the maintenance of an adequate system of internal controls required by such Legal Requirements. The minute books of the Company and each of its Subsidiaries fairly reflect the substance of events and transactions included therein.

**Section 3.9 Properties.**

(a) **Section 3.9** of the Company Disclosure Schedules lists or describes all interests in real property owned by the Company and each of its Subsidiaries, including OREO, as of the date of this Agreement, together with the address of such real estate, and each lease of real property to which it is a party, and in each case of either owned or leased real property, the proper identification, if applicable, of each such property as a branch or main office or other office.

(b) The Company and each of its Subsidiaries has good and marketable title to all assets and properties, whether real or personal, tangible or intangible, that it purports to own, other than OREO, subject to no liens, mortgages, security interests, encumbrances or charges of any kind except: (i) as noted in the most recent Company Financial Statements or incurred in the Ordinary Course of Business since the date of the most recent Company Financial Statements; (ii) statutory liens for Taxes not yet delinquent or being contested in good faith by appropriate Proceedings and for which appropriate reserves have been established and reflected in the Company Financial Statements; (iii) pledges or liens required to be granted in connection with the acceptance of government deposits, granted in connection with repurchase or reverse repurchase agreements, securing any discount with, borrowing from, or obligations to any Federal Reserve Bank or Federal Home Loan Bank, interbank credit facilities or any transaction by the Bank acting in a fiduciary capacity or otherwise incurred in the Ordinary Course of Business; (iv) easements, rights of way, and other similar encumbrances that do not materially affect the present use of the properties or assets subject thereto or affected thereby or otherwise materially impair the present business operations at such properties; (v) minor defects and irregularities in title and encumbrances that do not materially impair the use thereof for the purposes for which they are held as of the date of this Agreement; (vi) liens or deposits in connection with worker's compensation, unemployment insurance, social security or other insurance; (vii) inchoate mechanic's and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carrier's liens arising in the Ordinary Course of Business of the Company or the Bank consistent with past practice; (viii) liens existing on any asset of any Person at the time such Person is acquired by or is combined with the Company or any of the Company's Subsidiaries, provided the lien was not created in contemplation of that event; (ix) liens on property required by Regulation W promulgated by the Federal Reserve; and (x) liens incidental to the conduct of business or ownership of property of the Company or any of its Subsidiaries which do not in the aggregate materially detract from the value of the property or materially impair the use thereof as of the date of this Agreement (collectively, the "**Company Permitted Exceptions**"). The Company and each of its Subsidiaries as lessee has the right under valid and existing leases to occupy, use, possess and control any and all of the respective property leased by it, and each such lease is valid and without default thereunder by the lessee or, to the Knowledge of the Company, the lessor. To the Knowledge of the Company, all buildings and structures owned by the Company and each of its Subsidiaries lie wholly within the boundaries of the real property owned or validly leased by it, and do not encroach upon the property of, or otherwise conflict with the property rights of, any other Person.

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

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

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

(c) **Section 3.10(c)** of the Company Disclosure Schedules lists, as of December 31, 2016, each Company Loan: (i) under the terms of which the obligor is more than ninety (90) days delinquent in payment of principal or interest or in default of any other material provision as of the dates shown thereon or for which the Bank has discontinued the accrual of interest; (ii) that has been classified as "substandard," "doubtful," "loss," "other loans especially mentioned" or any comparable classifications by the Bank; (iii) that has been listed on any "watch list" or similar internal report of the Bank; (iv) that has been the subject of any notice from any obligor of adverse environmental conditions potentially affecting the value of any collateral for such Company Loan; (v) with respect to which the Bank has Knowledge of potential violations of any Environmental Laws that may have occurred on the property serving as collateral for such Company Loan or by any obligor of such Company Loan; or (vi) that represents an extension of credit to an executive officer or director of the Bank or an entity controlled by an executive officer or director.

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

(e) To the Knowledge of the Company: (i) none of the Company Loans is subject to any material offset or claim of offset; and (ii) the aggregate loan balances in excess of the Bank's allowance for loan and lease losses are, based on past loan loss experience, collectible in accordance with their terms (except as limited above) and all uncollectible loans have been charged off.

**Section 3.11** *Taxes.*

(a) The Company and each of its Subsidiaries have duly and timely filed (taking into account all applicable extensions) all Tax Returns required to be filed by them, and each such Tax Return was true, correct and complete in all material respects when filed. The Company and each of its

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

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

(c) The Company and each of its Subsidiaries have delivered or made available to Acquiror true, correct and complete copies of all Tax Returns relating to income taxes, franchise taxes and all other material taxes owed by the Company and its Subsidiaries with respect to the last three (3) fiscal years.

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

### **Section 3.12** *Employee Benefits.*

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

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

(ii) all notices and other material written communications that were given by the Company, any Subsidiary, or any Company Benefit Plan to the IRS, the DOL or the PBGC pursuant to applicable Legal Requirements within the six (6) years preceding the date of this Agreement;

(iii) all notices or other material written communications that were given by the IRS, the PBGC, or the DOL to the Company, any Subsidiary, or any Company Benefit Plan within the six (6) years preceding the date of this Agreement; and

(iv) with respect to any equity-based compensation plan or arrangement (including the Company Stock Plans or any stock option, stock purchase, stock ownership, stock



appreciation, restricted stock, restricted stock unit, phantom stock or similar plan, agreement or award), (A) a complete and correct list of recipients of outstanding awards as of the date hereof, (B) the number of outstanding awards held by each recipient as of the date hereof and (C) the form of award agreement pursuant to which each such outstanding award was issued or otherwise granted.

(b) Except as set forth in **Section 3.12(b)** of the Company Disclosure Schedules, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (including possible terminations of employment in connection therewith) will cause a payment, vesting, increase or acceleration of benefits or benefit entitlements under any Company Benefit Plan or any other increase in the liabilities of the Company or any Subsidiary under any Company Benefit Plan as a result of the transactions contemplated by this Agreement. No Company Benefit Plan provides for payment of any amount which, considered in the aggregate with amounts payable pursuant to all other Company Benefit Plans, would result in any amount being non-deductible for federal income tax purposes by virtue of Section 280G or 162(m) of the Code.

(c) Neither the Company nor any Company ERISA Affiliate sponsors, maintains, administers or contributes to, or has ever sponsored, maintained, administered or contributed to, or has, has had or, could have any liability with respect to, (i) any "multiemployer plan" (as defined in Section 3(37) of ERISA), (ii) any "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA), or (iii) except as set forth in **Section 3.12(c)** of the Company Disclosure Schedules, any self-insured plan (including any plan pursuant to which a stop loss policy or contract applies). With respect to any Company Benefit Plan that is a "multiple employer plan" (as described in Section 413(c) of the Code) or is provided by or through a professional employer organization, such Company Benefit Plan complies in all respects with the requirements of the Code and ERISA and neither the Company nor any of the Company ERISA Affiliates has any liabilities other than the payment and/or remittance of premiums and/or required contributions on behalf of enrolled individuals. Neither the Company nor any of the Company ERISA Affiliates sponsors, maintains, administers or contributes to, or has ever sponsored, maintained, administered or contributed to, or has, has had or could have any liability with respect to, any Company Benefit Plan subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code, or any tax-qualified "defined benefit plan" (as defined in Section 3(35) of ERISA). No Company Benefit Plan is underfunded when comparing the present value of accrued liabilities under such plan to the market value of plan assets.

(d) Each Company Benefit Plan that is intended to qualify under Section 401 and related provisions of the Code is the subject of a favorable determination letter, or, in the case of a volume submitter or prototype plan, an advisory or sponsor letter, from the IRS to the effect that it is so qualified under the Code and that its related funding instrument is tax exempt under Section 501 of the Code (or the Company and its Subsidiaries are otherwise relying on an opinion letter issued to the prototype sponsor), and, to the Company's Knowledge, there are no facts or circumstances that would adversely affect the qualified status of any Company Benefit Plan or the tax-exempt status of any related trust.

(e) Each Company Benefit Plan is and has been administered in all material respects in compliance with its terms and with all applicable Legal Requirements.

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

(g) No Company Benefit Plan fiduciary or any other person has, or has had, any liability to any Company Benefit Plan participant, beneficiary or any other person under any provisions of ERISA or any other applicable Legal Requirement by reason of any action or failure to act in connection with any Company Benefit Plan, including any liability by any reason of any payment of, or failure to pay, benefits or any other amounts or by reason of any credit or failure to give credit for any benefits or rights. To the Company's Knowledge, no disqualified person (as defined in Code Section 4975(e)(2)) of any Company Benefit Plan has engaged in any nonexempt prohibited transaction (as described in Code Section 4975(c) or ERISA Section 406).

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

(i) There are no obligations under any Company Benefit Plans to provide health or other welfare benefits to retirees or other former employees, directors, consultants or their dependents (other than rights under Section 4980B of the Code or Section 601 of ERISA or comparable state laws).

(j) No condition exists as a result of which the Company or any Subsidiary would have any liability, whether absolute or contingent, under any Company Benefit Plan with respect to any misclassification of a person performing services for the Company or any Subsidiary as an independent contractor rather than as an employee. All individuals participating in Company Benefit Plans are in fact eligible and authorized to participate in such Company Benefit Plan.

(k) Neither the Company nor any of its Subsidiaries have any liabilities to employees or former employees that are not reflected in the Company Benefit Plans.

**Section 3.13 Compliance with Legal Requirements.** The Company and each of its Subsidiaries hold all material licenses, certificates, permits, franchises and rights from all appropriate Regulatory Authorities necessary for the conduct of their respective businesses as presently conducted. The Company and each of its Subsidiaries is, and at all times since January 1, 2014, has been, in compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its respective businesses or the ownership or use of any of its respective assets, except where noncompliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company, neither the Company nor any of its Subsidiaries has received, at any time since January 1, 2014, any notice or other communication (whether oral or written) from any Regulatory Authority or any other Person regarding: (a) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement; or (b) any actual, alleged, possible, or potential obligation on the part of the Company or any of its Subsidiaries to undertake, or to bear all or any portion of the cost of, any remedial action of any nature in connection with a failure to comply with any Legal Requirement.

**Section 3.14 Legal Proceedings; Orders.**

(a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company, neither the Company nor any of its Subsidiaries is a party to any, and there are no pending or, to the Knowledge of the Company, threatened, Proceedings against the Company or any of its Subsidiaries. There is no Order imposed on the Company or any of its Subsidiaries (or that, upon consummation of the Merger, would apply to the Surviving Entity or any of its affiliates) that would reasonably be expected to be material to the Company and its Subsidiaries taken as a whole. No officer, director, employee or agent of the

Company or any of its Subsidiaries is subject to any Order that prohibits such officer, director, employee or agent from engaging in or continuing any conduct, activity or practice relating to the businesses of the Company or any of its Subsidiaries as currently conducted.

(b) Neither the Company nor any of its Subsidiaries: (i) is subject to any cease and desist or other Order or enforcement action issued by; (ii) is a party to any written agreement, consent agreement or memorandum of understanding with; (iii) is a party to any commitment letter or similar undertaking to; (iv) is subject to any order or directive by; (v) is subject to any supervisory letter from; (vi) has been ordered to pay any civil money penalty, which has not been paid, by; or (vii) has adopted any policies, procedures or board resolutions at the request of; any Regulatory Authority that currently restricts in any material respect the conduct of its business, in any manner relates to its capital adequacy, restricts its ability to pay dividends or interest or limits in any material manner its credit or risk management policies, its management or its business. To the Knowledge of the Company, since January 1, 2014, none of the foregoing has been threatened by any Regulatory Authority.

**Section 3.15 Absence of Certain Changes and Events.** Except as listed in **Section 3.15** of the Company Disclosure Schedules, since December 31, 2015, the Company and its Subsidiaries have conducted their respective businesses only in the Ordinary Course of Business and no event or events have occurred that had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on the Company.

**Section 3.16 Material Contracts.** Except for Contracts evidencing Company Loans made by the Bank in the Ordinary Course of Business, **Section 3.16** of the Company Disclosure Schedules lists or describes the following with respect to the Company and each of its Subsidiaries (each such agreement or document, a "**Company Material Contract**") as of the date of this Agreement, true, complete and correct copies of each of which have been delivered or made available to Acquiror:

(a) all loan and credit agreements, conditional sales Contracts or other title retention agreements or security agreements relating to money borrowed by it in excess of \$1,000,000, exclusive of deposit agreements with customers of the Bank entered into in the Ordinary Course of Business, agreements for the purchase of federal funds and repurchase agreements and Federal Home Loan Bank of Chicago advances;

(b) each Contract that involves performance of services or delivery of goods or materials by it of an amount or value in excess of \$250,000 (other than Contracts for the sale of loans);

(c) each Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts by it in excess of \$250,000;

(d) each Contract not referred to elsewhere in this **Section 3.16** that: (i) relates to the future purchase of goods or services that materially exceeds the requirements of its business at current levels or for normal operating purposes; or (ii) has a Material Adverse Effect on the Company or its Subsidiaries;

(e) each lease, rental, license, installment and conditional sale agreement and other Contract affecting the ownership of, leasing of, title to or use of, any personal property (except personal property leases and installment and conditional sales agreements having aggregate remaining payments of less than \$250,000);

(f) each material licensing agreement or other Contract with respect to patents, trademarks, copyrights, or other intellectual property (other than shrink-wrap license agreements or other similar license agreements), including material agreements with current or former employees, consultants or contractors regarding the appropriation or the nondisclosure of any of its intellectual property;

- (g) each collective bargaining agreement and other Contract to or with any labor union or other employee representative of a group of employees;
- (h) each joint venture, partnership and other Contract (however named) involving a sharing of profits, losses, costs or liabilities by it with any other Person;
- (i) each Contract containing covenants that in any way purport to restrict, in any material respect, the business activity of the Company or its Subsidiaries or limit, in any material respect, the ability of the Company or its subsidiaries to engage in any line of business or to compete with any Person;
- (j) each Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods having an average annual amounts in excess of \$250,000;
- (k) each current material consulting or non-competition agreement to which the Company or any of its Subsidiaries is a party;
- (l) the name of each Person who is or would be entitled pursuant to any Contract or Company Benefit Plan to receive any payment from the Company or its Subsidiaries as a result of the consummation of the Contemplated Transactions (including any payment that is or would be due as a result of any actual or constructive termination of a Person's employment or position following such consummation) and the maximum amount of such payment;
- (m) each Contract for capital expenditures for a single property, individually, or collectively with any other Contract for capital expenditures on such property, in excess of \$500,000;
- (n) each Company Benefit Plan; and
- (o) each amendment, supplement and modification in respect of any of the foregoing.

**Section 3.17 No Defaults.** Each Company Material Contract is in full force and effect and is valid and enforceable against the Company, and to the Company's Knowledge, against such other party to such Company Material Contract, in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other Legal Requirements affecting creditors' rights generally and subject to general principles of equity. To the Knowledge of the Company, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a material violation or breach of, or give the Company, any of its Subsidiaries or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Company Material Contract, except as listed in **Section 3.10(c)** of the Company Disclosure Schedules or where any such default would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company. Except in the Ordinary Course of Business with respect to any Company Loan, neither the Company nor any of its Subsidiaries has given to or received from any other Person, at any time since January 1, 2014, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or breach of, or default under, any Company Material Contract, that has not been terminated or satisfied prior to the date of this Agreement. Other than in the Ordinary Course of Business, there are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate, any material amounts paid or payable to the Company or any of its Subsidiaries under current or completed Company Material Contracts with any Person, and no such Person has made written demand for such renegotiation.

**Section 3.18 Insurance.** **Section 3.18** of the Company Disclosure Schedules lists all insurance policies and bonds owned or held as of the date of this Agreement by the Company and its Subsidiaries with respect to their respective business, operations, properties or assets (including bankers' blanket bond and insurance providing benefits for employees), true, complete and correct copies of each of which have been delivered or made available to Acquiror. The Company and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with comparable entities engaged in the same business and industry. The Company and its Subsidiaries are in compliance in all material respects with their insurance policies and are not in default under any of the terms thereof. Each such policy is outstanding and in full force and effect and, except for policies insuring against potential liabilities of officers, directors and employees of the Company and its Subsidiaries, the Company or the relevant Subsidiary thereof is the sole beneficiary of such policies. All premiums and other payments due under any such policy have been paid, and all claims thereunder have been filed in due and timely fashion. **Section 3.18** of the Company Disclosure Schedules lists and briefly describes all claims that have been filed under such insurance policies and bonds within the past two (2) years prior to the date of this Agreement that individually or in the aggregate exceed \$100,000 and the current status of such claims. None of the Company or any of its Subsidiaries has had any insurance policy or bond cancelled or nonrenewed by the issuer of the policy or bond within the past two (2) years.

**Section 3.19 Compliance with Environmental Laws.** There are no actions, suits, investigations, liabilities, inquiries, Proceedings or Orders involving the Company or any of its Subsidiaries or any of their respective assets that are pending or, to the Knowledge of the Company, threatened, nor to the Knowledge of the Company, is there any factual basis for any of the foregoing, as a result of any asserted failure of the Company or any of its Subsidiaries of, or any predecessor thereof, to comply with any Environmental Law. No environmental clearances or other governmental approvals are required for the conduct of the business of the Company or any of its Subsidiaries or the consummation of the Contemplated Transactions. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries is the owner of any interest in real estate, other than OREO, on which any substances have been generated, used, stored, deposited, treated, recycled or disposed of, which substances if known to be present on, at or under such property, would require notification to any Regulatory Authority, clean up, removal or some other remedial action under any Environmental Law at such property or any impacted adjacent or down gradient property, except where such action would not reasonably be expected to have a Material Adverse Effect on the Company. Except for any matters that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and each Subsidiary of the Company has complied in all material respects with all Environmental Laws applicable to it and its business operations.

**Section 3.20 Transactions with Affiliates.** Since January 1, 2014, all transactions required to be disclosed by the Company pursuant to Item 404 of Regulation S-K promulgated under the Securities Act have been disclosed in the Company SEC Reports. No transaction, or series of related transactions, is currently proposed by the Company or any of its Subsidiaries or, to the Knowledge of the Company, by any other Person, to which the Company or any of its Subsidiaries would be a participant that would be required to be disclosed under Item 404 of Regulation S-K promulgated under the Securities Act if consummated.

**Section 3.21 Brokerage Commissions.** Except for fees payable to FIG Partners, LLC pursuant to an engagement letter that has been Previously Disclosed, none of the Company or its Subsidiaries, or any of their respective Representatives, has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

**Section 3.22 Approval Delays.** To the Knowledge of the Company, there is no reason why the granting of any of the Requisite Regulatory Approvals would be denied or unduly delayed. The Bank's most recent CRA rating was "satisfactory" or better.

**Section 3.23 Labor Matters.**

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

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

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

**Section 3.25 Investments.**

(a) **Section 3.25(a)** of the Company Disclosure Schedules includes a complete and correct list and description as of December 31, 2016, of: (i) all investment and debt securities, mortgage-backed and related securities, marketable equity securities and securities purchased under agreements to resell that are owned by the Company or its Subsidiaries, other than, with respect to the Bank, in a fiduciary or agency capacity (the "**Company Investment Securities**"); and (ii) any such Company Investment Securities that are pledged as collateral to another Person. The Company and each Subsidiary has good and marketable title to all Company Investment Securities held by it, free and clear of any liens, mortgages, security interests, encumbrances or charges, except for Company Permitted Exceptions and except to the extent such Company Investment Securities are pledged in the Ordinary Course of Business consistent with prudent banking

practices to secure obligations of the Company or the Bank. The Company Investment Securities are valued on the books of the Company and the Bank in accordance with GAAP.

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

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

(d) All Derivative Transactions, whether entered into for the account of the Company or any of its Subsidiaries or for the account of a customer of the Company or any of its Subsidiaries, were entered into in the Ordinary Course of Business and in accordance with prudent banking practice and applicable Legal Requirements of applicable Regulatory Authorities and in accordance with the investment, securities, commodities, risk management and other policies, practices and procedures employed by the Company and its Subsidiaries, and with counterparties believed at the time to be financially responsible and able to understand (either alone or in consultation with their advisers) and to bear the risks of such Derivative Transactions. All of such Derivative Transactions are legal, valid and binding obligations of the Company or one of its Subsidiaries enforceable against it in accordance with their terms (except as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity), and are in full force and effect. The Company and its Subsidiaries have duly performed their obligations under the Derivative Transactions to the extent that such obligations to perform have accrued and, to the Knowledge of the Company, there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder.

**Section 3.26** *No Other Representations or Warranties.*

(a) Except for the representations and warranties made by the Company in this **Article 3**, neither the Company nor any other Person makes any express or implied representation or warranty with respect to the Company, its Subsidiaries, or their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects, and the Company hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company nor any other Person makes or has made any representation or warranty to Acquiror or any of its Affiliates or representatives with respect to: (i) any financial projection, forecast, estimate, budget or prospective information relating to the Company, any of its Subsidiaries or their respective businesses; or (ii) except for the representations and warranties made by the Company in this **Article 3**, any oral or written information presented to Acquiror or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby.

(b) The Company acknowledges and agrees that neither Acquiror nor any other Person has made or is making any express or implied representation or warranty other than those contained in **Article 4**.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES OF ACQUIROR**

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

**Section 4.1 Acquiror Organization.** Acquiror: (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada and is also in good standing in each other jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the failure to be so qualified and in good standing would not have a Material Adverse Effect on Acquiror; (b) is registered with the Federal Reserve as a financial holding company under the Bank Holding Company Act of 1956, as amended; and (c) has full power and authority, corporate and otherwise, to operate as a bank holding company and to own, operate and lease its properties as presently owned, operated and leased, and to carry on its business as it is now being conducted. The copies of the Acquiror Articles of Incorporation and Acquiror Bylaws and all amendments thereto set forth in the Acquiror SEC Reports are true, complete and correct, and in full force and effect as of the date of this Agreement. Acquiror has no subsidiary other than the subsidiaries listed on Exhibit 21 to Acquiror's Annual Report on Form 10-K for the fiscal year ended December 31, 2015.

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

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

**Section 4.4 No Conflict.** Neither the execution nor delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time): (a) contravene, conflict with or result in a violation of any provision of the articles of incorporation, certificate of formation or charter (or similar organizational documents)



or bylaws or operating agreement, each as in effect on the date hereof, or any currently effective resolution adopted by the board of directors, stockholders, manager or members of, Acquiror or any of its Subsidiaries; or (b) assuming receipt of the Requisite Regulatory Approvals, contravene, conflict with or result in a violation of any Legal Requirement or any Order to which Acquiror or any of its Subsidiaries, or any of their respective assets that are owned or used by them, may be subject, except for any contravention, conflict or violation that is permissible by virtue of obtaining the Requisite Regulatory Approvals. Except for: (a) the filing of applications, filings and notices, as applicable, with the Federal Reserve and approval of such applications, filings and notices; (b) the filing of applications, filings and notices, as applicable, with the Illinois State Department of Financial and Professional Regulation, Division of Banking and approval of such applications, filings and notices; (c) the filing of any required applications, filings or notices with the FDIC and approval of such applications, filings and notices; (d) the filing with the SEC of the Proxy Statement in definitive form and of the Registration Statement and declaration of effectiveness of the Registration Statement; (e) the filing of the Nevada Articles of Merger with the Nevada Secretary of State pursuant to the NRS and the filing of the Illinois Articles of Merger with the Illinois Secretary of State pursuant to the IBCA; and (f) such filings and approvals as are required to be made or obtained under the securities or "Blue Sky" laws of various states in connection with the issuance of the shares of Acquiror Common Stock pursuant to this Agreement and the listing of additional shares of Acquiror Common Stock on the NASDAQ Global Select Market, no consents or approvals of or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality are necessary in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

#### **Section 4.5** *Acquiror Capitalization.*

(a) The authorized capital stock of Acquiror currently consists exclusively of: (i) 66,666,667 shares of Acquiror Common Stock, of which, as of December 31, 2016 (the "**Acquiror Capitalization Date**"), 38,236,028 shares were issued and outstanding, and 633,232 shares were held in the treasury of Acquiror; and (ii) 1,000,000 shares of Acquiror's preferred stock, \$0.001 par value per share (the "**Acquiror Preferred Stock**"), of which no shares were issued and outstanding as of the Acquiror Capitalization Date. Acquiror does not have outstanding any bonds, debentures, notes or other debt obligations having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) with the stockholders of Acquiror on any matter. All of the issued and outstanding shares of Acquiror Capital Stock have been, and those shares of Acquiror Common Stock to be issued pursuant to the Merger will be, duly authorized and validly issued and fully paid, nonassessable and free of preemptive rights. Acquiror's securities are not listed, or quoted, for trading on any U.S. domestic or foreign securities exchange, other than the NASDAQ Global Select Market and Acquiror satisfies all of the quantitative maintenance criteria of the NASDAQ Global Select Market.

(b) As of the Acquiror Capitalization Date, no shares of Acquiror Capital Stock were reserved for issuance except for: (i) 855,451 shares of Acquiror Common Stock reserved for issuance in connection with stock options, restricted stock units, or other equity awards under Acquiror Stock Plans; (ii) 1,138,920 shares of Acquiror Common Stock reserved for issuance pursuant to future awards under Acquiror Stock Plans; and (iii) 191,277.67 shares of Acquiror Common Stock reserved for issuance in connection with outstanding warrants originally issued to the United States Department of the Treasury pursuant to the Capital Purchase Program implemented pursuant to the Troubled Asset Relief Program.

(c) Other than awards under Acquiror Stock Plans that are outstanding as of the date of this Agreement, no equity-based awards were outstanding as of the Acquiror Capitalization Date. Since the Acquiror Capitalization Date through the date hereof, Acquiror has not: (i) issued or repurchased any shares of Acquiror Common Stock or Acquiror Preferred Stock or other equity

securities of Acquiror, other than in connection with the exercise of Acquiror Equity Awards that were outstanding on the Acquiror Capitalization Date or settlement thereof, in each case in accordance with the terms of the relevant Acquiror Stock Plan; or (ii) issued or awarded any options, stock appreciation rights, restricted shares, restricted stock units, deferred equity units, awards based on the value of Acquiror Common Stock or any other equity-based awards. From the Acquiror Capitalization Date through the date of this Agreement, neither Acquiror nor any of its Subsidiaries has: (A) accelerated the vesting of or lapsing of restrictions with respect to any stock-based compensation awards or long-term incentive compensation awards; (B) with respect to executive officers of Acquiror or its Subsidiaries, entered into or amended any employment, severance, change in control or similar agreement (including any agreement providing for the reimbursement of excise taxes under Section 4999 of the Code); or (C) adopted or materially amended any Acquiror Stock Plan.

(d) None of the shares of Acquiror Common Stock were issued in violation of any federal or state securities laws or any other applicable Legal Requirement. As of the date of this Agreement there are: (i) other than outstanding Acquiror Equity Awards, no outstanding subscriptions, Contracts, conversion privileges, options, warrants, calls or other rights obligating Acquiror or any of its Subsidiaries to issue, sell or otherwise dispose of, or to purchase, redeem or otherwise acquire, any shares of capital stock of Acquiror or any of its Subsidiaries; and (ii) no contractual obligations of Acquiror or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of Acquiror Common Stock or any equity security of Acquiror or its Subsidiaries or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of Acquiror or its Subsidiaries. Except as permitted by this Agreement, since the Acquiror Capitalization Date, no shares of Acquiror Common Stock have been purchased, redeemed or otherwise acquired, directly or indirectly, by Acquiror or any of its Subsidiaries and no dividends or other distributions payable in any equity securities of Acquiror or any of its Subsidiaries have been declared, set aside, made or paid to the stockholders of Acquiror. Other than its Subsidiaries, Acquiror does not own, nor has any Contract to acquire, any equity interests or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

**Section 4.6 *Acquiror Subsidiary Capitalization.*** All of the issued and outstanding shares of capital stock or other equity ownership interests of each Subsidiary of Acquiror are owned by Acquiror, directly or indirectly, free and clear of any material liens, pledges, charges, claims and security interests and similar encumbrances, and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. No Subsidiary of Acquiror has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of capital stock or any other equity security of such Subsidiary or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of such Subsidiary. No Subsidiary of Acquiror owns or has any Contract to acquire, any equity interests or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

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

(a) Acquiror has timely filed all Acquiror SEC Reports, except where the failure to file any Acquiror SEC Report, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Acquiror, and all such Acquiror SEC Reports complied as to form in all material respects, as of their respective filing dates and effective dates, as the case may be, with all applicable requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder which are applicable to the Acquiror. The Acquiror SEC Reports were prepared in accordance with applicable Legal Requirements in all material respects. As of their respective filing dates, none of the Acquiror SEC Reports contained

an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date. As of the date hereof, there are no outstanding comments from or unresolved issues raised by the SEC with respect to any of the Acquiror SEC Reports. No Subsidiary of Acquiror is required to file periodic reports with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

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

(c) Acquiror is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 that are applicable to it or any of its Subsidiaries. Acquiror maintains a system of disclosure controls and procedures as defined in Rule 13a-15 and 15d-15 under the Exchange Act that are designed to provide reasonable assurance that information required to be disclosed by Acquiror in reports that Acquiror is required to file under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to Acquiror's management to allow timely decisions regarding required disclosures. As of December 31, 2016, to the Knowledge of Acquiror, such controls and procedures were effective, in all material respects, to provide such reasonable assurance.

(d) Acquiror and its consolidated Subsidiaries have established and maintained a system of Internal Control Over Financial Reporting. Acquiror's certifying officers have evaluated the effectiveness of Acquiror's Internal Control Over Financial Reporting as of the end of the period covered by the most recently filed quarterly report on Form 10-Q of Acquiror under the Exchange Act (the "**Acquiror Evaluation Date**"). Acquiror presented in such quarterly report the conclusions of the certifying officers about the effectiveness of Acquiror's Internal Control Over Financial Reporting based on their evaluations as of the Acquiror Evaluation Date. Since the Acquiror Evaluation Date, there have been no changes in Acquiror's Internal Control Over Financial Reporting that have materially affected, or are reasonably likely to materially affect, Acquiror's Internal Control Over Financial Reporting. Acquiror has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(e) Acquiror and each of its Subsidiaries has filed all forms, reports and documents required to be filed since January 1, 2014, with all applicable federal or state securities or banking authorities except to the extent failure would not have a Material Adverse Effect on Acquiror and its Subsidiaries. Such forms, reports and documents: (i) complied as to form in all material

respects with applicable Legal Requirements; and (ii) did not at the time they were filed, after giving effect to any amendment thereto filed prior to the date hereof, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) is deemed to modify information as of an earlier date.

(f) To the Knowledge of Acquiror, there has not been any event or occurrence since January 1, 2014 that would result in a determination that Acquiror Bank is not an eligible depository institution as defined in 12 C.F.R. § 303.2(r).

**Section 4.8 Books and Records.** The books of account, minute books, stock record books and other records of Acquiror and its Subsidiaries are complete and correct in all material respects and have been maintained in accordance with Acquiror's business practices and all applicable Legal Requirements, including the maintenance of an adequate system of internal controls required by such Legal Requirements. The minute books of Acquiror and each of its Subsidiaries fairly reflect the substance of events and transactions included therein.

**Section 4.9 Properties.** Acquiror and each of its Subsidiaries has good and marketable title to all assets and properties, whether real or personal, tangible or intangible, that it purports to own, other than OREO, subject to no liens, mortgages, security interests, encumbrances or charges of any kind except: (i) as noted in the most recent Acquiror Financial Statements and incurred in the Ordinary Course of Business since the date of the most recent Acquiror Financial Statements; (ii) statutory liens for Taxes not yet delinquent or being contested in good faith by appropriate Proceedings and for which appropriate reserves have been established and reflected in the Acquiror Financial Statements; (iii) pledges or liens required to be granted in connection with the acceptance of government deposits, granted in connection with repurchase or reverse repurchase agreements, securing any discount with, borrowing from, or obligations to any Federal Reserve Bank or Federal Home Loan Bank, interbank credit facilities or any transaction by Acquiror Bank acting in a fiduciary capacity or otherwise incurred in the Ordinary Course of Business; (iv) easements, rights of way, and other similar encumbrances that do not materially affect the present use of the properties or assets subject thereto or affected thereby or otherwise materially impair the present business operations at such properties; (v) minor defects and irregularities in title and encumbrances that do not materially impair the use thereof for the purposes for which they are held as of the date of this Agreement; (vi) liens or deposits in connection with worker's compensation, unemployment insurance, social security or other insurance; (vii) inchoate mechanic's and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carrier's liens arising in the Ordinary Course of Business of Acquiror or Acquiror Bank consistent with past practice; (viii) liens existing on any asset of any Person at the time such Person is acquired by or is combined with Acquiror or any of its Subsidiaries, provided the lien was not created in contemplation of that event; (ix) liens on property required by Regulation W promulgated by the Federal Reserve; and (x) liens incidental to the conduct of business or ownership of property of Acquiror or any of its Subsidiaries which do not in the aggregate materially detract from the value of the property or materially impair the use thereof as of the date of this Agreement. Acquiror and each of its Subsidiaries as lessee has the right under valid and existing leases to occupy, use, possess and control any and all of the respective property leased by it, and each such lease is valid and without default thereunder by the lessee or, to the Knowledge of Acquiror, the lessor.

**Section 4.10** *Loans; Loan Loss Reserve.*

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

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

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

(d) To the Knowledge of Acquiror: (i) none of the Acquiror Loans is subject to any material offset or claim of offset; and (ii) the aggregate loan balances in excess of Acquiror Bank's allowance for loan and lease losses are, based on past loan loss experience, collectible in accordance with their terms (except as limited above) and all uncollectible loans have been charged off.

**Section 4.11** *Taxes.*

(a) Acquiror and each of its Subsidiaries have duly and timely filed (taking into account all applicable extensions) all Tax Returns required to be filed by them, and each such Tax Return was true, correct and complete in all material respects when filed. Acquiror and each of its Subsidiaries have paid, or made adequate provision for the payment of, all Taxes (whether or not reflected in Tax Returns as filed or to be filed) due and payable by Acquiror and each of its Subsidiaries, or claimed to be due and payable by any Regulatory Authority, and are not delinquent in the payment of any Tax, except such Taxes as are being contested in good faith and as to which adequate reserves have been provided.

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

executed an extension or waiver of any statute of limitations on the assessment or collection of any Tax that is currently in effect.

(c) Acquiror and each of its Subsidiaries have delivered or made available to the Company true, correct and complete copies of all Tax Returns relating to income taxes and franchise taxes owed by Acquiror and its Subsidiaries with respect to the last three (3) fiscal years.

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

#### **Section 4.12** *Employee Benefits.*

(a) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (including possible terminations of employment in connection therewith) will cause a payment, vesting, increase or acceleration of benefits or benefit entitlements under any Acquiror Benefit Plan or any other increase in the liabilities of Acquiror or any Subsidiary under any Acquiror Benefit Plan as a result of the transactions contemplated by this Agreement.

(b) With respect to any Acquiror Benefit Plan that is a "multiple employer plan" (as described in Section 413(c) of the Code) or is provided by or through a professional employer organization, such Acquiror Benefit Plan complies in all respects with the requirements of the Code and ERISA and neither Acquiror nor any of the Acquiror ERISA Affiliates has any liabilities other than the payment and/or remittance of premiums and/or required contributions on behalf of enrolled individuals. Neither Acquiror nor any of the Acquiror ERISA Affiliates sponsors, maintains, administers or contributes to, or has ever sponsored, maintained, administered or contributed to, or has, has had or could have any liability with respect to, any Acquiror Benefit Plan subject to Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code, or any tax-qualified "defined benefit plan" (as defined in Section 3(35) of ERISA). No Acquiror Benefit Plan is underfunded when comparing the present value of accrued liabilities under such plan to the market value of plan assets.

(c) Each Acquiror Benefit Plan that is intended to qualify under Section 401 and related provisions of the Code is the subject of a favorable determination letter, or, in the case of a volume submitter or prototype plan, an advisory or sponsor letter, from the IRS to the effect that it is so qualified under the Code and that its related funding instrument is tax exempt under Section 501 of the Code (or Acquiror and its Subsidiaries are otherwise relying on an opinion letter issued to the prototype sponsor), and, to Acquiror's Knowledge, there are no facts or circumstances that would adversely affect the qualified status of any Acquiror Benefit Plan or the tax-exempt status of any related trust.

(d) Each Acquiror Benefit Plan is and has been administered in all material respects in compliance with its terms and with all applicable Legal Requirements.

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

(f) No Acquiror Benefit Plan fiduciary or any other person has, or has had, any liability to any Acquiror Benefit Plan participant, beneficiary or any other person under any provisions of ERISA or any other applicable Legal Requirement by reason of any action or failure to act in connection with any Acquiror Benefit Plan, including any liability by any reason of any payment of, or failure to pay, benefits or any other amounts or by reason of any credit or failure to give credit for any benefits or rights. To Acquiror's Knowledge, no disqualified person (as defined in Code Section 4975(e)(2)) of any Acquiror Benefit Plan has engaged in any nonexempt prohibited transaction (as described in Code Section 4975(c) or ERISA Section 406).

(g) All accrued contributions and other payments to be made by Acquiror or any Subsidiary to any Acquiror Benefit Plan have been made or reserves adequate for such purposes will have been set aside therefore and reflected in the Acquiror Financial Statements.

(h) No condition exists as a result of which Acquiror or any Subsidiary would have any liability, whether absolute or contingent, under any Acquiror Benefit Plan with respect to any misclassification of a person performing services for Acquiror or any Subsidiary as an independent contractor rather than as an employee. All individuals participating in Acquiror Benefit Plans are in fact eligible and authorized to participate in such Acquiror Benefit Plan.

(i) Neither Acquiror nor any of its Subsidiaries have any liabilities to employees or former employees that are not reflected in the Acquiror Benefit Plans.

**Section 4.13 Compliance with Legal Requirements.** Acquiror and each of its Subsidiaries hold all material licenses, certificates, permits, franchises and rights from all appropriate Regulatory Authorities necessary for the conduct of their respective businesses as presently conducted. Acquiror and each of its Subsidiaries is, and at all times since January 1, 2014, has been, in compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its respective businesses or the ownership or use of any of its respective assets, except where noncompliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Acquiror. Except as would not reasonably be expected, individually or in the aggregate, to have Material Adverse Effect on Acquiror, neither Acquiror nor any of its Subsidiaries has received, at any time since January 1, 2014, any notice or other communication (whether oral or written) from any Regulatory Authority or any other Person regarding: (a) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement; or (b) any actual, alleged, possible, or potential obligation on the part of Acquiror or any of its Subsidiaries to undertake, or to bear all or any portion of the cost of, any remedial action of any nature in connection with a failure to comply with any Legal Requirement.

**Section 4.14 Legal Proceedings; Orders.**

(a) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Acquiror, neither Acquiror nor any of its Subsidiaries is a party to any, and there are no pending or, to the Knowledge of Acquiror, threatened, Proceedings against Acquiror or any of its Subsidiaries. There is no Order imposed on Acquiror or any of its Subsidiaries that would reasonably be expected to be material to the Company and its Subsidiaries taken as a whole. No officer, director, employee or agent of Acquiror or any of its Subsidiaries is subject to any Order that prohibits such officer, director, employee or agent from engaging in or continuing any conduct, activity or practice relating to the businesses of Acquiror or any of its Subsidiaries as currently conducted.

(b) Neither Acquiror nor any of its Subsidiaries: (i) is subject to any cease and desist or other Order or enforcement action issued by; (ii) is a party to any written agreement, consent agreement or memorandum of understanding with; (iii) is a party to any commitment letter or similar undertaking to; (iv) is subject to any order or directive by; (v) is subject to any supervisory letter

from; (vi) has been ordered to pay any civil money penalty, which has not been paid, by; or (vii) has adopted any policies, procedures or board resolutions at the request of; any Regulatory Authority that currently restricts in any material respect the conduct of its business, in any manner relates to its capital adequacy, restricts its ability to pay dividends or interest or limits in any material manner its credit or risk management policies, its management or its business. To the Knowledge of Acquiror, none of the foregoing has been threatened by any Regulatory Authority.

**Section 4.15** *Absence of Certain Changes and Events.* Since December 31, 2015, no event or events have occurred that had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect on Acquiror.

**Section 4.16** *Compliance with Environmental Laws.* There are no actions, suits, investigations, liabilities, inquiries, Proceedings or Orders involving Acquiror or any of its Subsidiaries or any of their respective assets that are pending or, to the Knowledge of Acquiror, threatened, nor to the Knowledge of Acquiror, is there any factual basis for any of the foregoing, as a result of any asserted failure of Acquiror or any of its Subsidiaries of, or any predecessor thereof, to comply with any Environmental Law. No environmental clearances or other governmental approvals are required for the conduct of the business of Acquiror or any of its Subsidiaries or the consummation of the Contemplated Transactions. To the Knowledge of Acquiror, neither Acquiror nor any of its Subsidiaries is the owner of any interest in real estate, other than OREO, on which any substances have been generated, used, stored, deposited, treated, recycled or disposed of, which substances if known to be present on, at or under such property, would require notification to any Regulatory Authority, clean up, removal or some other remedial action under any Environmental Law at such property or any impacted adjacent or down gradient property, except where such action would not reasonably be expected to have a Material Adverse Effect on Acquiror. Except for any matters that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Acquiror, Acquiror and each Subsidiary of Acquiror has complied in all material respects with all Environmental Laws applicable to it and its business operations.

**Section 4.17** *Brokerage Commissions.* Except for fees payable to Stephens Inc. pursuant to an engagement letter that has been Previously Disclosed, none of Acquiror or its Subsidiaries, or any of their respective Representatives, has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

**Section 4.18** *Approval Delays.* To the Knowledge of Acquiror, there is no reason why the granting of any of the Requisite Regulatory Approvals would be denied or unduly delayed. Acquiror Bank's most recent CRA rating was "satisfactory" or better.

**Section 4.19** *Financial Capability.* Acquiror has, and will have prior to the Effective Time, sufficient funds to pay the Cash Consideration and the consideration to be paid to the holders of the Director Company Stock Options and other Company Equity Awards in accordance with **Section 2.5** and to perform its other obligations contemplated by this Agreement.

**Section 4.20** *No Other Representations or Warranties.*

(a) Except for the representations and warranties made by Acquiror in this **Article 4**, neither Acquiror nor any other Person makes any express or implied representation or warranty with respect to Acquiror, its Subsidiaries, or their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects, and Acquiror hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither Acquiror nor any other Person makes or has made any representation or warranty to the Company or any of its Affiliates or representatives with respect to: (i) any financial projection, forecast, estimate, budget or prospective information relating to Acquiror, any of its Subsidiaries or their



respective businesses; or (ii) except for the representations and warranties made by Acquiror in this **Article 4**, any oral or written information presented to the Company or any of its Affiliates or representatives in the course of their due diligence investigation of Acquiror, the negotiation of this Agreement or in the course of the transactions contemplated hereby.

(b) Acquiror acknowledges and agrees that neither the Company nor any other Person has made or is making any express or implied representation or warranty other than those contained in **Article 3**.

## ARTICLE 5 THE COMPANY'S COVENANTS

### Section 5.1 *Access and Investigation.*

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

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

(c) The Company shall provide, and cause each of its Subsidiaries to provide, to Acquiror all information provided to the directors on all such boards or members of such committees in connection with all meetings of the board of directors and committees of the board of directors of the Company or otherwise provided to the directors or members, and to provide any other financial reports or other analysis prepared for senior management of the Company or its Subsidiaries; in each case other than portions of such documents: (i) relating to confidential supervisory or examination materials, (ii) the disclosure of which would violate any applicable Legal Requirement, (iii) the disclosure of which would, in the reasonable judgment of the Company's outside counsel, result in the waiver of the attorney-client privilege, or (iv) related to an Acquisition Proposal (disclosure of which shall be governed solely by **Section 5.8**).

(d) All information obtained by Acquiror in accordance with this **Section 5.1** shall be treated in confidence as provided in that certain Mutual Confidentiality and Non-Disclosure Agreement dated as of November 3, 2016, between Acquiror and the Company (the "**Confidentiality Agreement**").

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

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

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

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

(ii) (A) make, declare, pay or set aside for payment any dividend on or in respect of, or declare or make any distribution on any shares of Company Capital Stock outside of past practice (other than dividends from its wholly owned Subsidiaries to it or another of its wholly owned Subsidiaries); or (B) directly or indirectly adjust, split, combine, redeem, reclassify, purchase or otherwise acquire, any shares of Company Capital Stock (other than repurchases

of shares of Company Common Stock in the Ordinary Course of Business to satisfy obligations under Company Benefit Plans);

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

(iv) enter into loan transactions not in accordance with, or consistent with, past practices of the Bank or that are on terms and conditions that, to the Knowledge of the Company, are materially more favorable than those available to the borrower from competitive sources in arm's-length transactions;

(v) (A) except as disclosed on **Section 5.2(b)(v)** of the Company Disclosure Schedules, enter into any new credit or new lending relationships greater than \$2,500,000 that would require an exception to the Bank's formal loan policy as in effect as of the date of this Agreement or that are not in strict compliance with the provisions of such loan policy; or (B) other than incident to a reasonable loan restructuring, extend additional credit to any Person and any director or officer of, or any owner of a material interest in, such Person (any of the foregoing with respect to a Person being referred to as a "**Borrowing Affiliate**") if such Person or such Borrowing Affiliate is the obligor under any indebtedness to the Company or any of its Subsidiaries which constitutes a nonperforming loan or against any part of such indebtedness the Company or any of its Subsidiaries has established loss reserves or any part of which has been charged-off by the Company or any of its Subsidiaries;

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

(vii) fail to: (A) charge-off any Company Loans or leases that would be deemed uncollectible in accordance with GAAP or any applicable Legal Requirement; or (B) place on non-accrual any Company Loans or leases that are past due greater than ninety (90) days;

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

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

(x) amend the Company Articles of Incorporation or the Company Bylaws, or similar governing documents of any of its Subsidiaries;

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

(xii) except as permitted by this Agreement or as required by any applicable Legal Requirement or the terms of any Company Benefit Plan existing as of the date hereof: (A) except as disclosed on **Section 5.2(b)(i)** of the Company Disclosure Schedules, increase in any manner the compensation or benefits of any of the current or former directors, officers, employees, consultants, independent contractors or other service providers of the Company or its Subsidiaries (collectively, the "**Company Employees**"), other than increases in the Ordinary Course of Business consistent with past practices in timing, metrics and amount; (B) become a party to, establish, amend, commence participation in, terminate or commit itself to the adoption of any stock option plan or other stock-based compensation plan, compensation, severance, pension, consulting, non-competition, change in control, retirement, profit-sharing, welfare benefit, or other employee benefit plan or agreement or employment agreement with or for the benefit of any Company Employee (or newly hired employees), director or stockholder; (C) accelerate the vesting of or lapsing of restrictions with respect to any stock-based compensation or other long-term incentive compensation under any Company Benefit Plans; (D) cause the funding of any rabbi trust or similar arrangement or take any action to fund or in any other way secure the payment of compensation or benefits under any Company Benefit Plan; or (E) materially change any actuarial assumptions used to calculate funding obligations with respect to any Company Benefit Plan that is required by applicable Legal Requirements to be funded or change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP or any applicable Legal Requirement;

(xiii) incur or guarantee any indebtedness for borrowed money other than in the Ordinary Course of Business;

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

(xv) settle any action, suit, claim or proceeding against it or any of its Subsidiaries, except for an action, suit, claim or proceeding that is settled in an amount and for consideration not in excess of \$250,000 and that would not: (A) impose any material restriction on the business of the Company or its Subsidiaries; or (B) create precedent for claims that is reasonably likely to be material to it or its Subsidiaries;

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

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

(xviii) hire any employee with an annual salary in excess of \$150,000; or

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

(c) For purposes of **Section 5.2(b)**, Acquiror's consent shall be deemed to have been given if the Company has made a written request to Robin N. Elliott, Executive Vice President and Chief Financial Officer of Acquiror, and John J. Powers, Executive Vice President and General Counsel of Acquiror, for permission to take any action otherwise prohibited by **Section 5.2(b)** and has provided Acquiror with information sufficient for Acquiror to make an informed decision with respect to such request, and Acquiror has failed to respond to such request within five (5) Business Days after Acquiror's receipt of such request.

**Section 5.3 Notice of Changes.** The Company will give prompt notice to Acquiror of any fact, event or circumstance known to it that: (a) is reasonably likely, individually or taken together with all other facts, events and circumstances known to it, to result in a Material Adverse Effect on the Company; or (b) would cause or constitute a material breach of any of the Company's representations, warranties, covenants or agreements contained herein that reasonably could be expected to give rise, individually or in the aggregate, to the failure of a condition in **Article 8**.

**Section 5.4 Stockholders' Meeting.** Subject to the other provisions of this Agreement and unless there has been a Company Adverse Recommendation, the Company shall, as promptly as reasonably practicable after the date the Registration Statement is declared effective, take all action necessary, including as required by and in accordance with the IBCA, Company Articles of Incorporation and Company Bylaws to duly call, give notice of, convene and hold a meeting of its stockholders (the "**Company Stockholders' Meeting**") for the purpose of obtaining the Company Stockholder Approval. The Company and Company Board will use their reasonable best efforts to obtain from its stockholders the votes in favor of the adoption of this Agreement required by the IBCA, including by recommending that its stockholders vote in favor of this Agreement, and the Company and Company Board will not withhold, withdraw, qualify or adversely modify (or publicly propose or resolve to withhold, withdraw, qualify or adversely modify) Company Board's recommendation to the Company's stockholders that the Company's stockholders vote in favor of the adoption and approval of this Agreement and the Contemplated Transactions, including the Merger (a "**Company Adverse Recommendation**"). However, if, prior to the time the Company Stockholder Approval is obtained, the Company Board, after consultation with outside counsel, determines in good faith it is reasonably likely that to, or to continue to, recommend this Agreement to its stockholders would result in a violation of its fiduciary duties under applicable Legal Requirements, then the Company Board may make a Company Adverse Recommendation or publicly propose or resolve to make a Company Adverse Recommendation.

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

**Section 5.6 Operating Functions.** The Company and the Bank shall cooperate with Acquiror and Acquiror Bank in connection with planning for the efficient and orderly combination of the parties and

the operation of the Bank and Acquiror Bank, and in preparing for the consolidation of the banks' appropriate operating functions to be effective on the Effective Date or such later date as the parties may mutually agree.

**Section 5.7** *Company Benefit Plans.*

(a) At the request of Acquiror, except as otherwise provided by **Section 2.5(a)(i)**, the Company will take all appropriate action to amend or terminate, prior to the Effective Time, any Company Benefit Plan, provided however, that no action taken by the Company with respect to the termination of a Company Benefit Plan shall be required to be irrevocable until one day prior to the Effective Time.

(b) Prior to the Effective Time, the Company shall accrue the costs associated with any payments due under any Company Benefit Plan, including without limitation any change of control or severance agreements, retention or stay bonus programs, or other similar arrangements, consistent with GAAP.

**Section 5.8** *Acquisition Proposals.*

(a) The Company will immediately cease and cause to be terminated any activities, discussions or negotiations conducted before the date of this Agreement with any Persons other than Acquiror with respect to any Acquisition Proposal. The Company will within two (2) Business Days advise Acquiror following receipt of any Acquisition Proposal and the substance thereof (including the identity of the Person making such Acquisition Proposal), and will keep Acquiror apprised of any related developments, discussions and negotiations (including the material terms and conditions of the Acquisition Proposal) on a reasonably current basis.

(b) The Company agrees that it will not, and will cause its respective Subsidiaries and its and its Subsidiaries' officers, directors, agents, advisors and affiliates not to, initiate, solicit, encourage or knowingly facilitate inquiries or proposals with respect to, or engage in any negotiations concerning, or provide any confidential or nonpublic information or data to, or have any discussions with, any Person relating to, any Acquisition Proposal (other than contacting a Person for the sole purpose of seeking clarification of the terms and conditions of such Acquisition Proposal); *provided that*, in the event the Company receives an unsolicited *bona fide* Acquisition Proposal from a Person other than Acquiror after the execution of this Agreement, and the Company Board concludes in good faith that such Acquisition Proposal constitutes a Superior Proposal or would reasonably be likely to result in a Superior Proposal and, after considering the advice of outside counsel, that failure to take such actions would be reasonably likely to result in a violation of the directors' fiduciary duties under applicable Legal Requirements, the Company may: (i) furnish information with respect to it to such Person making such Acquisition Proposal pursuant to a customary confidentiality agreement (subject to the requirement that any such information not previously provided to Acquiror shall be promptly furnished to Acquiror); (ii) participate in discussions or negotiations regarding such Acquisition Proposal; and (iii) terminate this Agreement in order to concurrently enter into an agreement with respect to such Acquisition Proposal; *provided, however*, that the Company may not terminate this Agreement pursuant to this **Section 5.8** unless and until (x) five (5) Business Days have elapsed following the delivery to the other party of a written notice of such determination by the Company Board and, during such five (5) Business-Day period, the parties cooperate with one another with the intent of enabling the parties to engage in good faith negotiations so that the Contemplated Transactions may be effected, and (y) at the end of such five (5) Business-Day period, the Company continues, in good faith and after consultation with outside legal counsel and financial advisors, to believe that a Superior Proposal continues to exist.

(c) Nothing contained in this Agreement shall prevent the Company or the Company Board from complying with Rule 14d-9 and Rule 14e-2 under the Exchange Act with respect to an Acquisition Proposal, *provided* that such Rules will in no way eliminate or modify the effect that any action pursuant to such Rules would otherwise have under this Agreement.

Section 5.9 *Release of Security Interest.* Prior to the Effective Time, Company shall use its reasonable best efforts to pay, in full, all principal and interest payments due on Company's outstanding debt obligation to MB Financial Bank, N.A., Rosemont, Illinois ("**MB Financial Bank**"), and use its reasonable best efforts to seek the release of MB Financial Bank's security interest on the issued and outstanding shares of common stock of the Bank pledged to MB Financial Bank in connection with such debt obligation.

## ARTICLE 6 ACQUIROR'S COVENANTS

### Section 6.1 *Access and Investigation.*

(a) Subject to any applicable Legal Requirement, the Company and its Representatives shall, at all times during normal business hours and with reasonable advance notice, have such reasonable access to the facilities, operations, records and properties of Acquiror and each of its Subsidiaries in accordance with the provisions of this **Section 6.1(a)** as shall be necessary for the purpose of determining Acquiror's continued compliance with the terms and conditions of this Agreement. The Company and its Representatives may, during such period, make or cause to be made such reasonable investigation of the operations, records and properties of Acquiror and each of its Subsidiaries and of their respective financial and legal conditions as Company shall deem necessary or advisable to familiarize itself with such records, properties and other matters; *provided, however*, that such access or investigation shall not interfere materially with the normal operations of Acquiror or any of its Subsidiaries. Upon request, Acquiror and each of its Subsidiaries will furnish the Company or its Representatives attorneys' responses to auditors' requests for information regarding Acquiror or such Subsidiary, as the case may be, and such financial and operating data and other information reasonably requested by the Company (provided, such disclosure would not result in the waiver by Acquiror or any of its Subsidiaries of any claim of attorney-client privilege). No investigation by the Company or any of its Representatives shall affect the representations and warranties made by Acquiror in this Agreement. This **Section 6.1(a)** shall not require the disclosure of any information to the Company the disclosure of which, in Acquiror's reasonable judgment: (i) would be prohibited by any applicable Legal Requirement; (ii) would result in the breach of any agreement with any third party in effect on the date of this Agreement; or (iii) relate to pending or threatened litigation or investigations, if disclosure might affect the confidential nature of, or any privilege relating to, the matters being discussed. If any of the restrictions in the preceding sentence shall apply, Acquiror and the Company will make appropriate alternative disclosure arrangements, including adopting additional specific procedures to protect the confidentiality of sensitive material and to ensure compliance with any applicable Legal Requirement.

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

(c) All information obtained by the Company in accordance with this **Section 6.1** shall be treated in confidence as provided in the Confidentiality Agreement.

**Section 6.2** *Operation of Acquiror and Acquiror Subsidiaries.*

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

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

(i) (A) enter into any agreement with respect to, or consummate, any merger or business combination, or any acquisition of any other Person or (B) make any loan, advance or capital contribution to, or investment in, any Person, in each case that would reasonably be expected to prevent, impede or materially delay the consummation of the Merger;

(ii) amend the Acquiror Articles of Incorporation or the Acquiror Bylaws, or similar governing documents of any of its Subsidiaries, in a manner that would materially and adversely affect the benefits of the Merger to the stockholders of the Company;

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

(iv) agree to take, make any commitment to take, or adopt any resolutions of Acquiror Board in support of, any of the actions prohibited by this **Section 6.2**.

**Section 6.3** *Information Provided to the Company.* Acquiror agrees that the information concerning Acquiror or any of its Subsidiaries that is provided or to be provided by Acquiror to the Company for inclusion or that is included in the Registration Statement or Proxy Statement and any other documents to be filed with any Regulatory Authority in connection with the Contemplated Transactions will: (a) at the respective times such documents are filed and, in the case of the Registration Statement, when it becomes effective and, with respect to the Proxy Statement, when mailed, not be false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; or (b) in the case of the Proxy Statement or any amendment thereof or supplement thereto, not be false or misleading with respect to any material fact, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of any proxy for the meeting in connection with which the Proxy Statement shall be mailed. Notwithstanding the foregoing, Acquiror shall have no responsibility for the truth or accuracy of any information with respect to the Company or any of its Subsidiaries or any of their Affiliates contained in the Registration Statement or in any document submitted to, or other communication with, any Regulatory Authority.



**Section 6.4 Operating Functions.** Acquiror and Acquiror Bank shall cooperate with the Company and the Bank in connection with planning for the efficient and orderly combination of the parties and the operation of the Bank and Acquiror Bank, and in preparing for the consolidation of the banks' appropriate operating functions to be effective on the Effective Date or such later date as the parties may mutually agree.

**Section 6.5 Indemnification.**

(a) From and after the Effective Time, Acquiror shall indemnify, defend and hold harmless, to the fullest extent permitted under applicable Legal Requirements, each current or former director, officer or employee of the Company or any of its Subsidiaries or fiduciary of the Company or any of its Subsidiaries under any Company Benefit Plans or any Person who is or was serving at the request of the Company or any of its Subsidiaries as a director, officer, trustee or employee of another Person (each, an "**Indemnified Party**"), and any Person who becomes an Indemnified Party between the date hereof and the Effective Time, against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, including the Contemplated Transactions, whether asserted or claimed prior to, at or after the Effective Time. Acquiror shall also advance expenses incurred by an Indemnified Party in each such case to the fullest extent permitted by applicable Legal Requirements, subject to the receipt of an undertaking from such Indemnified Party to repay such advanced expenses if it is determined by a final and nonappealable judgment of a court of competent jurisdiction that such Indemnified Party was not entitled to indemnification hereunder.

(b) For a period of six (6) years after the Effective Time or, if such term coverage is not available, such other maximum period of coverage available, Acquiror shall maintain in effect the Company's current directors' and officers' liability insurance covering each Person currently covered by the Company's directors' and officers' liability insurance policy for acts or omissions occurring prior to the Effective Time; *provided*, that in no event shall Acquiror be required to expend annually in the aggregate an amount in excess of 250% of the amount of the aggregate premiums paid by the Company for the current policy term for such purpose and, if Acquiror is unable to maintain such policy (or substitute policy) as a result of this proviso, Acquiror shall obtain as much comparable insurance as is available and for as long a period of time as is available following the Effective Time by payment of such amount; *provided further*, that: (i) Acquiror may substitute therefor "tail" policies the material terms of which, including coverage and amount, are no less favorable in any material respect to such directors and officers than the Company's existing policies as of the date hereof; or (ii) the Company may obtain such extended reporting period coverage under the Company's existing insurance programs (to be effective as of the Effective Time).

(c) If Acquiror or any of its successors or assigns shall: (i) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger; or (ii) transfer all or substantially all its properties and assets to any Person; then, and in each such case, Acquiror shall cause proper provision to be made so that the successor and assign of Acquiror assumes the obligations set forth in this **Section 6.5**.

(d) The provisions of this **Section 6.5** shall survive consummation of the Merger and the Bank Merger and are intended to be for the benefit of, and will be enforceable by, each Indemnified Party, his or her heirs and his or her legal representatives.

**Section 6.6 Board Representation.** Subject to any necessary approval by the appropriate Regulatory Authorities, Acquiror shall take all appropriate action, subject to and in accordance with the respective bylaws of Acquiror and Acquiror Bank, to appoint: (a) one individual serving on the

Company Board and mutually agreeable to the parties, to the Acquiror Board, effective immediately upon the Effective Time; and (b) one individual mutually agreeable to the parties to the board of directors of Acquiror Bank, effective immediately upon the effectiveness of the Bank Merger.

**Section 6.7** *Authorization and Reservation of Acquiror Common Stock.* The Acquiror Board shall, as of the date hereof, authorize and reserve the maximum number of shares of Acquiror Common Stock to be issued pursuant to this Agreement and take all other necessary corporate action to consummate the Contemplated Transactions.

**Section 6.8** *Stock Exchange Listing.* Acquiror shall use its reasonable best efforts to cause all shares of Acquiror Common Stock issuable or to be reserved for issuance under this Agreement to be approved for listing on the NASDAQ Global Select Market prior to the Closing Date.

**Section 6.9** *Assumption of Debt Instruments.* Except as provided in **Section 5.9**, Acquiror agrees to execute and deliver, or cause to be executed and delivered, by or on behalf of the Surviving Entity, at or prior to the Effective Time, one or more supplemental indentures, guarantees, and other instruments required for the due assumption of the Company's outstanding debt, subordinated debentures, guarantees, securities, and other agreements to the extent required by the terms of such debt, subordinated debentures, guarantees, securities, and other agreements.

## ARTICLE 7 COVENANTS OF ALL PARTIES

**Section 7.1** *Regulatory Approvals.* Acquiror and the Company and their respective Subsidiaries will cooperate and use all reasonable best efforts to as promptly as possible prepare, but in no event later than forty-five (45) days following the date hereof, file, effect and obtain all Requisite Regulatory Approvals, and the parties will comply with the terms of such Requisite Regulatory Approvals. Each of Acquiror and the Company will have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable Legal Requirements relating to the exchange of information, with respect to all substantive written information submitted to any Regulatory Authority in connection with the Requisite Regulatory Approvals. In exercising the foregoing right, each of the parties will act reasonably and as promptly as practicable. Each party agrees that it will consult with the other party with respect to obtaining all permits, consents, approvals and authorizations of all Regulatory Authorities necessary or advisable to consummate the Contemplated Transactions, and each party will keep the other party apprised of the status of material matters relating to completion of the Contemplated Transactions. Acquiror and the Company will, upon request, furnish the other party with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any filing, notice or application made by or on behalf of such other party or any of its Subsidiaries with or to any Regulatory Authority in connection with the Contemplated Transactions.

**Section 7.2** *SEC Registration.* As soon as practicable following the date of this Agreement, but in no event later than forty-five (45) days following the date hereof, the Company and Acquiror shall prepare and file with the SEC the Proxy Statement and Acquiror shall prepare and file with the SEC the Registration Statement, in which the Proxy Statement will be included. Acquiror shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the Merger and the Contemplated Transactions. Prior to the filing of the Registration Statement, Acquiror shall consult with the Company with respect to such filing and shall afford the Company and its representatives reasonable opportunity to review and comment thereon. The Registration Statement and the Proxy Statement shall include all information reasonably requested by the Company to be included. The Company will use its reasonable best efforts to cause the Proxy Statement to be mailed to the Company's stockholders as promptly as practicable after the Registration

Statement is declared effective under the Securities Act. Acquiror shall also take any action required to be taken under any applicable Legal Requirement in connection with the Acquiror Stock Issuance, and each party shall furnish all information concerning itself and its stockholders as may be reasonably requested in connection with any such action. Acquiror will advise the Company, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of Acquiror Capital Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC to amend the Proxy Statement or the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information, and the Company will advise Acquiror, promptly after it receives notice thereof, of any request by the SEC to amend the Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information. The parties shall use reasonable best efforts to respond (with the assistance of the other party) as promptly as practicable to any comments of the SEC with respect thereto. If prior to the Effective Time any event occurs with respect to the Company, Acquiror or any Subsidiary of the Company or Acquiror, respectively, or any change occurs with respect to information supplied by or on behalf of the Company or Acquiror, respectively, for inclusion in the Proxy Statement or the Registration Statement that, in each case, is required to be described in an amendment of, or a supplement to, the Proxy Statement or the Registration Statement, the Company or Acquiror, as applicable, shall promptly notify the other of such event (including, prior to entering into any agreement providing for any merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, tender offer, exchange offer or other similar transaction involving Acquiror or any of its Subsidiaries), and the Company or Acquiror, as applicable, shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Proxy Statement and the Registration Statement and, as required by applicable Legal Requirements, in disseminating the information contained in such amendment or supplement to the Company's stockholders and to Acquiror's stockholders. Acquiror shall take all action (other than qualifying to do business in any jurisdiction in which it is not now so qualified) required to be taken under the Securities Act, the Exchange Act, any applicable foreign or state securities or "blue sky" Legal Requirements and the rules and regulations thereunder in connection with the Merger and the issuance of Acquiror Common Stock as Stock Consideration.

**Section 7.3 *Publicity.*** Neither the Company nor Acquiror shall, and neither the Company nor Acquiror shall permit any of its Subsidiaries to, issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public statement or, except as otherwise specifically provided in this Agreement, any disclosure of nonpublic information to a third party, concerning, the Contemplated Transactions without the prior consent (which shall not be unreasonably withheld or delayed) of Acquiror, in the case of a proposed announcement, statement or disclosure by the Company, or the Company, in the case of a proposed announcement, statement or disclosure by Acquiror; *provided, however*, that either party may, without the prior consent of the other party (but after prior consultation with the other party to the extent practicable under the circumstances), issue or cause the publication of any press release or other public announcement to the extent required by applicable Legal Requirements or by the NASDAQ Rules.

**Section 7.4 *Reasonable Best Efforts; Cooperation.*** Each of Acquiror and the Company agrees to exercise good faith and use its reasonable best efforts to satisfy the various covenants and conditions to Closing in this Agreement, and to consummate the Contemplated Transactions as promptly as practicable. Neither Acquiror nor the Company will intentionally take or intentionally permit to be taken any action that would be a breach of the terms or provisions of this Agreement. Between the date of this Agreement and the Closing Date, each of Acquiror and the Company will, and will cause each Subsidiary of Acquiror and the Company, respectively, and all of their respective Affiliates and Representatives to, cooperate with respect to all filings that any party is required by any applicable Legal Requirements to make in connection with the Contemplated Transactions. Subject to applicable

Legal Requirements and the instructions of any Regulatory Authority, each party shall keep the other party reasonably apprised of the status of matters relating to the completion of the Contemplated Transactions, including promptly furnishing the other party with copies of notices or other written communications received by it or any of its Subsidiaries from any Regulatory Authority with respect to such transactions.

**Section 7.5** *Tax Free Reorganization.*

(a) The parties intend that the Merger qualify as a nontaxable reorganization within the meaning of Section 368(a) and related sections of the Code and that this Agreement constitute a "plan of reorganization" within the meaning of Section 1.368-2(g) of the income tax regulations promulgated under the Code. From and after the date of this Agreement and until the Effective Time, each of the Company and Acquiror shall use its commercially reasonable efforts, and shall cause their Subsidiaries to use commercially reasonable efforts, to cause the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Code, and will not knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken which action or failure to act could prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Following the Effective Time, neither Acquiror nor any Affiliate of Acquiror knowingly shall take any action, cause any action to be taken, fail to take any action, or cause any action to fail to be taken, which action or failure to act could prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code. Within forty-five (45) days following the Effective Time, the Surviving Entity shall comply with the reporting requirements of Section 1.6045B-1(a)(2) of the Treasury Regulations. Each of the Company and Acquiror shall report the Merger as a reorganization within the meaning of Section 368(a) of the Code on its United States federal income Tax Return, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code.

(b) As of the date hereof, the Company does not know of any reason: (i) why it would not be able to deliver to counsel to the Company and counsel to Acquiror, at the date of the legal opinions referred to in **Sections 8.8** and **9.8**, certificates substantially in compliance with IRS published advance ruling guidelines, with reasonable or customary exceptions and modifications thereto (the "**IRS Guidelines**"), to enable counsel to Acquiror and counsel to the Company to deliver the legal opinions contemplated by **Sections 8.8** and **9.8**, respectively, and the Company hereby agrees to deliver such certificates effective as of the date of such opinions; or (ii) why counsel to the Company would not be able to deliver the opinion required by **Section 9.8**. The Company will deliver such certificates to counsel to the Company and counsel to Acquiror.

(c) As of the date hereof, Acquiror does not know of any reason: (i) why it would not be able to deliver to counsel to Acquiror and counsel to the Company, at the date of the legal opinions referred to in **Sections 8.8** and **9.8**, certificates substantially in compliance with the IRS Guidelines, to enable counsel to Acquiror and counsel to the Company to deliver the legal opinions contemplated by **Sections 8.8** and **9.8**, respectively, and Acquiror hereby agrees to deliver such certificates effective as of the date of such opinions; or (ii) why counsel to Acquiror would not be able to deliver the opinion required by **Section 8.8**. Acquiror will deliver such certificates to counsel to Acquiror and counsel to the Company.

**Section 7.6** *Employees and Employee Benefits.*

(a) All individuals employed by the Company or any of its Subsidiaries immediately prior to the Closing ("**Covered Employees**") shall automatically become employees of Acquiror as of the Closing. Following the Closing, Acquiror shall maintain employee benefit plans and compensation opportunities for the benefit of Covered Employees that provide employee benefits and compensation opportunities that, in the aggregate, are substantially comparable to the employee benefits and compensation opportunities that are made available to similarly-situated employees of

Acquiror under the Acquiror Benefit Plans; *provided, however*, that: (i) in no event shall any Covered Employee be eligible to participate in any closed or frozen Acquiror Benefit Plan; and (ii) until such time as Acquiror shall cause Covered Employees to participate in the Acquiror Benefit Plans, a Covered Employee's continued participation in Company Benefit Plans shall be deemed to satisfy the foregoing provisions of this sentence (it being understood that participation in the Acquiror Benefit Plans may commence at different times with respect to each Acquiror Benefit Plan).

(b) For the purpose of satisfying eligibility requirements and vesting periods (but not for the purpose of benefit accruals) under the Acquiror Benefit Plans providing benefits to the Covered Employees (the "**New Plans**"), each Covered Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors to the same extent as such Covered Employee was entitled to credit for such service under any applicable Company Benefit Plan in which such Covered Employee participated or was eligible to participate immediately prior to the Transition Date; *provided, however*, that the foregoing shall not apply to the extent that its application would result in a duplication of benefits with respect to the same period of service.

(c) In addition, and without limiting the generality of the foregoing, as of the Transition Date, Acquiror shall use commercially reasonable efforts to provide that: (i) each Covered Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is similar in type to an applicable Company Benefit Plan in which such Covered Employee was participating immediately prior to the Transition Date (such Company Benefit Plans prior to the Transition Date collectively, the "**Old Plans**"); (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, vision or similar benefits to any Covered Employee, all pre-existing condition exclusions and actively-at-work requirements of such New Plan shall be waived for such Covered Employee and his or her covered dependents, unless such conditions would not have been waived under the Old Plan in which such Covered Employee, as applicable, participated or was eligible to participate immediately prior to the Transition Date; and (iii) any eligible expenses incurred by such Covered Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the Transition Date shall be taken into account under such New Plan to the extent such eligible expenses were incurred during the plan year of the New Plan in which the Transition Date occurs for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Covered Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(d) The Company and its Subsidiaries shall take all actions necessary to terminate the Company's severance policies immediately prior to the Effective Time. Subject to the provisions of **Section 7.6(e)**, following the Effective Time, Acquiror or Acquiror's Subsidiary will cause any eligible Company employee (exempt and non-exempt) to be covered by a severance policy under which employees who incur a qualifying involuntary termination of employment will be eligible to receive severance pay in accordance with the severance pay schedule set forth on **Section 7.6(d)** of the Acquiror Disclosure Schedules. Notwithstanding the foregoing, no Company employee eligible to receive severance benefits or other payment triggered by the Merger under an employment, change in control, severance or other agreement (a "**CIC Payment**") shall be entitled to participate in the severance policy described in this **Section 7.6(d)** or to otherwise receive severance benefits. Any Company employee who waives and relinquishes his or her right to a CIC Payment will be eligible for a severance payment as provided in this **Section 7.6(d)**.

(e) Any Company employee who has or is party to any employment agreement, severance agreement, change in control agreement or any other agreement or arrangement that provides for a CIC Payment shall not receive any severance benefits as provided in Section 7.6(d) but will receive the CIC Payment to the extent it is required to be paid under such agreement, provided that, on or before the Closing Date, the Company will take all steps necessary to ensure that in the event that the amounts of the CIC Payment, either individually or in conjunction with a payment or benefit under any other plan, agreement or arrangement that is aggregated for purposes of Code Section 280G (in the aggregate "**Total Payments**"), would constitute an "excess parachute payment" within the meaning of Section 280G of the Code that is subject to the Tax imposed by Section 4999 of the Code, then the amounts of the CIC Payment shall be reduced such that the value of the Total Payments that each counterparty is entitled to receive shall be \$1.00 less than the maximum amount which the counterparty may receive without becoming subject to the excise tax or resulting in a disallowance of a deduction of the payment of such amount under Section 280G of the Code.

**Section 7.7 Takeover Laws.** If any "moratorium," "control share," "fair price," "affiliate transaction," "business combination" or other anti-takeover Legal Requirement is or may become applicable to the Merger, the parties shall use their respective commercially reasonable efforts to (a) take such actions as are reasonably necessary so that the transactions contemplated hereunder may be consummated as promptly as practicable on the terms contemplated by this Agreement and (b) otherwise take all such actions as are reasonably necessary to eliminate or minimize the effects of any such Legal Requirement on the Merger and the transactions contemplated by this Agreement.

**Section 7.8 Section 16 Matters.** Prior to the Effective Time, the parties will each take such steps as may be necessary or appropriate to cause (a) any disposition of shares of Company Capital Stock or conversion of any derivative securities in respect of shares of Company Capital Stock in connection with the consummation of the Contemplated Transactions to be exempt under Rule 16b-3 promulgated under the Exchange Act and (b) any acquisitions or dispositions of Acquiror Common Stock resulting from the Merger and the other transactions contemplated by this Agreement, by each individual who may become or is reasonably expected to become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Acquiror immediately following the Effective Time, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

**Section 7.9 Stockholder Litigation.** Each of the Company and Acquiror shall give the other the reasonable opportunity to consult concerning the defense of any stockholder litigation against the Company or Acquiror, as applicable, or any of their respective directors or officers relating to the Contemplated Transactions.

## **ARTICLE 8 CONDITIONS PRECEDENT TO OBLIGATIONS OF ACQUIROR**

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

**Section 8.1 Accuracy of Representations and Warranties.** For purposes of this **Section 8.1**, the accuracy of the representations and warranties of the Company set forth in this Agreement shall be assessed as of the date of this Agreement and as of the Closing Date (or such other date(s) as specified, to the extent any representation or warranty speaks as of a specific date). The representations and warranties set forth in **Section 3.3** and **Section 3.5(a)** shall be true and correct (except for inaccuracies which are *de minimis* in amount and effect). There shall not exist inaccuracies in the representations and warranties of the Company set forth in this Agreement (including the

representations set forth in **Section 3.3** and **Section 3.5(a)**) such that the aggregate effect of such inaccuracies has, or is reasonably likely to have, a Material Adverse Effect; *provided, that*, for purposes of this sentence only, those representations and warranties which are qualified by references to "material" or "Material Adverse Effect" shall be deemed not to include such qualifications.

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

**Section 8.3** *Stockholder Approvals.* The Company Stockholder Approval shall have been obtained.

**Section 8.4** *No Proceedings, Injunctions or Restraints; Illegality.* Since the date of this Agreement, there must not have been commenced or threatened any Proceeding: (a) other than the stockholder litigation contemplated by **Section 7.9**, involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions; or (b) that may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Contemplated Transactions, in either case that would reasonably be expected by the Acquiror Board to have a Material Adverse Effect on the Surviving Entity. No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger or any of the other Contemplated Transactions shall be in effect. No statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any governmental authority which prohibits or makes illegal consummation of the Merger.

**Section 8.5** *Regulatory Approvals.* All Requisite Regulatory Approvals shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired or been terminated and no such Requisite Regulatory Approval shall have imposed a restriction or condition on, or requirement of, such approval that would, after the Effective Time, reasonably be expected by the Acquiror Board to materially restrict or burden the Surviving Entity.

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

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

**Section 8.8** *Tax Opinion.* Acquiror shall have received a written opinion of Barack Ferrazzano Kirschbaum & Nagelberg LLP, tax counsel to Acquiror, in form and substance reasonably satisfactory to the Company and Acquiror, dated as of the Closing Date, to the effect that: (a) the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code; (b) the Company and Acquiror will each be a party to such reorganization within the meaning of Section 368(b) of the Code; and (c) no gain or loss will be recognized by holders of Company Common Stock upon the receipt of shares of Acquiror Common Stock in exchange for their shares of Company Common Stock, except to the extent of any cash consideration received in the Merger and any cash received in lieu of fractional shares of Acquiror Common Stock.

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

**Section 8.10** *No Material Adverse Effect.* From the date of this Agreement to the Closing, there shall be and have been no change in the financial condition, assets or business of the Company or any of its Subsidiaries that has had or would reasonably be expected to have a Material Adverse Effect on the Company.

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

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

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

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

**Section 9.3** *Stockholder Approvals.* The Company Stockholder Approval shall have been obtained.

**Section 9.4** *No Proceedings; No Injunctions or Restraints; Illegality.* Since the date of this Agreement, there must not have been commenced or threatened any Proceeding: (a) other than the stockholder litigation contemplated by **Section 7.9**, involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions; or (b) that may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Contemplated Transactions, in either case that would reasonably be expected by the Company Board to have a Material Adverse Effect on the Surviving Entity. No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger or any of the other Contemplated Transactions shall be in effect. No statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any governmental authority which prohibits or makes illegal consummation of the Merger.

**Section 9.5** *Regulatory Approvals.* All Requisite Regulatory Approvals shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired or been terminated and no such Requisite Regulatory Approval shall have imposed a restriction or condition on, or requirement of, such approval that would, after the Effective Time, reasonably be expected by the Company Board to materially restrict or burden the Surviving Entity.

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



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

**Section 9.8 Tax Opinion.** The Company shall have received a written opinion of Howard & Howard Attorneys PLLC, tax counsel to the Company, in form and substance reasonably satisfactory to the Company and Acquiror, dated as of the Closing Date, to the effect that: (a) the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code; (b) the Company and Acquiror will each be a party to such reorganization within the meaning of Section 368(b) of the Code; and (c) no gain or loss will be recognized by holders of Company Common Stock upon the receipt of shares of Acquiror Common Stock in exchange for their shares of Company Common Stock, except to the extent of any cash consideration received in the Merger and any cash received in lieu of fractional shares of Acquiror Common Stock .

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

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

## **ARTICLE 10 TERMINATION**

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

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

(b) by Acquiror if the Company shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement (except for breaches of **Section 5.4** or **Section 5.8**, which are separately addressed in **Section 10.1(g)**), which breach or failure to perform, either individually or together with other such breaches, in the aggregate, if occurring or continuing on the date on which the Closing would otherwise occur would result in the failure of any of the conditions set forth in **Article 8** and such breach or failure to perform has not been or cannot be cured within thirty (30) days following written notice to the party committing such breach, making such untrue representation and warranty or failing to perform; *provided*, that such breach or failure is not a result of the failure by Acquiror to perform and comply in all material respects with any of their obligations under this Agreement that are to be performed or complied with by them prior to or on the date required hereunder;

(c) by the Company if Acquiror shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform, either individually or together with other such breaches, in the aggregate, if occurring or continuing on the date on which the Closing would otherwise occur would result in the failure of any of the conditions set forth in **Article 9** and such breach or failure to perform has not been or cannot be cured within thirty (30) days following written notice to the party committing such breach, making such untrue representation and warranty or failing to perform, *provided*, that such breach or failure is not a result of the failure by the Company to perform and comply in all material respects with any of its obligations under this Agreement that are to be performed or complied with by it prior to or on the date required hereunder;

(d) by Acquiror or the Company if: (i) any Regulatory Authority that must grant a Requisite Regulatory Approval has denied approval of any of the Contemplated Transactions and such denial has become final and nonappealable; (ii) any application, filing or notice for a Requisite Regulatory Approval has been withdrawn at the request or recommendation of the applicable Regulatory Authority; or (iii) if the Company Stockholder Approval is not obtained following the Company Stockholders' Meeting; *provided, however*, that the right to terminate this Agreement under this **Section 10.1(d)** shall not be available to a party whose failure (or the failure of any of its Affiliates) to fulfill any of its obligations (excluding warranties and representations) under this Agreement has been the cause of or resulted in the occurrence of any event described in clauses (i) and (ii) above;

(e) by Acquiror or the Company if the Effective Time shall not have occurred at or before October 31, 2017 (the "**Termination Date**"); *provided, however*, that the right to terminate this Agreement under this **Section 10.1(e)** shall not be available to any party to this Agreement whose failure to fulfill any of its obligations (excluding warranties and representations) under this Agreement has been the cause of or resulted in the failure of the Effective Time to occur on or before such date;

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

(g) by Acquiror if the Company materially breaches any of its obligations under **Section 5.4** or **Section 5.8**;

(h) by the Company pursuant to **Section 5.8**;

(i) by Acquiror if the Company makes a Company Adverse Recommendation; and

(j) by the Company, if (i) the Final Acquiror Market Value shall be less than \$22.71; (ii) Acquiror has not exercised its option pursuant to **Section 2.1(a)(i)** to adjust the Exchange Ratio within two (2) Business Days of the Determination Date; and (iii) the Company has not exercised its option pursuant to **Section 2.1(a)(ii)** to accept the Exchange Ratio without further adjustment, such termination to be effective on the tenth (10<sup>th</sup>) day following the Determination Date.

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

**Section 10.3** *Fees and Expenses.*

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

(b) If this Agreement is terminated by Acquiror pursuant to **Section 10.1(b)**, then the Company shall pay to Acquiror, within ten (10) Business Days after such termination, the amount of \$2.5 million by wire transfer of immediately available funds to such account as Acquiror shall designate.

(c) If this Agreement is terminated by the Company pursuant to **Section 10.1(c)** or **Section 10.1(j)**, then Acquiror shall pay to the Company, within ten (10) Business Days after such termination, the amount of \$2.5 million by wire transfer of immediately available funds to such account as the Company shall designate.

(d) If this Agreement is terminated by Acquiror pursuant to **Section 10.1(g)** or **Section 10.1(i)** or by the Company pursuant to **Section 10.1(h)**, then the Company shall pay to Acquiror, within two (2) Business Days after such termination, the amount of \$9.0 million (the "**Termination Fee**") by wire transfer of immediately available funds to such account as Acquiror shall designate.

(e) If, after the date of this Agreement and prior to the termination of this Agreement, a bona fide Acquisition Proposal shall have been made known to senior management of the Company or has been made directly to its stockholders generally or any Person shall have publicly announced (and not withdrawn) an Acquisition Proposal with respect to the Company and (A) thereafter this Agreement is terminated by Acquiror pursuant to **Section 10.1(b)** as a result of a material breach; and (B) within six (6) months after such termination the Company shall enter into a definitive written agreement with any Person (other than Acquiror and its Affiliates) with respect to such Acquisition Proposal, the Company shall pay to Acquiror, within ten (10) Business Days after the execution of such definitive agreement, the Termination Fee (less the amount of funds, if any, previously paid by the Company to Acquiror pursuant to **Section 10.3(b)**) by wire transfer of immediately available funds to such account as Acquiror shall designate; *provided, however*, that for purposes of this paragraph, Acquisition Proposal has the meaning ascribed thereto in **Section 12.1(o)**, except that references in that Section to "15%" shall be replaced by "50%."

(f) All payments made pursuant to this **Section 10.3** shall constitute liquidated damages and except as provided in **Section 10.2(ii)** in the case of fraud or willful and material breach of this Agreement, the receipt thereof shall be the sole and exclusive remedy of the receiving party against the party making such payment, its Affiliates and their respective directors, officers and stockholders for any claims arising out of or relating in any way to this Agreement or the transactions contemplated herein. Further, neither the Company nor Acquiror shall be required to pay the Termination Fee on more than one occasion.

## ARTICLE 11 MISCELLANEOUS

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

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

**Section 11.3 Assignments, Successors and No Third Party Rights.** Neither party to this Agreement may assign any of its rights under this Agreement (whether by operation of law or otherwise) without the prior written consent of the other party. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentence, this Agreement and every representation, warranty,

covenant, agreement and provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except for **Section 6.5**, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with **Section 11.5** without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, persons other than the parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

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

**Section 11.5 Extension of Time; Waiver.** At any time prior to the Effective Time, the parties may, to the extent permitted by applicable Legal Requirements: (a) extend the time for the performance of any of the obligations or other acts of the other party; (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement; or (c) waive compliance with or amend, modify or supplement any of the agreements or conditions contained in this Agreement which are for the benefit of the waiving party. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. Except as provided in **Article 10**, the rights and remedies of the parties to this Agreement are cumulative and not alternative. To the maximum extent permitted by applicable Legal Requirements: (x) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (y) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (z) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

**Section 11.6 Notices.** All notices, consents, waivers and other communications under this Agreement shall be in writing (which shall include facsimile communication and electronic mail) and shall be deemed to have been duly given if delivered by hand or by nationally recognized overnight delivery service (receipt requested), mailed by registered or certified U.S. mail (return receipt requested) postage prepaid or sent by facsimile (with confirmation) or electronic mail (with

confirmation) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Acquiror, to:

First Busey Corporation  
100 W. University Avenue  
Champaign, Illinois 61820  
Telephone: (217) 365-4544  
Facsimile: (217) 351-6551  
Attention: Robin N. Elliott (robin.elliott@busey.com)

First Busey Corporation  
100 W. University Avenue  
Champaign, Illinois 61820  
Telephone: (217) 365-4639  
Facsimile: (217) 351-6551  
Attention: John J. Powers (john.powers@busey.com)

with copies, which shall not constitute notice, to:

Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 W. Madison Street, Suite 3900  
Chicago, Illinois 60606  
Telephone: (312) 984-3100  
Facsimile: (312) 984-3150  
Attention: Robert M. Fleetwood (robert.fleetwood@bfkn.com)

If to the Company, to:

First Community Financial Partners, Inc.  
2801 Black Road  
Joliet, Illinois 60435  
Telephone: (630) 789-4444  
Facsimile: (630) 366-2001  
Electronic mail: rthygesen@fcbankgroup.com  
Attention: Roy C. Thygesen

with copies, which shall not constitute notice, to:

Howard & Howard Attorneys PLLC  
200 S. Michigan Ave. #1100  
Chicago, Illinois 60604  
Telephone: (312) 456-3406  
Facsimile: (312) 939-5617  
Attention: Mark Ryerson (mbr@h2law.com)

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

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

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

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

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

## **ARTICLE 12 DEFINITIONS**

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

- (a) "**Acquiror Articles of Incorporation**" means the Amended and Restated Articles of Incorporation of First Busey Corporation, as amended.
- (b) "**Acquiror Bank**" means Busey Bank, an Illinois state chartered bank headquartered in Champaign, Illinois, and a wholly-owned subsidiary of Acquiror.
- (c) "**Acquiror Benefit Plan**" means any: (i) qualified or nonqualified "employee pension benefit plan" (as defined in Section 3(2) of ERISA) or other deferred compensation or retirement plan or arrangement; (ii) "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) or other health, welfare or similar plan or arrangement; (iii) "employee benefit plan" (as defined in Section 3(3) of ERISA); (iv) equity-based plan or arrangement (including any stock option, stock purchase, stock ownership, stock appreciation, restricted stock, restricted stock unit, phantom stock or similar plan, agreement or award); (v) other compensation, severance, bonus, profit-sharing or incentive plan or arrangement; or (vi) change in control agreement or employment or severance agreement, in each case with respect to clauses (i) through (vi) of this definition, that are maintained by, sponsored by, contributed to, or required to be contributed to, by Acquiror or any of its Subsidiaries for the benefit of any current or former employee, officer or director of Acquiror or any of its Subsidiaries, or any beneficiary thereof.
- (d) "**Acquiror Board**" means the board of directors of Acquiror.
- (e) "**Acquiror Bylaws**" means the First Busey Corporation Amended and Restated ByLaws, as amended.
- (f) **Reserved.**

- (g) "**Acquiror Capital Stock**" means the Acquiror Common Stock and the Acquiror Preferred Stock, collectively.
- (h) "**Acquiror Common Stock**" means the common stock, \$0.001 par value per share, of Acquiror.
- (i) **Reserved.**
- (j) "**Acquiror Equity Award**" means any outstanding stock option, stock appreciation right, restricted stock award, restricted stock unit, or other equity award granted under an Acquiror Stock Plan.
- (k) "**Acquiror ERISA Affiliate**" means each "person" (as defined in Section 3(9) of ERISA) that is treated as a single employer with Acquiror or any of its Subsidiaries for purposes of Section 414 of the Code.
- (l) "**Acquiror SEC Reports**" means the annual, quarterly and other reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) filed or furnished by Acquiror with the SEC under the Securities Act, the Exchange Act, or the regulations thereunder, since January 1, 2014.
- (m) "**Acquiror Stock Issuance**" means the issuance of the Acquiror Common Stock pursuant to this Agreement.
- (n) "**Acquiror Stock Plans**" means collectively the following:
- (i) Main Street Trust, Inc. 2000 Stock Incentive Plan, as subsequently amended
  - (ii) First Busey Corporation Employee Stock Ownership Plan, as subsequently amended
  - (iii) First Busey Corporation 1999 Stock Option Plan, as subsequently amended
  - (iv) First Busey Corporation 2004 Stock Option Plan, as subsequently amended
  - (v) First Busey Corporation 2010 Equity Incentive Plan, as subsequently amended
  - (vi) First Busey Corporation Employee Stock Purchase Plan, as subsequently amended
  - (vii) Pulaski Financial Corp. 2000 Stock-Based Incentive Plan
  - (viii) Pulaski Financial Corp. 2002 Stock Option Plan, as subsequently amended
  - (ix) Pulaski Financial Corp. 2006 Long-Term Incentive Plan, as subsequently amended
- (o) "**Acquisition Proposal**" means a tender or exchange offer to acquire more than 15% of the voting power in the Company or any of its Subsidiaries, a proposal for a merger, consolidation or other business combination involving the Company or any of its Subsidiaries or any other proposal or offer to acquire in any manner more than 15% of the voting power in, or more than 15% of the business, assets or deposits of, the Company or any of its Subsidiaries, other than the transactions contemplated hereby and other than any sale of whole loans and securitizations in the Ordinary Course of Business.
- (p) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with, such specified Person.

(q) "**Bank**" means First Community Financial Bank, an Illinois state chartered bank headquartered in Joliet, Illinois, and a wholly-owned subsidiary of the Company.

(r) "**Bank Merger**" means the merger of the Bank with and into, and under the charter of, Acquiror Bank.

(s) "**Business Day**" means any day except Saturday, Sunday and any day on which banks in Champaign, Illinois, or Joliet, Illinois, are authorized or required by law or other government action to close.

(t) "**Closing Acquiror Common Stock Price**" means the weighted average of the daily closing sales prices of a share of Acquiror Common Stock as reported on the NASDAQ Global Select Market for the five (5) consecutive trading days immediately preceding the Closing Date.

(u) "**Code**" means the Internal Revenue Code of 1986, as amended, and any rules, regulations and guidance promulgated thereunder.

(v) "**Company Articles of Incorporation**" means the Articles of Incorporation of the Company, as amended.

(w) "**Company Benefit Plan**" means any: (i) qualified or nonqualified "employee pension benefit plan" (as defined in Section 3(2) of ERISA) or other deferred compensation or retirement plan or arrangement; (ii) "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) or other health, welfare or similar plan or arrangement; (iii) "employee benefit plan" (as defined in Section 3(3) of ERISA); (iv) equity-based compensation plan or arrangement (including any stock option, stock purchase, stock ownership, stock appreciation, restricted stock, restricted stock unit, phantom stock or similar plan, agreement or award); (v) other compensation, severance, bonus, profit-sharing or incentive plan or arrangement; or (vi) change in control agreement or employment or severance agreement, in each case with respect to clauses (i) through (vi) of this definition, that are maintained by, sponsored by, contributed to, or required to be contributed to, by the Company or any of its Subsidiaries for the benefit of any current or former employee, officer or director of the Company or any of its Subsidiaries, or any beneficiary thereof.

(x) "**Company Board**" means the board of directors of the Company.

(y) "**Company Bylaws**" means the Bylaws of the Company, as amended and restated.

(z) "**Company Capital Stock**" means the Company Common Stock and the Company Preferred Stock, collectively.

(aa) "**Company Common Stock**" means the common stock, \$1.00 par value per share, of the Company.

(bb) "**Company Equity Award**" means any outstanding Company Stock Option, Company RSU, Company Performance Unit, stock appreciation right, restricted stock award, or other equity award granted under a Company Stock Plan.

(cc) "**Company ERISA Affiliate**" means each "person" (as defined in Section 3(9) of ERISA) that is treated as a single employer with the Company or any of its Subsidiaries for purposes of Section 414 of the Code.

(dd) "**Company Final Closing Price**" means the closing sales price of a share of Company Common Stock on the NASDAQ Capital Market on the last trading day immediately preceding the Closing Date.

(ee) "**Company SEC Reports**" means the annual, quarterly and other reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated



therein) filed or furnished by the Company with the SEC under the Securities Act, the Exchange Act, or the rules and regulations of the SEC thereunder, since January 1, 2014.

(ff) "**Company Stockholder Approval**" means the adoption and approval of this Agreement by the stockholders of the Company, in accordance with the IBCA and Company Articles of Incorporation.

(gg) "**Company Stock Plans**" means collectively the following:

- (i) First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan, as subsequently amended
- (ii) First Community Financial Partners, Inc. 2013 Equity Incentive Plan, as subsequently amended
- (iii) First Community Financial Partners, Inc. 2016 Equity Incentive Plan

(hh) "**Contemplated Transactions**" means all of the transactions contemplated by this Agreement, including: (i) the Merger; (ii) the Bank Merger, (iii) the performance by Acquiror and the Company of their respective covenants and obligations under this Agreement; and (iv) Acquiror's issuance of shares of Acquiror Common Stock pursuant to the Registration Statement and cash in exchange for shares of Company Common Stock.

(ii) "**Contract**" means any agreement, contract, obligation, promise or understanding (whether written or oral and whether express or implied) that is legally binding: (i) under which a Person has or may acquire any rights; (ii) under which such Person has or may become subject to any obligation or liability; or (iii) by which such Person or any of the assets owned or used by such Person is or may become bound.

(jj) "**Control**," "**Controlling**" or "**Controlled**" when used with respect to any specified Person, means the power to vote twenty-five percent (25%) or more of any class of voting securities of a Person, the power to control in any manner the election of a majority of the directors or partners of such Person, or the power to exercise a controlling influence over the management or policies of such Person.

(kk) "**CRA**" means the Community Reinvestment Act, as amended.

(ll) "**Deposit Insurance Fund**" means the fund that is maintained by the FDIC to allow it to make up for any shortfalls from a failed depository institution's assets.

(mm) "**Derivative Transactions**" means any swap transaction, option, warrant, forward purchase or sale transaction, futures transaction, cap transaction, floor transaction or collar transaction relating to one or more currencies, commodities, bonds, equity securities, loans, interest rates, prices, values, or other financial or nonfinancial assets, credit-related events or conditions or any indexes, or any other similar transaction or combination of any of these transactions, including collateralized mortgage obligations or other similar instruments or any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to such transactions.

(nn) "**DOL**" means the U.S. Department of Labor.

(oo) "**Environment**" means surface or subsurface soil or strata, surface waters and sediments, navigable waters, groundwater, drinking water supply and ambient air.

(pp) "**Environmental Laws**" means any federal, state or local law, statute, ordinance, rule, regulation, code, order, permit or other legally binding requirement applicable to the business or assets of the Company or any of its Subsidiaries that imposes liability or standards of conduct with respect to the Environment and/or Hazardous Materials.

- (qq) "**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.
- (rr) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.
- (ss) "**FDIC**" means the Federal Deposit Insurance Corporation.
- (tt) "**Federal Reserve**" means the Board of Governors of the Federal Reserve System or the appropriate Federal Reserve Bank acting under delegated authority.
- (uu) "**GAAP**" means generally accepted accounting principles in the U.S., consistently applied.
- (vv) "**Hazardous Materials**" means any hazardous, toxic or dangerous substance, waste, contaminant, pollutant, gas or other material that is classified as such under Environmental Laws or is otherwise regulated under Environmental Laws.
- (ww) "**IBCA**" means the Business Corporation Act of 1983 of Illinois, as amended.
- (xx) **Reserved.**
- (yy) "**IRS**" means the U.S. Internal Revenue Service.
- (zz) "**Knowledge**" means, assuming due inquiry under the facts or circumstances, the actual knowledge of the chief executive officer, president, chief financial officer, chief credit officer or general counsel of Acquiror or the Company, as the context requires.
- (aaa) "**Legal Requirement**" means any federal, state, local, municipal, foreign, international, multinational or other Order, constitution, law, ordinance, regulation, rule, policy statement, directive, statute or treaty.
- (bbb) "**Material Adverse Effect**" as used with respect to a party, means an event, circumstance, change, effect or occurrence which, individually or together with any other event, circumstance, change, effect or occurrence: (i) is materially adverse to the business, financial condition, assets, liabilities or results of operations of such party and its Subsidiaries, taken as a whole; or (ii) materially impairs the ability of such party to perform its obligations under this Agreement or to consummate the Merger and the other Contemplated Transactions on a timely basis; *provided that*, in determining whether a Material Adverse Effect has occurred, there shall be excluded any effect to the extent attributable to or resulting from: (A) changes in Legal Requirements and the interpretation of such Legal Requirements by courts or governmental authorities; (B) changes in GAAP or regulatory accounting requirements; (C) changes or events generally affecting banks, bank holding companies or financial holding companies, or the economy or the financial, securities or credit markets, including changes in prevailing interest rates, liquidity and quality, currency exchange rates, price levels or trading volumes in the U.S. or foreign securities markets; (D) changes in national or international political or social conditions including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States; (E) the effects of the actions expressly permitted or required by this Agreement or that are taken with the prior written consent of the other party in contemplation of the Contemplated Transactions, including the costs and expenses associated therewith and the response or reaction of customers, vendors, licensors, investors or employees; and (F) failure, in and of itself, to meet internal or other estimates, projections or forecasts of revenue, net income or any other measure of financial performance, but not, in any such case, including the underlying causes thereof; except with respect to clauses (A), (B), (C) and (D), to the extent that the effects of such change are disproportionately adverse to the financial condition, results of operations or business of such party and its Subsidiaries, taken as a whole, as compared to other companies in the industry in which such party and its Subsidiaries operate.
- (ccc) "**NASDAQ Rules**" means the listing rules of the NASDAQ Global Select Market.

(ddd) "**NRS**" means the provisions of the Nevada Revised Statutes governing business corporations, limited liability companies and mergers of business entities (NRS Sections 78.010 *et seq.*, 86.011 *et seq.*, and 92A.005 *et seq.*, respectively).

(eee) "**Option Exchange Ratio**" means the ratio of (a) the sum of (i) the Exchange Ratio multiplied by the closing sales price of a share of Acquiror Common Stock on the NASDAQ Global Select Market on the last trading day immediately preceding the Closing Date, plus (ii) the Cash Consideration, divided by (b) the closing sales price of a share of Acquiror Common Stock on the NASDAQ Global Select Market on the last trading day immediately preceding the Closing Date.

(fff) "**Order**" means any award, decision, injunction, judgment, order, ruling, extraordinary supervisory letter, policy statement, memorandum of understanding, resolution, agreement, directive, subpoena or verdict entered, issued, made, rendered or required by any court, administrative or other governmental agency, including any Regulatory Authority, or by any arbitrator.

(ggg) "**Ordinary Course of Business**" shall include any action taken by a Person only if such action is consistent with the past practices of such Person and is similar in nature and magnitude to actions customarily taken in the ordinary course of the normal day-to-day operations of such Person.

(hhh) "**OREO**" means real estate owned by a Person and designated as "other real estate owned."

(iii) "**Outstanding Company Shares**" means the shares of Company Common Stock issued and outstanding immediately prior to the Effective Time.

(jjj) "**PBGC**" means the U.S. Pension Benefit Guaranty Corporation.

(kkk) "**Person**" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, foundation, joint venture, estate, trust, association, organization, labor union or other entity or Regulatory Authority.

(lll) "**Proceeding**" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any judicial or governmental authority, including a Regulatory Authority, or arbitrator.

(mmm) "**Proxy Statement**" means a proxy statement prepared by the Company for use in connection with the Company Stockholders' Meeting, all in accordance with the rules and regulations of the SEC.

(nnn) "**Registration Statement**" means a registration statement on Form S-4 or other applicable form under the Securities Act covering the shares of Acquiror Common Stock to be issued pursuant to this Agreement, which shall include the Proxy Statement.

(ooo) "**Regulatory Authority**" means any federal, state or local governmental body, agency, court or authority that, under applicable Legal Requirements: (i) has supervisory, judicial, administrative, police, enforcement, taxing or other power or authority over the Company, Acquiror, or any of their respective Subsidiaries; (ii) is required to approve, or give its consent to, the Contemplated Transactions; or (iii) with which a filing must be made in connection therewith.

(ppp) "**Representative**" means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

(qqq) "**Requisite Regulatory Approvals**" means all necessary documentation, applications, notices, petitions, filings, permits, consents, approvals and authorizations from all applicable Regulatory Authorities for approval of the Contemplated Transactions, other than the Bank Merger.

(rrr) "**SEC**" means the Securities and Exchange Commission.

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

(ttt) "**Subsidiary**" with respect to any Person means an affiliate controlled by such Person directly or indirectly through one or more intermediaries.

(uuu) "**Superior Proposal**" means a *bona fide* written Acquisition Proposal (with all references to "15%" in the definition of Acquisition Proposal being treated as references to "50%" for these purposes) which Company Board concludes in good faith to be more favorable from a financial point of view to its stockholders than the Merger and the other transactions contemplated hereby, (i) after receiving the advice of its financial advisors (which shall be FIG Partners, LLC or any nationally recognized investment banking firm), (ii) after taking into account the likelihood and timing of consummation of the proposed transaction on the terms set forth therein (as compared to, and with due regard for, the terms herein) and (iii) after taking into account all legal (with the advice of outside counsel), financial (including the financing terms of any such proposal), regulatory (including the advice of outside counsel regarding the potential for regulatory approval of any such proposal) and other aspects of such proposal and any other relevant factors permitted under applicable Legal Requirements.

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

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

(xxx) "**Transition Date**" means, with respect to any Covered Employee, the date Acquiror commences providing benefits to such employee with respect to each New Plan.

(yyy) "**U.S.**" means the United States of America.

(zzz) "**Warrant Exchange Ratio**" means the ratio of (a) the sum of (i) the Exchange Ratio multiplied by the closing sales price of a share of Acquiror Common Stock on the NASDAQ Global Select Market on the last trading day immediately preceding the Closing Date, plus (ii) the Cash Consideration, divided by (b) the closing sales price of a share of Acquiror Common Stock on the NASDAQ Global Select Market on the last trading day immediately preceding the Closing Date.

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

(a) In this Agreement, unless otherwise stated or the context otherwise requires, the following uses apply: (i) actions permitted under this Agreement may be taken at any time and from time to time in the actor's sole discretion; (ii) references to a statute shall refer to the statute

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

(b) The schedules of each of the Company and Acquiror referred to in this Agreement (the "**Company Disclosure Schedules**" and the "**Acquiror Disclosure Schedules**", respectively, and collectively the "**Schedules**") shall consist of items, the disclosure of which with respect to a specific party is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained herein or to one or more covenants contained herein, which Schedules were delivered by each of the Company and Acquiror to the other before the date of this Agreement; *provided*, that: (i) no such item is required to be set forth as an exception to a representation or warranty if its absence would not result in the related representation or warranty being deemed untrue or incorrect; (ii) the mere inclusion of an item in the Company Disclosure Schedules or Acquiror Disclosure Schedules as an exception to a representation or warranty shall not be deemed an admission by the Company or Acquiror, as applicable, that such item represents a material exception or fact, event or circumstance or that such item is reasonably likely to result in a Material Adverse Effect; and (iii) any disclosures made with respect to a section of the Agreement shall be deemed to qualify (A) any other section of the Agreement specifically referenced or cross-referenced and (B) other sections of the Agreement to the extent it is reasonably apparent on its face (notwithstanding the absence of a specific cross-reference) from a reading of the disclosure that such disclosure applies to such other sections. In the event of any inconsistency between the statements in the body of this Agreement and those in the Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control. For purposes of this Agreement, "**Previously Disclosed**" means, with respect to the Company, information set forth by the Company in the Company Disclosure Schedules and, with respect to Acquiror, information set forth by Acquiror in the Acquiror Disclosure Schedules.

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

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

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[SIGNATURE PAGE FOLLOWS]

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

**ACQUIROR:**

**FIRST BUSEY CORPORATION**

By: /s/ VAN A. DUKEMAN

\_\_\_\_\_  
Name: Van A. Dukeman  
Title: *President and Chief Executive Officer*

**COMPANY:**

**FIRST COMMUNITY FINANCIAL PARTNERS, INC.**

By: /s/ ROY C. THYGESEN

\_\_\_\_\_  
Name: Roy C. Thygesen  
Title: *Chief Executive Officer*

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

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## FORM OF VOTING AND SUPPORT AGREEMENT

THIS VOTING AND SUPPORT AGREEMENT (this "**Agreement**") is entered into as of [ · ], 2017, among **FIRST BUSEY CORPORATION**, a Nevada corporation ("**Acquiror**"), **FIRST COMMUNITY FINANCIAL PARTNERS, INC.**, an Illinois corporation (the "**Company**"), and those directors and/or officers of the Company whose names appear on the signature page of this Agreement and who own or control the voting of any shares of common stock of the Company (such stockholders collectively referred to in this Agreement as the "**Principal Stockholders**," and individually as a "**Principal Stockholder**").

## RECITALS

- A.** As of the date hereof, each Principal Stockholder is the owner or controls the vote of the number of shares of the Company's common stock, \$1.00 par value per share ("**Company Stock**"), as is set forth opposite such Principal Stockholder's name on the signature page attached hereto.
- B.** Acquiror is contemplating the acquisition of the Company by means of a merger (the "**Merger**") of the Company with and into Acquiror, all pursuant to an Agreement and Plan of Merger dated as of [ · ], 2017 (the "**Merger Agreement**"), between Acquiror and the Company.
- C.** Acquiror and the Company are unwilling to expend the substantial time, effort and expense necessary to implement the Merger, including applying for and obtaining necessary approvals of regulatory authorities, unless all of the Principal Stockholders enter into this Agreement.
- D.** Each Principal Stockholder believes it is in his or her best interest as well as the best interest of the Company for Acquiror and the Company to consummate the Merger.

## AGREEMENTS

In consideration of the foregoing premises, which are incorporated herein by this reference, and the covenants and agreements of the parties herein contained, and as an inducement to Acquiror and the Company to enter into the Merger Agreement and to incur the expenses associated with the Merger, the parties hereto, intending to be legally bound, hereby agree as follows:

**Section 1. Definitions; Construction.** All terms that are capitalized and used herein (and are not otherwise specifically defined herein) shall be used in this Agreement as defined in the Merger Agreement. The parties hereby incorporate by this reference the principles of construction set forth in Section 12.2 of the Merger Agreement.

**Section 2. Representations and Warranties.** Each Principal Stockholder represents and warrants that as of the date hereof, he or she:

- (a) owns beneficially and of record the number of shares of Company Stock as is set forth opposite such Principal Stockholder's name on the signature page attached hereto;
- (b) has the sole, or joint with any other Principal Stockholder, voting power with respect to such shares of Company Stock; and
- (c) has all necessary power and authority to enter into this Agreement and further represents and warrants that this Agreement is the legal, valid and binding agreement of such Principal Stockholder, and is enforceable against such Principal Stockholder in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other Legal Requirements affecting creditors' rights generally and subject to general principles of equity.

**Section 3. Voting Agreement.** Each Principal Stockholder hereby agrees that at any meeting of the Company's stockholders however called, and in any action by written consent of the Company's stockholders, such Principal Stockholder shall vote, or cause to be voted, all shares of Company Stock

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now or at any time hereafter owned or controlled by him or her at the time of such meeting of the Company's stockholders:

- (a) in favor of the Merger and the other Contemplated Transactions as described in the Merger Agreement;
- (b) against any Acquisition Proposal involving any party other than Acquiror or an Affiliate of Acquiror; and
- (c) against any action or agreement that would reasonably be expected to result in a material breach of any covenant, representation or warranty or any other obligation of the Company under the Merger Agreement.

**Section 4. *Additional Covenants.*** Except as required by law, each Principal Stockholder agrees that he or she will:

- (a) not, and will not permit any of his or her Affiliates prior to the Effective Time to, sell, assign, transfer or otherwise dispose of, or permit to be sold, assigned, transferred or otherwise disposed of, any Company Stock owned of record or beneficially by such Principal Stockholder, whether such shares of Company Stock are owned of record or beneficially by such Principal Stockholder on the date of this Agreement or are subsequently acquired by any method, except: (i) for transfers by will or by operation of law (in which case this Agreement shall bind the transferee); (ii) a transfer for estate and tax planning purposes, subject in each case to the transferee agreeing in writing to be bound by the terms of this Agreement; (iii) with the prior written consent of Acquiror (which consent shall not be unreasonably withheld), for any sales, assignments, transfers or other dispositions necessitated by hardship; or (iv) as Acquiror may otherwise agree in writing;
- (b) not vote or execute any written consent to rescind or amend in any manner any prior vote or written consent to approve or adopt the Merger Agreement or any of the other Contemplated Transactions;
- (c) use his or her best efforts to cause any necessary meeting of the Company's stockholders to be duly called and held, or any necessary consent of stockholders to be obtained, for the purpose of approving or adopting the Merger Agreement and the Contemplated Transactions;
- (d) cause any of his or her Affiliates to cooperate fully with Acquiror in connection with the Merger Agreement and the Contemplated Transactions; and
- (e) execute and deliver such additional instruments and documents and take such further action as may be reasonably necessary to effectuate and comply with his or her respective obligations under this Agreement.

**Section 5. *No Economic Benefit.*** Nothing contained in this Agreement shall be deemed to vest in Acquiror any direct or indirect ownership or incidence of ownership of or with respect to any of the Company Stock. All rights, ownership and economic benefits of and relating to the Company Stock shall remain and belong to the applicable stockholder and Acquiror shall have no power or authority to direct any stockholder in the voting of any of the Company Stock or the performance by any stockholder of its duties or responsibilities as a stockholder of the Company, except as otherwise provided herein. For the avoidance of doubt, this is a voting and support agreement only, and is not to be interpreted as a written consent to the Merger or as granting Acquiror a proxy to vote the Company Stock subject to this Agreement.

**Section 6. *Termination.*** Notwithstanding any other provision of this Agreement, this Agreement shall automatically terminate on the earlier of: (i) the date of termination of the Merger Agreement as set forth in Article 10 thereof, as such termination provisions may be amended by Acquiror and the

Company from time to time; (ii) the favorable vote of Company stockholders with respect to approval of the Merger Agreement; (iii) the date, if any, on which the Company publicly discloses that the board of directors of the Company has withdrawn, qualified or adversely modified its recommendation to the stockholders of the Company that the Company's stockholders vote in favor of the adoption of the Merger Agreement, in each case because the board of directors of the Company has determined in good faith, after consultation with outside counsel, that to, or to continue to, recommend the Merger Agreement to the Company's stockholders would result in a violation of its fiduciary duties under applicable law; or (iv) December 31, 2018.

**Section 7. Amendment and Modification.** This Agreement may be amended, modified or supplemented at any time by the written approval of such amendment, modification or supplement by the Company, Acquiror and all of the Principal Stockholders.

**Section 8. Entire Agreement.** This Agreement evidences the entire agreement among the parties hereto with respect to the matters provided for herein and there are no agreements, representations or warranties with respect to the matters provided for herein other than those set forth herein and in the Merger Agreement and any written agreements related thereto. Except for the Merger Agreement, this Agreement supersedes any agreements among any of the Company, its stockholders or Acquiror concerning the acquisition, disposition or control of any Company Stock.

**Section 9. Absence of Control.** Subject to any specific provisions of this Agreement, it is the intent of the parties to this Agreement that Acquiror by reason of this Agreement shall not be deemed (until consummation of the Contemplated Transactions) to control, directly or indirectly, the Company and shall not exercise, or be deemed to exercise, directly or indirectly, a controlling influence over the management or policies of the Company.

**Section 10. Informed Action.** Each Principal Stockholder acknowledges that he or she has had an opportunity to be advised by counsel of his or her choosing with regard to this Agreement and the transactions and consequences contemplated hereby. Each Principal Stockholder further acknowledges that he or she has received a copy of the Merger Agreement and is familiar with its terms.

**Section 11. Severability.** The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, this Agreement shall be construed with the invalid or inoperative provisions deleted and the rights and obligations of the parties shall be construed and enforced accordingly.

**Section 12. Counterparts; Facsimile/PDF Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and accepted by facsimile or portable data file (pdf) signature and any such signature shall be of the same force and effect as an original signature.

**Section 13. Governing Law.** All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal laws of the State of Illinois applicable to agreements made and wholly to be performed in such state without regard to conflicts of laws.

**Section 14. Successors; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Company and Acquiror, and their successors and permitted assigns, and the Principal Stockholders and their respective spouses, executors, personal representatives, administrators, heirs, legatees, guardians and other legal representatives. This Agreement shall survive the death or incapacity of any Principal Stockholder. This Agreement may be assigned only by Acquiror, and then only to an Affiliate of Acquiror.

**Section 15. Directors' Duties.** The parties hereto acknowledge that each Principal Stockholder is entering into this Agreement solely in his or her capacity as a stockholder of the Company and, notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended or shall be construed to require any Principal Stockholder, in his or her capacity as a director and/or officer of the Company and/or Company Bank, as applicable, to act or fail to act in accordance with his or her fiduciary duties in such director and/or officer capacity. Furthermore, no Principal Stockholder makes any agreement or understanding herein in his or her capacity as a director and/or officer of the Company and/or Company Bank. For the avoidance of doubt, nothing in this Section shall in any way limit, modify or abrogate any of the obligations of the Principal Stockholders hereunder to vote the shares owned by him or her in accordance with the terms of the Agreement and not to transfer any shares except as permitted by this Agreement.

**Section 16. WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR DISPUTE THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS OF THIS SECTION.

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[SIGNATURE PAGE FOLLOWS]

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

**ACQUIROR:**

**COMPANY:**

**FIRST BUSEY CORPORATION**

**FIRST COMMUNITY FINANCIAL PARTNERS, INC.**

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

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

Name: Van A. Dukeman  
Title: *President and Chief Executive Officer*

Name: Roy C. Thygesen  
Title: *Chief Executive Officer*

*[Signature Page of Voting and Support Agreement]*

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## BANK MERGER AGREEMENT

**THIS BANK MERGER AGREEMENT** (this "**Agreement**") is made as of [ ], 2017, between **BUSEY BANK**, an Illinois chartered non-member bank headquartered in Champaign, Illinois ("**Busey**," or where appropriate, the "**Continuing Bank**"), and **FIRST COMMUNITY FINANCIAL BANK**, an Illinois chartered member bank headquartered in Joliet, Illinois ("**First Community**").

## RECITALS

**A.** As of December 31, 2016, Busey had capital stock outstanding of \$[ ], divided into [1,022,805] shares of issued and outstanding common stock, \$10.00 par value per share, surplus of approximately \$[ ] million, retained earnings of approximately \$[ ] million and accumulated other comprehensive income of approximately \$[ ] million.

**B.** As of December 31, 2016, First Community had capital stock outstanding of \$[ ], divided into [ ] shares of issued and outstanding common stock, \$ [ ] par value per share, surplus of approximately \$[ ] million, retained earnings of approximately \$[ ] million and accumulated other comprehensive income of approximately \$[ ] million.

**C.** First Busey Corporation, a Nevada corporation with its main office in Champaign, Illinois ("**Acquiror**"), is the sole stockholder of Busey, and at the time of the merger of First Community with and into, and under the charter of, Busey (the "**Bank Merger**"), will be the sole shareholder of First Community.

**D.** Pursuant to that certain Agreement and Plan of Merger, dated as of February 6, 2017 (the "**Holding Company Agreement**"), by and between Acquiror and First Community Financial Partners, Inc., an Illinois corporation with its main office in Joliet, Illinois, and the sole stockholder of First Community (the "**Company**"), the Company will be merged with and into Acquiror (the "**Holding Company Merger**").

**E.** Following the effectiveness of the Holding Company Merger, First Community is to be merged with and into Busey, with Busey as the surviving bank and a wholly owned subsidiary of Acquiror.

**F.** Upon the consummation of the Bank Merger, Continuing Bank will have capital stock outstanding of \$[ ], divided into [ ] shares of issued and outstanding common stock, \$10.00 par value per share, and the assets, liabilities, surplus and retained earnings set forth on the pro forma financial statement attached as **SCHEDULE A**.

**G.** Each of the boards of directors and the sole stockholders of Busey and First Community, respectively, have approved this Agreement and authorized its execution.

## AGREEMENTS

**IN CONSIDERATION OF THE FOREGOING PREMISES**, and the mutual covenants herein contained and for the purpose of prescribing the terms and conditions of the Bank Merger, the manner of carrying the same into effect, the treatment of First Community's common stock and such other details and provisions as are deemed necessary or desirable, the parties hereby agree as follows:

## Article 1

## GENERAL

**Section 1.1 The Bank Merger.** Pursuant to the terms and conditions of this Agreement and the provisions of Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. §1828(c)), and Section 5/22 of Chapter 205 of the Illinois Compiled Statutes, First Community shall be merged into, and under the charter of, Busey, and Busey shall be the Continuing Bank.

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**Section 1.2 Effective Time.** The Bank Merger shall become effective at such time upon satisfaction of all requirements of law and the terms and conditions specified in this Agreement, including, among other conditions, receipt of the approval of the Federal Deposit Insurance Corporation (the "FDIC") and the Illinois Department of Financial and Professional Regulation (the "DFPR") and, if appropriate, approvals of other bank regulatory agencies. The time of such effectiveness is referred to in this Agreement as the "Effective Time."

**Section 1.3 Name, Offices, Charter and Bylaws of the Continuing Bank.**

- (a) The name of the Continuing Bank shall be "**Busey Bank**" as a result of the Bank Merger;
- (b) The principal office and place of business of Busey at 100 West University Avenue, Champaign, Illinois 61820, shall be the established and authorized principal office and place of business of the Continuing Bank. The branch offices of Busey shall be operated as branches of the Continuing Bank, and the main and branch offices of First Community shall be established and authorized as branch offices of the Continuing Bank; and
- (c) The charter and bylaws, respectively, of Busey as in effect immediately prior to the Effective Time shall be the charter and bylaws of the Continuing Bank from and after the Effective Time, until amended in accordance with applicable law.

**Section 1.4 Board of Directors.** The Board of Directors of the Continuing Bank shall consist of those persons as set forth in **EXHIBIT A** attached hereto. Each director shall hold office from and after the time of his or her qualification as a director of the Continuing Bank and until his or her successor is elected and has qualified.

**Section 1.5 Senior Executive Officers.** The senior executive officers of the Continuing Bank shall consist of those persons as set forth in **EXHIBIT B** attached hereto, each to hold office in accordance with the bylaws of the Continuing Bank as in effect at and after the Effective Time.

**Article 2**

**TREATMENT OF COMMON STOCK  
AND CAPITALIZATION OF THE CONTINUING BANK**

**Section 2.1 Treatment of Common Stock.** The treatment of the shares of common stock of each of Busey and First Community shall be as follows:

- (a) Each of the [ ] shares of First Community common stock, par value \$[ ] per share, outstanding immediately prior to the Effective Time shall, by virtue of the Bank Merger and without any action on the part of the holder thereof, be canceled as of the Effective Time.
- (b) Each of the [ ] shares of Busey common stock, par value \$10.00 per share, outstanding immediately prior to the Effective Time shall remain outstanding and shall not be changed or affected in any way by the Bank Merger. After the Effective Time, each certificate representing such shares shall remain outstanding and shall represent the same number of shares of common stock of the Continuing Bank as it represented of Busey immediately prior to the Effective Time.

**Section 2.2 Capitalization of the Continuing Bank.** At the Effective Time, Continuing Bank will have capital stock of \$[ ], divided into [ ] shares of common stock, par value of \$[ ] per share. Accordingly, as of December 31, 2016, the capital accounts of the Continuing Bank would have been as set forth on the pro forma financial statement attached as **SCHEDULE A**.



## Article 3

### EFFECT OF THE BANK MERGER UPON FIRST COMMUNITY AND BUSEY

**Section 3.1 General.** Except as specifically set forth herein, at the Effective Time, the identity, existence, purposes, powers, objects, franchises, privileges, rights and immunities of Busey shall continue unaffected and unimpaired by the Bank Merger and the corporate franchise, existence and rights of First Community shall be merged with and into the Continuing Bank. The separate existence and corporate organization of First Community and Busey, except insofar as either may be continued by statute, shall cease at the Effective Time. The Continuing Bank shall at and after the Effective Time possess all of the rights, privileges, immunities, powers and franchises, including appointments, designations and nominations, and all other rights and interests as trustee, executor, administrator, registrar or transfer agent of stocks and bonds, guardian, conservator, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as was held or enjoyed by First Community and Busey at the Effective Time.

**Section 3.2 Properties of the Continuing Bank.** At the Effective Time, all property, real, personal and mixed, and all debts due on whatever account and all other choses in action and all and every other interest, of or belonging to, or due to, First Community and Busey, shall be taken and deemed to be transferred to and vested in the Continuing Bank without further act or deed, and the title to all real estate, or any interest therein, under the laws of Illinois or of any other state or of the United States, vested in First Community and Busey shall vest in the Continuing Bank and shall not revert or be in any way impaired by reason of the Bank Merger. First Community and Busey shall execute all such instruments of transfer, if any, as shall be necessary under the laws of the State of Illinois or of any other state or of the United States to vest all the right, title and interest of First Community and Busey in and to its assets in the Continuing Bank.

**Section 3.3 Liabilities of the Continuing Bank.** The Continuing Bank at and after the Effective Time shall be responsible and liable for and assume all of the liabilities, deposits, contracts and obligations of First Community and Busey in the same manner and to the same extent as if the Continuing Bank had itself incurred the same or contracted therefor, and any claim existing or action or proceeding pending by or against First Community and Busey may be prosecuted to judgment as if the Bank Merger had not taken place, or the Continuing Bank may be substituted in place of First Community and Busey. Neither the rights of creditors nor any liens upon the property of First Community and Busey shall be impaired by reason of the Bank Merger, but such liens shall be limited to the property upon which they were liens immediately prior to the Effective Time.

## Article 4

### CONDITIONS

**Section 4.1 Conditions to Consummation.** This Agreement is subject to, and consummation of the Bank Merger herein provided for, is conditioned upon the fulfillment prior to the Effective Time of each of the following conditions:

- (a) approval of this Agreement by the affirmative vote of all the holders of the outstanding shares of common stock of Busey and First Community;
- (b) consummation of the transactions contemplated by the Holding Company Agreement, including without limitation, the Holding Company Merger; and
- (c) procurement of all other actions, consents, approvals or rulings, governmental or otherwise, and satisfaction of all other requirements of law (including, without limitation, the approval of the FDIC and the DFPR) which are, or in the opinion of counsel for Busey or First Community may be, necessary to permit or enable the Continuing Bank, upon and after the Bank

Merger, to conduct all or any part of the business and activities of Busey or First Community in the manner in which such business and activities were conducted by each of them prior to the Bank Merger.

## Article 5

### TERMINATION

Notwithstanding anything herein to the contrary, this Agreement may be terminated by agreement of the parties and shall automatically terminate, without any action by either party hereto, immediately upon the termination of the Holding Company Agreement.

## Article 6

### MISCELLANEOUS

**Section 6.1 Expenses.** Whether or not the Bank Merger is approved, the parties to this Agreement shall pay expenses incurred by each of them, respectively, in connection with the transactions contemplated herein, and each of the parties shall pay their proportionate share of all examination expenses as may be incurred by the DFPR in connection with the Bank Merger.

**Section 6.2 Counterparts; Captions.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The title of this Agreement and the headings herein set out are for convenience of reference only and shall not be deemed a part of this Agreement.

**Section 6.3 Amendment.** At any time before or after approval and adoption hereof by the respective shareholders of Busey and First Community, this Agreement may be amended by agreement between Busey and First Community.

**Section 6.4 Governing Law.** This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Illinois, except as otherwise required.

**Section 6.5 Dividends.** Except as may otherwise be provided in the Holding Company Agreement, the parties shall continue to pay dividends in accordance with their regular practices during the period between the date this Agreement is executed and the date of the consummation of the Bank Merger contemplated herein.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Busey and First Community have caused this Agreement to be executed in counterparts by their duly authorized officers as of the date first above written.

**BUSEY BANK**

**FIRST COMMUNITY FINANCIAL BANK**

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

Robin N. Elliott  
*Chief Financial Officer and Chief Operating Officer*

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

Roy C. Thygesen  
*Chief Executive Officer*

*[SIGNATURE PAGE TO BANK MERGER AGREEMENT]*

---

SCHEDULE A

PRO FORMA FINANCIAL STATEMENT

**BUSEY BANK**  
(dollars in thousands)

	<u>December 31, 2016</u>
Total assets	\$ [ ]
Total liabilities	\$ [ ]
Equity capital	
Common stock	\$ [ ]
Surplus	[ ]
Retained earnings	[ ]
Other comprehensive income	[ ]
Total equity capital	<u>\$ [ ]</u>

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**EXHIBIT A**

**BOARD OF DIRECTORS OF CONTINUING BANK**

[ ]

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**EXHIBIT B**

**SENIOR EXECUTIVE OFFICERS OF CONTINUING BANK**

NAME

TITLE

[ ]

[ ]

## QuickLinks

[Exhibit 2.1](#)  
[EXECUTION COPY](#)

[AGREEMENT AND PLAN OF MERGER BETWEEN FIRST BUSEY CORPORATION AND FIRST COMMUNITY FINANCIAL PARTNERS, INC.  
FEBRUARY 6, 2017](#)

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100 W. UNIVERSITY AVE.  
CHAMPAIGN, IL 61820

WWW.BUSEY.COM



**FOR IMMEDIATE RELEASE**

February 6, 2017

**FIRST BUSEY AND FIRST COMMUNITY TO MERGE**  
*First Busey Expands Into Attractive Southwest Suburbs of Chicago*

**Champaign, IL and Joliet, IL**—First Busey Corporation (“Busey”) (NASDAQ: BUSE), the holding company for Busey Bank, and First Community Financial Partners, Inc. (“First Community”) (NASDAQ: FCFP), the holding company for First Community Financial Bank, today jointly announced the signing of a definitive agreement pursuant to which Busey will acquire First Community through a merger transaction. The acquisition provides Busey entrance into the demographically and economically attractive southwest suburban markets of the greater Chicagoland area.

Under the terms of the merger agreement, First Community shareholders will receive 0.396 shares of BUSE common stock and \$1.35 in cash for each share of FCFP common stock. Based upon Busey’s 5-day volume weighted average closing price of \$29.31 as of February 3, 2017, the implied per share purchase price is \$12.95 with an aggregate transaction value of approximately \$235.8 million. The transaction is anticipated to close mid-2017, subject to customary closing conditions and required approvals. Upon completion of the holding company merger, we anticipate merging First Community Financial Bank with and into Busey Bank in late 2017.

First Busey President and Chief Executive Officer Van A. Dukeman said, *“This business combination is consistent with our strategy of expanding into markets with both population and commercial density in the Midwest through disciplined partnerships with companies who have similar operating and cultural philosophies. Joining two of the best community banks in Illinois together offers significant growth possibilities for the combined customer, associate, community and shareholder base.”*

Founded in 2004, and with more than \$1.26 billion in assets, First Community operates as a state chartered commercial bank with nine branches in Will, DuPage and Grundy counties, which encompass portions of the southwestern suburbs of Chicago. These markets are home to more than 1.67 million people; 593,000 households; and nearly 70,000 businesses. Roy C. Thygesen, First Community’s President and Chief Executive Officer, will continue to lead First Community through the merger. Once the acquisition is completed, Thygesen will be named Busey Bank’s Executive Vice-President and Market President, Northern Illinois.

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*“First Community has solid, experienced leadership, supported by outstanding community-minded commercial and retail banking teams. We look forward to working together to expand into the greater Chicagoland market, and remain committed to providing premier service experiences in the communities where we work and live,”* concluded Dukeman.

Roy C. Thygesen, Chief Executive Officer of First Community said, *“Busey is the right strategic partner—one whose employee-focused culture and vision of service excellence aligns perfectly with the principles First Community was founded upon.”*

*“We are excited that First Community customers will be able to take advantage of an expanded array of sophisticated commercial, consumer and wealth management services and capabilities. As importantly, our combined size gives us the lending capacity to support growth in our clients’ credit needs for years to come, delivered in the community banking approach they have come to expect, by the same bankers they know,”* Thygesen concluded.

Both companies value an engaged and empowered workforce, and are committed to building a premier, service-oriented, community brand experience. Busey was recently named one of the **Best Places to Work in Illinois**, as well as named one of **American Banker’s 2016 Best Banks to Work For**. Further, both Busey and First Community were named among the top performing small-cap banks and thrifts—**Sm-All Stars**—by Sandler O’Neill + Partners, L.P. this past year. They were two of 26 selected in the nation, and the only two Illinois banks to be named.

Barack Ferrazzano Kirschbaum & Nagelberg LLP served as legal counsel to First Busey Corporation and Stephens Inc. served as financial advisor and provided a fairness opinion to First Busey Corporation. Howard & Howard Attorneys PLLC served as legal counsel to First Community Financial Partners, Inc. and FIG Partners served as financial advisor and provided a fairness opinion to First Community Financial Partners, Inc.

**Busey Corporate Profile**

As of December 31, 2016, First Busey Corporation (Nasdaq: BUSE) was a \$5.4 billion financial holding company headquartered in Champaign, Illinois. Busey Bank, a wholly-owned bank subsidiary, is headquartered in Champaign, Illinois and has twenty-seven banking centers serving Illinois, thirteen banking centers in the St. Louis, Missouri metropolitan area, five banking centers serving southwest Florida and a banking center in Indianapolis, Indiana. Busey Bank also offers mortgage loan products through seventeen loan production offices in the St. Louis, Kansas City, Chicago, Omaha-Council Bluffs metropolitan areas and across the Midwest. Trevett Capital Partners, a wealth management division of Busey Bank, provides asset management, investment and fiduciary services to high net worth clients in southwest Florida. The wealth management professionals of Trevett Capital Partners can be reached through [trevettcapitalpartners.com](http://trevettcapitalpartners.com). Busey Bank had total assets of \$5.4 billion as of December 31, 2016.

In addition, Busey Bank owns a retail payment processing subsidiary, FirsTech, Inc., which processes over 27 million transactions per year using online bill payment, lockbox processing and walk-in payments at its 3,000 agent locations in 36 states. More information about FirsTech, Inc. can be found at [firsttechpayments.com](http://firsttechpayments.com).



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Busey Wealth Management is a wholly-owned subsidiary of First Busey Corporation. Through Busey Trust Company, Busey Wealth Management provides asset management, investment and fiduciary services to individuals, businesses and foundations. As of December 31, 2016, Busey Wealth Management's assets under care were approximately \$5.4 billion.

For more information about us, visit <http://www.busey.com>.

**About First Community Financial Partners, Inc.:** First Community Financial Partners, Inc., headquartered in Joliet, Illinois, is a bank holding company whose common stock trades on the NASDAQ Capital Market (NASDAQ:FCFP). First Community Financial Partners has one bank subsidiary, First Community Financial Bank. First Community Financial Bank, based in Joliet, Illinois, has locations in Joliet, Plainfield, Homer Glen, Channahon, Naperville, Burr Ridge, Mazon, Braidwood, and Diamond, Illinois. The company is dedicated to its founding principles by being actively involved in the communities it serves and providing exceptional personal service delivered by experienced local professionals.

**CONTACTS:**

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First Busey Corporation  
(217) 365-4500  
[robin.elliott@busey.com](mailto:robin.elliott@busey.com)

Glen Stiteley, CFO  
First Community Financial Partners  
(815) 725-1885  
[gstiteley@fcbankgroup.com](mailto:gstiteley@fcbankgroup.com)

**Special Note Concerning Forward-Looking Statements**

This document may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 with respect to the financial condition, results of operations, plans, objectives, future performance and business of Busey and First Community. Forward-looking statements, which may be based upon beliefs, expectations and assumptions of Busey's and First Community's management and on information currently available to management, are generally identifiable by the use of words such as "believe," "expect," "anticipate," "plan," "intend," "estimate," "may," "will," "would," "could," "should" or other similar expressions. Additionally, all statements in this document, including forward-looking statements, speak only as of the date they are made, and neither Busey nor First Community undertakes any obligation to update any statement in light of new information or future events. A number of factors, many of which are beyond the ability of Busey and First Community to control or predict, could cause actual results to differ materially from those in its forward-looking statements. These factors include, among others, the following: (i) the possibility that any of the anticipated benefits of the proposed transaction between Busey and First Community will not be realized or will not be realized within the expected time period; (ii) the risk that integration of operations of First Community with those of Busey will be materially delayed or will be more costly or difficult than expected; (iii) the inability to complete the proposed transaction due to the failure of the required shareholder approval; (iv) the failure to satisfy other conditions to completion of the proposed transaction, including receipt of required regulatory and other approvals; (v) the failure of the proposed transaction to close for any other reason; (vi) the effect of the announcement of the transaction on customer relationships and operating results; (vii) the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events; (viii) the strength of the local, national and international economy; (ix) changes in state and federal laws, regulations and governmental policies concerning Busey's and First Community's general business (including the impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the extensive regulations to be promulgated thereunder, as well as the rules adopted by the federal bank regulatory agencies to implement Basel III); (x) changes in interest rates and prepayment rates of Busey's and First Community's assets; (xi) increased competition in the financial services sector and the inability to attract new customers; (xii) changes in technology and the ability to develop and maintain secure and reliable electronic systems; (xiii) the loss of key executives or employees; (xiv) changes in consumer spending; (xv) unexpected results of acquisitions, including the acquisition of First Community; (xvi) unexpected outcomes of existing or new litigation

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involving Busey or First Community; (xvii) the economic impact of any future terrorist threats or attacks; (xviii) the economic impact of exceptional weather occurrences such as tornadoes, hurricanes, floods, and blizzards; and (xix) changes in accounting policies and practices. These risks and uncertainties should be considered in evaluating forward-looking statements and undue reliance should not be placed on such statements. Additional information concerning Busey and First Community and their respective business, including additional factors that could materially affect Busey's and First Community's financial results, are included in Busey's and First Community's filings with the Securities and Exchange Commission (the "SEC").

**Additional Information**

Busey will file a registration statement on Form S-4 with the SEC in connection with the proposed transaction. The registration statement will include a proxy statement of First Community that also constitutes a prospectus of Busey, which will be sent to the shareholders of First Community. First Community's shareholders are advised to read the proxy statement/prospectus when it becomes available because it will contain important information about Busey, First Community and the proposed transaction. When filed, this document and other documents relating to the merger filed by Busey and First Community can be obtained free of charge from the SEC's website at [www.sec.gov](http://www.sec.gov). These documents also can be obtained free of charge by accessing Busey's website at [www.busey.com](http://www.busey.com) under the tab "Investors Relations" and then under "SEC Filings" or by accessing First Community's website at [www.fcbankgroup.com](http://www.fcbankgroup.com) under "Investor Relations" and then under "SEC Filings." Alternatively, these documents, when available, can be obtained free of charge from Busey upon written request to First Busey Corporation, Corporate Secretary, 100 W. University Avenue, Champaign, Illinois 61820 or by calling (217) 365-4544, or from First Community, upon written request to First Community Financial Partners, Inc., Corporate Secretary, 2801 Black Road, Joliet, Illinois 60435 or by calling (815) 725-1885.

**Participations in the Solicitation**

Busey, First Community and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from shareholders in connection with the proposed transaction under the rules of the SEC. Information about these participants may be found in the definitive proxy statement of Busey relating to its 2016 Annual Meeting of Stockholders filed with the SEC on April 14, 2016 and the definitive proxy statement of First Community relating to its 2016 Annual Meeting of Shareholders filed with the SEC on April 8, 2016. These definitive proxy statements can be obtained free of charge from the sources indicated above. Additional information regarding the interests of these participants will also be included in the proxy statement/prospectus regarding the proposed transaction when it becomes available.

**No Offer or Solicitation**

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

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## Extension into Attractive and Contiguous Markets



February 6, 2017

## Special Note Concerning Forward-Looking Statements

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## Transaction Overview

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## Transaction Rationale

### Strategically Compelling

- Franchise extension into attractive and contiguous markets
- Established commercial banking platform with cross-sale opportunities for all of BUSE product offerings, including wealth management
- Diversified and clean loan portfolio with strong commercial balances (C&I represented 28.5% of loans as of 12/31/16)

### Financially Attractive

- Attractive earnings accretion of approximately 4.0% in 2018 (first full year pro forma) and 5.3% in 2019 (first full year of cost savings)
- Tangible book value dilution of approximately 2.5% and an earn back of approximately 3 years using the cross-over method
- 16%+ internal rate of return exceeds company cost of capital hurdles
- Leverages excess capital while allowing BUSE to retain strong regulatory capital ratios on a pro forma basis

### Low Risk

- Comprehensive due diligence process and thorough loan review completed
- FCFP has an experienced and deep management team which will assist in post-merger operations, integration, and market expansion
  - Key executives and business producers, including the CEO and the head of commercial banking, are expected to remain with BUSE post-close
- FCFP has a similar culture, which will facilitate a successful integration process



## Transaction Terms

Aggregate Deal Value <sup>(1)</sup>	<input type="checkbox"/> \$235.8 million
Consideration Mix	<input type="checkbox"/> Fixed consideration mix of 90% stock / 10% cash
Consideration Structure	<ul style="list-style-type: none"> <li><input type="checkbox"/> FCFP shares will be exchanged for 0.396 BUSE shares and \$1.35 in cash</li> <li><input type="checkbox"/> There will be a cap/collar structure whereby, if BUSE's 5-day VWAP of \$29.31 increases above \$35.90<sup>(2)</sup> or below \$22.71<sup>(2)</sup> from the signing date to the determination date, then BUSE has the option to adjust the exchange ratio accordingly<sup>(3)</sup></li> <li><input type="checkbox"/> If the adjustment to the exchange ratio requires BUSE to issue more than 19.9% of its then issued/outstanding shares, BUSE will have the right to adjust the exchange ratio so that it will issue no more than 19.9% of its then issued/outstanding shares, and correspondingly increase the cash consideration</li> </ul>
Termination Fee	<ul style="list-style-type: none"> <li><input type="checkbox"/> Termination fee of \$9.0 million, equal to 3.8% of the transaction value, will be paid to BUSE by FCFP if FCFP makes an adverse recommendation or accepts a competing offer</li> <li><input type="checkbox"/> Termination fee of \$2.5 million, equal to 1.0% of the transaction value, will be paid if terminated by FCFP or BUSE if the opposite party is found to be in material breach of its representations and warranties</li> </ul>
Pricing Ratios	<ul style="list-style-type: none"> <li><input type="checkbox"/> Price / TBV: 198.4%</li> <li><input type="checkbox"/> Price / LTM EPS<sup>(4)</sup>: 21.4x</li> <li><input type="checkbox"/> Price / 2018 EPS + fully phased-in cost saves: 12.8x</li> </ul>
Required Approvals	<ul style="list-style-type: none"> <li><input type="checkbox"/> FCFP requires shareholder and regulatory approval</li> <li><input type="checkbox"/> BUSE requires regulatory approval</li> </ul>
Board of Directors	<input type="checkbox"/> One seat on each for holding company and bank
Anticipated Closing	<input type="checkbox"/> Mid – 2017

<sup>1</sup>Includes consideration paid for restricted stock units, warrants, and other equity awards (using BUSE's 5-day VWAP of \$29.31 as of 2/3/2017)

<sup>2</sup>Based on determination of the price from the 5-day VWAP prior to signing and up/down 22.5%

<sup>3</sup>Refer to the Definitive Merger Agreement for more details

<sup>4</sup>LTM Net income adjusted for bargain purchase gain of \$1.9M and merger expenses of \$1.0M related to the Mason State Bank acquisition per FCFP's 9/30/2016 10-Q



## Transaction Details

<b>Cost Saves &amp; One Time Charges</b>	<input type="checkbox"/> Readily achievable cost savings conservatively assumed to be 25% <input type="checkbox"/> One time pre-tax deal charges of \$13.1M, or 5.6% of aggregate deal value
<b>Fair Market Value Adjustments &amp; Purchase Accounting</b>	<input type="checkbox"/> A 1.9% gross credit mark or \$19.1 million
<b>Core Deposit Intangibles</b>	<input type="checkbox"/> Core deposit intangibles created equal to 1.5% of FCFP's non-time deposits, amortized over ten years using the sum of years digits method
<b>Revenue Enhancements</b>	<input type="checkbox"/> None assumed
<b>Pro Forma Capital Ratios</b>	<input type="checkbox"/> 8.4% TCE/TA <input type="checkbox"/> 9.7% Leverage Ratio <input type="checkbox"/> 12.0% Tier 1 Capital Ratio <input type="checkbox"/> 13.2% Total Risk Based Capital Ratio



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## Due Diligence Review

<b>Due Diligence Overview</b>	<b>Estimated Credit Mark</b>	
Thorough due diligence process to evaluate FCFP's credit portfolio	Total \$ Amount	\$19.1M
<input type="checkbox"/> Loan review completed by BUSE internal team in conjunction with highly experienced, reputable third-party credit due diligence firm	As a Percent of NPAs (as of 9/30/2016)	144%
<input type="checkbox"/> 53% of outstanding loan balances reviewed	Loan Loss Reserve	\$11.7M
<input type="checkbox"/> 100% of loans classified as Watch, OAEM, Substandard, and Doubtful reviewed	Net Credit Mark	\$7.4M

Granular review of cost structure and transaction charges

Thorough review of regulatory, legal, operational, and compliance risks



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## Transaction Meets All M&A Disciplines

Key Attributes	FCFP	Rationale
<b>Franchise Aspects:</b>		
<input type="checkbox"/> High-density market with growth opportunities in commercial & wealth management	✓	Franchise extension into attractive and contiguous market that includes the southwest suburbs of greater Chicago
<input type="checkbox"/> Quality franchise with an attractive deposit base	✓	More than \$1.0 billion in deposits, 22.9% noninterest-bearing, and approximately 79% core deposits <sup>(1)</sup>
<input type="checkbox"/> Strong commercial lending platform	✓	71% of FCFP loans in C&I and commercial real estate, significant cross selling opportunities for BUSE wealth management product line
<input type="checkbox"/> Complementary culture and familiar markets	✓	Similar corporate cultures which should make for an efficient transition and integration  BUSE has a successful history of lending in these markets and has existing wealth management clients with businesses in these markets
<input type="checkbox"/> Experienced and deep management team	✓	Key executives and business producers, including the CEO and the head of commercial banking, are expected to remain with BUSE post-close
<b>Disciplined Fundamentals:</b>		
<input type="checkbox"/> Accretive to EPS	✓	4.0%+ accretive to first full year pro forma earnings and 5.3%+ after 100% of the cost saves are included
<input type="checkbox"/> Attractive TBV earn back period	✓	Approximately 3 years using the cross-over method
<input type="checkbox"/> Conservative credit marks and reasonable cost saves	✓	1.9% of total loans and over 144% of NPAs

<sup>1</sup>All deposits excluding time deposits greater than \$100 thousand. As of 12/31/2016



## First Community Financial Partners, Inc. and Market Overview

# First Community Financial Partners, Inc. Overview

## Overview

- ❑ First Community Financial Partners, Inc. (NASDAQ: FCFP) was formed as a bank holding company in 2006
  - Headquartered in Joliet, IL and operates 9 branches in Will, DuPage and Grundy counties, which encompasses portions of the southwestern suburbs of Chicago
  - Offers a full suite of commercial and personal banking solutions
- ❑ Largest bank headquartered in Will County
  - Ranked as the 3<sup>rd</sup> leading community bank by deposit market share in Will County, a \$12 billion deposit market<sup>(1)</sup>
- ❑ Combined four bank charters in 2013, creating a \$900 million holding company

## Footprint Highlights

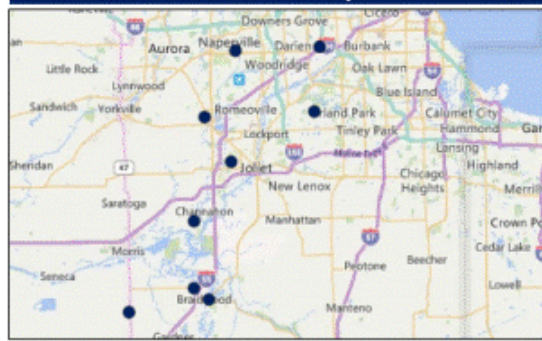
County	Households	Population
Will, IL	228,118	689,874
DuPage, IL	346,803	936,342
Grundy, IL	18,530	50,736
<b>Total</b>	<b>593,451</b>	<b>1,676,952</b>

Financial data as of 12/31/2016.  
Source: SNL Financial and company filings  
<sup>1</sup>2016 Summary of Deposits



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## Branch Map



## Financial Highlights

Balance Sheet (\$M)		Capital	
Assets	\$1,268.2	TCE / TA	8.88%
Net Loans (incl. HFS)	\$982.2	Tier 1 Common Ratio	10.51%
Deposits	\$1,083.2	Total Capital Ratio	12.99%
Profitability (2016 FY)		Asset Quality	
NIM	3.50%	NPAs/Assets (Ex. TDRs)	0.52%
ROAE	10.17%	LLR/Loans	1.18%
ROAA	1.00%	LLR/NPLs	199.5%
Efficiency Ratio	61.9%	NCOs/Avg. Loans	0.13%



## First Community Deposit Market Share

Will, IL		June 30, 2016		
Rank	Institution	# of Branches	Total Deposits (\$'000)	Market Share (%)
1	Bank of Montreal	24	2,086,419	17.81
2	First Midwest Bancorp Inc. (IL)	24	1,878,524	16.04
3	JPMorgan Chase & Co. (NY)	22	1,777,603	15.18
4	Wintrust Financial Corp. (IL)	8	740,672	6.32
5	Bank of America Corp. (NC)	11	711,078	6.07
6	<b>First Community Finl Partners (IL)</b>	<b>5</b>	<b>644,869</b>	<b>5.51</b>
<b>Market Total</b>		<b>200</b>	<b>11,711,990</b>	<b>100.00</b>

DuPage, IL		June 30, 2016		
Rank	Institution	# of Branches	Total Deposits (\$'000)	Market Share (%)
1	JPMorgan Chase & Co. (NY)	40	7,257,865	18.67
2	PNC Financial Services Group (PA)	19	4,341,257	11.17
3	Bank of Montreal	28	3,554,053	9.14
4	Citigroup Inc. (NY)	9	3,359,000	8.64
5	Wintrust Financial Corp. (IL)	19	3,012,099	7.75
23	<b>First Community Finl Partners (IL)</b>	<b>2</b>	<b>273,660</b>	<b>0.70</b>
<b>Market Total</b>		<b>339</b>	<b>38,874,443</b>	<b>100.00</b>

Grundy, IL		June 30, 2016		
Rank	Institution	# of Branches	Total Deposits (\$'000)	Market Share (%)
1	First Midwest Bancorp Inc. (IL)	6	504,534	42.78
2	Illinois Valley Bancorp Inc. (IL)	2	168,766	14.31
3	Midland States Bancorp Inc. (IL)	2	101,466	8.60
4	Canadian Imperial Bank of Comm	1	87,350	7.41
5	JPMorgan Chase & Co. (NY)	2	77,293	6.55
7	<b>First Community Finl Partners (IL)</b>	<b>2</b>	<b>52,861</b>	<b>4.48</b>
<b>Market Total</b>		<b>22</b>	<b>1,179,422</b>	<b>100.00</b>

Source: SNL Financial. Deposit market share data as of June 30, 2016  
<sup>1</sup>All deposits excluding time deposits greater than \$100 thousand. Based on 12/31/2016 bank-level regulatory data



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## Branch Franchise

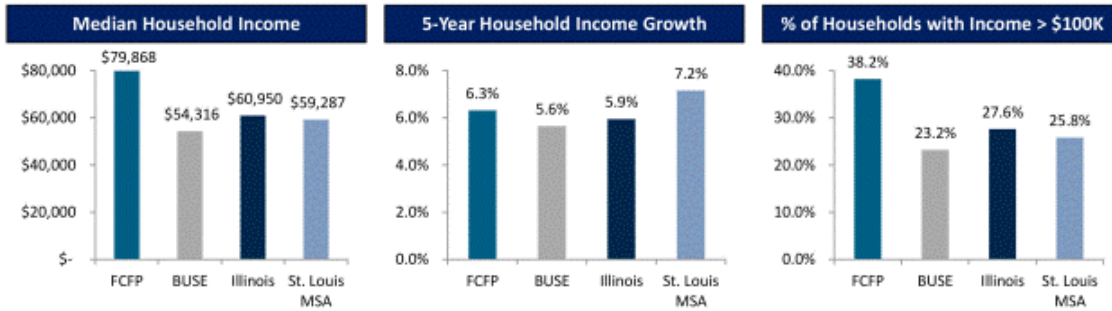
- ❑ 9 full service locations
- ❑ Over \$100 million average deposits per location
- ❑ 22.9% non-interest bearing
- ❑ Core deposits represent approximately 79% of deposits<sup>(1)</sup>
- ❑ 0.43% total cost of deposits for quarter ended December 31, 2016





# Attractive Operating Markets

- First Community's operating markets provide attractive demographic trends which should continue to support quality growth opportunities for the pro forma franchise



- First Community's core markets demonstrate attractive economic, commercial and demographic characteristics that provide a compelling opportunity for First Busey to extend its franchise
  - FCFP's footprint has a median household income almost 50% higher than that of BUSE's footprint and 35% higher than the State of Illinois
  - Nearly 70,000 businesses operate in FCFP's operating markets
  - The counties FCFP serves are, on average, 100%<sup>(1)</sup> larger than those of BUSE and serve 103%<sup>(2)</sup> more businesses

Source: SNL Financial

Note: Demographic statistics for BUSE and FCFP in the bar charts above are based on deposit-weighted county averages as of 6/30/2016

(1) Based on average population in counties served by BUSE of 278,957 and in the counties served by FCFP of 558,984

(2) Based on average number of businesses in counties served by BUSE of 11,457 and in the counties served by FCFP of 23,261



## Pro Forma Franchise

### Overview

- 36 full-service branches throughout Illinois, as well as 13 in Missouri, 5 in Florida and 1 in Indiana
- \$6.7 billion in assets
- \$5.1 billion in gross loans

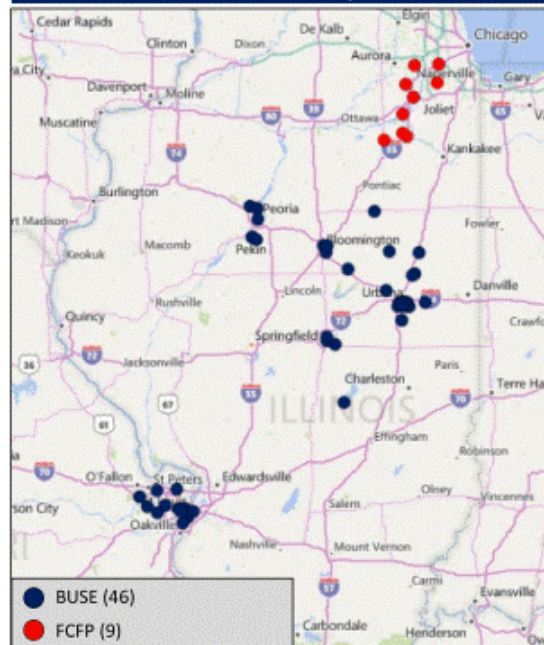
### Pro Forma Deposit Market Share

Illinois (Excluding the City of Chicago)		June 30, 2016	
Rank	Institution	# of Branches	Total Deposits (\$000) / Market Share (%)
1	JPMorgan Chase & Co. (NY)	247	34,432,137 / 13.26
2	Bank of Montreal	174	16,225,496 / 6.25
3	Wintrust Financial Corp. (IL)	110	15,898,703 / 6.12
4	Bank of America Corp. (NC)	107	12,283,872 / 4.73
5	PNC Financial Services Group (PA)	148	12,227,101 / 4.71
6	U.S. Bancorp (MN)	200	9,837,675 / 3.79
7	MB Financial Inc. (IL)	73	9,493,709 / 3.65
8	First Midwest Bancorp Inc. (IL)	110	9,389,396 / 3.61
9	Fifth Third Bancorp (OH)	115	7,834,029 / 3.02
10	Citigroup Inc. (NY)	35	7,343,000 / 2.83
12	Pro Forma Company	36	3,937,472 / 1.52
12	First Busey Corp. (IL)	27	2,966,082 / 1.14
40	First Community Finl Partners (IL)	9	971,390 / 0.37
<b>Market Total</b>		<b>3,817</b>	<b>259,750,178 / 100.00</b>

Source: SNL Financial



### Branch Map

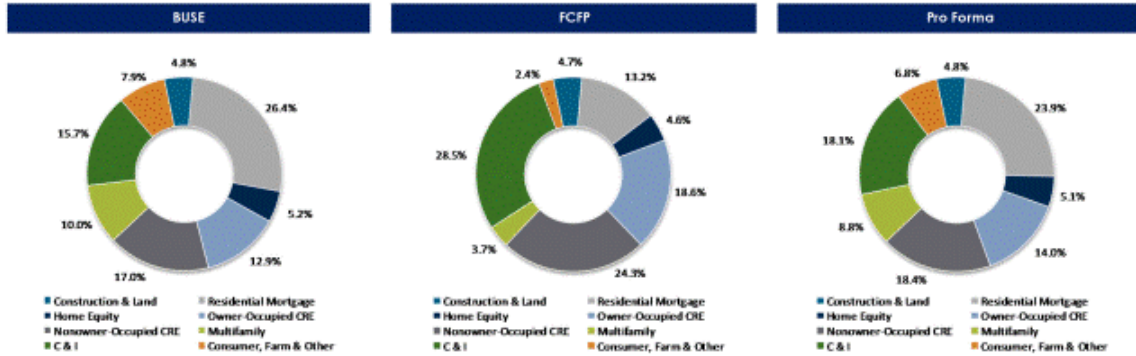
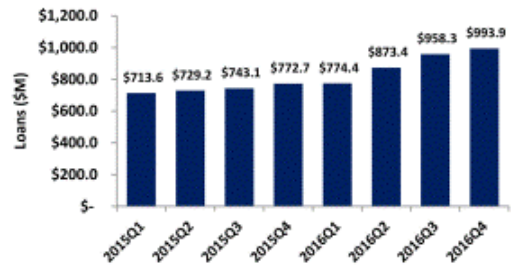


# Pro Forma Loan Portfolio

## First Community Loan Portfolio

- Well diversified loan portfolio with no one segment accounting for more than 29% of loans
- More than 35% growth in total loans since 1Q'15<sup>(1)</sup>
- C&I loans represent more than 28% of loans
- NPAs/Assets of 0.52% as of 12/31/2016

## First Community Loan Growth



Source: SNL Financial. Loan breakout as of 12/31/2016 based on bank-level regulatory data  
<sup>1</sup>Growth includes loans acquired through the Mazon State Bank acquisition

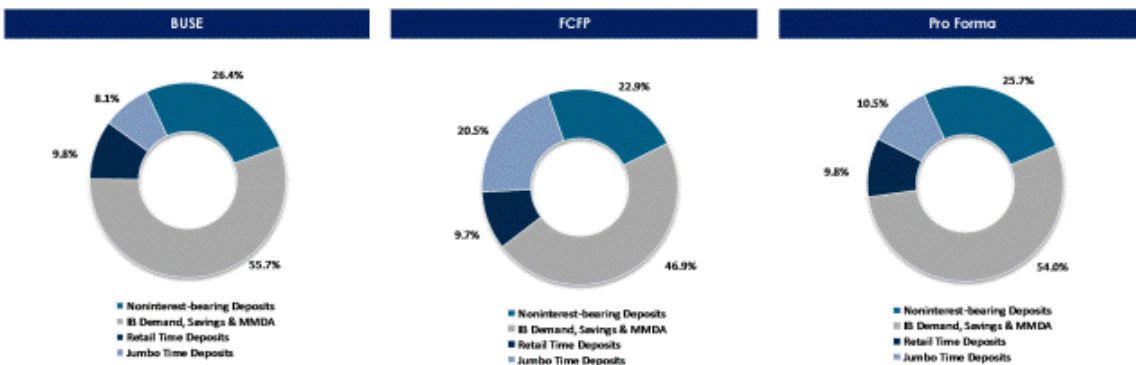
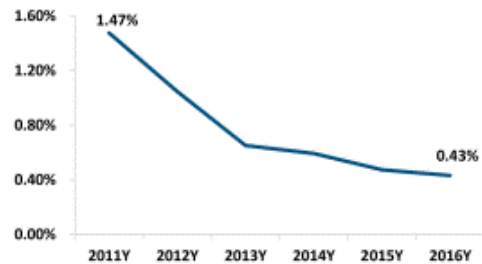


# Pro Forma Deposit Composition

## First Community Deposit Overview

- Core deposits representing approximately 79% of total deposits<sup>(1)</sup>
- Non-interest bearing deposits over 20% of total deposits
- Cost of deposits of 43 bps as of 12/31/16

## Cost of Deposits



Source: SNL Financial. Deposit breakout as of 12/31/2016 based on bank-level regulatory data  
<sup>1</sup>All deposits excluding time deposits greater than \$100 thousand. Based on 12/31/2016 bank-level regulatory data



## Appendix

### Historical Financial Highlights

	For the Years Ended:			For the Quarters Ended:			
	12/31/2014	12/31/2015	12/31/2016	3/31/2016	6/30/2016	9/30/2016	12/31/2016
<b>Balance Sheet (\$000)</b>							
Total Assets	924,075	1,040,652	1,268,210	1,060,862	1,125,362	1,246,598	1,268,210
Total Net Loans	676,026	760,978	982,249	763,071	861,324	946,002	982,249
Total Deposits	769,410	865,991	1,083,156	878,980	896,830	1,065,251	1,083,156
Total Equity	92,053	103,041	113,715	106,790	111,109	115,164	113,715
Loans / Deposits (%)	89.57	89.18	91.55	88.09	97.30	89.83	91.55
TCE / TA (%)	9.96	9.90	8.88	10.07	9.87	9.18	8.88
Tier 1 Ratio (%)	10.27	11.62	10.51	11.94	11.26	10.83	10.51
Total Capital Ratio (%)	13.55	14.69	12.99	14.99	14.14	13.52	12.99
<b>Profitability (\$000)</b>							
Pre-Tax Pre-Provision Income	11,620	12,742	16,497	2,917	3,823	5,537	4,220
Loan Loss Provision	3,000	(2,077)	1,066	0	500	383	183
Net Income Before Taxes	8,620	14,819	15,431	2,917	3,323	5,154	4,037
Net Income	5,883	9,819	11,107	2,028	2,265	4,135	2,679
ROAA (%)	0.65	0.99	1.00	0.78	0.84	1.36	0.85
ROAE (%)	6.23	10.08	10.17	7.68	8.36	14.50	9.44
Net Interest Margin (%)	3.39	3.26	3.50	3.36	3.39	3.40	3.42
Efficiency Ratio (%)	64.7	61.7	61.9	65.1	59.9	60.6	61.8
NonInt Inc. / Op. Rev. (%)	6.1	6.1	7.3	6.3	6.8	7.9	8.1
<b>Asset Quality (%)</b>							
NPLs / Loans	1.41	0.54	0.59	0.56	0.55	1.31	0.59
NPAs / Assets (1)	1.03	0.66	0.52	0.70	0.43	0.73	0.52
Reserves / Loans	2.02	1.52	1.18	1.46	1.38	1.28	1.18
NCOs / Avg Loans	0.73	0.01	0.13	0.21	(0.10)	0.06	0.32

Source: SNL Financial and company filings  
<sup>1</sup>NPAs / Assets excludes restructured loans