UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2022

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

Commission file number 0-15950

FIRST BUSEY CORPORATION

(Exact name of registrant as specified in its charter)

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

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

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

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

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

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

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

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

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

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

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

Large accelerated filer x	Accelerated filer o
Non-accelerated filer o	Smaller reporting company ☐
Emerging growth company ☐	

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. x

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. o

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). o

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates on the last business day of the registrant's most recently completed second fiscal quarter was $1.2 billion, determined using a per share closing price for the registrant's common stock on that date of $22.85, as quoted on The Nasdaq Global Select Market.

As of February 23, 2023, there were 55,288,101 shares of the registrant's common stock, $0.001 par value, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement for the 2023 Annual Meeting of Stockholders of First Busey Corporation to be held May 24, 2023, are incorporated by reference in this Form 10-K in response to Part III.

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FIRST BUSEY CORPORATION
FORM 10-K ANNUAL REPORT

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GLOSSARY

We use acronyms, abbreviations, and other terms throughout this Annual Report, as defined in the glossary below:

Term	Definition
2020 Equity Plan	First Busey's 2020 Equity Incentive Plan
ACL	Allowance for credit losses
Annual Report	Annual report filed with the SEC on Form 10-K pursuant to Section 13 or 15(d) of the Exchange Act
AOCI	Accumulated other comprehensive income (loss)
API	Application programming interface
ARRC	Alternative Reference Rates Committee
ASC	Accounting Standards Codification
ASU	Accounting Standards Update
BaaS	Banking as a Service
Basel III	2010 capital accord adopted by the international Basel Committee on Banking Supervision
Basel III Rule	Regulations promulgated by U.S. federal banking agencies – the OCC, the Federal Reserve, and the FDIC – to both enforce implementation of certain aspects of the Basel III capital reforms and effect certain changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act
BHCA	Bank Holding Company Act of 1956, as amended
bps	basis points
CAC	Cummins-American Corp.
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CECL	ASU 2016-13, codified as ASC Topic 326 *"Financial Instruments-Credit Losses,"* which established the Current Expected Credit Losses methodology for measuring credit losses on financial instruments
CFPB	Consumer Financial Protection Bureau
COSO	Committee of Sponsoring Organizations of the Treadway Commission
COVID-19	Coronavirus disease 2019
CRA	Community Reinvestment Act
CRE	Commercial real estate
CRE Guidance	Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices guidance issued jointly by the OCC, the Federal Reserve, and the FDIC
Current Report	Current report filed with the SEC on Form 8-K pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
DFPR	Illinois Department of Financial and Professional Regulation
DIF	Deposit Insurance Fund of the FDIC
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act
DSU	Deferred stock unit
Durbin	The Durbin Amendment to the Dodd-Frank Act, requiring the Federal Reserve to establish a maximum permissible interchange fee for many types of debit transactions
ESPP	Employee Stock Purchase Plan
Exchange Act	Securities Exchange Act of 1934, as amended
Fair value	The price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date, as defined in ASC Topic 820 *"Fair Value Measurement"*
FASB	Financial Accounting Standards Board
FDIC	Federal Deposit Insurance Corporation

Term	Definition
Federal Reserve	Board of Governors of the Federal Reserve System
FHLB	Federal Home Loan Bank
First Busey	First Busey Corporation, together with its wholly-owned consolidated subsidiaries; also, “Busey,” the “Company,” “we,” “us,” and “our”
First Busey Risk Management	First Busey Risk Management, Inc.
First Community	First Community Financial Partners, Inc.
FirsTech	FirsTech, Inc.
FOMC	Federal Open Market Committee
GAAP	U.S. Generally Accepted Accounting Principles
GSB	Glenview State Bank
Illinois CRA	Illinois Community Reinvestment Act
Interagency Statement	Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus, issued on March 22, 2020, and revised on April 7, 2020
LCR	Liquidity coverage ratio
LIBOR	London Interbank Offered Rate
LOCOM	Lower of Cost or Market, an accounting approach under which assets are carried at amortized historical cost less write-offs and downward fair value adjustments, as may be applicable
Nasdaq	National Association of Securities Dealers Automated Quotations
NM	Not meaningful
NMTC	New Markets Tax Credit
NSFR	Net stable funding ratio
OCC	Office of the Comptroller of the Currency
OCI	Other comprehensive income (loss)
OREO	Other real estate owned
PCD	Purchased credit deteriorated
PCI	Purchased credit impaired
PPP	Paycheck Protection Program
PSU	Performance-based restricted stock unit
Pulaski	Pulaski Financial Corp.
Quarterly Report	Quarterly report filed with the SEC on Form 10-Q pursuant to Section 13 or 15(d) of the Exchange Act
Regulatory Relief Act	Economic Growth, Regulatory Relief, and Consumer Protection Act
RSU	Restricted stock unit
SBA	U.S. Small Business Administration
SEC	U.S. Securities and Exchange Commission
Securities Act	Securities Act of 1933, as amended
SOFR	Secured Overnight Financing Rate published by the Federal Reserve
TDR	Troubled debt restructuring
Term loan	$60 million term loan provided for in the Second Amended and Restated Credit Agreement, dated May 28, 2021
U.S.	United States of America
U.S. Treasury	U.S. Department of the Treasury
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

PART I

ITEM 1. BUSINESS

INTRODUCTION

First Busey, a Nevada corporation organized in 1980, is a $12.3 billion financial holding company. First Busey conducts a broad range of financial services through its wholly-owned bank subsidiary, Busey Bank, with banking centers in Illinois, Missouri, Florida, and Indiana. First Busey is headquartered in Champaign, Illinois, and its common stock is traded on The Nasdaq Global Select Market under the symbol “BUSE.”

ACQUISITIONS

Over the last several years, First Busey completed the following acquisitions as part of our strategy to expand into new service areas and to provide broader coverage in areas where we already maintain a presence:

Acquisition Date	Companies Acquired
January 8, 2015	Herget Financial Corp. and its wholly-owned bank subsidiary, Herget Bank, National Association
April 30, 2016	Pulaski Financial Corp. and its wholly-owned subsidiary, Pulaski Bank, National Association
July 2, 2017	First Community Financial Partners, Inc. and its wholly-owned subsidiary, First Community Financial Bank
October 1, 2017	Mid Illinois Bancorp, Inc. and its wholly-owned subsidiary, South Side Trust & Savings Bank of Peoria
January 31, 2019	The Bank Ed Corp. and its wholly-owned subsidiary, TheBANK of Edwardsville
August 31, 2019	Investors' Security Trust Company
May 31, 2021	Cummins-American Corp. and its wholly-owned subsidiary, Glenview State Bank

Further information related to acquisitions made prior to January 1, 2021, has been presented in the Annual Reports previously filed with the SEC corresponding to the year of each acquisition.

2021 Acquisition

On May 31, 2021, First Busey acquired CAC, the holding company for GSB, through a merger transaction. The partnership enhances the Company’s existing deposit, commercial banking, and wealth management presence in the Chicago-Naperville-Elgin, IL-IN-WI Metropolitan Statistical Area. First Busey operated GSB as a separate banking subsidiary until August 14, 2021, when it was merged with and into Busey Bank. At that time, all GSB banking centers became branches of Busey Bank.

See “*Note 2. Acquisitions*” in the Notes to the Consolidated Financial Statements for further information relating to this acquisition.

SUBSIDIARIES OF FIRST BUSEY

First Busey conducts the business of banking, related banking services, asset management, brokerage, and fiduciary services through Busey Bank, payment technology solutions through FirsTech, and captive insurance through First Busey Risk Management. First Busey also has various other subsidiaries that are not significant to the consolidated entity.

Busey Bank

Busey Bank is an Illinois state-chartered bank organized in 1868 with its headquarters in Champaign, Illinois. Busey Bank has 46 banking centers in Illinois, eight in Missouri, three in southwest Florida, and one in Indianapolis, Indiana.

Busey Bank offers a range of diversified financial products and services for consumers and businesses, including online and mobile banking capabilities to conveniently serve our customers’ needs. Commercial services include commercial, commercial real estate, real estate construction, and agricultural loans, as well as commercial depository services such as cash management. Retail banking services include residential real estate, home equity lines of credit and consumer loans, customary types of demand and savings deposits, money transfers, safe deposit services, and individual retirement accounts and other fiduciary services through our banking center, automated teller machines, and technology-based networks.

Busey Bank’s principal sources of income are interest and fees on loans and investments, wealth management fees, and service fees. Principal expenses are interest paid on deposits and borrowings and general operating expenses. Busey Bank’s primary markets are central Illinois; northern Illinois, including the Chicago metropolitan area; the St. Louis, Missouri, metropolitan area; southwest Florida; and central Indiana.

Busey Bank provides a full range of asset management, investment, brokerage, fiduciary, philanthropic advisory, tax preparation, and farm management services to individuals, businesses, and foundations through its Wealth Management business. As of December 31, 2022, $11.1 billion of assets were under care. For individuals, Busey Bank provides investment management, trust and estate advisory services, and financial planning. For businesses, it provides investment management, business succession planning, and employee retirement plan services. For foundations, Busey Bank provides investment management, investment strategy consulting, and fiduciary services. Brokerage-related services are offered by Busey Investment Services, a division of Busey Bank, through a third-party arrangement. In addition, Busey Bank provides professional farm management and brokerage services to the agricultural industry.

FirsTech

FirsTech, a subsidiary of Busey Bank, provides comprehensive and innovative payment technology solutions. Through our payment platform, which utilizes an API cloud-based platform, our technology provides for fully integrated payments capabilities. FirsTech's multi-channel payment platform allows businesses to collect payments from their customers in a variety of ways, to enable fast, frictionless payments. Payment method vehicles include text, interactive voice response, electronic payment concentration delivered to Automated Clearing House networks, money management and credit card networks, walk-in payment processing, direct debit services, and lockbox remittance processing for customers to make payments by mail. FirsTech also provides additional tools to help clients with billing, reconciliation, bill reminders, and treasury services. Our client base represents a diverse set of industries, with a higher concentration in highly regulated industries, such as financial institutions, utility, insurance, and telecommunications industries. The Company continues to make strategic investments across key areas of the business including technology, product, sales, and operations.

First Busey Risk Management

First Busey Risk Management, a wholly-owned subsidiary of First Busey, incorporated in Nevada, is a captive insurance company that insures against certain risks unique to the operations of the Company and its subsidiaries and for which insurance may not be currently available or economically feasible in today’s insurance marketplace. First Busey Risk Management pools resources with several other similar insurance company subsidiaries of financial institutions to spread a limited amount of risk among themselves.

BANKING CENTER MARKETS

Busey Bank serves the Illinois banking market with 46 banking centers. Our Illinois markets feature several Fortune 1000 companies. Those organizations, coupled with large healthcare and higher education sectors, anchor the communities in which they are located and have provided a comparatively stable foundation for housing, employment, and small business. Ten of our banking centers in Illinois are located within the Chicago Metropolitan Statistical Area, and 12 of our banking centers in Illinois are located within the St. Louis Metropolitan Statistical Area.

Busey Bank has eight banking centers in Missouri. St. Louis, Missouri has a diverse economy with major employment sectors including health care, financial services, professional and business services, and retail. We have a total of 20 banking centers within the boundaries of the St. Louis Metropolitan Statistical Area, including branches in both Illinois and Missouri.

Busey Bank has three banking centers in southwest Florida, an area which has experienced strong population growth, job growth, and an expanded housing market, as well as the benefits of a tourism and winter resort economy.

Busey Bank has one banking center in the Indianapolis, Indiana area, which is the most populous city of Indiana with a diverse economy, particularly because it serves as the headquarters of many large corporations.

COMPETITION

Busey Bank competes actively with national and state banks, savings and loan associations, and credit unions for deposits and loans mainly in Illinois; the St. Louis, Missouri, metropolitan area; southwest Florida; and central Indiana. Busey Bank competes for real estate and other loans primarily on the basis of type of loan, interest rates and loan fees, and the quality of services provided. Busey Bank and FirsTech compete with other financial institutions, including asset management and trust companies, security broker/dealers, personal loan companies, insurance companies, finance companies, leasing companies, mortgage companies, payment technology solution companies, fintech companies, and certain governmental agencies, all of which actively engage in marketing various types of loans, deposit accounts, wealth management, and other products and services.

Busey Bank faces substantial competition in attracting deposits from other commercial banks, savings institutions, digital banks, money market and mutual funds, credit unions, insurance agencies, brokerage firms, and other investment vehicles. Customers for banking services are generally influenced by convenience, quality of service, personal contacts, price of services, and availability of products. Busey Bank attracts a significant amount of deposits through its banking centers, primarily from the communities in which those banking centers are located; therefore, competition for those deposits is principally from other commercial banks, savings institutions, and credit unions located in the same communities. Busey Bank competes for deposits by offering a variety of deposit accounts at competitive rates, high-quality customer service, convenient business hours, technology enabled solutions including internet and mobile banking, and convenient banking centers with inter-branch deposit and withdrawal privileges.

Based on information obtained from the FDIC Summary of Deposits dated June 30, 2022, the most recent report available, Busey Bank ranked in the top 10 in total deposits in nine Illinois counties:

As of June 30, 2022	
County	**Busey Bank Market Share Ranking**
Champaign	1
Macon	1
Madison	1
St. Clair	3
Mclean	4
Peoria	4
Tazewell	4
Grundy	5
Will	7

SUPERVISION, REGULATION, AND OTHER FACTORS

General

FDIC-insured institutions, like Busey Bank, as well as their holding companies and affiliates, are extensively regulated under federal and state law. As a result, the Company’s growth and earnings performance may be affected not only by management decisions and general economic conditions, but also by the requirements of federal and state statutes and by the regulations and policies of various bank regulatory agencies, including the DFPR, the Federal Reserve, the FDIC and the CFPB. Furthermore, taxation laws administered by the Internal Revenue Service and state taxing authorities, accounting rules developed by the FASB, securities laws administered by the SEC and state securities authorities, and anti-money laundering laws enforced by the U.S. Treasury have an impact on the Company’s business. The effect of these statutes, regulations, regulatory policies, and accounting rules are significant to the Company’s operations and results.

Federal and state banking laws impose a comprehensive system of supervision, regulation, and enforcement on the operations of FDIC-insured institutions, their holding companies, and affiliates that is intended primarily for the protection of the FDIC-insured deposits and depositors of banks, rather than stockholders. These laws, and the regulations of the bank regulatory agencies issued under them, affect, among other things, the scope of the Company’s business; the kinds and amounts of investments the Company and Busey Bank may make; required capital levels relative to assets; the nature and amount of collateral for loans; the establishment of branches; the ability to merge, consolidate and acquire; dealings with the Company’s and Busey Bank’s insiders and affiliates; and the Company’s payment of dividends.

In reaction to the global financial crisis and particularly following the passage of the Dodd-Frank Act in 2010, the Company experienced heightened regulatory requirements and scrutiny. Although the reforms primarily targeted systemically important financial service providers (at the time, those with assets of $50 billion and greater), certain provisions of the law triggered at $10.0 billion in assets and the influence of other provisions filtered down in varying degrees to community banks over time, causing the Company's compliance and risk management processes, and the costs thereof, to increase. The Regulatory Relief Act provided meaningful relief for banks and their holding companies that were not considered systemically important (amended to be those with assets under $250 billion). However, the $10.0 billion threshold remained in place for certain Dodd-Frank Act reforms that are now applicable to the Company, as discussed below.

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

The following is a summary of the material elements of the supervisory and regulatory framework applicable to the Company and Busey Bank. It does not describe all of the statutes, regulations, and regulatory policies that apply, nor does it restate all of the requirements of those that are described. The descriptions are qualified in their entirety by reference to particular statutory and regulatory provisions.

The $10.0 billion Threshold

As indicated in the introduction above, the Dodd-Frank Act included a number of requirements that triggered when a banking entity crossed over $10.0 billion in assets. Those included requirements for stress testing capital, maintenance of a risk committee, adherence to the Volcker Rule's complicated prohibitions on proprietary trading and ownership of private funds, limitations on interchange fees for certain debit transactions, clearing of swap agreements, and examination and enforcement related to consumer financial services by the CFPB, in addition to a number of heightened reporting requirements. The Regulatory Relief Act eliminated the stress test and risk committee requirements for banking entities between $10.0 billion and $50 billion, but the other Dodd-Frank regulations and reporting requirements were not changed.

The Company crossed the $10.0 billion threshold in 2020. The material consequences to the Company of crossing the $10.0 billion threshold are as follows:

Interchange Fees

Durbin required the Federal Reserve to establish a maximum permissible interchange fee for many types of debit transactions. Interchange fees, also known as "swipe" fees, are charges that merchants pay to card-issuing banks, such as Busey Bank, for processing electronic payment transactions. The Federal Reserve set the maximum interchange fee at 21 cents, plus five basis points of the transaction value. The Federal Reserve also adopted a rule to allow a debit card issuer to recover one cent per transaction for fraud prevention purposes if the issuer complies with certain fraud-related requirements required by the Federal Reserve. Durbin limitations are applicable to any banking entity with over $10.0 billion in assets and became applicable to Busey Bank on July 1, 2022, following a six-month transition period. Compliance with Durbin has reduced Busey Bank's earnings on the covered debit transactions.

Volcker Rule

The Volcker Rule (also a part of the Dodd-Frank Act) restricts the ability of banking entities (holding companies and their affiliates) with over $10.0 billion in assets to sponsor or invest in private funds, or to engage in certain types of proprietary trading. In October 2019, the Federal Reserve, OCC, FDIC, Commodity Futures Trading Commission, and SEC finalized rules to tailor the application of the Volcker Rule based on the size and scope of a banking entity's trading activities and to clarify and amend certain definitions, requirements, and exemptions. Banking entities have two years (with a possibility of extensions) to comply with the Volcker requirements after crossing the $10.0 billion threshold. The Company does not materially engage in the activities prohibited by the Volcker Rule; therefore, the application of the rule will not have a material effect on the operations of the Company and its subsidiaries.

CFPB Examination and Enforcement

Although the CFPB's rules issued under federal consumer financial protection laws are applicable to all providers of consumer financial services, the CFPB only has examination and enforcement authority over banks with more than $10.0 billion in assets (measured over four consecutive quarters). Busey Bank continues to be examined for compliance with consumer laws by its primary federal regulatory agency, the FDIC, and in August 2022 began the transition to CFPB oversight.

Clearing Swaps Agreements

Banks with over $10.0 billion in assets are required to clear swaps agreements on exchanges. Busey Bank began to comply with the exchange requirement beginning in 2021.

Risk Committee

The Dodd Frank Act required publicly traded bank holding companies with more than $10.0 billion in total consolidated assets to establish and maintain a risk committee. Pursuant to the Federal Reserve's final rules issued under the Regulatory Relief Act, that threshold was increased to $50.0 billion. Although it is not yet required to have a risk committee in place, the Company established a committee comprised of holding company directors in 2018 to oversee risk matters in preparation for future growth.

The Role of Capital

Regulatory capital represents the net assets of a banking organization available to absorb losses. Because of the risks attendant to their business, FDIC-insured institutions generally are required to hold more capital than other businesses, which directly affects the Company's earnings capabilities. Although capital historically has been one of the key measures of the financial health of both bank holding companies and banks, its role became fundamentally more important in the wake of the global financial crisis, as the banking regulators recognized that the amount and quality of capital held by banks prior to the crisis was insufficient to absorb losses during periods of severe stress.

Capital Levels

Banks have been required to hold minimum levels of capital based on guidelines established by the bank regulatory agencies since 1983. The minimums have been expressed in terms of ratios of "capital" divided by "total assets." The capital guidelines for U.S. banks beginning in 1989 have been based upon international capital accords, known as "Basel" rules, adopted by the Basel Committee on Banking Supervision, a committee of central banks and bank supervisors that acts as the primary global standard-setter for prudential regulation, as implemented by the U.S. bank regulatory agencies on an interagency basis. The accords recognized that bank assets for the purpose of the capital ratio calculations needed to be risk weighted (the theory being that riskier assets should require more capital) and that off-balance sheet exposures needed to be factored into the calculations. Following the global financial crisis, the Group of Governors and Heads of Supervision, the oversight body of the Basel Committee on Banking Supervision, announced agreement on a strengthened set of capital requirements for banking organizations around the world, known as Basel III, to address deficiencies recognized in connection with the global financial crisis.

The Basel III Rule

U.S. federal banking agencies adopted the Basel III regulatory capital reforms in pertinent part, and, at the same time, promulgated rules effecting certain changes required by the Dodd-Frank Act (the "Basel III Rule") in regulations that were effective (with a number of phase-ins) in 2015. The Basel III Rule established capital standards for banks and bank holding companies that are meaningfully more stringent than those in place previously: it increased the required quantity and quality of capital; and it required a more complex, detailed, and calibrated assessment of risk in the calculation of risk weightings. The Basel III Rule is applicable to all banking organizations that are subject to minimum capital requirements, including federal and state banks and savings and loan associations, as well as to most bank and savings and loan holding companies. First Busey Corporation and Busey Bank are each subject to the Basel III Rule as described below.

Not only did the Basel III Rule increase most of the required minimum capital ratios in effect prior to January 1, 2015, but also, in requiring that forms of capital be of higher quality to absorb loss, it introduced the concept of Common Equity Tier 1 Capital, which consists primarily of common stock, related surplus (net of Treasury stock), retained earnings, and Common Equity Tier 1 minority interests subject to certain regulatory adjustments. The Basel III Rule also changed the definition of capital by establishing more stringent criteria that instruments must meet to be considered Additional Tier 1 Capital (primarily non-cumulative perpetual preferred stock that meets certain requirements) and Tier 2 Capital (primarily other types of preferred stock and subordinated debt, subject to limitations). The Basel III Rule also constrained the inclusion of minority interests, mortgage-servicing assets, and deferred tax assets in capital and required deductions from Common Equity Tier 1 Capital in the event that such assets exceeded a percentage of a banking institution's Common Equity Tier 1 Capital.

Minimum Capital Ratio Requirements

The Basel III Rule requires **minimum** capital ratios as follows:

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

Capital Conservation Buffer

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

Well-Capitalized Requirements

The ratios described above are minimum standards for banking organizations to be considered "adequately capitalized." Bank regulatory agencies uniformly encourage banks to hold more capital and be "well-capitalized" and, to that end, federal law and regulations provide various incentives for banking organizations to maintain regulatory capital at levels in excess of minimum regulatory requirements. For example, a banking organization that is well-capitalized may: (i) qualify for exemptions from prior notice or application requirements otherwise applicable to certain types of activities; (ii) qualify for expedited processing of other required notices or applications; and (iii) accept, roll-over or renew brokered deposits. Higher capital levels also could be required if warranted by the particular circumstances or risk profiles of individual banking organizations. For example, the Federal Reserve's capital guidelines contemplate that additional capital may be required to take adequate account of, among other things, interest rate risk, the risks posed by concentrations of credit, nontraditional activities, or securities trading activities. Further, any banking organization experiencing or anticipating significant growth would be expected to maintain capital ratios, including tangible capital positions (*i.e.*, Tier 1 Capital less all intangible assets), well above the minimum levels.

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

- A Common Equity Tier 1 Capital ratio to risk-weighted assets of 6.5% or more;
- A ratio of Tier 1 Capital to total risk-weighted assets of 8% or more;
- A ratio of Total Capital to total risk-weighted assets of 10% or more; and
- A leverage ratio of Tier 1 Capital to total adjusted average quarterly assets of 5% or greater.

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

As of December 31, 2022: (i) Busey Bank was not subject to a directive from the FDIC to increase its capital and (ii) Busey Bank was well-capitalized, as defined by FDIC regulations. As of December 31, 2022, the Company had regulatory capital in excess of the Federal Reserve's requirements and met the requirements to be well-capitalized. The Company also is in compliance with the capital conservation buffer.

Prompt Corrective Action

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

Supervision and Regulation of First Busey Corporation

General

First Busey Corporation, as the sole stockholder of Busey Bank, is a bank holding company. As a bank holding company, First Busey Corporation is registered with, and subject to regulation, supervision, and enforcement by, the Federal Reserve under the BHCA. First Busey Corporation is legally obligated to act as a source of financial and managerial strength to Busey Bank and to commit resources to support it in circumstances where we might not otherwise do so. Under the BHCA, First Busey Corporation is subject to periodic examination by the Federal Reserve and is required to file with the Federal Reserve periodic reports of its operations and such additional information regarding First Busey Corporation and Busey Bank as the Federal Reserve may require.

Acquisitions, Activities and Financial Holding Company Election

The primary purpose of a bank holding company is to control and manage banks. The BHCA generally requires the prior approval of the Federal Reserve for any merger involving a bank holding company or any acquisition by a bank holding company of another bank or bank holding company. Subject to certain conditions (including deposit concentration limits established by the BHCA), the Federal Reserve may allow a bank holding company to acquire banks located in any state of the U.S. In approving interstate acquisitions, the Federal Reserve is required to give effect to applicable state law limitations on the aggregate amount of deposits that may be held by the acquiring bank holding company and its FDIC-insured institution affiliates in the state in which the target bank is located (provided that those limits do not discriminate against out-of-state institutions or their holding companies) and state laws that require that the target bank have been in existence for a minimum period of time (not to exceed five years) before being acquired by an out-of-state bank holding company. Furthermore, in accordance with the Dodd-Frank Act, bank holding companies must be well-capitalized and well-managed in order to effect interstate mergers or acquisitions. For a discussion of the capital requirements, see "*Item 1. Business—Supervision, Regulation and Other Factors—The Role of Capital*" above.

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

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

Change in Control

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

Capital Requirements

Bank holding companies are required to maintain capital in accordance with Federal Reserve capital adequacy requirements. For a discussion of capital requirements, see "*Item 1. Business—Supervision, Regulation and Other Factors—The Role of Capital*" above.

Dividend Payments

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

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

Incentive Compensation

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

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

Monetary Policy

The monetary policy of the Federal Reserve has a significant effect on the operating results of financial or bank holding companies and their subsidiaries, which was exacerbated by the COVID-19 pandemic. Among the tools available to the Federal Reserve to affect the money supply are open market transactions in U.S. government securities and changes in the discount rate on bank borrowings. These tools are used in varying combinations to influence overall growth and distribution of bank loans, investments, and deposits, and their use may affect interest rates charged on loans or paid on deposits.

Federal Securities Regulation

First Busey Corporation's common stock is registered with the SEC under the Securities Act and the Exchange Act. Consequently, First Busey Corporation is subject to the information, proxy solicitation, insider trading and other restrictions and requirements of the SEC under the Exchange Act.

Corporate Governance

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

Supervision and Regulation of Busey Bank

General

Busey Bank is an Illinois-chartered bank. Its deposit accounts are insured by the DIF to the maximum extent provided under federal law and FDIC regulations, currently $250,000 per insured depositor category. As an Illinois-chartered FDIC-insured bank, Busey Bank is subject to the examination, supervision, reporting, and enforcement requirements of the DFPR, the chartering authority for Illinois banks. Busey Bank is also regulated by the FDIC, designated by federal law as the primary federal regulator of insured state banks that, like Busey Bank, are not members of the Federal Reserve System.

Deposit Insurance

As an FDIC-insured institution, Busey Bank is required to pay deposit insurance premium assessments to the FDIC. The FDIC has adopted a risk-based assessment system whereby FDIC-insured institutions pay insurance premiums at rates based on their risk classification. FDIC assessment rates for institutions that have more than $10.0 billion in assets, such as Busey Bank, are calculated based on a "scorecard" methodology that seeks to capture both the probability that an individual large institution will fail and the magnitude of the impact on the DIF if such a failure occurs, based primarily on the difference between the institution's average of total assets and average tangible equity. The FDIC has the ability to make discretionary adjustments to the total score, up or down, based upon significant risk factors that are not adequately captured in the scorecard. For institutions like Busey Bank, after accounting for potential base-rate adjustments, the total assessment rate could range from 1.5 to 40 basis points on an annualized basis. An institution's assessment is determined by multiplying its assessment rate by its assessment base, which is asset based.

The reserve ratio is the DIF balance divided by estimated insured deposits. In response to the global financial crisis, the Dodd-Frank Act increased the minimum reserve ratio from 1.15% to 1.35% of the estimated amount of total insured deposits. Prior to the COVID-19 pandemic, the reserve ratio briefly exceeded the statutory threshold, but, because of extraordinary insured deposit growth caused by an unprecedented inflow of deposits during pandemic, the reserve ratio fell below 1.35% and continues to be below the threshold. The FDIC staff closely monitors the factors that affect the reserve ratio, and in order to raise the reserve ratio to 1.35% by September 30, 2028, the FDIC increased the initial deposit insurance rates by two basis points, beginning with the first quarterly assessment period of the 2023 assessments. As a result of this change, the Bank's FDIC insurance assessment rate will increase beginning in 2023.

The DIF balance was approximately $125.5 billion on September 30, 2022, up $1.0 billion from the end of the second quarter. The reserve ratio remained at 1.26%, as growth in the fund balance kept pace with growth in insured deposits. The FDIC staff continues to closely monitor the factors that affect the reserve ratio, and any change could impact FDIC assessments.

Supervisory Assessments

All Illinois-chartered banks are required to pay supervisory assessments to the DFPR to fund the operations of that agency. The amount of the assessment is calculated on the basis of each bank's total assets. During the year ended December 31, 2022, Busey Bank paid supervisory assessments to the DFPR totaling approximately $0.9 million.

Capital Requirements

Banks are generally required to maintain capital levels in excess of other businesses. For a discussion of capital requirements, see "*Item 1. Business—Supervision, Regulation and Other Factors—The Role of Capital*" above.

Liquidity Requirements

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

In addition to liquidity guidelines already in place, federal bank regulatory agencies implemented the Basel III LCR in September 2014, which requires large financial firms to hold levels of liquid assets sufficient to protect against constraints on their funding during times of financial turmoil, and in 2016 proposed implementation of the NSFR. While these rules do not, and will not, apply to Busey Bank, it continues to review its liquidity risk management policies in light of developments.

Dividend Payments

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

State Bank Investments and Activities

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

Insider Transactions

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

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

Safety and Soundness Standards/Risk Management

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

In general, the safety and soundness standards prescribe the goals to be achieved in each area, and each institution is responsible for establishing its own procedures to achieve those goals. While regulatory standards do not have the force of law, if an institution operates in an unsafe and unsound manner, the FDIC-insured institution’s primary federal regulator may require the institution to submit a plan for achieving and maintaining compliance. If an FDIC-insured institution fails to submit an acceptable compliance plan, or fails in any material respect to implement a compliance plan that has been accepted by its primary federal regulator, the regulator is required to issue an order directing the institution to cure the deficiency. Until the deficiency cited in the regulator’s order is cured, the regulator may restrict the FDIC-insured institution’s rate of growth, require the FDIC-insured institution to increase its capital, restrict the rates the institution pays on deposits, or require the institution to take any action the regulator deems appropriate under the circumstances. Noncompliance with safety and soundness may also constitute grounds for other enforcement action by the federal bank regulatory agencies, including cease and desist orders and civil money penalty assessments.

During the past decade, bank regulatory agencies have increasingly emphasized the importance of sound risk management processes and strong internal controls when evaluating the activities of the FDIC-insured institutions they supervise. Properly managing risk has been identified as critical to the conduct of safe and sound banking activities, and has become even more important as new technologies, product innovation, and the size and speed of financial transactions have changed the nature of banking markets. The agencies have identified a spectrum of risks facing a banking institution including, but not limited to, credit, market, liquidity, operational, legal, and reputational risk. The key risk themes identified by the Company for 2023 are discussed under *“Item 1A. Risk Factors”* below. Busey Bank is expected to have active board and senior management oversight; adequate policies, procedures, and limits; adequate risk measurement, monitoring, and management information systems; and comprehensive internal controls.

Privacy and Cybersecurity

Busey Bank is subject to many U.S. federal and state laws and regulations governing requirements for maintaining policies and procedures to protect non-public confidential information of its customers. These laws require Busey Bank to periodically disclose its privacy policies and practices relating to sharing such information and permit consumers to opt out of their ability to share information with unaffiliated third parties under certain circumstances. They also impact Busey Bank’s ability to share certain information with affiliates and non-affiliates for marketing and/or non-marketing purposes, or to contact customers with marketing offers. In addition, Busey Bank is required to implement a comprehensive information security program that includes administrative, technical, and physical safeguards to ensure the security and confidentiality of customer records and information. These security and privacy policies and procedures, for the protection of personal and confidential information, are in effect across all businesses and geographic locations.

Branching Authority

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

Transaction Account Reserves

Federal law requires FDIC-insured institutions to maintain reserves against their transaction accounts (primarily NOW and regular checking accounts) to provide liquidity. The amount of reserves is determined by the Federal Reserve based on tranches of zero, three, and ten percent of a bank’s transaction account deposits. However, in March 2020, in an unprecedented move, the Federal Reserve announced that the banking system had ample reserves, and, as reserve requirements no longer played a significant role in this regime, it reduced all reserve tranches to zero percent, thereby freeing banks from the legally mandated reserve maintenance requirement. The action permits Busey Bank to loan or invest funds that previously were unavailable. The Federal Reserve has indicated that it expects to continue to operate in an ample reserves regime for the foreseeable future.

Community Reinvestment Act Requirements

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

In May 2022, the bank regulatory agencies issued a notice of proposed rulemaking called the Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations (the "CRA Proposal"). The CRA Proposal is designed to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. More specifically, the bank regulatory agencies described the goals of the CRA Proposal as follows: (i) to expand access to credit, investment, and basic banking services in low and moderate-income communities; (ii) to adapt to changes in the banking industry, including mobile and internet banking by modernizing assessment areas while maintaining a focus on branch based areas; (iii) to provide greater clarity, consistency, and transparency in the application of the regulations through the use of standardized metrics as part of CRA evaluations and clarifying eligible CRA activities focused on low- and moderate-income communities and under-served rural communities; (iv) to tailor CRA rules and data collection to bank size and business model; and (v) to maintain a unified approach among the regulators. A final rule has not yet been issued.

In 2022, Busey Bank, like all Illinois chartered banks, became subject to state level CRA standards, following passage of the Illinois CRA. This means that, in addition to the federal CRA review, Busey Bank will be reviewed by the DFPR to assess Busey Bank’s record of meeting the credit needs of its communities. Like the potential impact under the federal CRA, applications for additional acquisitions or activities would be affected by the evaluation of Busey Bank’s effectiveness in meeting its Illinois CRA requirements.

Anti-Money Laundering

The USA PATRIOT Act, the Bank Secrecy Act and other similar laws are designed to deny terrorists and criminals the ability to obtain access to the U.S. financial system and have significant implications for FDIC-insured institutions and other businesses involved in the transfer of money. These laws mandate financial services companies to have policies and procedures with respect to measures designed to address the following matters: (i) customer identification programs; (ii) money laundering; (iii) terrorist financing; (iv) identifying and reporting suspicious activities and currency transactions; (v) currency crimes; and (vi) cooperation between FDIC-insured institutions and law enforcement authorities.

Concentrations in Commercial Real Estate

Concentration risk exists when FDIC-insured institutions deploy too many assets to any one industry or segment. A concentration in CRE is one example of regulatory concern. The interagency CRE Guidance provides supervisory criteria, including the following numerical indicators, to assist bank examiners in identifying banks with potentially significant CRE loan concentrations that may warrant greater supervisory scrutiny: (i) CRE loans exceeding 300% of capital and increasing 50% or more in the preceding three years; or (ii) construction and land development loans exceeding 100% of capital. The CRE Guidance does not limit banks' levels of CRE lending activities, but rather guides institutions in developing risk management practices and levels of capital that are commensurate with the level and nature of their CRE concentrations. On December 18, 2015, federal banking agencies issued a statement to reinforce prudent risk-management practices related to CRE lending, having observed substantial growth in many CRE asset and lending markets, increased competitive pressures, rising CRE concentrations in banks, and an easing of CRE underwriting standards. Federal bank agencies reminded FDIC-insured institutions to maintain underwriting discipline and exercise prudent risk-management practices to identify, measure, monitor, and manage the risks arising from CRE lending. In addition, FDIC-insured institutions must maintain capital commensurate with the level and nature of their CRE concentration risk. As of December 31, 2022, Busey Bank did not exceed these guidelines.

Consumer Financial Services

The historical structure of federal consumer protection regulation applicable to all providers of consumer financial products and services changed significantly on July 21, 2011, when the CFPB commenced operations to supervise and enforce consumer protection laws. The CFPB has broad rulemaking authority for a wide range of consumer protection laws that apply to all providers of consumer products and services, including Busey Bank, as well as the authority to prohibit "unfair, deceptive or abusive" acts and practices. The CFPB has examination and enforcement authority over providers with more than $10.0 billion in assets. In August 2022 the CFPB began the process of assuming supervisory authority over Busey Bank.

Because abuses in connection with residential mortgages were a significant factor contributing to the financial crisis, many new rules issued by the CFPB and required by the Dodd-Frank Act addressed mortgage and mortgage-related products, their underwriting, origination, servicing, and sales. The Dodd-Frank Act significantly expanded underwriting requirements applicable to loans secured by 1-4 family residential real property, and augmented federal law combating predatory lending practices. In addition to numerous disclosure requirements, the Dodd-Frank Act imposed new standards for mortgage loan originations on all lenders, including banks and savings associations, in an effort to strongly encourage lenders to verify a borrower's ability to repay, while also establishing a presumption of compliance for certain "qualified mortgages." The CFPB has from time to time released additional rules as to qualified mortgages and the borrower's ability to repay. The CFPB's rules have not had a significant impact on the Bank's operations, except for higher compliance costs.

Supervision and Regulation of Busey Risk Management

First Busey Risk Management, incorporated in Nevada, is a captive insurance company which insures against certain risks unique to the operations of the Company and its subsidiaries and for which insurance may not be currently available or economically feasible in today's insurance marketplace. First Busey Risk Management is subject to regulations of the State of Nevada and periodic examinations by the Nevada Division of Insurance.

EXECUTIVE OFFICERS

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

Van A. Dukeman. Mr. Dukeman, age 64, has served as a Director, Chief Executive Officer and President of First Busey since August 2007. Prior to August 2007, Mr. Dukeman served as a Director, Chief Executive Officer and President of Main Street Trust, Inc. from May 1998 until its merger with First Busey.

Robin N. Elliott. Mr. Elliott, age 46, was appointed President and Chief Executive Officer of Busey Bank in April 2019, and also became the President and CEO of FirsTech in December 2022. Prior to that, he served as Chief Operating Officer of First Busey since February 2016 and Chief Financial Officer of First Busey since January 2014. Mr. Elliott had previously served as Director of the Business Banking Group of Busey Bank since November 2011. Prior to that appointment, he had served as Director of Finance & Treasury since joining the organization in 2006.

Jeffrey D. Jones. Mr. Jones, age 49, was appointed Chief Financial Officer of First Busey in July 2019. Prior to that, he was Co-Head of the US Depository Group and Head of Depository Investment Banking with Stephens, Inc., since 2015.

Monica L. Bowe. Ms. Bowe, age 49, has served as Chief Risk Officer of First Busey since January 2020. Prior to that, she served as Senior Director of Operational Risk Program Management at KeyBank, a subsidiary of KeyCorp headquartered in Cleveland, Ohio, since 2015.

John J. Powers. Mr. Powers, age 67, has served as General Counsel of First Busey since December 2011. Prior to that, he was a stockholder of Meyer Capel, P.C., a law firm based in Champaign, Illinois, since 1998.

Amy L. Randolph. Mrs. Randolph, age 48, was appointed Chief of Staff in April 2017. Prior to that appointment she served as Executive Vice President and Chief Brand Officer since March 2014. Prior to March 2014, she served as Senior Vice President of Growth Strategies since 2008.

HUMAN CAPITAL

First Busey is built upon a strong commitment to associate, customer, stockholder, and community experiences. Our associates are the cornerstone of this unwavering commitment. Busey’s vision, Service Excellence in Everything We Do, starts with dedication to our associates. We are deeply humbled to be consistently recognized nationally and locally throughout our footprint for this steadfastness. Nationally, the organization is named among America’s Best Banks by *Forbes;* the Best Banks to Work For by *American Banker* since 2016; the Best Places to Work in Money Management by Pension and Investments since 2018; and a Leading Disability Employer by the National Organization on Disability. Locally, Busey has been voted as one of the Best Places to Work in Illinois since 2016 and a Best Company to Work For in Florida since 2017. From exceeding the needs of customers and colleagues to serving our communities selflessly, our associates show unmatched dedication to Busey. Their shared experiences are what make these and other awards possible. Since we opened our doors 155 years ago, we have maintained our core values, creating a strong foundation and shaping our inclusive culture.

Busey remains committed to bringing diversity and inclusion to our organization, the banking profession, and the communities where we live and work. Busey is dedicated to attracting and retaining talent across a variety of backgrounds and experiences. A diverse team—one with varying beliefs and opinions—promotes productivity, creativity, and innovation, while better meeting and exceeding the needs of a diverse customer base. Recruiting, supporting, and retaining a diversified workforce with varying perspectives and ideas, while having an inclusive culture, is the foundation of our core values—One Busey. Our endeavors in this regard are reported to the Employee Benefit and Compensation Committee, as well as the Board's Enterprise Risk Committee, which hold the organization accountable to this core value at the highest levels of management. We maintain an Affirmative Action Plan, the results of which – including proactive steps for inclusion – are reviewed by this same group. Busey supports and empowers women in the workplace as reflected in our gender-diverse workforce. In 2022, women comprised 60% of Busey's total number of associates, and made up 25% of our senior leadership, providing meaningful contributions not only within the organization but throughout the communities we serve.

Associate engagement is an important barometer of our cultural health. We regularly solicit feedback to understand the views of our associates about their work environment and Busey’s culture. The results from engagement surveys are used to implement programs and processes designed to enhance engagement and improve the associate experience. With a strong 90% participation rate and an approach focused on continuous improvement, 2022 results increased to the highest scores in Busey’s history. One such way to keep associates informed and engaged is through our quarterly update calls, which are conducted by Busey leadership. These calls provide important information about the financial health of the Company, but more importantly they provide a cultural touchpoint to solidify Busey’s commitment to our number one asset – our associates. A tenet of our engaged culture is a commitment to investing in associates through unique, award-winning training and development programs. In 2022, 52% of our associate base engaged in talent and leadership development programs. Since 2017, Busey has been a proud recipient of the Association for Talent Development’s BEST Award, which is presented to organizations that demonstrate enterprise-wide success as a result of employee talent development.

Additionally, we care about the health and well-being of our associates and their families, as evidenced in the 94% participation rate in our innovative, holistic health and wellness program, B Well. Investments in B Well include a stress management and mental wellness component, lifesaving biometric screenings, a corporate health and wellness coach, onsite wellness center, health club reimbursements, on-demand wellness streaming service and Health Savings Account investments funded by the Company. In 2022, Busey was honored to be recognized among the 2022 Illinois' Healthiest Employers, by global health insurer Cigna and Crain's Content Studio marking the fifth year the Company was named among this elite group.

As of December 31, 2022, First Busey and our subsidiaries had a total of 1,497 full-time equivalents. Geographic distribution of our associates is as follows:

	As of December 31, 2022		
	Full-time	**Part-time**	**Total**
Busey associates by state			
Illinois	1,008	86	1,094
Missouri	163	6	169
Florida	73	1	74
Indiana	20	1	21
Remote	186	—	186
Total number of associates	1,450	94	1,544

SECURITIES AND EXCHANGE COMMISSION REPORTING AND OTHER INFORMATION

First Busey's website address is www.busey.com. We make available on this website our Annual Reports, Quarterly Reports, Current Reports, and any amendments thereto, as soon as reasonably practicable after such reports are filed or furnished with the SEC, and in any event, on the same day as such filing with the SEC. Reference to this website does not constitute incorporation by reference of the information contained on the website and it should not be considered part of this document. First Busey has adopted a code of ethics applicable to our employees, officers, and directors. The text of this code of ethics may be found under "Investor Relations" on our website.

NON-GAAP FINANCIAL INFORMATION

This Annual Report contains certain financial information determined by methods other than in accordance with GAAP. Management uses these non-GAAP financial measures and non-GAAP ratios, together with the related GAAP financial measures, in analysis of the Company's performance and in making business decisions, as well as for comparison to the Company's peers. The Company believes the adjusted measures are useful for investors and management to understand the effects of certain non-recurring noninterest items and provide additional perspective on the Company's performance over time.

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

A listing of the Company's non-GAAP financial measures and ratios are shown in the table below, together with the related GAAP financial measures.

GAAP Financial Measures	Related Non-GAAP Financial Measures	Related Non-GAAP Ratios
Net interest income Total noninterest income Net security gains and losses Total noninterest expense	Pre-provision net revenue	Pre-provision net revenue to average assets
	Adjusted pre-provision net revenue	Adjusted pre-provision net revenue to average assets
Net income	Adjusted net income	Adjusted diluted earnings per share
		Adjusted return on average assets
		Adjusted return on average tangible common equity
Average common equity	Average tangible common equity	Return on average tangible common equity
		Adjusted return on average tangible common equity
Net interest income	Tax-equivalent net interest income	Net interest margin
	Adjusted net interest income	Adjusted net interest margin
Net interest income Total noninterest income Net security gains and losses	Tax-equivalent revenue	Efficiency ratio
		Adjusted efficiency ratio
		Adjusted core efficiency ratio
Total noninterest expense Amortization of intangible assets	Non-interest expense excluding amortization of intangible assets	Efficiency ratio
	Adjusted noninterest expense	Adjusted efficiency ratio
	Adjusted core expense	Adjusted core efficiency ratio
Total noninterest expense	Noninterest expense, excluding non-operating adjustments	
Total assets Goodwill and other intangible assets, net	Tangible assets	Tangible common equity to tangible assets
Total stockholders’ equity Goodwill and other intangible assets, net	Tangible common equity	Tangible common equity to tangible assets
	Tangible book value	Tangible book value per common share
Portfolio loans	Core loans	Core loans to portfolio loans
		Core loans to core deposits
Total deposits	Core deposits	Core deposits to total deposits
		Core loans to core deposits

A reconciliation of non-GAAP financial measures to what management believes to be the most directly comparable GAAP financial measures appears below.

RECONCILIATION OF NON-GAAP FINANCIAL MEASURES *(unaudited)*

Pre-Provision Net Revenue, Adjusted Pre-Provision Net Revenue,
Pre-Provision Net Revenue to Average Assets, and Adjusted Pre-Provision Net Revenue to Average Assets

(dollars in thousands)

		Years Ended December 31,		
		2022	2021	2020
PRE-PROVISION NET REVENUE				
Net interest income		$ 323,438	$ 270,698	$ 282,935
Total noninterest income		126,803	132,804	118,265
Net security (gains) losses		2,133	(3,070)	(1,331)
Total noninterest expense		(283,881)	(261,780)	(234,197)
Pre-provision net revenue	[a]	$ 168,493	$ 138,652	$ 165,672
Non-GAAP adjustments:				
Acquisition and other restructuring expenses		4,537	17,351	10,711
Provision for unfunded commitments		61	(774)	1,822
Amortization of New Markets Tax Credits		6,333	5,563	2,311
Adjusted pre-provision net revenue	[b]	$ 179,424	$ 160,792	$ 180,516
Average total assets	[c]	$ 12,492,948	$ 11,904,935	$ 10,292,256
Reported: Pre-provision net revenue to average assets	[a÷c]	1.35%	1.16%	1.61%
Adjusted: Pre-provision net revenue to average assets	[b÷c]	1.44%	1.35%	1.75%

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RECONCILIATION OF NON-GAAP FINANCIAL MEASURES *(unaudited)*

Adjusted Net Income, Adjusted Diluted Earnings Per Share, Adjusted Return on Average Assets, Average Tangible Common Equity, Return on Average Tangible Common Equity, and Adjusted Return on Average Tangible Common Equity

(dollars in thousands, except per share amounts)

		Years Ended December 31,		
		2022	2021	2020
NET INCOME ADJUSTED FOR NON-OPERATING ITEMS				
Net income	[a]	$ 128,311	$ 123,449	$ 100,344
Non-GAAP adjustments:				
Acquisition expenses:				
Salaries, wages, and employee benefits		587	7,347	—
Data processing		214	3,700	56
Loss on leases or fixed asset impairment		—	—	479
Professional fees, occupancy, and other		258	2,599	864
Other restructuring expenses:				
Salaries, wages, and employee benefits		2,409	472	2,470
Loss on leases or fixed asset impairment		986	3,227	6,657
Professional fees, occupancy, and other		83	6	185
Related tax benefit		(938)	(3,692)	(2,327)
Adjusted net income	[b]	$ 131,910	$ 137,108	$ 108,728
DILUTED EARNINGS PER SHARE				
Diluted average common shares outstanding	[c]	56,137,164	56,008,805	54,826,939
Reported: Diluted earnings per share	[a÷c]	$ 2.29	$ 2.20	$ 1.83
Adjusted: Diluted earnings per share	[b÷c]	2.35	2.45	1.98
RETURN ON AVERAGE ASSETS				
Average total assets	[d]	12,492,948	11,904,935	10,292,256
Reported: Return on average assets	[a÷d]	1.03%	1.04%	0.97%
Adjusted: Return on average assets	[b÷d]	1.06%	1.15%	1.06%
RETURN ON AVERAGE TANGIBLE COMMON EQUITY				
Average common equity		$ 1,195,171	$ 1,324,862	$ 1,240,374
Average goodwill and other intangible assets, net		(370,424)	(372,593)	(368,624)
Average tangible common equity	[e]	$ 824,747	$ 952,269	$ 871,750
Reported: Return on average tangible common equity	[a÷e]	15.56%	12.96%	11.51%
Adjusted: Return on average tangible common equity	[b÷e]	15.99%	14.40%	12.47%

RECONCILIATION OF NON-GAAP FINANCIAL MEASURES ***(unaudited)***

Adjusted Net Interest Income and Adjusted Net Interest Margin

(dollars in thousands)

		Years Ended December 31,		
		2022	2021	2020
Net interest income		$ 323,438	$ 270,698	$ 282,935
Non-GAAP adjustments:				
Tax-equivalent adjustment		2,199	2,355	2,740
Tax-equivalent net interest income	[a]	325,637	273,053	285,675
Purchase accounting accretion related to business combinations		(3,134)	(7,151)	(10,391)
Adjusted net interest income	[b]	$ 322,503	$ 265,902	$ 275,284
Average interest-earning assets	[c]	$ 11,473,063	$ 10,978,116	$ 9,417,938
Reported: Net interest margin	[a÷c]	2.84%	2.49%	3.03%
Adjusted: Net interest margin	[b÷c]	2.81%	2.42%	2.92%

RECONCILIATION OF NON-GAAP FINANCIAL MEASURES ***(unaudited)***

Noninterest Expense Excluding Amortization of Intangible Assets, Adjusted Noninterest Expense, Adjusted Core Expense, Noninterest Expense Excluding Non-operating Adjustments, Efficiency Ratio, Adjusted Efficiency Ratio, and Adjusted Core Efficiency Ratio

(dollars in thousands)

		Years Ended December 31,		
		2022	2021	2020
Net interest income		$ 323,438	$ 270,698	$ 282,935
Non-GAAP adjustments:				
Tax-equivalent adjustment		2,199	2,355	2,740
Tax-equivalent net interest income		325,637	273,053	285,675
Total noninterest income		126,803	132,804	118,265
Non-GAAP adjustments:				
Net security (gains) losses		2,133	(3,070)	(1,331)
Noninterest income excluding net securities gains and losses		128,936	129,734	116,934
Tax-equivalent revenue	[a]	$ 454,573	$ 402,787	$ 402,609
Total noninterest expense		$ 283,881	$ 261,780	$ 234,197
Non-GAAP adjustments:				
Amortization of intangible assets	[b]	(11,628)	(11,274)	(10,008)
Non-interest expense excluding amortization of intangible assets	[c]	272,253	250,506	224,189
Non-operating adjustments:				
Salaries, wages, and employee benefits		(2,996)	(7,819)	(2,470)
Data processing		(214)	(3,700)	(56)
Lease or fixed asset impairment		(986)	(3,227)	(7,136)
Professional fees and other		(341)	(2,605)	(1,049)
Adjusted noninterest expense	[f]	267,716	233,155	213,478
Provision for unfunded commitments		(61)	774	(1,822)
Amortization of New Markets Tax Credits		(6,333)	(5,563)	(2,311)
Adjusted core expense	[g]	$ 261,322	$ 228,366	$ 209,345
Noninterest expense, excluding non-operating adjustments	[f-b]	$ 279,344	$ 244,429	$ 223,486
Reported: Efficiency ratio	[c÷a]	59.89%	62.19%	55.68%
Adjusted: Efficiency ratio	[f÷a]	58.89%	57.89%	53.02%
Adjusted: Core efficiency ratio	[g÷a]	57.49%	56.70%	52.00%

RECONCILIATION OF NON-GAAP FINANCIAL MEASURES *(unaudited)*

Tangible Book Value and Tangible Book Value Per Common Share

(dollars in thousands, except per share amounts)

		As of December 31,	
		2022	2021
Total stockholders' equity		$ 1,145,977	$ 1,319,112
Goodwill and other intangible assets, net		(364,296)	(375,924)
Tangible book value	[a]	$ 781,681	$ 943,188
Ending number of common shares outstanding	[b]	55,279,124	55,434,910
Tangible book value per common share	[a÷b]	$ 14.14	$ 17.01

Tangible Common Equity and Tangible Common Equity to Tangible Assets

(dollars in thousands)

		As of December 31,	
		2022	2021
Total assets		$ 12,336,677	$ 12,859,689
Non-GAAP adjustments:			
Goodwill and other intangible assets, net		(364,296)	(375,924)
Tax effect of other intangible assets[1]		8,847	16,254
Tangible assets	[a]	$ 11,981,228	$ 12,500,019
Total stockholders' equity		$ 1,145,977	$ 1,319,112
Non-GAAP adjustments:			
Goodwill and other intangible assets, net		(364,296)	(375,924)
Tax effect of other intangible assets[1]		8,847	16,254
Tangible common equity	[b]	$ 790,528	$ 959,442
Tangible common equity to tangible assets[2]	[b÷a]	6.60 %	7.68 %

1. Net of estimated deferred tax liability.
2. Tax-effected measure.

RECONCILIATION OF NON-GAAP FINANCIAL MEASURES *(unaudited)*

Core Loans, Core Loans to Portfolio Loans,
Core Deposits, Core Deposits to Total Deposits, and Core Loans to Core Deposits

(dollars in thousands)

		As of December 31,	
		2022	2021
Portfolio loans	[a]	$ 7,725,702	$ 7,188,998
Non-GAAP adjustments:			
PPP loans amortized cost		(845)	(74,958)
Core loans	[b]	$ 7,724,857	$ 7,114,040
Total deposits	[c]	$ 10,071,280	$ 10,768,577
Non-GAAP adjustments:			
Brokered transaction accounts		(1,303)	(2,248)
Time deposits of $250,000 or more		(120,377)	(137,449)
Core deposits	[d]	$ 9,949,600	$ 10,628,880
RATIOS			
Core loans to portfolio loans	[b÷a]	99.99 %	98.96 %
Core deposits to total deposits	[d÷c]	98.79 %	98.70 %
Core loans to core deposits	[b÷d]	77.64 %	66.93 %

SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

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

- the strength of the local, state, national, and international economy (including effects of inflationary pressures and supply chain constraints);
- the economic impact of any future terrorist threats or attacks, widespread disease or pandemics (including the Coronavirus Disease 2019 pandemic), or other adverse external events that could cause economic deterioration or instability in credit markets (including Russia’s invasion of Ukraine);
- changes in state and federal laws, regulations, and governmental policies concerning First Busey’s general business;
- changes in accounting policies and practices;
- changes in interest rates and prepayment rates of First Busey’s assets (including the impact of the LIBOR phase-out);
- increased competition in the financial services sector and the inability to attract new customers;
- changes in technology and the ability to develop and maintain secure and reliable electronic systems;
- the loss of key executives or associates;
- changes in consumer spending;
- unexpected results of current and/or future acquisitions, which may include failure to realize the anticipated benefits of any acquisition and the possibility that transaction costs may be greater than anticipated;
- unexpected outcomes of existing or new litigation involving First Busey;
- the economic impact of exceptional weather occurrences such as tornadoes, hurricanes, floods, and blizzards; and
- other factors and risks described under *“Item 1A. Risk Factors”* herein.

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

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

ITEM 1A. RISK FACTORS

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

ECONOMIC AND MARKET RISKS

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

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

Uncertainty regarding economic conditions may result in changes in consumer and business spending, borrowing and savings habits. Downturns in the markets where our banking operations occur could result in a decrease in demand for our products and services, an increase in loan delinquencies and defaults, high or increased levels of problem assets and foreclosures, and reduced wealth management fees resulting from lower asset values. Such conditions could adversely affect the credit quality of our loans, financial condition, and results of operations.

The Company currently conducts its banking operations in central and suburban Chicago, Illinois; the St. Louis, Missouri metropolitan area; central Indiana; and southwest Florida. The financial condition of the State of Illinois, in which the largest portion of the Company's customer base resides, is characterized with low credit ratings and declines in population. The Company operates in markets with significant university and healthcare presence, which rely heavily on state and federal funding and contracts. Timely payments by the State of Illinois to its vendors and government-sponsored entities, as well as potential federal changes to healthcare laws, could affect the Company's primary market areas, which could in turn affect its financial condition and results of operations. A small part of the company's business resides in Florida, which is frequently affected by inclement weather. On September 28, 2022, Hurricane Ian, a large and destructive Category 4 Atlantic hurricane made landfall in southwest Florida and surrounding areas which resulted in the temporary closure of our banking centers. The Company's business continuity practices allowed for rapid restoration of service and strong support of Florida associates.

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

Changes in interest rates could affect the level of assets and liabilities held on the Company's balance sheet and the revenue that the Company earns from net interest income, as earnings and profitability depend significantly on our net interest income. Net interest income represents the difference between interest income and fees earned on interest-earning assets, such as loans and investment securities, and interest expense incurred on interest-bearing liabilities, such as deposits and borrowed funds. Interest rates are sensitive to many factors that are beyond the Company's control, including general economic conditions and policies of various governmental and regulatory agencies, including the FOMC.

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

It is currently expected that during 2023, and perhaps beyond, the FOMC will continue to increase interest rates to reduce the rate of inflation. In 2022, the FOMC increased, at various dates throughout the year, the target range for the federal funds rate from 0.00% to 0.25% to a range of 4.25% to 4.50%. All of these increases were expressly made in response to inflationary pressures, which are currently expected to continue in 2023. If the FOMC further increases the targeted federal funds rates, overall interest rates likely will rise, which may negatively impact the entire national economy. In addition, our net interest income could be adversely affected if the rates we pay on deposits and borrowings increase more rapidly than the rates we earn on loans and other assets. Rising interest rates also may reduce the demand for loans and the value of fixed-rate investment securities. These effects from interest rate changes or from other sustained economic stress or a recession, among other matters, could have a material adverse effect on our business, financial condition, liquidity, and results of operations.

Given the complex factors affecting the strength of the U.S. economy, including uncertainties regarding the persistence of inflation, geopolitical developments such as the war in Ukraine and resulting disruptions in the global energy market, the effects of the pandemic in China, and tight labor market conditions and supply chain issues, there is a meaningful risk that the Federal Reserve and other central banks may raise interest rates too much, thereby limiting economic growth and potentially causing an economic recession. This could decrease loan demand, harm the credit characteristics of our existing loan portfolio, and decrease the value of collateral securing loans in the portfolio.

Changes in monetary policy, including changes in interest rates, will influence not only the interest the Company receives on loans and investment securities and the amount of interest it pays on deposits and borrowings, but such changes could also affect the Company’s ability to originate loans and obtain deposits and the fair value of the Company’s financial assets and liabilities. In addition, a rise in interest rates has resulted in decreased demand for first mortgages as well as mortgage refinancing, activities which have historically contributed a significant portion of the Company’s mortgage revenue. When interest rates rise, competition for deposits often increases, which can lead to a change in the Company’s funding mix and cost of funding. Any substantial, unexpected, prolonged change in market interest rates could have a material adverse effect on the Company’s business, financial condition, and results of operations.

The transition to an alternative reference rate could cause instability and have a negative effect on financial market conditions.

LIBOR represents the interest rate at which banks offer to lend funds to one another in the international interbank market for short-term loans, and has been used globally as a benchmark for financial contracts for more than three decades. Changing industry norms and regulatory directives have driven a transition away from LIBOR, and the Federal Reserve established the ARRC to oversee the transition and select an alternative reference rate as a replacement for LIBOR. On November 30, 2020, a concurrent announcement was issued by LIBOR’s administrator, its regulator, and U.S. regulators which advised banks to stop new USD LIBOR issuances by the end of 2021, and cited plans to cease the publication of USD LIBOR, with proposed end dates immediately following the December 31, 2021, publication for the one week and two month USD LIBOR settings (which has now occurred), and the June 30, 2023, publication for the other USD LIBOR tenors. The June 30, 2023, end date for the remaining USD LIBOR tenors has now been set, and U.S. regulators issued supplemental guidance in October 2021 reiterating that financial institutions should stop new LIBOR issuances, including renewals and extensions of existing LIBOR-linked financial contracts, by December 31, 2021, and urging banks to address their existing LIBOR exposures and transition to robust and sustainable alternative rates as soon as possible. ARRC has formally endorsed the SOFR as its recommended alternative reference rate for LIBOR, and additional laws and regulations issued in 2022 have also endorsed SOFR as a “comparable” rate to LIBOR. However, U.S. regulators have advised that banks should conduct a comprehensive evaluation of any alternative reference rates being considered for use and remain free to choose an alternative reference rate other than SOFR that best suits their clients’ needs.

Contracts linked to LIBOR are vast in number and value, are intertwined with numerous financial products and services, and have diverse parties. Although the Company has actively worked to plan for the transition away from LIBOR, the transition is both complex and challenging and the downstream effect of unwinding or transitioning such contracts could cause instability and negatively impact financial markets and individual institutions. If the Company’s selected alternative reference rate is based on a small transaction volume, it could be susceptible to volatility and disruption during times of market stress. Furthermore, if the Company fails to properly address legacy contracts by adding robust fallback positions, it will be exposed to interest rate risks and potential loss of yields. Finally, if the Company or other market participants fail to properly plan to implement alternative reference rates other than LIBOR, it could have an adverse effect on the Company and the financial system as a whole. In 2021, the Company began the transition to SOFR and other alternative reference rates in anticipation of the cessation of the publication of LIBOR and, in accordance with regulatory guidance, ceased new LIBOR issuances as of December 31, 2021. The Company continues to actively work to transition all remaining LIBOR contracts prior to the June 30, 2023, end date.

Declines in asset values may result in impairment charges and adversely affect the value of our investments, financial performance and capital.

The market value of investments in our securities portfolio has become increasingly volatile in recent years. If we are forced to liquidate any of those investments prior to maturity, including because of a lack of liquidity, we would recognize as a charge to earnings the losses attributable to those securities.

The market value of investments may be affected by factors other than the underlying performance of the servicer of the securities or the mortgages underlying the securities, such as changes in the interest rate environment, negative trends in the residential and commercial real estate markets, ratings downgrades, adverse changes in the business climate and a lack of liquidity in the secondary market for certain investment securities. On a quarterly basis, we formally evaluate investments and other assets for impairment indicators. Reduction in the value, or impairment of our investment securities, can impact our earnings and common stockholders' equity. Changes in market interest rates can affect the value of these investment securities, with increasing interest rates generally resulting in a reduction of value. Although the reduction in value from temporary increases in market rates does not affect our income until the security is sold, it does result in an unrealized loss recorded in OCI that can reduce our common stockholders’ equity. Further, we may have to record provision expense to establish an allowance for credit losses on our carried at fair value debt securities, and we must periodically test our investment securities for other-than-temporary impairment in value. In assessing whether the value of investment securities is impaired, we consider the length of time and extent to which the fair value has been less than cost, the financial condition and near-term prospects of the issuer, and the intent and ability to retain our investment in the security for a period of time sufficient to allow for any anticipated recovery in fair value in the near term. Based on management's evaluation, it was determined that the gross unrealized losses at December 31, 2022, were primarily a function of the changes in certain market interest rates.

A large percentage of our investment securities has fixed interest rates and are classified as available for sale. As is the case with many financial institutions, our emphasis on increasing the development of core deposits, those with no stated maturity date, has resulted in our interest-bearing liabilities having a shorter duration than our interest-earning assets. This imbalance can create significant earnings volatility because interest rates change over time. As interest rates have increased, our cost of funds has increased more rapidly than the yields on a substantial portion of our interest-earning assets. In addition, the market value of our fixed-rate assets, for example, our investment securities, has declined in recent periods. In line with the foregoing, we have experienced and may continue to experience an increase in the cost of interest-bearing liabilities primarily due to raising the rates we pay on some of our deposit products to stay competitive within our market and an increase in borrowing costs from increases in the federal funds rate. Community banks rely more heavily than larger institutions on net interest income as a revenue source. Larger institutions generally have more diversified sources of noninterest income.

Continued elevated levels of inflation could adversely impact our business and results of operations.

The United States has recently experienced elevated levels of inflation, with the consumer price index climbing 6.5% in 2022. Continued levels of inflation could have complex effects on our business and results of operations, some of which could be materially adverse. For example, elevated inflation harms consumer purchasing power, which could negatively affect our retail customers and the economic environment and, ultimately, many of our business customers, and could also negatively affect our levels of non-interest expense. In addition, if interest rates continue to continue rise in response to elevated levels of inflation, the value of our securities portfolio could be negatively impacted. Continued elevated levels of inflation could also cause increased volatility and uncertainty in the business environment, which could adversely affect loan demand and our clients' ability to repay indebtedness. It is also possible that governmental responses to the current inflation environment could adversely affect our business, such as changes to monetary and fiscal policy that are too strict, or the imposition or threatened imposition of price controls. The duration and severity of the current inflationary period cannot be estimated with precision.

Labor shortages and failure to attract and retain qualified employees could negatively impact our business, results of operations, and financial condition.

A number of factors may adversely affect the labor force available to us or increase labor costs, including high employment levels, decreased labor force size, and participation rates. Although we have not experienced any material labor shortage to date, we have recently observed an overall tightening and competitive local labor market. A sustained labor shortage or increased turnover rates within our employee base could lead to increased costs, such as increased compensation expense to attract and retain employees.

In addition, if we are unable to hire and retain employees capable of performing at a high-level, or if mitigation measures we may take to respond to a decrease in labor availability have unintended negative effects, our business could be adversely affected. An overall labor shortage, lack of skilled labor, increased turnover, or labor inflation could have a material adverse impact on our operations, results of operations, liquidity, or cash flows.

The COVID-19 pandemic could continue to have adverse effects on our business.

The COVID-19 pandemic has had a significant economic impact on the communities in which we operate, our borrowers and depositors, and the national economy generally. These effects have diminished in the past year, but future developments and uncertainties will be difficult to predict, such as the potential emergence of a new variant, the course of the pandemic in China and other major economies, the persistence of pandemic-related work and lifestyle changes, changes in consumer preferences associated with the emergence of the pandemic, and other market disruptions. Any such developments could have a complex and negative effect on our business, including with respect to the prevailing economic environment, our lending and investment activities, and our business operations.

REGULATORY AND LEGAL RISKS

Legislative and regulatory actions taken now or in the future may increase our costs and impact our business, governance structure, financial condition, or results of operations.

Laws, regulations, rules, policies, and regulatory interpretations governing the Company continue to evolve and will likely continue to change over time as Congress and various regulatory agencies react to adverse economic conditions or other matters. The extent and scope of potential financial regulations is hard to predict, but continued changes are expected to occur as leadership and priorities in various regulatory bodies shift.

Implementation of current or proposed regulatory or legislative changes to laws applicable to the financial industry may impact the profitability of the Company's business activities and may change certain business practices, including the ability to offer new products, obtain financing, attract deposits, make loans, achieve satisfactory interest spreads, and enter into acquisition and merger agreements, and could expose the Company to additional expense, including increased compliance costs. Appointments to the primary banking regulatory agencies affect monetary policy and interest rates, and changes in fiscal policy could affect broader patterns of trade and economic growth. Executive orders, future legislation, regulation, and government policy could affect the banking industry as a whole, including our business and results of operations, in ways that are difficult to predict. In addition, our results of operations also could be adversely affected by changes in the way in which existing statutes and regulations are interpreted or applied by courts and government agencies.

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

As the Company continues to grow in asset size and complexity, regulatory expectations and scrutiny will increase and could have a potential impact on the Company's operations and business.

The Company has grown steadily over the past several years, increasing size through both organic growth and strategic acquisitions. As financial institutions grow, so do the expectations of regulatory agencies regarding the financial institution's ability to control for increasingly complex and sophisticated business operations. Certain regulations and laws have embedded asset thresholds that change regulatory expectations, have different financial statement impacts, require different committee and management compositions, or enhance certain reporting requirements. For example, as further discussed in the Supervision and Regulation section, the Dodd-Frank Act included a number of requirements that trigger when a banking entity crosses over $10.0 billion in assets.

Beginning on July 1, 2022, the Company became subject to Durbin. Durbin requires the Federal Reserve to establish a maximum permissible interchange fee for many types of debit transactions, which reduced the Company's fee income during the second half of 2022. Further in August 2022, the Company came under the oversight of the CFPB. As regulatory expectations, scrutiny, and reporting requirements continue to increase, the Company's operations and strategies may be affected.

Laws impacting cannabis-related businesses in Illinois and other states may have an impact on the Company's operations and risk profile.

The Controlled Substances Act makes it illegal under federal law to manufacture, distribute, or dispense marijuana. Starting January 1, 2020, however, the Illinois Cannabis Regulation and Tax Act began permitting adults to legally purchase marijuana for recreational use from licensed dispensaries. Further, in November 2022 voters in Missouri approved a ballot initiative to legalize recreational use of cannabis. It is Busey Bank's current practice to avoid knowingly providing banking products or services to entities or individuals that: (i) directly or indirectly manufacture, distribute, or dispense marijuana or hemp products, or those with a significant financial interest in such entities; or (ii) derive a material amount of revenue from providing products or services to, or other involvement with, such entities. Busey Bank is taking reasonable measures, including appropriate new account screening and customer due diligence measures, to ensure that existing and potential customers that operate in the states in which the Bank operates do not engage in any such activities. Nonetheless, shifts in Illinois and Missouri law legalizing cannabis use, along with shifts in Florida law allowing medicinal use and decriminalizing possession, have increased the number of direct and indirect cannabis-related businesses in some of the states in which the Company operates, and therefore increases the likelihood that Busey Bank could interact with such businesses, as well as their owners and employees. Such interactions could create additional legal, regulatory, strategic, and reputational risk to Busey Bank and the Company.

The Company is or may become involved from time to time in suits, legal proceedings, information-gathering requests, investigations, and proceedings by governmental and self-regulatory agencies that may lead to adverse consequences.

Many aspects of our business and operations involve the risk of legal liability, and in some cases we or our subsidiaries have been named or threatened to be named as defendants in various lawsuits arising from our business activities. In addition, companies in our industry are frequently the subject of governmental and self-regulatory agency information-gathering requests, reviews, investigations, and proceedings. The results of such proceedings could lead to significant civil or criminal penalties, including monetary penalties, damages, adverse judgments, settlements, fines, injunctions, restrictions on the way in which we conduct our business, or reputational harm.

Although we establish accruals for legal proceedings when information related to the loss contingencies represented by those matters indicates both that a loss is probable and that the amount of loss can be reasonably estimated, we do not have accruals for all legal proceedings where we face a risk of loss. In addition, due to the inherent subjectivity of the assessments and unpredictability of the outcome of legal proceedings, amounts accrued may not represent the ultimate loss to us from the legal proceedings in question. Accordingly, our ultimate losses may be higher, and possibly significantly so, than the amounts accrued for legal loss contingencies, which could adversely affect our financial condition and results of operations.

CREDIT AND LENDING RISKS

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

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

The Company estimates and establishes reserves for credit losses and maintains them at a level considered adequate by management to absorb probable credit losses based on a continual analysis of the Company’s portfolio and market environment. These reserves represent the Company’s estimate of probable losses in the portfolio at each balance sheet date and are based upon other relevant information available.

In 2016, the FASB published CECL, which required recording loss estimates for the life of the instrument for loans, a change from the 40-year standard in which losses were recorded under the “incurred loss” concept. These measurements require significant use of management judgments as well as forward-looking information and forecasts. Any failure of these judgments or forecasts to be correct could negatively affect our results of operations and financial condition. Adoption of CECL in 2020 resulted in additional reserves being set aside to protect against future credit losses. Although management believes the reserves are adequate to absorb losses on existing loans that may become uncollectible, management cannot guarantee that additional provisions for credit losses will not be required in the future.

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

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

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

The Company may have higher credit risk, or experience higher credit losses, to the extent its loans are concentrated by loan type, industry segment, borrower type, or geographic location of the borrower or collateral. A significant portion of the Company’s loan portfolio is made up of commercial, commercial real estate, and retail real estate loans. Because payments on such loans are often dependent on the successful operation of the borrower involved, repayment of such loans is often more sensitive than other types of loans to adverse conditions in the general economy. For example, the cumulative effects of decreased economic activity, changes in the economy and overall business environment, labor availability shortages, and supply chain constraints as a result of the COVID-19 pandemic have adversely affected commercial loans, and we expect this trend to continue for certain portions of our loan portfolio, depending on the strength and speed of economic recovery and other factors, particularly if general economic conditions worsen.

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

A significant portion of the Company’s loans are collateralized by real estate. The market value of real estate can fluctuate significantly in a short period of time as a result of market conditions in the area in which the real estate is located. Adverse changes in the economy affecting real estate values and liquidity generally, and in markets in which the Company has banking operations, could significantly impair the value of property pledged as collateral on loans and affect the Company’s ability to sell the collateral upon foreclosure without a loss or additional losses. Collateral may have to be sold for less than the outstanding balance of the loan which would result in losses.

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

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

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

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

CAPITAL AND LIQUIDITY RISKS

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

First Busey and Busey Bank must meet regulatory capital requirements and maintain sufficient liquidity. The Company's ability to raise additional capital, when and if needed, will depend on conditions in the capital markets, economic conditions, and a number of other factors, including investor perceptions regarding the banking industry and market condition, and governmental activities, many of which are outside the Company's control, and on its financial condition and performance. Accordingly, the Company cannot guarantee that it will be able to raise additional capital if needed or on terms acceptable to the Company. In particular, if the Company is required to raise additional capital in the current interest rate environment, we believe the pricing and other terms investors may require in such an offering may not be attractive to us.

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

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

Liquidity is essential to the Company's business. An inability to raise funds through deposits, borrowings, sales of securities, sales of loans, and other sources could have a substantial negative effect on liquidity. The Company's primary sources of funds consist of deposits and funds from sales of investment securities, investment maturities and sales, and cash from operations. Additional liquidity is available through repurchase agreements, brokered deposits, and the ability to borrow from the Federal Reserve Bank and the FHLB. Access to funding sources in amounts adequate to finance or capitalize the Company's activities or on terms that are acceptable to the Company could be impaired by factors that affect it directly or the financial services industry or economy in general, such as disruptions in the financial markets or negative views and expectations about the prospects for the financial services industry. In addition, increased competition with the largest banks and Fintechs for retail deposits may impact our ability to raise funds through deposits and could have a negative effect on our liquidity. Any decline in available funding and/or capital could adversely impact the Company's ability to originate loans, invest in securities, meet its expenses, pay dividends to its stockholders, or meet deposit withdrawal demands, any of which could have a material adverse impact on its liquidity, business, financial condition, and results of operations.

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

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

COMPETITIVE AND STRATEGIC RISKS

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

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

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

The Company currently conducts its banking operations in central and suburban Chicago, Illinois; the St. Louis, Missouri, metropolitan area; central Indiana; and southwest Florida. In addition, the Company currently offers fiduciary and wealth management services, which account for a significant portion of its non-interest income. Many competitors offer the same, or a wider variety of, banking and wealth management services within the Company’s market areas. These competitors include national banks, regional banks, and other community banks. The Company also faces competition from many other types of financial institutions, including savings and loan institutions, finance companies, brokerage firms, insurance companies, credit unions, mortgage banks, digital banks and online lenders, and other financial intermediaries. In addition, a number of out-of-state financial intermediaries have opened production offices or otherwise solicit deposits in the Company’s market areas. Also, technology and other changes have lowered barriers to entry and made it possible for non-banks or financial technology companies, as well as other large technology corporations, to offer products and services traditionally provided by banks. For example, customers can maintain funds that would have historically been held as bank deposits in brokerage accounts or mutual funds, can apply for and receive credit, and can also complete transactions such as paying bills and/or transferring funds without the assistance of banks. The process of eliminating banks as intermediaries, known as “disintermediation,” could result in the loss of fee income, as well as the loss of customer deposits and the related income generated from those deposits. Increased competition in the Company’s markets may result in reduced loans, deposits, and commissions and brokers’ fees, as well as reduced net interest margin and profitability. Ultimately, the Company may not be able to compete successfully against current and future competitors. If the Company is unable to attract and retain banking and wealth management customers, it may be unable to grow its loan and deposit portfolios or its wealth management commissions, which could adversely affect its business, results of operations, and financial condition.

While we do not offer products relating to digital assets, including cryptocurrencies, stablecoins and other similar assets, there has been a significant increase in digital asset adoption globally over the past several years. Certain characteristics of digital asset transactions, such as the speed with which such transactions can be conducted, the ability to transact without the involvement of regulated intermediaries, the ability to engage in transactions across multiple jurisdictions, and the anonymous nature of the transactions, are appealing to certain consumers notwithstanding the various risks posed by such transactions. Accordingly, digital asset service providers—which, at present are not subject to the same degree of scrutiny and oversight as banking organizations and other financial institutions—are becoming active competitors to more traditional financial institutions.

Rapid speed of disruptive innovations enabled by new and emerging technologies and/or other market forces may outpace the Company’s ability to compete.

The financial services industry is undergoing rapid technological changes with frequent introductions of new technology driven products and services. In addition to better serving clients, the effective use of technology increases efficiency and enables financial institutions to both reduce costs and service customers beyond the bank’s traditional branch footprint. The widespread adoption of new technologies, including mobile banking services, cryptocurrencies, and payment systems could require us in the future to make substantial expenditures to modify or adapt our existing products and services as we grow and develop new products to satisfy our customers’ expectations and comply with regulatory guidance. Our future success will depend in part upon our ability to address the needs of our clients by using technology to provide products and services that will satisfy client demands for convenience as well as to create additional efficiencies in our operations. Ultimately, if we fall behind in our ability to be adaptive and innovative, attracting new customers and sustaining customer loyalty and retention may be increasingly difficult as a result of evolving customer preferences and/or demographic shifts in our existing customer base.

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

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

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

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

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

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

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

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

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

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

ACCOUNTING AND TAX RISKS

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

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

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

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

Periodically, agencies such as the FASB or the SEC change the financial accounting and reporting standards or the interpretation of those standards that govern the preparation of the Company's Financial Statements. These changes are beyond the Company's control, can be difficult to predict, and could materially impact how the Company reports its financial condition and results of operations. In addition, trends in financial and business reporting, including environmental social and governance related disclosures, could require us to incur additional reporting expense. Changes in these standards are continuously occurring and the implementation of such changes could have a material adverse effect on the Company's financial condition and results of operations.

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

Changes in tax laws at national or state levels could have an effect on the Company's short-term and long-term earnings. Tax law changes are both difficult to predict and are beyond the Company's control. Changes in tax laws could affect the Company's earnings as well as its customers' financial positions, or both.

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

In evaluating the need for a valuation allowance, the Company estimates future taxable income based on management forecasts and tax planning strategies that may be available to us. While the Company has determined that no valuation allowance is currently required for any deferred tax assets, if future events differ significantly from our current forecasts, it may need to establish a valuation allowance against its net deferred tax assets, which would have a material adverse effect on its results of operations and financial condition. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods prior to the expiration of the related net operating losses and may be limited by Section 382 of the Internal Revenue Code.

Further, the Company's investments in certain tax-advantaged projects may not generate returns as anticipated and may have an adverse impact on the Company's financial results. The Company invests in certain tax-advantaged projects promoting affordable housing, community development, and other community revitalization projects. The Company's investments in these projects are designed to generate a return primarily through the realization of federal and state income tax credits, and other tax benefits, over specified time periods. The Company is subject to the risk that previously recorded tax credits, which remain subject to recapture by taxing authorities based on compliance features required to be met at the project level, will fail to meet certain government compliance requirements and will not be able to be realized. The possible inability to realize these tax credit and other tax benefits can have a negative impact on the Company's financial results. The ultimate realization of the tax credits and other tax benefits depends upon having sufficient taxable income and on many factors outside of the Company's control, including changes in the applicable tax code and the ability of the projects to be completed.

OPERATIONAL RISKS

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

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

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

Communications and information systems are essential to conduct the Company's business, as it uses such systems to manage customer transactions and relationships, the general ledger, and deposits, loans, and investments. However, the computer systems and network infrastructure the Company uses could be vulnerable to unforeseen problems as operations are dependent upon the protection of computer equipment against damage from physical theft, fire, power loss, telecommunications failure, or a similar catastrophic event, as well as from security events.

In addition, the Company outsources certain processing functions to third-party providers. If third-party providers encounter difficulties or if the Company has difficulty in communicating with them, the ability to adequately process and account for customer transactions may be affected and business operations may be adversely impacted. If third-party providers are unable to meet service expectations, experience system or processing failure, or incur disruptions affecting operations, results could adversely impact the Company. While the Company follows certain due diligence procedures in reviewing and vetting its third-parties, it cannot control their actions.

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

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

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

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

Although the Company devotes significant resources to maintain and regularly upgrade systems and processes designed to protect the security of its computer systems, software, networks, and other technology assets, these measures do not provide absolute security in the security of their websites or other systems, some of which have involved sophisticated and targeted attacks intended to obtain unauthorized access to confidential information, destroy data, disable or degrade service, or sabotage systems, often through the introduction of computer viruses or malware, cyber-attacks, and other means. In addition, cyber attackers have taken advantage of the pandemic to create campaigns to leverage individuals fears and uncertainties as well as capitalize on the increased number of transactions occurring on digital channels. The implementation of remote working arrangements that use virtual private networks, virtual conferencing services, and telecommunication technologies can increase insider risk, cybersecurity vulnerabilities, and other operational exposures. Industry trends in ransomware, phishing, and other intrusion methods have increased significantly and will continue to pose increased risk.

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

The Company also faces risks related to cyber-attacks and other security breaches in connection with credit card, debit card, and other payment-related transactions that typically involve the transmission of sensitive information regarding the Company’s customers through various third-parties, including merchant acquiring banks, payment processors, payment card networks, and its processors. Cyber-attacks or other breaches, whether affecting the Company or others, could intensify consumer concern and regulatory focus and result in breach and fraud-related losses as well as increased costs, all of which could have a material adverse effect on the Company’s business.

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

These risks have increased for all financial institutions globally as new technologies, the use of the Internet and telecommunications technologies, including mobile devices, to conduct financial and other business transactions, and the sophistication and activities of malicious individuals and organizations have increased substantially. Despite the Company's significant investment in security resources and its continued efforts to prevent or limit the effects of potential threats, it is possible that the Company may not be able to anticipate or implement effective preventative measures against all security incidents.

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

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

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

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

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

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

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

Climate change or other adverse external events could significantly impact the Company's business.

Severe weather, natural disasters, geopolitical risks and acts of terrorism or war, widespread disease or pandemics, effects of which are still being felt, and other adverse external events could have a significant impact on the Company's ability to conduct business. Climate change, in particular, presents multi-faceted risks including operational risk from the physical effects of climate events on our and our customers' facilities and other assets; credit risk from borrowers with significant exposure to climate risk; and reputational risk from stakeholder concerns about our practices related to climate change.

Climate change exposes the Company to physical risk as its effects may lead to more frequent shifts in weather patterns and more extreme weather events that could damage, destroy, or otherwise impact the value or productivity of our properties and other assets; reduce the availability of insurance to cover losses; and/or disrupt our operations through prolonged outages. Such events and long-term shifts may also have a significant impact on our customers, which could amplify credit risk by diminishing borrowers' repayment capacity or collateral values, and other businesses and counterparties with whom we transact, which could have a broader impact on the economy, supply chains, and distribution networks.

Furthermore, banking regulators and other supervisory authorities, investors, and other stakeholders have increasingly viewed financial institutions as important in helping to address the risks related to climate change both directly and with respect to their customers, which may result in financial institutions coming under increased pressure regarding the disclosure and management of their climate risks and related lending and investment activities. Given that climate change could impose systemic risks upon the financial sector, either via disruptions in economic activity resulting from the physical impacts of climate change or changes in policies as the economy transitions to a less carbon-intensive environment, we face regulatory risk of increasing focus on our resilience to climate-related risks, including in the context of stress testing for various climate stress scenarios. Ongoing legislative or regulatory changes regarding climate risk management and practices may result in higher regulatory, compliance, credit, and reputational risks and costs.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

First Busey and Busey Bank's headquarters are located at 100 West University Avenue, Champaign, Illinois. FirsTech's headquarters is located at 130 North Water Street, Decatur, Illinois. These facilities, which are owned by the Company, house the executive and primary administrative offices of each respective entity. First Busey and its subsidiaries also own or lease other facilities, such as banking centers of Busey Bank, for business operations.

The Company considers its properties to be suitable and adequate for its present needs. None of the properties are subject to any material encumbrance.

ITEM 3. LEGAL PROCEEDINGS

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

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

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES

COMMON STOCK

First Busey's common stock is traded on The Nasdaq Global Select Market under the symbol "BUSE."

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

As of February 23, 2023, First Busey Corporation had 55,288,101 shares of common stock outstanding held by 2,205 holders of record. Additionally, there were an estimated 12,064 beneficial holders whose stock was held in street name by brokerage houses and nominees as of that date.

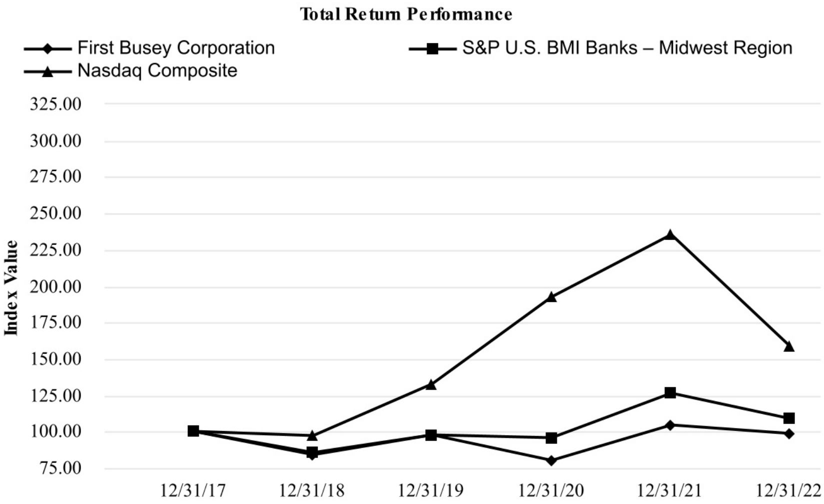
STOCK REPURCHASES

On February 3, 2015, First Busey's board of directors authorized the Company to repurchase up to an aggregate of 666,667 shares of its common stock. The repurchase plan has no expiration date. On May 22, 2019, First Busey's board of directors approved an amendment to increase the authorized shares under the repurchase program by 1,000,000 shares, and on February 5, 2020, First Busey's board of directors approved another amendment to increase the authorized shares under the repurchase program by an additional 2,000,000 shares. During the fourth quarter of 2022, the Company purchased no shares under the plan. As of December 31, 2022, the Company had 147,210 shares that may still be purchased under the plan.

Period	Total Number of Shares Purchased	Weighted Average Price Paid per Common Share	Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs
October 1-31, 2022	—	$ —	—	147,210
November 1-30, 2022	—	$ —	—	147,210
December 1-31, 2022	—	$ —	—	147,210
Three months ended December 31, 2022	—	$ —	—	
Year ended December 31, 2022	388,614	$ 25.50	388,614	

PERFORMANCE GRAPH

The following graph compares First Busey's performance, as measured by the change in price of its common stock plus reinvested dividends, with the Nasdaq Composite and the S&P US BMI Banks – Midwest Region for the five years ended December 31, 2022.



Index	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
First Busey Corporation	$ 100.00	$ 84.11	$ 97.39	$ 79.89	$ 104.46	$ 98.80
S&P U.S. BMI Banks – Midwest Region	100.00	85.39	97.39	95.52	126.19	108.91
Nasdaq Composite	100.00	97.16	132.81	192.47	235.15	158.64

Banks in the S&P U.S. BMI Banks - Midwest Region Index represent all Major Exchange Traded Banks in S&P Capital IQ's coverage universe headquartered in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin.

ITEM 6. [Reserved]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

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SCOPE OF DISCUSSION

The following is management's discussion and analysis of the financial condition as of December 31, 2022, and 2021, and the results of operations for the years ended December 31, 2022, 2021, and 2020, of First Busey and its subsidiaries. It should be read in conjunction with "*Item 1. Business*," the Consolidated Financial Statements, and the related Notes to the Consolidated Financial Statements included in this Annual Report.

Detailed discussion and analysis of the financial condition and results of operation for 2022 as compared to 2021 can be found below. Comparison of 2021 to 2020 can be found in *"Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations"* of the 2021 Annual Report.

CURRENT EVENTS

Hurricane Ian

On September 28, 2022, Hurricane Ian made landfall in southwest Florida, impacting our operations in the region. We remain focused on assisting our clients and employees as they navigate the challenges from this historic storm. As of February 23, 2023, two of our three branches are fully operational, and services have been restored at a temporary facility for our third location. Efforts undertaken to date include: (i) financial assistance for associates impacted by the storm; (ii) creation of a relief center for associates to access much needed supplies; (iii) staffing resource reallocation to support our southwest Florida operations; (iv) fee waivers for impacted customers; and (v) loan modification program for impacted commercial and retail real estate customers. In 2022, we recognized $0.2 million in noninterest income resulting from a gain on hurricane related disposal of fixed assets, partially offset by waived service charges, and $0.4 million in noninterest expense in connection with these initiatives.

Efficiency Optimization Plan & FirsTech Leadership Change

Early in the fourth quarter of 2022, we implemented a targeted restructuring and efficiency optimization plan that is expected to generate annual salary and benefits savings of approximately $4.0 million. Approximately 33% of the quarterly run-rate for savings was reflected in our results for the fourth quarter of 2022, and we anticipate our savings to be at a 100% run-rate by the first quarter of 2023. We expect to largely reinvest the anticipated savings to support ongoing growth initiatives across our franchise over the next several quarters.

Late in the fourth quarter of 2022, we instituted a leadership change at our wholly-owned payments subsidiary, FirsTech, that reflects our continued commitment to scaling and growing this business. Robin Elliott replaces Farhan Yasin as President & CEO of FirsTech and all other leadership remains unchanged. In less than two years, FirsTech has been re-energized, revenue has increased, talent has been upgraded across the enterprise, and the technology stack has been redesigned and modernized, positioning the company for scalable growth. Going forward we are squarely focused on executing on our growth strategy to provide comprehensive and innovative payment technology solutions that enable businesses to connect with their customers in a multitude of ways on a single, highly-configurable, secure platform.

The Company incurred one-time severance-related costs of $2.4 million during the fourth quarter of 2022, primarily related to the efficiency optimization plan and FirsTech leadership change.

COVID-19

Throughout the COVID-19 pandemic, First Busey operated as an essential community resource, providing approximately $1.1 billion in payroll assistance for small businesses and select nonprofits through low-interest, 100% government-guaranteed loans as part of the PPP. First Busey had $0.9 million in PPP loans outstanding, with an amortized cost of $0.8 million, as of December 31, 2022. In comparison, First Busey had $76.9 million in PPP loans outstanding, with an amortized cost of $75.0 million, as of December 31, 2021.

CRITICAL ACCOUNTING ESTIMATES

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

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

Fair Value of Debt Securities Available for Sale

The fair values of debt securities available for sale are measurements from an independent pricing service and are based on observable data that may include dealer quotes, market spreads, cash flows, the U.S. Treasury yield curve, live trading levels, trade execution data, market consensus prepayment speeds, credit information, and the security's terms and conditions, among other things. The use of different judgments and estimates to determine the fair value of securities could result in a different fair value estimate.

Realized securities gains or losses are reported in the Consolidated Statements of Income. The cost of securities sold is based on the specific identification method.

A debt security available for sale is impaired if the fair value of the security declines below its amortized cost basis. To determine the appropriate accounting, we must first determine if we intend to sell the security or if it is more likely than not that we will be required to sell the security before the fair value increases to at least the amortized cost basis. If either of those selling events is expected, we will write down the amortized cost basis of the security to its fair value. This is achieved by writing off any previously recorded allowance, if applicable, and recognizing any incremental impairment through earnings. If we do not intend to sell the security, nor believe it more likely than not that we will be required to sell the security before the fair value recovers to the amortized cost basis, we must determine whether any of the decline in fair value has resulted from a credit loss, or if it is entirely the result of noncredit factors.

We consider the following factors in assessing whether the decline is due to a credit loss:

- Extent to which the fair value is less than the amortized cost basis;
- Adverse conditions specifically related to the security, an industry, or a geographic area (for example, changes in the financial condition of the issuer of the security, or in the case of an asset-backed debt security, in the financial condition of the underlying loan obligors);
- Payment structure of the debt security and the likelihood of the issuer being able to make payments that increase in the future;
- Failure of the issuer of the security to make scheduled interest or principal payments; and
- Any changes to the rating of the security by a rating agency.

Impairment related to a credit loss must be measured using the discounted cash flow method. Credit loss recognition is limited to the fair value of the security. The impairment is recognized by establishing an allowance through provision for credit losses. Impairment related to noncredit factors is recognized in AOCI, net of applicable taxes.

Fair Value of Assets Acquired and Liabilities Assumed in Business Combinations

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

The fair value of a loan portfolio acquired in a business combination generally requires greater levels of management estimates and judgment than other assets acquired or liabilities assumed. Acquired loans are in the scope of ASC Topic 326 *"Financial Instruments-Credit Losses."* However, the offset to record the allowance at the date of acquisition on acquired loans depends on whether or not the loan is classified as PCD. The allowance for PCD loans is recorded through a gross-up effect, while the allowance for acquired non-PCD loans is recorded through provision expense, consistent with originated loans. Thus, the determination of which loans are PCD and non-PCD can have a significant effect on the accounting for these loans.

Goodwill

Goodwill represents the excess of purchase price over the fair value of net assets acquired using the acquisition method of accounting. Determining the fair value often involves estimates based on third-party valuations, such as appraisals, or internal valuations based on discounted cash flow analyses or other valuation techniques. Goodwill is not amortized, instead, we assess the potential for impairment on an annual basis or more frequently if events and circumstances indicate that goodwill might be impaired.

Income Taxes

First Busey estimates income tax expense based on amounts expected to be owed to federal and state tax jurisdictions. Estimated income tax expense is reported in the Consolidated Statements of Income. Accrued and deferred taxes, as reported in other assets or other liabilities in the Consolidated Balance Sheets, represent the net estimated amount due to or to be received from taxing jurisdictions either currently or in the future. Management judgment is involved in estimating accrued and deferred taxes, as it may be necessary to evaluate the risks and merits of the tax treatment of transactions, filing positions, and taxable income calculations after considering tax-related statutes, regulations, and other relevant factors. Because of the complexity of tax laws and interpretations, interpretation is subject to judgment.

Allowance for Credit Losses

First Busey calculates the ACL at each reporting date. We recognize an allowance for the lifetime expected credit losses for the amount we do not expect to collect. Measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported book value. The calculation also contemplates that First Busey may not be able to make or obtain such forecasts for the entire life of the financial assets and requires a reversion to historical credit loss information.

In determining the allowance, management relies predominantly on a disciplined credit review and approval process that extends to the full range of First Busey's credit exposure. The ACL must be determined on a collective (pool) basis when similar risk characteristics exist. On a case-by-case basis, we may conclude a loan should be evaluated on an individual basis based on the disparate risk characteristics.

Loans deemed uncollectible are charged against and reduce the allowance. A provision for credit losses is charged to current expense and acts to replenish the ACL in order to maintain the allowance at a level that management deems adequate. Determining the allowance involves significant judgments and assumptions by management. Because of the nature of the judgments and assumptions made by management, actual results may differ from these judgments and assumptions.

EXECUTIVE SUMMARY

Operating Results

Results of our operations are presented below, segregated by operating segment *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Net income by operating segment			
Banking	$ 131,596	$ 117,844	$ 101,226
FirsTech	847	1,527	2,372
Wealth Management	18,543	18,570	13,181
Other	(22,675)	(14,492)	(16,435)
Net income	$ 128,311	$ 123,449	$ 100,344

Operating Performance

Operating performance metrics presented in the table below have been derived from information used by management to monitor and manage our financial performance *(dollars in thousands, except per share amounts)*:

		Years Ended December 31,		
		2022	2021	2020
Reported:	Net income	$ 128,311	$ 123,449	$ 100,344
Adjusted:	Net income[1]	131,910	137,108	108,728
Reported:	Diluted earnings per common share	$ 2.29	$ 2.20	$ 1.83
Adjusted:	Diluted earnings per common share[1]	2.35	2.45	1.98
Reported:	Return on average assets	1.03 %	1.04 %	0.97 %
Adjusted:	Return on average assets[1]	1.06 %	1.15 %	1.06 %
Reported:	Return on average tangible common equity[1]	15.56 %	12.96 %	11.51 %
Adjusted:	Return on average tangible common equity[1]	15.99 %	14.40 %	12.47 %
Reported:	Pre-provision net revenue[1]	$ 168,493	$ 138,652	$ 165,672
Adjusted:	Pre-provision net revenue[1]	179,424	160,792	180,516
Reported:	Pre-provision net revenue to average assets[1]	1.35 %	1.16 %	1.61 %
Adjusted:	Pre-provision net revenue to average assets[1]	1.44 %	1.35 %	1.75 %

1. See "*Item 1. Business—Non-GAAP Financial Information.*"

Non-operating Items

First Busey views certain non-operating items, including acquisition-related and restructuring charges, as adjustments to net income reported under GAAP. Non-operating pretax adjustments were as follows for the periods presented *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Non-operating costs			
Acquisition related expenses[1]	$ 1,059	$ 13,646	$ 1,399
Restructuring charges[2]	3,478	3,705	9,312
Total non-operating costs	$ 4,537	$ 17,351	$ 10,711

1. Acquisition expenses related to completed acquisitions and exploratory due diligence.
2. Restructuring charges related to previously disclosed restructuring plans.

A reconciliation of non-GAAP measures—including pre-provision net revenue, adjusted pre-provision net revenue, pre-provision net revenue to average assets, adjusted pre-provision net revenue to average assets, adjusted net income, adjusted earnings per share, adjusted return on average assets, adjusted net interest margin, adjusted noninterest expense, efficiency ratio, adjusted efficiency ratio, tangible common equity, tangible common equity to tangible assets, tangible book value per share, and return on average tangible common equity—which First Busey believes facilitates the assessment of its financial results and peer comparability, is included in tabular form in this Annual Report. See "*Item 1. Business—Non-GAAP Financial Information.*"

Wealth Management Fees and Payment Technology Solutions

Combined, revenues from wealth management fees and payment technology solutions activities represented 59.5% of First Busey's noninterest income in 2022, providing a balance to spread-based revenue from traditional banking activities. Further, noninterest income, excluding net securities gains (losses), represented 28.5% of total revenue for the year ended December 31, 2022.

RESULTS OF OPERATION — THREE YEARS ENDED DECEMBER 31, 2022

Net Interest Income

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

Certain assets with tax favorable treatment are evaluated on a tax-equivalent basis. Tax-equivalent basis assumes a federal income tax rate of 21.0%. Tax favorable assets generally have lower contractual pre-tax yields than fully taxable assets. A tax-equivalent analysis is performed by adding the tax savings to the earnings on tax favorable assets. After factoring in the tax favorable effects of these assets, the yields may be more appropriately evaluated against alternative earning assets. In addition to yield, various other risks are factored into the evaluation process.

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

Consolidated Average Balance Sheets and Interest Rates

Average balances, income and expense, and yield rates are presented below for the periods indicated *(dollars in thousands)*:

	Years Ended December 31,								
	2022			2021			2020		
	Average Balance	Income/ Expense	Yield/ Rate	Average Balance	Income/ Expense	Yield/ Rate	Average Balance	Income/ Expense	Yield/ Rate
Assets									
Interest-bearing bank deposits and federal funds sold	$ 290,875	$ 3,097	1.06 %	$ 630,687	$ 1,151	0.18 %	$ 488,786	$ 1,723	0.35 %
Investment securities:									
U.S. Government obligations	179,557	1,079	0.60 %	180,041	1,692	0.94 %	135,204	2,915	2.16 %
Obligations of states and political subdivisions[1]	286,220	7,611	2.66 %	299,064	7,694	2.57 %	293,070	8,353	2.85 %
Other securities	3,265,271	61,591	1.89 %	2,876,714	37,166	1.29 %	1,411,826	29,857	2.11 %
Loans held for sale	5,178	192	3.71 %	21,803	506	2.32 %	82,106	2,184	2.66 %
Portfolio loans[1, 2]	7,445,962	288,615	3.88 %	6,969,807	252,946	3.63 %	7,006,946	284,306	4.06 %
Total interest-earning assets[1, 3]	$ 11,473,063	$ 362,185	3.16 %	$ 10,978,116	$ 301,155	2.74 %	$ 9,417,938	$ 329,338	3.50 %
Cash and due from banks	120,910			133,711			118,739		
Premises and equipment	131,657			138,731			146,144		
ACL	(89,387)			(97,397)			(88,248)		
Other assets	856,705			751,774			697,683		
Total assets	$ 12,492,948			$ 11,904,935			$ 10,292,256		
Liabilities and Stockholders' Equity									
Interest-bearing transaction deposits	$ 2,785,439	$ 7,150	0.26 %	$ 2,619,942	$ 1,922	0.07 %	$ 2,153,230	$ 4,718	0.22 %
Savings and money market deposits	3,326,259	4,237	0.13 %	3,092,992	2,817	0.09 %	2,567,962	5,960	0.23 %
Time deposits	846,738	4,725	0.56 %	1,040,709	7,844	0.75 %	1,356,347	20,013	1.48 %
Federal funds purchased and repurchase agreements	244,004	1,475	0.60 %	218,454	227	0.10 %	187,811	660	0.35 %
Borrowings[4]	309,175	15,932	5.15 %	268,767	12,452	4.63 %	217,702	9,352	4.30 %
Junior subordinated debt issued to unconsolidated trusts	71,716	3,029	4.22 %	71,545	2,840	3.97 %	71,376	2,960	4.15 %
Total interest-bearing liabilities	$ 7,583,331	$ 36,548	0.48 %	$ 7,312,409	$ 28,102	0.38 %	$ 6,554,428	$ 43,663	0.67 %
Net interest spread[1]			2.68 %			2.36 %			2.83 %
Noninterest-bearing deposits	3,550,517			3,142,155			2,364,442		
Other liabilities	163,929			125,509			133,012		
Stockholders' equity	1,195,171			1,324,862			1,240,374		
Total liabilities and stockholders' equity	$ 12,492,948			$ 11,904,935			$ 10,292,256		
Interest income / earning assets[1, 3]	$ 11,473,063	$ 362,185	3.16 %	$ 10,978,116	$ 301,155	2.74 %	$ 9,417,938	$ 329,338	3.50 %
Interest expense / earning assets	11,473,063	36,548	0.32 %	$ 10,978,116	28,102	0.25 %	$ 9,417,938	43,663	0.47 %
Net interest margin[1]		$ 325,637	2.84 %		$ 273,053	2.49 %		$ 285,675	3.03 %

1. On a tax-equivalent basis, assuming a federal income tax rate of 21.0%.
2. Non-accrual loans have been included in average portfolio loans.
3. Interest income includes a tax-equivalent adjustment of $2.2 million, $2.4 million, and $2.7 million for 2022, 2021 and 2020, respectively. Interest income includes $1.9 million, $14.0 million, and $15.2 million of fees, net of deferred costs related to PPP loans for 2022, 2021, and 2020, respectively.
4. Includes short-term borrowings, long-term debt, senior notes, and subordinated notes. Interest expense includes a non-usage fee on our revolving credit facility.

The following table presents a breakout of changes in net interest income attributable to changes in average volume and changes in average yield *(dollars in thousands)*:

	Years Ended December 31,					
	2022 vs. 2021 Change Due To			2021 vs. 2020 Change Due To		
	Average Volume	Average Yield/Rate	Total Change	Average Volume	Average Yield/Rate	Total Change
Increase (decrease) in interest income						
Interest-bearing bank deposits and federal funds sold	$ (921)	$ 2,867	$ 1,946	$ 410	$ (982)	$ (572)
Investment securities:						
U.S. Government obligations	(5)	(608)	(613)	765	(1,988)	(1,223)
Obligations of state and political subdivisions	(337)	254	(83)	168	(827)	(659)
Other securities	5,544	18,881	24,425	22,213	(14,904)	7,309
Loans held for sale	(515)	201	(314)	(1,430)	(248)	(1,678)
Portfolio loans	17,870	17,799	35,669	(1,499)	(29,861)	(31,360)
Change in interest income	$ 21,636	$ 39,394	$ 61,030	$ 20,627	$ (48,810)	$ (28,183)
Increase (decrease) in interest expense						
Interest-bearing transaction deposits	$ 129	$ 5,099	$ 5,228	$ 855	$ (3,651)	$ (2,796)
Savings and money market deposits	151	1,269	1,420	931	(4,074)	(3,143)
Time deposits	(1,303)	(1,816)	(3,119)	(3,923)	(8,246)	(12,169)
Federal funds purchased and repurchase agreements	30	1,218	1,248	95	(528)	(433)
Borrowings	1,611	1,869	3,480	2,289	811	3,100
Junior subordinated debt owed to unconsolidated trusts	7	182	189	7	(127)	(120)
Change in interest expense	$ 625	$ 7,821	$ 8,446	$ 254	$ (15,815)	$ (15,561)
Increase (decrease) in net interest income	$ 21,011	$ 31,573	$ 52,584	$ 20,373	$ (32,995)	$ (12,622)
Percentage increase (decrease) in net interest income over prior period			19.3 %			(4.4)%

Notable changes in average assets and average liabilities are summarized as follows for the periods presented *(dollars in thousands)*:

	Years Ended December 31,			
	2022	2021	Change	% Change
Average interest-earning assets	$ 11,473,063	$ 10,978,116	$ 494,947	4.5 %
Average interest-bearing liabilities	7,583,331	7,312,409	270,922	3.7 %
Average noninterest-bearing deposits	3,550,517	3,142,155	408,362	13.0 %
Total average deposits	10,508,953	9,895,798	613,155	6.2 %
Total average liabilities	11,297,777	10,580,073	717,704	6.8 %
Average noninterest-bearing deposits as a percent of total average deposits	33.8 %	31.8 %	200 bps	
Total average deposits as a percent of total average liabilities	93.0 %	93.5 %	(50) bps	

Changes in net interest income and net interest margin are summarized as follows for the periods presented *(dollars in thousands)*:

	Years Ended December 31, 2022	Years Ended December 31, 2021	Change	% Change
Net interest income				
Interest income, on a tax-equivalent basis[1]	$ 362,185	$ 301,155	$ 61,030	20.3 %
Interest expense	(36,548)	(28,102)	(8,446)	30.1 %
Net interest income, on a tax-equivalent basis[1]	$ 325,637	$ 273,053	$ 52,584	19.3 %
Net interest margin[1, 2]	2.84 %	2.49 %	35 bps	

1. Assuming a federal income tax rate of 21.0%.
2. Net interest income expressed as a percentage of average earning assets, stated on a tax-equivalent basis.

The FOMC raised rates by a total of 425 basis points during 2022. Rising rates have a positive impact on net interest margin, as assets, in particular commercial loans, reprice more quickly and to a greater extent than liabilities. In general, net interest margins have been impacted over the last three years by PPP loans, significant growth in the Company's liquidity position, organic portfolio loan growth over the past seven quarters, and the issuance of debt, with more recent impacts resulting from rate increases.

First Busey remains substantially funded by core deposits[1], with robust liquidity and significant market share in the communities we serve. As of December 31, 2022, our loan to deposit ratio was 76.7% and core deposits represented 98.8% of total deposits.

Net interest spread, which represents the difference between the average rate earned on earning assets and the average rate paid on interest-bearing liabilities, was 2.68% in 2022 compared to 2.36% in 2021 and 2.83% in 2020, each on a tax equivalent basis.

Annualized net interest margins for the quarterly periods indicated were as follows:

	2022	2021	2020
First Quarter	2.45 %	2.72 %	3.20 %
Second Quarter	2.68 %	2.50 %	3.03 %
Third Quarter	3.00 %	2.41 %	2.86 %
Fourth Quarter	3.24 %	2.36 %	3.06 %

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

[1] Core deposits is a non-GAAP financial measure. For a reconciliation of non-GAAP measures to the most directly comparable financial GAAP measures, see "*Item 1. Business—Non-GAAP Financial Information*."

Noninterest Income

Changes in noninterest income are summarized in the tables below for the periods presented *(dollars in thousands)*:

	Years Ended December 31, 2022	Years Ended December 31, 2021	Change	% Change
Noninterest income				
Wealth management and payment technology solutions income:				
Wealth management fees	$ 55,378	$ 53,086	$ 2,292	4.3 %
Payment technology solutions	20,067	18,347	1,720	9.4 %
Combined, wealth management fees and payment technology solutions	75,445	71,433	4,012	5.6 %
Fees for customer services	33,111	35,604	(2,493)	(7.0)%
Mortgage revenue	1,895	7,239	(5,344)	(73.8)%
Income on bank owned life insurance	3,663	5,166	(1,503)	(29.1)%
Securities income:				
Realized net gains (losses) on securities	50	29	21	72.4 %
Unrealized net gains (losses) recognized on equity securities	(2,183)	3,041	(5,224)	(171.8)%
Net securities gains (losses)	(2,133)	3,070	(5,203)	(169.5)%
Other income	14,822	10,292	4,530	44.0 %
Total noninterest income	$ 126,803	$ 132,804	$ (6,001)	(4.5)%

	Years Ended December 31, 2021	Years Ended December 31, 2020	Change	% Change
Noninterest income				
Wealth management and payment technology solutions income:				
Wealth management fees	$ 53,086	$ 42,928	$ 10,158	23.7 %
Payment technology solutions	18,347	15,628	2,719	17.4 %
Combined, wealth management fees and payment technology solutions	71,433	58,556	12,877	22.0 %
Fees for customer services	35,604	31,604	4,000	12.7 %
Mortgage revenue	7,239	13,038	(5,799)	(44.5)%
Income on bank owned life insurance	5,166	5,380	(214)	(4.0)%
Securities income:				
Realized net gains (losses) on securities	29	1,724	(1,695)	(98.3)%
Unrealized net gains (losses) recognized on equity securities	3,041	(393)	3,434	873.8 %
Net securities gains (losses)	3,070	1,331	1,739	130.7 %
Other income	10,292	8,356	1,936	23.2 %
Total noninterest income	$ 132,804	$ 118,265	$ 14,539	12.3 %

Total noninterest income was $126.8 million for the year ended December 31, 2022, a decrease of 4.5% when compared with $132.8 million for the year ended December 31, 2021. Revenues from wealth management fees and payment technology solutions represented 59.5% and 53.8% of noninterest income for the years ended December 31, 2022, and December 31, 2021, respectively, providing a complement to spread-based revenue from traditional banking activities. On a combined basis, revenue from these two critical operating areas was $75.5 million for the year ended December 31, 2022, a 5.6% increase from $71.4 million for the year ended December 31, 2021.

Wealth management fees increased by 4.3% to $55.4 million in 2022, compared to $53.1 million in 2021. First Busey's Wealth Management division had $11.1 billion in assets under care as of December 31, 2022, compared to $12.7 billion as of December 31, 2021. The decrease in the value of assets under care was principally due to a reduction in market valuations and nonrecurring outflows. Our portfolio management team continues to produce solid results in the face of very volatile markets.

Payment technology solutions revenue relates to our payment processing company, FirsTech. Payment technology solutions revenue increased by 9.4% to $20.1 million in 2022, compared to $18.3 million in 2021. Increases in payment technology solutions revenue were primarily the result of payment and volume activity as well as growth in customers served by FirsTech. FirsTech operations add important diversity to our revenue stream while widening our array of service offerings to larger commercial clients both within our footprint and nationally. We are currently making strategic investments in FirsTech to enhance future growth, including further upgrades to the product and engineering teams to build an API cloud-based platform to provide for fully integrated payment capabilities, as well as the continued development of our BaaS platform.

Fees for customer services decreased by 7.0% to $33.1 million in 2022, compared to $35.6 million in 2021. Beginning on July 1, 2022, we became subject to the Durbin Amendment of the Dodd-Frank Act. The Durbin Amendment requires the Federal Reserve to establish a maximum permissible interchange fee for many types of debit transactions, which resulted in a $4.8 million reduction in fee income during the last half of 2022.

Mortgage revenue was $1.9 million in 2022, compared to $7.2 million in 2021. Decreases primarily resulted from declines in sold-loan mortgage volume due to retaining a higher share of loan production in 2022, as well as lower gain on sale premiums. General economic conditions and interest rate volatility may impact future fee income.

Income on bank owned life insurance decreased by 29.1% to $3.7 million in 2022, compared to $5.2 million in 2021, primarily as a result of a decrease in life insurance proceeds.

Other income increased by 44.0% to $14.8 million in 2022, compared to $10.3 million in 2021. Other income benefited primarily from increases in other asset investment values and check sales, partially offset by smaller gains on commercial loan sales.

Noninterest Expense

Changes in noninterest expense are summarized in the tables below for the periods presented *(dollars in thousands)*:

	Years Ended December 31, 2022	Years Ended December 31, 2021	Change	% Change
Noninterest expense				
Salaries, wages, and employee benefits	$ 159,016	$ 145,312	$ 13,704	9.4 %
Data processing	21,648	21,862	(214)	(1.0)%
Premises expenses:				
Net occupancy expense of premises	19,130	18,346	784	4.3 %
Furniture and equipment expenses	7,645	8,301	(656)	(7.9)%
Combined, net occupancy expense of premises and furniture and equipment expenses	26,775	26,647	128	0.5 %
Professional fees	6,125	7,549	(1,424)	(18.9)%
Amortization of intangible assets	11,628	11,274	354	3.1 %
Interchange expense	6,298	5,792	506	8.7 %
Other expense	52,391	43,344	9,047	20.9 %
Total noninterest expense	$ 283,881	$ 261,780	$ 22,101	8.4 %
Income taxes	$ 33,426	$ 33,374	$ 52	0.2 %
Effective income tax rate	20.7 %	21.3 %	(60) bps	
Efficiency ratio[1]	59.9 %	62.2 %	(230) bps	
Adjusted efficiency ratio[1]	58.9 %	57.9 %	100 bps	
Full-time equivalent employees as of period-end	1,497	1,463	34	2.3 %

1. The efficiency ratio and adjusted efficiency ratio are both non-GAAP financial measures. For a reconciliation of non-GAAP financial measure to the most directly comparable GAAP financial measures, see "*Item 1. Business—Non-GAAP Financial Information.*"

	Years Ended December 31, 2021	2020	Change	% Change
Noninterest expense				
Salaries, wages, and employee benefits	$ 145,312	$ 126,719	$ 18,593	14.7 %
Data processing	21,862	16,426	5,436	33.1 %
Premises expenses:				
Net occupancy expense of premises	18,346	17,607	739	4.2 %
Furniture and equipment expenses	8,301	9,550	(1,249)	(13.1)%
Combined, net occupancy expense of premises and furniture and equipment expenses	26,647	27,157	(510)	(1.9)%
Professional fees	7,549	8,396	(847)	(10.1)%
Amortization of intangible assets	11,274	10,008	1,266	12.6 %
Interchange expense	5,792	4,810	982	20.4 %
Other expense	43,344	40,681	2,663	6.5 %
Total noninterest expense	$ 261,780	$ 234,197	$ 27,583	11.8 %
Income taxes	$ 33,374	$ 27,862	$ 5,512	19.8 %
Effective income tax rate	21.3 %	21.7 %	(40) bps	
Efficiency ratio[1]	62.2 %	55.7 %	650 bps	
Adjusted efficiency ratio[1]	57.9 %	53.0 %	490 bps	
Full-time equivalent employees as of period-end	1,463	1,346	117	8.7 %

1. The efficiency ratio and adjusted efficiency ratio are both non-GAAP financial measures. For a reconciliation of non-GAAP financial measure to the most directly comparable GAAP financial measures, see "*Item 1. Business—Non-GAAP Financial Information.*"

Total noninterest expense increased to $283.9 million for the year ended December 31, 2022, compared to $261.8 million for the year ended December 31, 2021. Non-operating acquisition and other restructuring expenses decreased to $4.5 million in 2022, compared to $17.4 million in 2021. We remain focused on expense discipline, and have made necessary investments during the past two years to support the continued organic growth of our key business lines and related support and risk management functions.

Salaries, wages, and employee benefits increased to $159.0 million in 2022, compared to $145.3 million in 2021. We had a total of 1,497 full-time equivalents at December 31, 2022, compared to 1,463 at December 31, 2021. Throughout 2022 we continued to invest in talent across our business lines and our risk management infrastructure. Labor market trends over the past year reflected a tight labor supply, while job gains resulted in increased demands for a skilled workforce, maintaining upward pressure on salaries, wages, and employee benefits.

Data processing expense decreased to $21.6 million in 2022, compared to $21.9 million in 2021. Decreases were primarily attributable to higher expenses in 2021 related to the CAC acquisition, offset by increased expenses for FirsTech related to transaction volume and continued Company-wide investments in technology enhancements, as well as inflation-driven price increases.

Combined, net occupancy expense of premises and furniture and equipment expenses increased to $26.8 million in 2022, compared to $26.6 million in 2021. Year-over-year increases are primarily attributable to higher building and maintenance costs. As we continue to divest our recently closed branches we expect to realize incremental cost savings.

Professional fees decreased to $6.1 million in 2022, compared to $7.5 million in 2021, as a result of decreases in legal fees, audit and accounting fees, payroll service costs, and consulting fees.

Amortization of intangible assets increased to $11.6 million in 2022, compared to $11.3 million in 2021, as a result of increases in intangible asset balances from the acquisition of CAC. Amortization of intangible assets included 12 months of amortization in 2022 in connection with intangible assets obtained in the acquisition of CAC, compared to seven months in 2021.

Interchange expense increased to $6.3 million in 2022, compared to $5.8 million in 2021. Fluctuations in interchange expense were primarily the result of increased payment and volume activity at FirsTech.

Other expense increased to $52.4 million in 2022, compared to $43.3 million in 2021. Increases were across multiple expense categories including marketing and business development, NMTC amortization, and regulatory expenses, partially offset by lower fixed asset impairment.

Efficiency Ratio[2]

The efficiency ratio is calculated as total noninterest expense, less amortization charges, as a percentage of tax-equivalent net interest income plus noninterest income, less security gains and losses. The efficiency ratio, which is a measure commonly used by management and the banking industry, measures the amount of expense incurred to generate a dollar of revenue. Our efficiency ratio was 59.9% for the year ended December 31, 2022, compared to 62.2% for the year ended December 31, 2021. Operating costs have been influenced by acquisition expenses and other restructuring costs, and the adjusted efficiency ratio[1] was 58.9% for the year ended December 31, 2022, compared to 57.9% for the year ended December 31, 2021.

Income Taxes

The effective income tax rate, or income taxes divided by income before taxes, was 20.7%, 21.3%, and 21.7% for the years ended December 31, 2022, 2021, and 2020, respectively. The Company's effective tax rate was lower than the combined federal and state statutory rate of approximately 28.0% due to tax exempt interest income, such as municipal bond interest and bank owned life insurance income, and investments in various federal and state tax credits. We continue to monitor evolving federal and state tax legislation and its potential impact on operations on an ongoing basis. As of December 31, 2022, we were not under examination by any tax authority; however, we have received an inquiry from the State of Illinois regarding our prior franchise tax filings. In the event the Company is required to amend our prior franchise tax filings, we could incur additional expenses.

[2] For a reconciliation of the efficiency ratio and the adjusted efficiency ratio, both of which are non-GAAP financial measures, see *"Item 1. Business—Non-GAAP Financial Information."*

FINANCIAL CONDITION

Balance Sheet

Changes in significant items included in our Consolidated Balance Sheets are summarized in the table below *(dollars in thousands)*:

	As of December 31, 2022	As of December 31, 2021	Change	% Change
Assets				
Debt securities available for sale	$ 2,461,393	$ 3,981,251	$ (1,519,858)	(38.2)%
Debt securities held to maturity	918,312	—	918,312	NM
Portfolio loans, net of ACL	7,634,094	7,101,111	532,983	7.5 %
Total assets	12,336,677	12,859,689	(523,012)	(4.1)%
Liabilities				
Deposits:				
Noninterest-bearing	3,393,666	3,670,267	(276,601)	(7.5)%
Interest-bearing	6,677,614	7,098,310	(420,696)	(5.9)%
Total deposits	10,071,280	10,768,577	(697,297)	(6.5)%
Securities sold under agreements to repurchase	229,806	270,139	(40,333)	(14.9)%
Short-term borrowings	351,054	17,678	333,376	1,885.8 %
Subordinated notes, net of unamortized issuance costs	222,038	182,773	39,265	21.5 %
Total liabilities	11,190,700	11,540,577	(349,877)	(3.0)%
Stockholders' Equity	1,145,977	1,319,112	(173,135)	(13.1)%

Investment Securities

Primary purposes of our investment securities portfolio are to provide a source of earnings by deploying funds which are not needed to fulfill loan demand, deposit redemptions, or other liquidity purposes; to serve as a tool for interest rate risk positioning; and to provide collateral for pledging purposes against public deposits and repurchase agreements, all while providing a source of liquidity.

We consider many factors in determining the composition of our investment portfolio including, but not limited to, credit quality, duration, interest rate risk, liquidity, tax-equivalent yield, regulatory considerations, and overall portfolio allocation. As of December 31, 2022, we did not hold general obligation bonds of any single issuer, the aggregate of which exceeded 10% of the Company's stockholders' equity.

Pledged securities totaled $746.7 million, or 22.1% of total debt securities, as of December 31, 2022, and $708.9 million, or 17.8% of total debt securities, as of December 31, 2021.

Debt Securities Available for Sale

Debt securities available for sale are carried at fair value. As of December 31, 2022, the fair value of debt securities available for sale was $2.5 billion, and the amortized cost was $2.8 billion. There were $0.1 million of gross unrealized gains and $311.2 million of gross unrealized losses, for a net unrealized loss of $311.1 million. The net unrealized loss, net of tax, is recorded in stockholders' equity through AOCI.

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

	As of December 31, 2022	2021
Debt securities available for sale		
U.S. Treasury securities	$ 114,061	$ 165,762
Obligations of U.S. government corporations and agencies	19,779	38,470
Obligations of states and political subdivisions	257,512	306,869
Asset-backed securities	469,875	492,186
Commercial mortgage-backed securities	108,394	614,998
Residential mortgage-backed securities	1,243,256	2,069,313
Corporate debt securities	248,516	293,653
Debt securities available for sale, fair value	$ 2,461,393	$ 3,981,251
Debt securities available for sale, amortized cost	$ 2,772,453	$ 4,013,523
Fair value as a percentage of amortized cost	88.78 %	99.20 %

By maturity date, fair values, and weighted average yields of debt securities available for sale as of December 31, 2022, were *(dollars in thousands)*:

	Due in 1 year or less		Due after 1 year through 5 years		Due after 5 years through 10 years		Due after 10 years	
	Fair Value	Weighted Average Yield	Fair Value	Weighted Average Yield	Fair Value	Weighted Average Yield	Fair Value	Weighted Average Yield
Debt securities available for sale[1]								
U.S. Treasury securities	$ 69,480	0.15 %	$ 44,581	0.34 %	$ —	— %	$ —	— %
Obligations of U.S. government corporations and agencies	8,947	2.31 %	7,733	2.75 %	3,099	3.48 %	—	— %
Obligations of states and political subdivisions[2]	27,473	2.02 %	92,449	2.23 %	93,704	2.16 %	43,886	2.50 %
Asset-backed securities	—	— %	—	— %	72,729	5.53 %	397,146	5.19 %
Commercial mortgage-backed securities	—	— %	23,643	2.24 %	18,584	2.19 %	66,167	2.15 %
Residential mortgage-backed securities	223	2.48 %	15,532	2.67 %	106,308	1.85 %	1,121,193	1.68 %
Corporate debt securities	27,844	0.62 %	184,816	1.21 %	35,856	3.55 %	—	— %
Debt securities available for sale	$ 133,967	0.78 %	$ 368,754	1.51 %	$ 330,280	2.92 %	$ 1,628,392	2.50 %

1. Securities are presented based upon final contractual maturity or pre-refunded date.
2. Weighted average yield calculated on a tax-equivalent basis, assuming a federal income tax rate of 21.0%.

Debt Securities Held to Maturity

In 2022, a portion of the debt securities available for sale were transferred to debt securities held to maturity. Debt securities held to maturity are carried at amortized cost. As of December 31, 2022, the amortized cost of debt securities held to maturity was $918.3 million, and the fair value was $785.3 million. There were no gross unrecognized gains and $133.0 million of gross unrecognized losses. Unrecognized losses are included in OCI, and amortized into income over the contractual lives of the securities. An ACL balance will be established for debt securities held to maturity when applicable. As of December 31, 2022, no ACL was recorded for our portfolio of debt securities held to maturity.

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

	As of December 31,	
	2022	2021
Debt securities held to maturity		
Commercial mortgage-backed securities	$ 474,820	$ —
Residential mortgage-backed securities	443,492	—
Debt securities held to maturity, amortized cost	$ 918,312	$ —
Debt securities held to maturity, fair value	$ 785,295	$ —
Fair value as a percentage of amortized cost	85.52 %	N/A

By maturity date, fair values, and weighted average yields of debt securities held to maturity as of December 31, 2022, were *(dollars in thousands)*:

	Due in 1 year or less		Due after 1 year through 5 years		Due after 5 years through 10 years		Due after 10 years	
	Fair Value	Weighted Average Yield	Fair Value	Weighted Average Yield	Fair Value	Weighted Average Yield	Fair Value	Weighted Average Yield
Debt securities held to maturity[1]								
Commercial mortgage-backed securities	$ —	— %	$ 41,483	2.25 %	$ 57,955	2.20 %	$ 311,644	2.31 %
Residential mortgage-backed securities	—	— %	—	— %	—	— %	374,213	2.25 %
Debt securities held to maturity	$ —	— %	$ 41,483	2.25 %	$ 57,955	2.20 %	$ 685,857	2.28 %

1. Securities are presented based upon final contractual maturity or pre-refunded date.

Equity Securities

Equity securities are carried at fair value. The fair value of equity securities was $11.5 million as of December 31, 2022, compared to $13.6 million as of December 31, 2021.

Portfolio Loans

We believe that making sound and profitable loans is a necessary and desirable means of employing funds available for investment. First Busey maintains lending policies and procedures designed to focus lending efforts on the types, locations, and duration of loans most appropriate for its business model and markets. GSB's policies were similar in nature to Busey Bank's policies, and we are migrating the legacy GSB portfolio toward Busey Bank's policies. While not specifically limited, we attempt to focus our lending on short to intermediate-term (0-10 years) loans in geographic areas within 125 miles of our lending offices. Loans originated outside of these areas are generally residential mortgage loans originated for sale in the secondary market or loans to existing customers of Busey Bank. We attempt to utilize government-assisted lending programs, such as the SBA and U.S. Department of Agriculture lending programs, when prudent. Generally, loans are collateralized by assets, primarily real estate, and guaranteed by individuals. Loans are expected to be repaid primarily from cash flows of the borrowers or from proceeds from the sale of selected assets of the borrowers.

Management reviews and approves Busey Bank's lending policies and procedures on a regular basis. Management routinely (at least quarterly) reviews the ACL in conjunction with reports related to loan production, loan quality, concentrations of credit, loan delinquencies, non-performing loans, and potential problem loans. Our underwriting standards are designed to encourage relationship banking rather than transactional banking. Relationship banking implies a primary banking relationship with the borrower that includes, at a minimum, an active deposit banking relationship in addition to the lending relationship. Significant underwriting factors in addition to location, duration, a sound and profitable cash flow basis, and the borrower's character, include the quality of the borrower's financial history, the liquidity of the underlying collateral, and the reliability of the valuation of the underlying collateral.

As a matter of policy and practice, we limit the level of concentration exposure in any particular loan segment with the goal of maintaining a well-diversified loan portfolio.

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

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

Busey Bank's lending can be summarized into five primary areas: commercial loans, commercial real estate loans, real estate construction loans, retail real estate loans, and retail other loans.

Commercial Loans

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

Commercial Real Estate Loans

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

Real Estate Construction Loans

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

Retail Real Estate Loans

Retail real estate loans are comprised of direct consumer loans that include residential real estate, home equity lines of credit, and home equity loans. In 2022, the Company retained a larger percentage of originated retail real estate loans in our portfolio over selling to secondary market purchasers. As retail real estate loan underwriting is subject to specific regulations, we typically underwrite our retail real estate loans to conform to widely accepted standards. Several factors are considered in underwriting including the debt-to-income ratio and credit history of the borrower, as well as the value of the underlying real estate.

Retail Other Loans

Retail other loans consist of installment loans to individuals, including automotive loans and indirect lending. These loans are centrally underwritten utilizing the borrower’s financial history, including credit scores, as well as information about the underlying collateral. Retail other loans also include whole-life loans which are secured by the cash value of life insurance policies. Repayment of retail other loans is expected from the cash flow of the borrower.

Portfolio Loans by Loan Category

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

	As of December 31,			
	2022	2021	Change	% Change
Portfolio loans				
Commercial	$ 1,974,154	$ 1,943,886	$ 30,268	1.6 %
Commercial real estate	3,261,873	3,119,807	142,066	4.6 %
Real estate construction	530,469	385,996	144,473	37.4 %
Retail real estate	1,657,082	1,512,976	144,106	9.5 %
Retail other	302,124	226,333	75,791	33.5 %
Total portfolio loans	$ 7,725,702	$ 7,188,998	$ 536,704	7.5 %
ACL	(91,608)	(87,887)	(3,721)	4.2 %
Portfolio loans, net	$ 7,634,094	$ 7,101,111	$ 532,983	7.5 %

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

	December 31, 2022				
	Illinois	Missouri	Florida	Indiana	Total
Portfolio loans					
Commercial	$ 1,401,165	$ 466,904	$ 52,925	$ 53,160	$ 1,974,154
Commercial real estate	2,180,767	680,532	220,939	179,635	3,261,873
Real estate construction	326,154	131,782	31,212	41,321	530,469
Retail real estate	1,253,069	210,048	122,397	71,568	1,657,082
Retail other	296,719	2,565	1,788	1,052	302,124
Total portfolio loans	$ 5,457,874	$ 1,491,831	$ 429,261	$ 346,736	$ 7,725,702
ACL					(91,608)
Portfolio loans, net of ACL					$ 7,634,094

	December 31, 2021				
	Illinois	Missouri	Florida	Indiana	Total
Portfolio loans					
Commercial	$ 1,372,584	$ 463,085	$ 55,180	$ 53,037	$ 1,943,886
Commercial real estate	2,063,681	691,969	191,303	172,854	3,119,807
Real estate construction	199,471	120,785	31,265	34,475	385,996
Retail real estate	1,124,486	235,083	96,563	56,844	1,512,976
Retail other	219,000	3,684	2,181	1,468	226,333
Total portfolio loans	$ 4,979,222	$ 1,514,606	$ 376,492	$ 318,678	$ 7,188,998
ACL					(87,887)
Portfolio loans, net of ACL					$ 7,101,111

Loan Growth

The Company generated $610.8 million, or 8.6%, in core loan[3] growth during 2022. Changes in portfolio loan balances, by loan category, were as follows *(dollars in thousands)*:

	As of December 31, 2022	As of December 31, 2021	Change	% Change
Portfolio loans				
Commercial loans:				
Commercial	$ 1,974,154	$ 1,943,886	$ 30,268	1.6 %
Commercial real estate	3,261,873	3,119,807	142,066	4.6 %
Real estate construction	530,469	385,996	144,473	37.4 %
Commercial loan balances	5,766,496	5,449,689	316,807	5.8 %
Retail loans:				
Retail real estate	1,657,082	1,512,976	144,106	9.5 %
Retail other	302,124	226,333	75,791	33.5 %
Retail loan balances	1,959,206	1,739,309	219,897	12.6 %
Total portfolio loans	7,725,702	7,188,998	536,704	7.5 %
ACL	(91,608)	(87,887)	(3,721)	4.2 %
Portfolio loans, net of ACL	$ 7,634,094	$ 7,101,111	$ 532,983	7.5 %

Excluding the amortized cost of PPP loans, changes in commercial loan balances were as follows:

	As of December 31, 2022	As of December 31, 2021	Change	% Change
Commercial loan balances	$ 5,766,496	$ 5,449,689	$ 316,807	5.8 %
Less: PPP loans amortized cost	(845)	(74,958)	74,113	(98.9)%
Commercial loan balances, excluding PPP loans	$ 5,765,651	$ 5,374,731	$ 390,920	7.3 %

Commercial balances—consisting of commercial, commercial real estate, and real estate construction loans—excluding PPP loans, increased by $390.9 million, or 7.3%, during the year ended December 31, 2022. Retail real estate and retail other loans increased by $219.9 million, or 12.6%, during the year ended December 31, 2022. PPP loans decreased by $74.1 million during the year ended December 31, 2022, to $0.8 million.

Loan Commitments

Commitments to extend credit and standby letters of credit increased by $8.6 million, or 0.4%, to a total of $2.0 billion as of December 31, 2022.

[3] Core loans is a non-GAAP financial measure. For a reconciliation of non-GAAP measures to the most directly comparable GAAP financial measures, see "*Item 1. Business—Non-GAAP Financial Information*" included in this Annual Report.

Loan Maturities

The following table sets forth remaining maturities of selected loans (excluding deferred loan fees and costs, purchase premiums and discounts, and certain real estate-mortgage loans and installment loans to individuals) at December 31, 2022, *(dollars in thousands)*. The determination of loan maturities is based on contractual loan terms. For the purposes of categorization within the table below, demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts are considered to mature within one year. Maturities for non-contractual rollovers or extensions are determined based on the rate review date.

	Within 1 Year	After 1 Year Through 5 Years	After 5 Years Through 15 Years	After 15 Years	Total
Selected Loans					
Commercial	$ 1,037,306	$ 628,431	$ 288,086	$ 20,412	$ 1,974,235
Commercial real estate	956,694	1,492,092	814,381	35	3,263,202
Real estate construction	342,924	138,112	48,730	2,820	532,586
Total selected loans	$ 2,336,924	$ 2,258,635	$ 1,151,197	$ 23,267	$ 5,770,023

Interest Rate Structure

Selected loans maturing after one year are summarized below by interest rate structure and loan category, as of December 31, 2022, *(dollars in thousands)*:

	Fixed Rate	Adjustable Rate	Total
Selected loans maturing after 1 year			
Commercial	$ 896,637	$ 40,292	$ 936,929
Commercial real estate	2,198,122	108,386	2,306,508
Real estate construction	170,692	18,970	189,662
Total selected loans maturing after 1 year	$ 3,265,451	$ 167,648	$ 3,433,099

Allowance for Credit Losses

The following table summarizes, by loan category, activity affecting the ACL and average portfolio loans outstanding for the year ended December 31, 2022, as well as the related ratios of net charge-offs (recoveries) to average portfolio loans *(dollars in thousands)*:

	ACL	Average Portfolio Loans Outstanding	Ratio of Net Charge-offs (Recoveries) To Average Portfolio Loans
ACL balance, December 31, 2019	$ 53,748		
Adoption of ASC 326-30	16,833		
Net (charge-offs) recoveries and average portfolio loans by loan category:			
Commercial	(5,972)	$ 2,123,550	0.28 %
Commercial real estate	(1,777)	2,840,592	0.06 %
Real estate construction	583	447,503	(0.13)%
Retail real estate	(845)	1,552,297	0.05 %
Retail other	(319)	43,004	0.74 %
Net (charge-offs) recoveries and average portfolio loans	(8,330)	$ 7,006,946	0.12 %
Provision for credit losses	38,797		
ACL balance, December 31, 2020	101,048		
Day 1 PCD[1]	4,178		
Net (charge-offs) recoveries and average portfolio loans by loan category:			
Commercial	(1,397)	$ 1,985,511	0.07 %
Commercial real estate	(666)	2,953,944	0.02 %
Real estate construction	89	450,713	(0.02)%
Retail real estate	(76)	1,446,673	0.01 %
Retail other	(188)	132,966	0.14 %
Net (charge-offs) recoveries and average portfolio loans	(2,238)	$ 6,969,807	0.03 %
Provision for credit losses	(15,101)		
ACL balance, December 31, 2021	87,887		
Net (charge-offs) recoveries and average portfolio loans by loan category:			
Commercial	(492)	$ 1,919,227	0.03 %
Commercial real estate	(842)	3,200,166	0.03 %
Real estate construction	213	466,045	(0.05)%
Retail real estate	385	1,584,859	(0.02)%
Retail other	(166)	275,665	0.06 %
Net (charge-offs) recoveries and average portfolio loans	(902)	$ 7,445,962	0.01 %
Provision for credit losses	4,623		
ACL balance, December 31, 2022	$ 91,608		

The following table presents ACL to portfolio loan ratios, as of the periods indicated *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Portfolio loans	$ 7,725,702	$ 7,188,998
PPP loans amortized cost	(845)	(74,958)
Core loans[1]	$ 7,724,857	$ 7,114,040
ACL	$ 91,608	$ 87,887
Ratios		
ACL to portfolio loans	1.19 %	1.22 %
ACL to core loans[1]	1.19 %	1.24 %

1. Core loans is a non-GAAP financial measure. For a reconciliation of non-GAAP financial measures to the most directly comparable GAAP financial measures, see *"Item 1. Business—Non-GAAP Financial Information."*

The following table sets forth the ACL by loan categories and percentage of loans to total loans as of December 31 for each of the years indicated *(dollars in thousands)*:

	As of December 31,			
	2022		2021	
	ACL	% of Loans to Total Loans	ACL	% of Loans to Total Loans
Loan Category				
Commercial	$ 23,860	25.6 %	$ 23,855	27.0 %
Commercial real estate	38,299	42.2 %	38,249	43.4 %
Real estate construction	6,457	6.9 %	5,102	5.4 %
Retail real estate	18,193	21.4 %	17,589	21.0 %
Retail other	4,799	3.9 %	3,092	3.2 %
Total	$ 91,608	100.0 %	$ 87,887	100.0 %

The ongoing impacts of CECL will be dependent upon changes in economic conditions and forecasts, originated and acquired loan portfolio composition, credit performance trends, portfolio duration, and other factors. As of December 31, 2022, management believed the level of the allowance to be appropriate based upon the information available. However, additional losses may be identified in our loan portfolio as new information is obtained.

Provision for Credit Losses

The ACL is a significant estimate in our Consolidated Balance Sheet, affecting both earnings and capital. The methodology adopted influences, and is influenced by, Busey Bank’s overall credit risk management processes. The ACL is recorded in accordance with GAAP to provide an adequate reserve for expected credit losses that is reflective of management’s best estimate of what is expected to be collected. All estimates of credit losses should be based on a careful consideration of all significant factors affecting the collectability as of the evaluation date. The ACL is established through the provision for credit loss expense charged to income. Provision expenses (releases) were recorded as follows for each of the years indicated *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Provision for credit losses	$ 4,623	$ (15,101)	$ 38,797

The relatively high expense in 2020 was attributed to the adoption of CECL in combination with the impacts of the COVID-19 pandemic on the economy, followed by a provision release in 2021 reflecting improvements in macroeconomic conditions and asset quality. In 2022 we began to see a stabilization of the provision expense.

Non-performing Loans and Non-performing Assets

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

Typically, loans are secured by collateral. When a loan is classified as non-accrual and determined to be collateral dependent, it is appropriately reserved or charged down through the ACL to the fair value of our interest in the underlying collateral less estimated costs to sell. Our loan portfolio is collateralized primarily by real estate.

The following table sets forth information concerning non-performing loans and performing restructured loans *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Portfolio loans	$ 7,725,702	$ 7,188,998
Non-GAAP adjustments:		
PPP loans amortized cost	(845)	(74,958)
Core loans[1]	$ 7,724,857	$ 7,114,040
Loans 30 – 89 days past due	$ 6,548	$ 6,261
Total assets	12,336,677	12,859,689
Non-performing assets		
Non-performing loans:		
Non-accrual loans	$ 15,067	$ 15,946
Loans 90+ days past due and still accruing	673	906
Total non-performing loans	15,740	16,852
OREO and other repossessed assets	850	4,416
Total non-performing assets	16,590	21,268
Substandard (excludes 90+ days past due)	90,489	70,565
Classified assets	$ 107,079	$ 91,833
Performing TDRs (includes 30 – 89 days past due)	$ 3,032	$ 1,801
ACL	91,608	87,887
Bank Tier 1 Capital	1,306,716	1,241,303
Ratios		
ACL to non-accrual loans	608.00 %	551.15 %
ACL to non-performing loans	582.01 %	521.52 %
ACL to non-performing assets	552.19 %	413.24 %
Non-accrual loans to portfolio loans	0.20 %	0.22 %
Non-performing loans to portfolio loans	0.20 %	0.23 %
Non-performing loans to core loans[1]	0.20 %	0.24 %
Non-performing assets to total assets	0.13 %	0.17 %
Non-performing assets to portfolio loans and OREO	0.21 %	0.30 %
Classified assets to Bank Tier 1 Capital and ACL	7.66 %	6.91 %

1. Core loans is a non-GAAP financial measure. For a reconciliation of non-GAAP financial measures to the most directly comparable GAAP financial measures, see *"Item 1. Business—Non-GAAP Financial Information."*

Credit quality continues to be exceptionally strong. Total non-performing assets were $16.6 million at December 31, 2022, compared to $21.3 million at December 31, 2021. Asset quality metrics remain dependent upon market-specific economic conditions, and specific measures may fluctuate from period to period. Continued disciplined credit management resulted in non-performing loans as a percentage of portfolio loans of 0.20% at December 31, 2022, compared with 0.23% at December 31, 2021. Furthermore, net charge-offs in 2022 totaled $0.9 million, representing 0.01% of average loans, compared with net charge-offs in 2021 of $2.2 million, representing 0.03% of average loans. If economic conditions were to deteriorate, we would expect the credit quality of our loan portfolio to decline and loan defaults to increase. Allowance coverage of non-performing loans increased to 582.0% at December 31, 2022, compared to 521.5% at December 31, 2021.

Classified assets, which includes non-performing assets and substandard loans, increased to $107.1 million at December 31, 2022, compared to $91.8 million at December 31, 2021. The ratio of classified assets to Busey Bank Tier 1 capital and ACL increased to 7.7% at December 31, 2022, from 6.9% at December 31, 2021.

Potential Problem Loans

Potential problem loans are loans classified as substandard which are not individually evaluated, restructured, non-accrual, or 90+ days past due, but where current information indicates that the borrower may not be able to comply with loan repayment terms. Management assesses the potential for loss on such loans and considers the effect of any potential loss in determining its provision for expected credit losses. Potential problem loans increased to $89.2 million at December 31, 2022, compared to $70.5 million at December 31, 2021. Management continues to monitor these credits and anticipates that restructurings, guarantees, additional collateral, or other planned actions will result in full repayment of the debts. As of December 31, 2022, management identified no other loans that represent or result from trends or uncertainties which would be expected to materially impact future operating results, liquidity, or capital resources.

Deposits

The following table shows the deposit mix for each of the periods presented *(dollars in thousands)*:

	As of December 31,					
	2022		2021			
	Balance	% Total	Balance	% Total	Change	% Change
Deposits						
Non-maturity deposits:						
Noninterest-bearing demand deposits	$ 3,393,666	33.7 %	$ 3,670,267	34.1 %	$ (276,601)	(7.5)%
Interest-bearing transaction deposits	2,857,818	28.4 %	2,720,417	25.2 %	137,401	5.1 %
Saving deposits and money market deposits	2,964,421	29.4 %	3,442,244	32.0 %	(477,823)	(13.9)%
Total non-maturity deposits	9,215,905	91.5 %	9,832,928	91.3 %	(617,023)	(6.3)%
Time deposits	855,375	8.5 %	935,649	8.7 %	(80,274)	(8.6)%
Total deposits	$ 10,071,280	100.0 %	$ 10,768,577	100.0 %	$ (697,297)	(6.5)%

We focus on deepening our relationship with customers to foster core deposit[4] growth, allowing us to reduce our reliance on wholesale funding. Our 2022 deposit balances were impacted by the declining retention of PPP loan funding in customer deposit accounts and the residual impacts of economic stimulus measures, along with the movement of deposits by certain non-relationship customers to competitors based on rate offerings. Core deposits include non-brokered transaction accounts, money market deposit accounts, and time deposits of $250,000 or less. Core deposits represented 98.8% of total deposits as of December 31, 2022, compared to 98.7% as of December 31, 2021. Time deposits as a percentage of total deposits declined to 8.5% as of December 31, 2022, compared to 8.7% as of December 31, 2021. As time deposits mature, we are actively engaging our customers to renew at current market rates.

[4] Core deposits is a non-GAAP financial measure. For a reconciliation of non-GAAP measures to the most directly comparable GAAP financial measures, see "*Item 1. Business—Non-GAAP Financial Information*" included in this Annual Report.

Deposits are federally insured up to the FDIC insurance limit of $250,000. When a portion of a deposit account exceeds the FDIC insurance limit, that portion is uninsured. The following table presents estimates of the uninsured portion of time deposits by maturity date *(dollars in thousands)*:

	As of December 31, 2022
Uninsured time deposits by schedule of maturities	
3 months or less	$ 21,908
Over 3 months through 6 months	16,926
Over 6 months through 12 months	31,888
Thereafter	49,929
Uninsured time deposits	$ 120,651

Borrowings

Term Loan

On May 28, 2021, the Company entered into a Second Amended and Restated Credit Agreement, pursuant to which we have access to (i) a $40.0 million revolving line of credit with an initial termination date of April 30, 2022, and (ii) a $60.0 million term loan with a maturity date of May 31, 2026. The loans had an annual interest rate of 1.75% plus the one-month LIBOR rate. On April 30, 2022, the agreement was amended, effecting an extension of the termination date for the revolving line of credit to April 30, 2023, and providing for the transition from a LIBOR-indexed interest rate to a SOFR-indexed interest rate. Under the terms of the amendment, the loans now have an annual interest rate of 1.80% plus the one-month forward-looking term rate based on SOFR.

Proceeds of the term loan were used to fund a part of the cash portion of the merger consideration related to the acquisition of CAC in the second quarter of 2021, and for general corporate purposes. As of December 31, 2022, there was no balance outstanding on the revolving credit facility and a total of $42.0 million outstanding on the term loan, of which $12.0 million was short-term and $30.0 million was long-term. The revolving credit facility incurs a non-usage fee based on any undrawn amounts.

Securities Sold Under Agreements to Repurchase and Short-term Borrowings

Securities sold under agreements to repurchase, which are classified as secured borrowings, generally mature daily. Short-term borrowings include FHLB advances which mature in less than one year from the date of origination, and the current portion of long-term debt due within 12 months.

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

	Years Ended December 31,		
	2022	2021	2020
Securities sold under agreements to repurchase			
Balance at end of period	$ 229,806	$ 270,139	$ 175,614
Weighted average interest rate at end of period	1.91 %	0.08 %	0.13 %
Maximum outstanding at any month end in year-to-date period	$ 283,664	$ 270,139	$ 210,529
Average daily balance for the year-to-date period	$ 243,690	$ 218,454	$ 187,032
Weighted average interest rate during period [1]	0.60 %	0.10 %	0.35 %
FHLB advances, current portion due within 12 months			
Balance at end of period	$ 339,054	$ 5,678	$ 4,658
Weighted average interest rate at end of period	4.28 %	0.36 %	0.43 %
Maximum outstanding at any month end in year-to-date period	$ 339,054	$ 5,678	$ 4,658
Average daily balance for the year-to-date period	$ 25,845	$ 4,934	$ 3,556
Weighted average interest rate during period [1]	4.28 %	0.41 %	0.53 %
Term loan, current portion due within 12 months			
Balance at end of period	$ 12,000	$ 12,000	$ —
Weighted average interest rate at end of period	5.92 %	1.88 %	— %
Maximum outstanding at any month end in year-to-date period	$ 12,000	$ 12,000	$ —
Average daily balance for the year-to-date period	$ 12,000	$ 7,167	$ —
Weighted average interest rate during period [1]	3.55 %	1.79 %	— %

1. The weighted average interest rate is computed by dividing total interest for the period by the average daily balance outstanding.

Long-term Debt

In addition to the term loan, long-term debt includes funds borrowed from the FHLB which totaled $4.1 million at December 31, 2021. We did not have any funds borrowed from the FHLB included in long-term debt as of December 31, 2022.

Senior and Subordinated Notes

On May 25, 2017, we issued $40.0 million of 3.75% senior notes that matured and were redeemed on May 25, 2022. Additionally, on May 25, 2017, we issued $60.0 million of fixed-to-floating rate subordinated notes that were scheduled to mature on May 25, 2027, with an optional redemption in whole or in part on any interest payment date on or after May 25, 2022. We redeemed all $60.0 million of the outstanding fixed-to-floating rate subordinated notes during the third quarter of 2022. At the time of redemption, the redeemed subordinated notes carried interest at a floating rate of 3-month LIBOR plus 2.919%.

On June 1, 2020, we issued $125.0 million of fixed-to-floating rate subordinated notes that mature on June 1, 2030. The subordinated notes, which qualify as Tier 2 capital for First Busey, bear interest at an annual rate of 5.25% for the first five years after issuance and thereafter bear interest at a floating rate equal to a three-month benchmark rate plus a spread of 5.11%, as calculated on each applicable determination date. The subordinated notes are payable semi-annually on each June 1 and December 1 during the five-year fixed-term, and thereafter on March 1, June 1, September 1, and December 1 of each year, commencing on September 1, 2025. The subordinated notes have an optional redemption in whole or in part on any interest payment date on or after June 1, 2025. The subordinated notes are unsecured obligations of First Busey.

On June 2, 2022, the Company issued $100.0 million aggregate principal amount of 5.000% fixed-to-floating rate subordinated notes maturing June 15, 2032, which qualify as Tier 2 Capital for regulatory purposes. The price to the public for the subordinated notes was 100% of the principal amount of the subordinated notes. Interest on the subordinated notes will accrue at a rate equal to (i) 5.000% per annum from the original issue date to, but excluding, June 15, 2027, payable semiannually in arrears, and (ii) a floating rate per annum equal to a benchmark rate, which is expected to be the Three-Month Term SOFR (as defined in the subordinated notes), plus a spread of 252 basis points from and including, June 15, 2027, payable quarterly in arrears. The subordinated notes have an optional redemption in whole or in part on any interest payment date on or after June 15, 2027.

Unamortized debt issuance costs related to senior notes and subordinated notes are presented in the following table *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Unamortized debt issuance costs		
Senior notes issued in 2017	$ —	$ 56
Subordinated notes issued in 2017	—	549
Subordinated notes issued in 2020	1,220	1,678
Subordinated notes issued in 2022	1,742	—
Total unamortized debt issuance costs	$ 2,962	$ 2,283

Junior Subordinated Debt Owed to Unconsolidated Trusts

First Busey maintains statutory trusts for the sole purpose of issuing and servicing trust preferred securities and related trust common securities. Proceeds from such issuances were used by the trusts to purchase junior subordinated notes of First Busey, which are the sole assets of each trust. Concurrent with the issuance of the trust preferred securities, we issued guarantees for the benefit of the holders of the trust preferred securities. The trust preferred securities are instruments that qualify, and are treated by First Busey, as Tier 1 regulatory capital. First Busey owns all of the common securities of each trust. The trust preferred securities issued by each trust rank equally with the common securities in right of payment, except that if an event of default under the indenture governing the notes has occurred and is continuing, the preferred securities will rank senior to the common securities in right of payment. In connection with the Pulaski acquisition in 2016, we acquired similar statutory trusts previously maintained by Pulaski and the fair value adjustment is being accreted over their weighted average remaining life, with a balance remaining to be accreted of $2.8 million at December 31, 2022. We had $71.8 million and $71.6 million of junior subordinated debt owed to unconsolidated trusts at December 31, 2022, and 2021, respectively.

Liquidity

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

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

	Years Ended December 31,		
	2022	2021	2020
Average liquid assets			
Cash and due from banks	$ 120,910	$ 133,711	$ 118,739
Interest-bearing bank deposits	290,875	630,687	488,786
Federal funds sold	—	—	—
Total average liquid assets	$ 411,785	$ 764,398	$ 607,525
Average liquid assets as a percent of average total assets	3.3 %	6.4 %	5.9 %

First Busey's primary sources of funds consist of deposits, investment maturities and sales, loan principal repayments, and capital funds. Cash and unencumbered securities on our Consolidated Balance Sheets are summarized as follows for the periods presented *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Cash and unencumbered securities		
Total cash and cash equivalents	$ 227,164	$ 836,095
Debt securities available for sale	2,461,393	3,981,251
Debt securities pledged as collateral	(746,675)	(708,939)
Cash and unencumbered securities	$ 1,941,882	$ 4,108,407

Additional liquidity is provided by the ability to borrow from the FHLB, the Federal Reserve Bank, First Busey's revolving credit facility, or to utilize brokered deposits, as summarized in the table below *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Additional borrowing capacity available from:		
FHLB	$ 1,765,388	$ 1,536,019
Federal Reserve Bank	659,680	624,627
Revolving credit facility	40,000	40,000
Additional borrowing capacity	$ 2,465,068	$ 2,200,646

As of December 31, 2022, management believed that adequate liquidity existed to meet all projected cash flow obligations. We seek to achieve a satisfactory degree of liquidity by actively managing both assets and liabilities. Asset management guides the proportion of liquid assets to total assets, while liability management monitors future funding requirements and prices liabilities accordingly.

Our ability to pay cash dividends to our stockholders and to service our debt is dependent on the receipt of cash dividends from our subsidiaries. Busey Bank paid dividends to First Busey totaling $95.0 million and $60.0 million for the years ended December 31, 2022, and 2021, respectively.

Off-Balance-Sheet Arrangements

Busey Bank routinely enters into commitments to extend credit and standby letters of credit in the normal course of business to meet the financing needs of its customers. The balance of commitments to extend credit represents future cash requirements and some of these commitments may expire without being drawn upon.

The following table summarizes our outstanding commitments and reserves for unfunded commitments *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Outstanding loan commitments and standby letters of credit	2,024,777	2,016,207
Reserve for unfunded commitments	6,601	6,540

The following table summarizes our provision for unfunded commitments expenses (releases) for the periods presented *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Provision for unfunded commitments expense (release)	$ 61	$ (774)	$ 1,822

We anticipate we will have sufficient funds available to meet current loan commitments, including loan applications received and in process prior to the issuance of firm commitments.

Contractual Obligations

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

The following table summarizes significant contractual obligations and other commitments, excluding short-term borrowings and the current portion of long-term debt, as of December 31, 2022, *(dollars in thousands)*:

	Certificates of Deposit	Operating Leases	Junior Subordinated Debt Owed to Unconsolidated Trusts	Long-term Debt	Subordinated Notes, Net of Unamortized Issuance Costs	Total
Contractual obligations by schedule of maturities						
2023	$ 560,147	$ 2,254	$ —	$ —	$ —	$ 562,401
2024	229,263	1,942	—	12,000	—	243,205
2025	34,307	1,719	—	12,000	—	48,026
2026	16,637	1,442	—	6,000	—	24,079
2027	14,301	1,277	—	—	—	15,578
Thereafter	720	6,699	71,810	—	222,038	301,267
Contractual obligations	$ 855,375	$ 15,333	$ 71,810	$ 30,000	$ 222,038	$ 1,194,556
Commitments to extend credit and standby letters of credit						$ 2,024,777

Cash Flows

Net cash flows provided by operating activities totaled $165.8 million in 2022, compared to $162.0 million in 2021. Significant items affecting the cash flows provided by operating activities include net income; the provision for credit losses; depreciation and amortization; gain on sales of mortgage loans, net of origination costs and activities related to the origination and sales of loans held for sale; and stock-based compensation. Net cash used to originate mortgage loans held for sale totaled $24.3 million in 2022, compared to $31.7 million of in 2021. Fluctuations in sales are a function of changes in market rates for mortgage loans, which influence refinance activity. Our provision for credit losses reflects a provision expense of $4.6 million in 2022, compared to a reserve release of $15.1 million in 2021. Stock-based compensation increased to $9.0 million in 2022, compared to $7.9 million in 2021.

Net cash used in investing activities totaled $290.9 million in 2022, compared to $829.2 million in 2021. Significant investment activities are those associated with managing First Busey's investment and loan portfolios, as well as acquisition activities. We purchased $280.1 million of debt securities available for sale in 2022, compared to $2.3 billion in 2021. In 2021, investing outflows were partially offset with $228.3 million net cash received in connection with the CAC acquisition.

Net cash used in financing activities totaled $483.9 million in 2022, compared to $814.7 million provided by financing activities in 2021. Significant items affecting cash flows from financing activities are debt issuance, deposits, short-term borrowings, long-term debt, payment of dividends, and proceeds and redemption from stock issuances. Deposits, which represent First Busey's primary funding source, decreased by $696.9 million in 2022, compared to an increase of $767.5 million in 2021, excluding acquired deposits. Proceeds from FHLB advances totaled $335.0 million in 2022, compared to $5.0 million in 2021.

Capital Resources

Our capital ratios are in excess of those required to be considered "well-capitalized" pursuant to applicable regulatory guidelines. The Federal Reserve uses capital adequacy guidelines in its examination and regulation of bank holding companies and their subsidiary banks. Risk-based capital ratios are established by allocating assets and certain off-balance-sheet commitments into risk-weighted categories. These balances are then multiplied by the factor appropriate for that risk-weighted category. In order to refrain from restrictions on dividends, equity repurchases, and discretionary bonus payments, banking institutions must maintain capital in excess of regulatory minimum capital requirements. The table below presents minimum capital ratios with capital buffer and capital ratios for First Busey and Busey Bank as of December 31, 2022.

	Minimum Capital Requirements with Capital Buffer	As of December 31, 2022	
		First Busey Corporation	Busey Bank
Common Equity Tier 1 Capital to Risk Weighted Assets	7.00 %	11.96 %	14.49 %
Tier 1 Capital to Risk Weighted Assets	8.50 %	12.78 %	14.49 %
Total Capital to Risk Weighted Assets	10.50 %	16.12 %	15.35 %
Leverage Ratio of Tier 1 Capital to Average Assets	6.50 %	9.45 %	10.72 %

Management believes that no conditions or events have occurred since December 31, 2022, that would materially adversely change First Busey's or Busey Bank's capital classifications.

NEW ACCOUNTING PRONOUNCEMENTS

We review new accounting standards as issued. Information relating to accounting pronouncements applicable to First Busey appears in "*Note 1. Significant Accounting Policies*" in the Notes to the Consolidated Financial Statements.

EFFECTS OF INFLATION

The effect of inflation on a financial institution differs significantly from the effect on an industrial company. While a financial institution's operating expenses, particularly salaries, wages, and employee benefits, are affected by general inflation, the asset and liability structure of a financial institution consists largely of monetary items. Monetary items, such as cash, loans, and deposits, are those assets and liabilities which are or will be converted into a fixed number of dollars regardless of changes in prices. As a result, changes in interest rates have a more significant impact on a financial institution's performance than does general inflation. For additional information regarding interest rates and changes in net interest income see "*Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Results of Operation — Three Years Ended December 31, 2022—Consolidated Average Balance Sheets and Interest Rates*" and "*Item 7A. Quantitative and Qualitative Disclosures About Market Risk.*"

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

First Busey has an asset-liability committee, whose policy is to meet at least quarterly, to review current market conditions and to structure the Consolidated Balance Sheets to optimize stability in net interest income in consideration of projected future changes in interest rates.

As interest rate changes do not impact all categories of assets and liabilities equally or simultaneously, the asset-liability committee primarily relies on balance sheet and income simulation analysis to determine the potential impact of changes in market interest rates on net interest income. In these standard simulation models, the balance sheet is projected over a one-year and a two-year time horizon and net interest income is calculated under current market rates and assuming permanent instantaneous shifts of +/-100, +/-200, +/-300, and +/-400 basis points. As of December 31, 2021, a downward adjustment in federal fund rates was not meaningful due to the low interest rate environment at that time. The model assumes immediate and sustained shifts in the federal funds rate and other market rate indices and corresponding shifts in other non-market rate indices based on their historical changes relative to changes in the federal funds rate and other market indices. Assets and liabilities are assumed to remain constant as of the measurement date; variable-rate assets and liabilities are repriced based on repricing frequency; and prepayment speeds on loans are projected for both declining and rising rate environments.

The interest rate risk of First Busey as a result of immediate and sustained changes in interest rates, expressed as a change in net interest income as a percentage of the net interest income calculated in the constant base model, was as follows:

	Year-One: Basis Point Changes							
	-400	-300	-200	- 100	+100	+200	+300	+400
December 31, 2022	(21.24)%	(14.74)%	(8.08)%	(3.95)%	3.05%	6.11%	9.18%	12.27%
December 31, 2021	NM	NM	NM	NM	8.77%	17.19%	25.64%	33.87%

	Year-Two: Basis Point Changes							
	-400	-300	-200	- 100	+100	+200	+300	+400
December 31, 2022	(27.82)%	(19.56)%	(10.76)%	(5.27)%	3.94%	7.91%	11.94%	16.02%
December 31, 2021	NM	NM	NM	NM	9.51%	18.22%	26.84%	35.35%

Interest rate risk is monitored and managed within approved policy limits and any temporary exceptions to policy in periods of rapid rate movement are approved and documented. The calculation of potential effects of hypothetical interest rate changes is based on numerous assumptions and should not be relied upon as indicative of actual results. Actual results would likely differ from simulated results due to the timing, magnitude, and frequency of interest rate changes as well as changes in market conditions and management strategies.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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Report of Independent Registered Public Accounting Firm

Stockholders and the Board of Directors of
First Busey Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of First Busey Corporation and Subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of income, comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013, and our report dated February 23, 2023, expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

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

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

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which they relate.

Allowance for Credit Losses on Loans—Adjustments to Historical Loss Factors

As described in Notes 1 and 4 to the financial statements, the Company's allowance for credit losses totaled $91.6 million, which consists of a reserve on loans collectively evaluated for impairment (a/k/a general reserve) of $87.1 million and a reserve on loans individually evaluated (a/k/a specific reserve) of $4.5 million at December 31, 2022. The allowance for credit losses is measured on a collective loan pool basis when similar risk characteristics exist. Loans that do not share similar risk characteristics are evaluated on an individual basis, at the balance sheet date. The measurement of expected credit losses on collectively evaluated loans is based on relevant information about past events, including historical experience, current conditions and reasonable and supportable forecasts that affect the collectability of the amortized cost basis. Adjustments to historical loss information are made for differences in current loan-specific risk characteristics such as differences in underwriting standards, portfolio mix, delinquency level, or term as well as for changes in environmental conditions such as changes in unemployment rates, property values and other relevant factors. The calculation also contemplates that the Company may not be able to make or obtain such forecasts for the entire life of the financial assets and requires a reversion to historical credit loss information.

We identified the adjustments to historical loss factors components of the allowance for credit losses as a critical audit matter as auditing the underlying adjustments required significant auditor judgment as amounts determined by management rely on analysis that is highly subjective and includes significant estimation uncertainty.

Our audit procedures related to the adjustments to historical factors within the allowance for credit losses include the following, among others:

- We obtained an understanding of the relevant controls related to the adjustments to historical factors in the calculation of the allowance for credit losses and tested such controls for design and operating effectiveness, including management's review of the allowance memo and calculation in support of adjustments.
- We tested the completeness and accuracy of data used by management in determining adjustments to historical loss factors by agreeing the supporting data to internal or external source data.
- We tested management's conclusions regarding the appropriateness of the adjustments, including magnitude and directional consistency, to historical loss factors and agreed the impact to the allowance for credit losses calculation.

We or our predecessor firms have served as the Company's auditor since at least 1980; however, an earlier year could not be established.

/s/ RSM US LLP
Champaign, Illinois
February 23, 2023

FIRST BUSEY CORPORATION
CONSOLIDATED BALANCE SHEETS
(dollars in thousands)

	As of December 31,	
	2022	2021
Assets		
Cash and cash equivalents:		
Cash and due from banks	$ 117,513	$ 102,983
Interest-bearing deposits	109,651	733,112
Total cash and cash equivalents	227,164	836,095
Debt securities available for sale	2,461,393	3,981,251
Debt securities held to maturity	918,312	—
Equity securities	11,535	13,571
Loans held for sale (2022 at LOCOM, 2021 at fair value)	1,253	23,875
Portfolio loans (net of ACL of $91,608 at December 31, 2022; $87,887 at December 31, 2021)	7,634,094	7,101,111
Premises and equipment, net	126,524	136,147
Right of use assets	12,829	10,533
Goodwill	317,873	317,873
Other intangible assets, net	46,423	58,051
Cash surrender value of bank owned life insurance	180,485	176,940
Other assets	398,792	204,242
Total assets	$ 12,336,677	$ 12,859,689
Liabilities and Stockholders' Equity		
Liabilities		
Deposits:		
Noninterest-bearing	$ 3,393,666	$ 3,670,267
Interest-bearing	6,677,614	7,098,310
Total deposits	10,071,280	10,768,577
Securities sold under agreements to repurchase	229,806	270,139
Short-term borrowings	351,054	17,678
Long-term debt	30,000	46,056
Senior notes, net of unamortized issuance costs	—	39,944
Subordinated notes, net of unamortized issuance costs	222,038	182,773
Junior subordinated debt owed to unconsolidated trusts	71,810	71,635
Lease liabilities	12,995	10,591
Other liabilities	201,717	133,184
Total liabilities	11,190,700	11,540,577
Outstanding commitments and contingent liabilities (see Notes 16 and 22)		
Stockholders' Equity		
Common stock, ($0.001 par value; 100,000,000 shares authorized)	58	58
Additional paid-in capital	1,320,980	1,316,984
Retained earnings	168,769	92,463
AOCI	(273,278)	(23,758)
Total stockholders' equity before treasury stock	1,216,529	1,385,747
Treasury stock at cost	(70,552)	(66,635)
Total stockholders' equity	1,145,977	1,319,112
Total liabilities and stockholders' equity	$ 12,336,677	$ 12,859,689
Shares		
Common shares issued	58,116,970	58,116,970
Less treasury shares	(2,837,846)	(2,682,060)
Common shares outstanding	55,279,124	55,434,910

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION
CONSOLIDATED STATEMENTS OF INCOME
(dollars in thousands, except per share amounts)

	Year Ended December 31,		
	2022	2021	2020
Interest income			
Interest and fees on loans	$ 287,477	$ 252,097	$ 284,959
Interest and dividends on investment securities:			
Taxable interest income	66,140	41,787	35,364
Non-taxable interest income	3,272	3,765	4,552
Other interest income	3,097	1,151	1,723
Total interest income	359,986	298,800	326,598
Interest expense			
Deposits	16,112	12,583	30,691
Federal funds purchased and securities sold under agreements to repurchase	1,475	227	660
Short-term borrowings	1,647	279	234
Long-term debt	1,310	657	525
Senior notes	637	1,598	1,598
Subordinated notes	12,338	9,918	6,995
Junior subordinated debt owed to unconsolidated trusts	3,029	2,840	2,960
Total interest expense	36,548	28,102	43,663
Net interest income	323,438	270,698	282,935
Provision for credit losses	4,623	(15,101)	38,797
Net interest income after provision for credit losses	318,815	285,799	244,138
Noninterest income			
Wealth management fees	55,378	53,086	42,928
Fees for customer services	33,111	35,604	31,604
Payment technology solutions	20,067	18,347	15,628
Mortgage revenue	1,895	7,239	13,038
Income on bank owned life insurance	3,663	5,166	5,380
Realized net gains (losses) on securities	50	29	1,724
Unrealized net gains (losses) recognized on equity securities	(2,183)	3,041	(393)
Other income	14,822	10,292	8,356
Total noninterest income	126,803	132,804	118,265
Noninterest expense			
Salaries, wages, and employee benefits	159,016	145,312	126,719
Data processing	21,648	21,862	16,426
Net occupancy expense of premises	19,130	18,346	17,607
Furniture and equipment expenses	7,645	8,301	9,550
Professional fees	6,125	7,549	8,396
Amortization of intangible assets	11,628	11,274	10,008
Interchange expense	6,298	5,792	4,810
Other expense	52,391	43,344	40,681
Total noninterest expense	283,881	261,780	234,197
Income before income taxes	161,737	156,823	128,206
Income taxes	33,426	33,374	27,862
Net income	$ 128,311	$ 123,449	$ 100,344
Basic earnings per common share	$ 2.32	$ 2.23	$ 1.84
Diluted earnings per common share	2.29	2.20	1.83
Dividends declared per share of common stock	0.92	0.92	0.88

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(dollars in thousands)

	Years Ended December 31,		
	2022	2021	2020
Net income	$ 128,311	$ 123,449	$ 100,344
OCI:			
Unrealized/Unrecognized gains (losses) on debt securities:			
Net unrealized holding gains (losses) on debt securities available for sale, net of taxes of $79,460, $23,367, and $(8,615)	(199,302)	(58,610)	21,561
Net unrecognized gains (losses) on debt securities transferred to held to maturity from available for sale, net of taxes of $13,812, $—, and $—, respectively	(34,644)	—	—
Reclassification adjustment for realized (gains) losses on debt securities available for sale included in net income, net of taxes of $7, $(17), and $496, respectively	(19)	44	(1,228)
Amortization of unrecognized losses on securities transferred to held to maturity, net of taxes of $(1,893), $—, and $—, respectively	4,745	—	—
Net change in unrealized/unrecognized gains (losses) on debt securities	(229,220)	(58,566)	20,333
Unrealized gains (losses) on cash flow hedges:			
Net unrealized holding gains (losses) on cash flow hedges, net of taxes of $8,258, $(294), and $1,007, respectively	(20,717)	736	(2,526)
Reclassification adjustment for realized (gains) losses on cash flow hedges included in net income, net of taxes of $(166), $(304), and $(216), respectively	417	763	542
Net change in unrealized gains (losses) on cash flow hedges	(20,300)	1,499	(1,984)
Net change in AOCI	(249,520)	(57,067)	18,349
Total comprehensive income (loss)	$ (121,209)	$ 66,382	$ 118,693

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(dollars in thousands, except per share amounts)

	Shares	Common Stock	Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	AOCI	Treasury Stock	Total Stockholders' Equity
Balance, December 31, 2019	**54,788,772**	**$ 56**	**$ 1,248,216**	**$ (14,813)**	**$ 14,960**	**$ (27,985)**	**$ 1,220,434**
Cumulative effect of change in accounting principle (ASU 2016-13)	—	—	—	(15,922)	—	—	(15,922)
Net income	—	—	—	100,344	—	—	100,344
OCI, net of tax	—	—	—	—	18,349	—	18,349
Repurchase of stock	(531,114)	—	—	—	—	(12,272)	(12,272)
Issuance of treasury stock for ESPP	32,063	—	(59)	—	—	606	547
Net issuance of treasury stock for RSU/DSU vesting and related tax	106,589	—	(2,648)	—	—	2,013	(635)
Issuance of treasury stock for stock options exercised, net of shares redeemed and related tax	8,069	—	(51)	—	—	152	101
Cash dividends common stock at $0.88 per share	—	—	—	(48,012)	—	—	(48,012)
Stock dividend equivalents RSUs at $0.88 per share	—	—	767	(767)	—	—	—
Stock-based compensation	—	—	7,135	—	—	—	7,135
Balance, December 31, 2020	**54,404,379**	**$ 56**	**$ 1,253,360**	**$ 20,830**	**$ 33,309**	**$ (37,486)**	**$ 1,270,069**
Net income	—	—	—	123,449	—	—	123,449
OCI, net of tax	—	—	—	—	(57,067)	—	(57,067)
Stock issued in acquisition, net of stock issuance costs	2,206,237	2	58,953	—	—	—	58,955
Repurchase of stock	(1,323,000)	—	—	—	—	(33,043)	(33,043)
Issuance of treasury stock for ESPP	30,390	—	(136)	—	—	782	646
Net issuance of treasury stock for RSU/DSU vesting and related tax	116,904	—	(4,109)	—	—	3,112	(997)
Cash dividends common stock at $0.92 per share	—	—	—	(50,764)	—	—	(50,764)
Stock dividend equivalents RSUs at $0.92 per share	—	—	1,052	(1,052)	—	—	—
Stock-based compensation	—	—	7,864	—	—	—	7,864
Balance, December 31, 2021	**55,434,910**	**$ 58**	**$ 1,316,984**	**$ 92,463**	**$ (23,758)**	**$ (66,635)**	**$ 1,319,112**
Net income	—	—	—	128,311	—	—	128,311
OCI, net of tax	—	—	—	—	(249,520)	—	(249,520)
Repurchase of stock	(388,614)	—	—	—	—	(9,912)	(9,912)
Issuance of treasury stock for ESPP	57,385	—	(320)	—	—	1,477	1,157
Net issuance of treasury stock for RSU/DSU vesting and related tax	175,225	—	(5,789)	—	—	4,513	(1,276)
Issuance of treasury stock for stock options exercised, net of shares redeemed and related tax	218	—	(5)	—	—	5	—
Cash dividends common stock at $0.92 per share	—	—	—	(50,863)	—	—	(50,863)
Stock dividend equivalents RSUs at $0.92 per share	—	—	1,142	(1,142)	—	—	—
Stock-based compensation	—	—	8,968	—	—	—	8,968
Balance, December 31, 2022	**55,279,124**	**$ 58**	**$ 1,320,980**	**$ 168,769**	**$ (273,278)**	**$ (70,552)**	**$ 1,145,977**

See accompanying Notes to Consolidated Financial Statements.

FIRST BUSEY CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(dollars in thousands)

	Years Ended December 31,		
	2022	2021	2020
Cash Flows Provided by (Used in) Operating Activities			
Net income	$ 128,311	$ 123,449	$ 100,344
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Provision for credit losses	4,623	(15,101)	38,797
Amortization of intangible assets	11,628	11,274	10,008
Amortization of mortgage servicing rights	3,540	5,292	5,667
Amortization of NMTC	6,333	5,563	2,311
Depreciation and amortization of premises and equipment	10,482	11,610	12,273
Net amortization (accretion) on portfolio loans	3,932	(11,545)	(15,372)
Net amortization (accretion) of premium (discount) on investment securities	20,799	24,251	9,716
Net amortization (accretion) of premium (discount) on time deposits	(403)	(1,142)	(933)
Net amortization (accretion) of premium (discount) on FHLB advances and other borrowings	1,400	826	586
Impairment of OREO and other repossessed assets	611	1	68
Impairment of fixed assets held for sale	427	3,227	6,901
Impairment of mortgage servicing rights	(8)	(639)	648
Impairment of leases	84	—	—
Unrealized (gains) losses recognized on equity securities, net	2,183	(3,041)	393
(Gain) loss on sales of equity securities, net	(24)	—	—
(Gain) loss on sales of debt securities, net	(26)	(29)	(1,724)
(Gain) loss on sales of loans, net	(1,944)	(9,323)	(26,999)
(Gain) loss on sales of OREO	(54)	174	(133)
(Gain) loss on sales of premises and equipment	(825)	(1,023)	286
(Gain) loss on life insurance proceeds	—	(1,257)	(1,270)
(Increase) decrease in cash surrender value of bank owned life insurance	(3,663)	(3,909)	(4,110)
Provision for deferred income taxes	(1,272)	4,665	(5,309)
Stock-based compensation	8,968	7,864	7,135
Mortgage loans originated for sale	(70,953)	(274,356)	(881,398)
Proceeds from sales of mortgage loans	95,289	306,074	920,050
(Increase) decrease in other assets	(56,284)	7,203	(8,210)
Increase (decrease) in other liabilities	2,633	(28,096)	(6,551)
Net cash provided by (used in) operating activities	$ 165,787	$ 162,012	$ 163,174
Cash Flows Provided by (Used in) Investing Activities			
Purchases of equity securities	$ (14,820)	$ (11,017)	$ (13,123)
Purchases of debt securities available for sale	(280,083)	(2,298,055)	(1,282,199)
Proceeds from sales of equity securities	15,418	7,254	13,152
Proceeds from sales of debt securities available for sale	—	290,955	—
Proceeds from paydowns and maturities of debt securities held to maturity	70,116	—	—
Proceeds from paydowns and maturities of debt securities available for sale	470,134	868,083	665,744
Purchases of FHLB and other bank stock	(12,969)	—	—
Proceeds from the redemption of FHLB and other bank stock	225	—	—
Net cash received in (paid for) acquisitions (see Note 2)	—	228,279	—
Net (increase) decrease in loans	(541,713)	76,826	(113,744)
Cash paid for premiums on bank-owned life insurance	(106)	(124)	(120)
Proceeds from life insurance	219	4,755	2,696
Purchases of premises and equipment	(4,989)	(5,042)	(4,198)
Proceeds from disposition of premises and equipment	4,528	7,306	814
Proceeds from sales of OREO	3,184	1,590	1,439
Net cash provided by (used in) investing activities	$ (290,856)	$ (829,190)	$ (729,539)

(continued)

FIRST BUSEY CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)
(dollars in thousands)

	Years Ended December 31,		
	2022	2021	2020
Cash Flows Provided by (Used in) Financing Activities			
Net increase (decrease) in deposits	$ (696,894)	$ 767,474	$ 776,386
Net change in federal funds purchased and securities sold under agreements to repurchase	(40,333)	77,874	(29,877)
Proceeds from FHLB advances	335,000	5,000	4,000
Repayment of FHLB advances	(5,678)	(4,658)	(32,711)
Proceeds from other borrowings, net of debt issuance costs	98,094	72,500	142,634
Repayment of other borrowings	(112,000)	(18,500)	(74,000)
Cash dividends paid	(50,863)	(50,764)	(48,012)
Purchase of treasury stock	(9,912)	(33,043)	(12,272)
Cash paid for withholding taxes on stock-based payments	(1,276)	(997)	(635)
Proceeds from stock options exercised	—	—	101
Common stock issuance costs	—	(150)	—
Net cash provided by (used in) financing activities	$ (483,862)	$ 814,736	$ 725,614
Net increase (decrease) in cash and cash equivalents	(608,931)	147,558	159,249
Cash and cash equivalents, beginning of period	836,095	688,537	529,288
Cash and cash equivalents, ending of period	$ 227,164	$ 836,095	$ 688,537
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION			
Cash payments for:			
Interest	$ 35,297	$ 25,374	$ 53,601
Income taxes	30,676	22,487	22,195
Non-cash investing and financing activities:			
OREO acquired in settlement of loans	175	1,610	2,867
Transfer of loans held for sale to portfolio loans	—	(4,808)	—
Transfer of debt securities available for sale to held to maturity	985,199	—	—

See accompanying Notes to Consolidated Financial Statements.

NOTE 1. SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

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

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

Principles of Consolidation

The Consolidated Financial Statements include the accounts of the Company and its subsidiaries, which include First Busey Risk Management, Deed of Trust Services Corporation, and Busey Bank, including Busey Bank's wholly-owned subsidiaries FirsTech, Pulaski Service Corporation, and Busey Capital Management, Inc. Operating results generated from acquired businesses are included with the Company's results of operations starting from each date of acquisition. The Company and its subsidiaries maintain various LLCs that hold specific assets for risk mitigation purposes and are consolidated into these Consolidated Financial Statements. Intercompany balances and transactions have been eliminated in consolidation.

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

Use of Estimates

In preparing the accompanying Consolidated Financial Statements in conformity with GAAP, the Company's management is required to make estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and the disclosures provided. Actual results could differ from those estimates. Material estimates which are particularly susceptible to significant change in the near-term relate to the fair value of debt securities available for sale, fair value of assets acquired and liabilities assumed in business combinations, goodwill, income taxes, and the determination of the ACL.

Comprehensive Income (Loss)

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

Trust Assets

Assets held for customers in a fiduciary or agency capacity, other than trust cash on deposit at Busey Bank, are not assets of the Company and, accordingly, are not included in the accompanying Consolidated Financial Statements. The Company had assets under care of $11.1 billion at December 31, 2022, and $12.7 billion at December 31, 2021.

Cash and Cash Equivalents

Cash and cash equivalents include cash on hand, cash items in process of collection, amounts due from other banks, interest-bearing deposits held with other financial institutions, and federal funds sold. The carrying amount of these instruments is considered a reasonable estimate of fair value.

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

Securities

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

Purchase premiums and discounts are recognized in interest income using the interest method over the terms of the securities. The amortization period for certain callable debt securities held at a premium are amortized to the earliest call date, while discounts on debt securities are amortized to maturity. Gains and losses on the sale of debt securities available for sale are recorded on the trade date and are determined using the specific identification method.

Debt securities available for sale are not within the scope of the current expected credit losses methodology, however, the accounting for credit losses on these securities is affected by ASC Subtopic 326-30 *"Financial Instruments-Credit Losses—Available-for-Sale Debt Securities."* A debt security available for sale is impaired if the fair value of the security declines below its amortized cost basis. To determine the appropriate accounting, the Company must first determine if it intends to sell the security or if it is more likely than not that it will be required to sell the security before the fair value increases to at least the amortized cost basis. If either of those selling events is expected, the Company will write down the amortized cost basis of the security to its fair value. This is achieved by writing off any previously recorded allowance, if applicable, and recognizing any incremental impairment through earnings. If the Company neither intends to sell the security, nor believes it more likely than not will be required to sell the security, before the fair value recovers to the amortized cost basis, the Company must determine whether any of the decline in fair value has resulted from a credit loss, or if it is entirely the result of noncredit factors.

The Company considers the following factors in assessing whether the decline is due to a credit loss:

- Extent to which the fair value is less than the amortized cost basis
- Adverse conditions specifically related to the security, an industry, or a geographic area (for example, changes in the financial condition of the issuer of the security, or in the case of an asset-backed debt security, in the financial condition of the underlying loan obligors)
- Payment structure of the debt security and the likelihood of the issuer being able to make payments that increase in the future
- Failure of the issuer of the security to make scheduled interest or principal payments
- Any changes to the rating of the security by a rating agency

Impairment related to a credit loss must be measured using the discounted cash flow method. Credit loss recognition is limited to the fair value of the security. Impairment is recognized by establishing an ACL through provision for credit losses. Impairment related to noncredit factors is recognized in AOCI, net of applicable taxes. The Company did not recognize any impairment in 2022, 2021, or 2020.

Debt securities classified as held to maturity are those debt securities that the Company has the intent and ability to hold to maturity and are carried at amortized cost. In 2022, the Company elected to transfer a portion of the agency mortgage-backed securities portfolio from available for sale to held to maturity. While held to maturity securities are within the scope of CECL, the standard allows for an assumption of zero credit losses when the expectation of non-payment is zero. The risk related to mortgage-backed securities issued and/or guaranteed by U.S. government agencies or U.S. government-sponsored enterprises, is considered low therefore requiring no allowance to be recorded.

Accrued interest receivable for debt securities totaled $14.7 million at December 31, 2022, and is excluded from the estimate of credit losses. Accrued interest receivable is reported in other assets on the Consolidated Balance Sheets.

Equity securities are carried at fair value with changes in fair value recognized in earnings.

Loans Held for Sale

Loans held for sale include mortgage loans which the Company intends to sell to investors and/or the secondary mortgage market.

Effective January 1, 2022, the Company elected to account for all newly originated loans held for sale at LOCOM. Loans held for sale are carried at amortized historical cost less loan write-offs and downward fair value adjustments, as may be applicable. Net unrealized losses, if any, are recognized through a valuation allowance by charges to income. Gains and losses on sales of loans are recognized at settlement dates and are determined by the difference between the sales proceeds and the carrying amount, net of the value of any servicing assets for loans that were sold with servicing rights retained.

Prior to this change, the Company accounted for loans held for sale at fair value. Loans held for sale were recorded at fair value, with changes in fair value recognized in earnings. Fair value adjustments were recorded as an adjustment to mortgage revenues. The fair value of loans held for sale was measured using observable quoted market prices, contract prices, or market price equivalents, consistent with those used by other market participants. Direct loan origination fees and costs related to loans accounted for at fair value were recognized when earned.

Loan Servicing

Servicing assets are recognized when servicing rights are acquired or retained through the sale of mortgage and government-guaranteed commercial loans. The unpaid principal balances of loans serviced by the Company for the benefit of others totaled $1.7 billion as of December 31, 2022, and are not included in the accompanying Consolidated Balance Sheets. Servicing rights are initially recorded at fair value which is determined using a valuation model that calculates the present value of estimated future net servicing income. Capitalized servicing rights are reported in other assets and are amortized into noninterest income in proportion to, and over the period of, the estimated future net servicing income of the underlying financial assets. The amortization of mortgage servicing rights is included in mortgage revenue. The amortization of government-guaranteed commercial loans is included in other income.

Servicing rights are periodically evaluated for impairment based on the fair value of those rights as compared to book value. Fair values are estimated using discounted cash flows based on expected prepayment rates and other inputs. For purposes of measuring impairment, servicing rights are stratified by one or more predominant characteristics of the underlying loans. A valuation allowance is recognized in the amount by which the amortized cost of the rights for each stratum exceeds its fair value, if any. If the Company later determines that all or a portion of the impairment no longer exists for a particular group of loans, a reversal of the allowance may be recorded in current period earnings. The Company had an insignificant amount of impairment recorded at December 31, 2022 and 2021.

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

Portfolio Loans

Loans that management has the intent and ability to hold for the foreseeable future, or until maturity or pay-off, are reported at the principal balance outstanding, net of purchase premiums and discounts, or net deferred origination fees or costs, charge-offs, and the ACL.

Loan origination fees, net of certain direct loan origination costs, are deferred and the net amount is amortized as an adjustment of the related loan’s yield. The Company amortizes the net amount over the contractual life of the related loan.

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

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

PPP Loans

At December 31, 2022, the Company had $0.9 million in PPP loans outstanding, with an amortized cost of $0.8 million. In comparison, at December 31, 2021, the Company had $76.9 million in PPP loans outstanding, with an amortized cost of $75.0 million. The Company received fees totaling $2.5 million, $20.1 million, and $25.4 million for the years ended December 31, 2022, 2021, and 2020, respectively. Incremental direct origination costs the Company incurred were $0.6 million, $4.2 million, and $5.1 million for the years ended December 31, 2022, 2021, and 2020, respectively. Both the fees received and the origination costs have been deferred and are being amortized over the contractual life of these loans, subject to prepayment. The Company recognized $1.9 million, $14.0 million, and $15.2 million in net interest income for fees, net of deferred cost, during the years ended December 31, 2022, 2021, and 2020, respectively. As of December 31, 2022, the remaining amount of fees to be recognized, net of deferred costs, was insignificant. PPP loans contain a forgiveness feature for funds spent on covered expenses, including both principal and accrued interest. Any remaining balance after loan forgiveness maintains a 100% government guarantee for the remaining term of the loan.

Troubled Debt Restructurings

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

The Company considers the customer's past performance, previous and current credit history, the individual circumstances surrounding the customer's current difficulties, and the customer's plan to meet the terms of the loan in the future prior to restructuring the terms of the loan. Generally, restructurings consist of short-term interest rate relief, short-term principal payment relief, short-term principal and interest payment relief, or forbearance (debt forgiveness). A restructured loan that exceeds 90 days past due or is placed on non-accrual status, is classified as non-performing.

All TDRs are individually evaluated for purposes of assessing the adequacy of the ACL and for financial reporting purposes. TDRs are evaluated using present value of the expected future cash flows discounted at the loan's original effective interest rate, the loan's observable market price, or the fair value of the collateral if the loan is collateral dependent. If the Company determines that the fair value of the TDR is less than the recorded investment in the loan, impairment is recognized through a charge to the ACL in the period of the modification and in periods subsequent to the modification.

Modified loans with payment deferrals that fall under the CARES Act or revised Interagency Statement that suspended requirements under GAAP related to TDR classifications are not included in the Company's TDR totals.

Assets Purchased with Credit Deterioration

On January 1, 2020, First Busey adopted ASC Topic 326 *"Financial Instruments-Credit Losses"* using the prospective transition approach for financial assets PCD that were previously classified as PCI and accounted for under ASC Subtopic 310-30 *"Receivables—Loans and Debt Securities Acquired with Deteriorated Credit Quality."* In accordance with the standard, management did not reassess whether PCI assets met the criteria of PCD assets as of the date of adoption. In accordance with ASC Topic 326, the amortized cost basis of PCD assets were adjusted to reflect an ACL for any remaining credit discount. Subsequent changes in expected cash flows will be adjusted through the ACL. The noncredit discount will be accreted into interest income at the effective interest rate as of January 1, 2020.

Subsequent to the adoption of ASC Topic 326, acquired loans are separated into two categories based on the credit risk characteristics of the underlying borrowers as either PCD, for loans which have experienced more than insignificant credit deterioration since origination, or all other loans. At the date of acquisition, an ACL on PCD loans is determined and netted against the amortized cost basis of the individual loans. The difference between the initial amortized cost basis and the par value of the loan is a noncredit discount or premium, which is amortized into interest income over the life of the loan. The ACL on PCD loans is recorded in the acquisition accounting and no provision for credit losses is recognized at the acquisition date. Subsequent changes to the ACL are recorded through provision expense. For all other loans, an ACL is established immediately after the acquisition through a charge to the provision for credit losses.

Allowance for Credit Losses

The ACL is a significant estimate in the Company's Consolidated Financial Statements, affecting both earnings and capital. The ACL is a valuation account that is deducted from the portfolio loans' amortized cost bases to present the net amount expected to be collected on the portfolio loans. Portfolio loans are charged off against the ACL when management believes the uncollectibility of a loan balance is confirmed. Recoveries will be recognized up to the aggregate amount of previously charged-off balances. The ACL is established through provision for credit loss expense charged to income.

A loan's amortized cost basis is comprised of the unpaid principal balance of the loan, accrued interest receivable, purchase premiums or discounts, and net deferred origination fees or costs. The Company has estimated its allowance on the amortized cost basis, exclusive of government guaranteed loans and accrued interest receivable. The Company writes-off uncollectible accrued interest receivable in a timely manner and has elected to not measure an allowance for accrued interest receivable. The Company presents the aggregate amount of accrued interest receivable for all financial instruments in other assets on the Consolidated Balance Sheets and the balance of accrued interest receivable is disclosed in "*Note 18. Fair Value Measurements.*"

Our methodology influences, and is influenced by, the Company's overall credit risk management processes. The ACL is managed in accordance with GAAP to provide an adequate reserve for expected credit losses that is reflective of management's best estimate of what is expected to be collected. The ACL is measured on a collective pool basis when similar risk characteristics exist. Loans that do not share risk characteristics are evaluated on an individual basis.

The measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the amortized cost basis. Adjustments to historical loss information are made for differences in current loan-specific risk characteristics such as differences in underwriting standards, portfolio mix, delinquency level, or term as well as for changes in environmental conditions such as changes in unemployment rates, property values, and other relevant factors. The calculation also contemplates that the Company may not be able to make or obtain such forecasts for the entire life of the financial assets and requires a reversion to historical credit loss information. The Company uses four quarters as its reasonable and supportable forecast period. Due to rapidly changing forecasts around the impact of COVID-19, the Company does not believe it has the current ability to incorporate reasonable and supportable forecasts into its CECL models extending beyond four quarters.

Ongoing impacts of CECL will be dependent upon changes in economic conditions and forecasts, originated and acquired loan portfolio composition, credit performance trends, portfolio duration, and other factors.

Premises and Equipment

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

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

Leases

A determination is made at inception if an arrangement contains a lease. For arrangements containing leases, the Company recognizes leases on the Consolidated Balance Sheets as right of use assets and corresponding lease liabilities. Lease-related assets, or right of use assets, are recognized on the lease commencement date at amounts equal to the respective lease liabilities, adjusted for prepaid lease payments, initial direct costs, and lease incentives received. Lease-related liabilities are recognized at the present value of the remaining contractual fixed lease payments, discounted using our incremental borrowing rate. Operating lease expense is recognized on a straight-line basis over the lease term, while variable lease payments are expensed as incurred.

ASC Topic 842 *"Leases"* requires the use of the rate implicit in the lease whenever this rate is readily determinable. If not readily determinable, the Company utilizes its incremental borrowing rate at lease inception, on a collateralized basis, over a similar term. For operating leases existing prior to January 1, 2019, the Company used a borrowing rate that corresponded to the remaining lease term.

The Company's lease agreements often include one or more options to renew at the Company's discretion. If, at lease inception, the Company considers the exercising of a renewal option to be reasonably certain, the Company will include the extended term in the calculation of its right of use assets and lease liabilities.

Long-Lived Assets

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

Other Real Estate Owned and Other Repossessed Assets

OREO and other repossessed assets represent properties and other assets acquired through foreclosure or other proceedings in settlement of loans. OREO and other repossessed assets are recorded at the fair value of the property or asset, less estimated costs of disposal, which establishes a new cost basis. Any adjustment to fair value at the time of transfer to OREO or other repossessed assets is charged to the ACL. OREO property and other repossessed assets are evaluated regularly to ensure the recorded amount is supported by its current fair value, and valuation allowances to reduce the carrying amount to fair value less estimated costs to dispose are recorded, as necessary. OREO and other repossessed assets are included in other assets on the Consolidated Balance Sheets. Revenue, expense, gains, and losses from the operations of foreclosed assets are included in earnings.

Goodwill and Other Intangibles

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

The Company estimates the fair value of its reporting units as of the measurement date utilizing valuation methodologies including comparable company analysis and precedent transaction analysis. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value. There was no impairment as of December 31, 2022, or 2021. See "*Note 7. Goodwill and Other Intangible Assets*" for further discussion.

Other intangible assets consist of core deposit and acquired customer relationship intangible assets arising from acquisitions and are amortized over their estimated useful lives.

Cash Surrender Value of Bank Owned Life Insurance

The Company has purchased, or acquired through acquisitions, life insurance policies on certain executives and senior officers. Life insurance is recorded at its cash surrender value, which estimates its fair value.

The Company maintains a liability for post-employment benefits promised to an employee based on an arrangement between the Company and an employee. In an endorsement split-dollar life insurance arrangement, the employer owns and controls the policy, and the employer and employee split the life insurance policy's cash surrender value and/or death benefits. If the employer agrees to maintain a life insurance policy during the employee's retirement, the present value of the cost of maintaining the insurance policy would be accrued over the employee's active service period. Similarly, if the employer agrees to provide the employee with a death benefit, the present value of the death benefit would be accrued over the employee's active service period. The Company has an accrued liability of $5.6 million as of December 31, 2022, included in other liabilities, for these arrangements, compared with $5.5 million as of December 31, 2021.

FHLB Stock

Busey Bank is a member of the FHLB system. FHLB members are required to own a certain amount of stock based on the level of borrowings and other factors, and may invest in additional amounts. FHLB stock is carried at cost in other assets in our Consolidated Balance Sheet. Dividends are reported as income.

The Company's investment in FHLB stock was $19.0 million as of December 31, 2022, and $6.2 million as of December 31, 2021.

Other Asset Investments

The Company has invested in certain tax-advantaged projects promoting affordable housing, new markets, and historic rehabilitation. These investments are designed to generate returns primarily though the realization of federal and state income tax credits and other tax benefits, such as tax deductions from operating losses of the investments, over specified time periods. In addition, the Company has private equities, which are primarily small business investment companies in the financial technology, agricultural, environmental, and affordable housing preservation markets. These investments are considered to be variable interest entities, and are accounted for under the equity method or deferral method, as appropriate. The Company is not required to consolidate variable interest entities in which it has concluded it does not have a controlling financial interest, and is not the primary beneficiary.

The following table summarizes the impact of the Company’s other asset investments on our Consolidated Balance Sheets for the periods indicated *(dollars in thousands)*:

		As of December 31,	
	Location	2022	2021
Other asset investments			
Funded investments	Other assets	$ 58,912	$ 37,417
Unfunded investments	Other assets	67,437	52,765
Other asset investments		$ 126,349	$ 90,182
Unfunded investment obligations	Other liabilities	$ (67,437)	$ (52,765)

Further, the Company owns Visa Class B shares, recorded at a nominal carrying value. These shares are subject to certain transfer restrictions currently and will be convertible into Visa Class A shares upon final resolution of certain litigation matters involving Visa.

Transfers of Financial Assets

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

Income Taxes

The Company is subject to income taxes in U.S. federal and various state jurisdictions. The Company and its subsidiaries file consolidated federal and state income tax returns with each subsidiary computing its taxes on a separate entity basis. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. With few exceptions, the Company is no longer subject to U.S. federal, state, or local tax examinations by tax authorities for the years before 2017.

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

Management believes that it is more likely than not that the deferred tax assets included in the accompanying Consolidated Financial Statements will be fully realized. The Company determined that no valuation allowance was required as of December 31, 2022, or 2021.

Positions taken in tax returns may be subject to challenge upon examination by the taxing authorities. Uncertain tax positions are initially recognized in the Consolidated Financial Statements when it is more likely than not the position will not be sustained upon examination by the tax authorities. Such tax positions are both initially and subsequently measured as the largest amount of tax benefit that has a greater than 50% likelihood of being realized upon settlement with the tax authority, assuming full knowledge of the position and all relevant facts. When applicable, the Company recognizes interest accrued related to unrecognized tax benefits and penalties in operating expenses. The Company had no accruals for payments of interest and penalties at December 31, 2022, or 2021.

At December 31, 2022, the Company was not under examination by any tax authority; however, we have received an inquiry from the State of Illinois regarding our prior franchise tax filings. In the event the Company is required to amend our prior franchise tax filings, we could incur additional expenses.

Treasury Stock

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

Stock-Based Employee Compensation

The 2020 Equity Plan was approved by stockholders at the 2020 Annual Meeting of Stockholders. A description of the 2020 Equity Plan can be found in the Company’s Proxy Statement for the 2020 Annual Meeting of Stockholders filed on April 9, 2020. The 2020 Equity Plan replaces the 2010 Equity Incentive Plan and the First Community 2016 Equity Incentive Plan, which, from time to time, the Company used to grant equity awards to legacy employees of First Community. Under the terms of the 2020 Equity Plan, the Company has granted RSU, DSU and PSU awards.

The Company’s equity incentive plans are designed to encourage ownership of its common stock by its employees and directors, to provide additional incentive for them to promote the success of the Company’s business, and to attract and retain talented personnel. All of the Company’s employees and directors and those of its subsidiaries are eligible to receive awards under the plans.

The Company grants RSU awards to members of management periodically throughout the year. Each RSU is equivalent to one share of the Company’s common stock. These units have requisite service periods ranging from one year to five years, subject to accelerated vesting upon eligible retirement from the Company. Recipients earn quarterly dividend equivalents on their respective units which entitle the recipients to additional units. Therefore, dividends earned each quarter compound based upon the updated unit balances.

The Company grants DSU awards, which are RSU awards with a deferred settlement date, to its directors and advisory directors. Each DSU is equivalent to one share of the Company’s common stock. DSUs vest over a one-year period following the grant date. These units generally are subject to the same terms as RSUs under the Company’s 2020 Equity Plan, except that, following vesting, settlement occurs within 30 days following the earlier of separation from the board or a change in control of the Company. After vesting and prior to delivery, these units will continue to earn dividend equivalents.

The Company also grants PSU awards to members of management periodically throughout the year. Each PSU is equivalent to one share of the Company’s common stock. The number of units that ultimately vest will be determined based on the achievement of market or other performance goals, subject to accelerated service-based vesting conditions upon eligible retirement from the Company.

The Company has outstanding stock options assumed from acquisitions.

In 2021, the stockholders of First Busey approved the 2021 ESPP, and since the purchase price under the plan is 85% of the fair value of a share of common stock (a 15% discount to the market price), the plan is considered to be a compensatory plan under current accounting guidance. Therefore, the entire amount of the discount is recognized in salaries, wages, and employee benefits on the Consolidated Statements of Income.

See "*Note 14. Stock-based Compensation*" for further discussion.

Segment Disclosure

Operating segments are components of a business that (i) engage in business activities from which the component may earn revenues and incur expenses; (ii) have operating results that are reviewed regularly by the entity's chief operating decision maker to make decisions about resources to be allocated to the segments and assess their performance; and (iii) for which discrete financial information is available. The Company's operations are managed along three operating segments consisting of Banking, FirsTech, and Wealth Management. See "*Note 21. Operating Segments and Related Information*" for further discussion.

Business Combinations

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

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

Derivative Financial Instruments

The Company utilizes interest rate swap agreements as part of its asset liability management strategy to help manage its interest rate risk position. Additionally, the Company enters into derivative financial instruments, including interest rate lock commitments issued to residential loan customers for loans that will be held for sale, forward sales commitments to sell residential mortgage loans to investors, and interest rate swaps with customers and other third parties.

Interest Rate Swaps Designated as Cash Flow Hedges

The Company entered into derivative instruments designated as cash flow hedges. For a derivative instrument that is designated and qualifies as a cash flow hedge, the change in fair value of the derivative instrument is reported as a component of other comprehensive income (loss) and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. Changes in fair value of components excluded from the assessment of effectiveness are recognized in current earnings.

Interest Rate Swaps Not Designated as Hedges

The Company may offer derivative contracts to its customers in connection with their risk management needs. The Company manages the risk associated with these contracts by entering into an equal and offsetting derivative with a third-party dealer. These derivatives generally worked together as an economic interest rate hedge, but the Company did not designate them for hedge accounting treatment. Consequently, changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Interest Rate Lock Commitments

Interest rate lock commitments that meet the definition of derivative financial instruments under ASC Topic 815 "*Derivatives and Hedging*" are carried at their fair values in other assets or other liabilities in the Consolidated Financial Statements, with changes in the fair values of the corresponding derivative financial assets or liabilities recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Forward Sales Commitments

The Company economically hedges mortgage loans held for sale and interest rate lock commitments issued to its residential loan customers related to loans that will be held for sale by obtaining corresponding best-efforts forward sales commitments with an investor to sell the loans at an agreed-upon price at the time the interest rate locks are issued to the customers. Forward sales commitments that meet the definition of derivative financial instruments under ASC Topic 815 *"Derivatives and Hedging"* are carried at their fair values in other assets or other liabilities in the Consolidated Financial Statements. While such forward sales commitments generally served as an economic hedge to mortgage loans held for sale and interest rate lock commitments, the Company did not designate them for hedge accounting treatment. Changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Risk Participation Agreements

The Company has entered into a risk participation agreement to manage the credit risk of its derivative position. This agreement transfers counterparty credit risk related to an interest rate swap to another financial institution. In this type of transaction, the Company (purchaser) has a swap agreement with a customer. The Company then enters into a risk participation agreement with a counterparty (seller), under which the counterparty receives a fee to accept a portion of the credit risk. If the customer defaults on the swap contract, the counterparty to the risk participation agreement must reimburse the Company for the counterparty's percentage of the positive fair value of the customer swap as of the default date. If the customer swap has a negative fair value, the counterparty has no reimbursement requirements. If the customer defaults on the swap contract and the counterparty (seller) fulfills its payment obligations under the risk participation agreement, the seller is entitled to a pro rata share of the Company's claim against the customer under the terms of the swap agreement.

Off-Balance Sheet Arrangements

The Company is a party to credit-related financial instruments with off-balance-sheet risk in the normal course of business to meet the financing needs of its customers. These financial instruments include commitments to extend credit and standby letters of credit. Those instruments involve, to varying degrees, elements of credit and interest rate risk in excess of the amount recognized in the Consolidated Balance Sheets. The Company's exposure to credit loss is represented by the contractual amount of those commitments. The Company uses the same credit policies in making commitments and conditional obligations as it does for on-balance-sheet instruments.

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

Standby letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer's obligation to a third-party. Those guarantees are primarily issued to support public and private borrowing arrangements, including bond financing and similar transactions, and primarily have terms of two years or less. The credit risk involved in issuing letters of credit is essentially the same as that involved in extending loan facilities to customers. The Company holds collateral, which may include accounts receivable, inventory, property and equipment, and income producing properties, supporting those commitments if deemed necessary. In the event the customer does not perform in accordance with the terms of the agreement with the third-party, the Company would be required to fund the commitment. If the commitment is funded, the Company would be entitled to seek recovery from the customer.

The Company estimates expected credit losses for off-balance sheet arrangements over the contractual period in which it is exposed to credit risk via a present contractual obligation to extend credit, unless that obligation is unconditionally cancellable by the issuer. To be considered unconditionally cancellable for accounting purposes, the Company must have the ability to, at any time, with or without cause, refuse to extend credit under the commitment. Off-balance-sheet credit exposure segments share the same risk characteristics as portfolio loans. The Company incorporates a probability of funding and utilizes the ACL loss rates to calculate the reserve. The reserve for off-balance-sheet credit exposure is carried on the Consolidated Balance Sheets in other liabilities rather than as a component of the ACL. The reserve for off-balance-sheet credit exposure is adjusted as a provision for off-balance-sheet credit exposure reported as a component of noninterest expense in the accompanying Consolidated Statements of Income. Liabilities recorded as reserves for the Company’s off-balance sheet credit exposure under these commitments was $6.6 million as of December 31, 2022, and was $6.5 million as of December 31, 2021.

Fair Value of Financial Instruments

Fair value of financial instruments is estimated using relevant market information and other assumptions, as more fully disclosed in *“Note 18. Fair Value Measurements.”* Fair value estimates involve uncertainties and matters of significant judgment regarding interest rates, credit risk, prepayments, and other factors, especially in the absence of broad markets for particular items. Changes in assumptions or in market conditions could significantly affect these estimates.

Revenue

ASC Topic 606 *“Revenue from Contracts with Customers”* outlines a single model for companies to use in accounting for revenue arising from contracts with customers and supersedes most prior revenue recognition guidance, including industry-specific guidance. ASC Topic 606 requires that companies recognize revenue based on the value of transferred goods or services as they occur in the contract and establishes additional disclosures. The Company’s revenue is comprised of net interest income, which is explicitly excluded from the scope of ASC Topic 606, and noninterest income. The Company has evaluated its noninterest income and the nature of its contracts with customers and determined that further disaggregation of revenue beyond what is presented in the accompanying Consolidated Financial Statements is not necessary. The Company satisfies its performance obligations on its contracts with customers as services are rendered so there is limited judgment involved in applying ASC Topic 606 that affects the determination of the timing and amount of revenue from contracts with customers.

Descriptions of the Company’s primary revenue generating activities that are within the scope of ASC Topic 606, and are presented in the accompanying Consolidated Statements of Income as components of noninterest income, include wealth management fees, payment technology solutions, and fees for customer services.

Wealth Management Fees

Wealth management fees represent fees due from wealth management customers as consideration for managing the customers' assets. Wealth management and trust services include custody of assets, investment management, fees for trust services, and other fiduciary activities. Also included are fees received from a third-party broker-dealer as part of a revenue sharing agreement for fees earned from customers that the Company refers to the third party. Revenue is recognized when the performance obligation is completed, which is generally monthly.

Payment Technology Solutions

Payment technology solutions revenue represents transaction-based fees for technology-driven payment solutions primarily for walk-in, lockbox, interactive voice recognition, and online bill payments through the Company’s subsidiary, FirsTech. Revenue is recognized when the performance obligation is completed, which is generally monthly.

Fees for Customer Services

Fees for customer services consist of time-based revenue from service fees for account maintenance, item-based revenue from fee-based activity, and transaction-based fee revenue. Revenue is recognized when the performance obligation is completed, which is generally monthly for account maintenance services or when a transaction has been completed. Payments for such performance obligations are generally received at the time the performance obligations are satisfied.

Reclassifications

Reclassifications have been made to certain prior year account balances, with no effect on net income or stockholders' equity, to be consistent with the classifications adopted as of and for the year ended December 31, 2022.

Subsequent Events

The Company has evaluated subsequent events for potential recognition and/or disclosure through the date the Consolidated Financial Statements included in this Annual Report on Form 10-K were issued. There were no significant subsequent events for the year ended December 31, 2022, through the filing date of these Consolidated Financial Statements.

Impact of Recently Adopted Accounting Standards

ASU 2022-06 *"Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848"* deferred the sunset date of ASC Topic 848 from December 31, 2022, to December 31, 2024, extending the time during which entities may apply certain practical expedients for contract modifications that replace a reference to LIBOR or another reference rate that is expected to be discontinued as a result of reference rate reform. This update was effective upon issuance on December 21, 2022. Adoption of this standard did not have a material impact on First Busey's financial position or results of operations.

ASU 2021-10 *"Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance"* establishes disclosure requirements for transactions with a government that have been accounted for by analogizing to a grant or contribution accounting model. Disclosures required under this standard include 1) the types of transactions, 2) the accounting for those transactions, and 3) the effect of those transactions on the consolidated financial statements. This update was effective for annual periods beginning January 1, 2022, and applies prospectively to all transactions within the scope of the amendments that are reflected in financial statements at the date of initial application and new transactions that are entered into after the date of initial application. Adoption of this standard did not have a material impact on First Busey's financial position or results of operations.

ASU 2021-05 *"Leases (Topic 842): Lessors—Certain Leases with Variable Lease Payments"* amends the lessor's classification of certain leases under ASC Topic 842. Under this updated guidance, leases that would otherwise be classified as a sales-type or direct financing lease must be classified by a lessor as an operating lease when the following conditions are met: 1) the contract includes variable lease payments that do not depend on an index or rate and 2) classification as a sales-type or direct financing lease would result in recognition of a selling loss at lease commencement. This guidance was effective for First Busey beginning January 1, 2022, and was applied on a prospective basis. Adoption of this standard did not have a material impact on the Company's financial position or results of operations.

ASU 2021-04 *"Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options"* clarifies how an issuer should account for modifications or exchanges of equity-classified written call options (i.e. a warrant to purchase the issuer's common stock). This accounting standard requires the issuer to treat a modification of an equity-classified warrant that does not cause the warrant to become liability-classified as an exchange of the original warrant for a new warrant. This guidance applies whether the modification is structured as an amendment to the terms and conditions of the warrant or as termination of the original warrant and issuance of a new warrant. This guidance was effective for First Busey beginning January 1, 2022, and was applied on a prospective basis. Adoption of this standard did not have a material impact on the Company's financial position or results of operations.

Recently Issued Accounting Standards

ASU 2022-03 *"Fair Value Measurements (Topic 820): Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions"* clarifies that contractual restrictions on the sale of equity securities are not considered in measuring the fair value of those equity securities, and further that contractual sale restrictions cannot be recognized and measured as a separate unit of account. This standard applies prospectively, and will be effective for First Busey beginning January 1, 2024. Early adoption is permitted. First Busey is currently evaluating the potential effect on the Company's financial position and results of operations.

ASU 2022-02 *"Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures"* eliminates the TDR accounting model for creditors that have already adopted CECL. In lieu of the TDR accounting model, loan refinancing and restructuring guidance in ASC Subtopic 310-20-35-9 through 35-11 *"Receivables—Nonrefundable Fees and Other Costs—Subsequent Measurement—Loan Refinancing or Restructuring"* will apply to all loan modifications, including those made for borrowers experiencing financial difficulty. This standard also enhances disclosure requirements related to certain loan modifications. Additionally, this standard introduces new requirements to disclose gross write-off information in the vintage disclosures of financing receivables by credit quality indicator and class of financing receivable by year of origination. This standard applies prospectively. For the transition method related to the recognition and measurement of TDRs, there is an option to apply a modified retrospective transition method, resulting in a cumulative-effect adjustment to retained earnings in the period of adoption. This standard became effective for First Busey beginning January 1, 2023. Adoption of this standard is not expected to have a material impact on our financial position or results of operations.

ASU 2022-01 *"Derivatives and Hedging (Topic 815): Fair Value Hedging—Portfolio Layer Method"* replaces the current last-of-layer hedge accounting method with an expanded portfolio layer method that permits multiple hedged layers of a single closed portfolio. The scope of the portfolio layer method is also expanded to include non-prepayable financial assets. This update also provides additional guidance on the accounting for and disclosure of hedge basis adjustments that are applicable to the portfolio layer method, and specifies how hedge basis adjustments should be considered when determining credit losses for the assets included in the closed portfolio. Amendments related to hedge basis adjustments which are included in this standard apply on a modified retrospective basis by means of a cumulative-effect adjustment to the opening balance of retained earnings on the initial application date. Amendments related to disclosure which are included in this standard may be applied on a prospective basis from the initial application date, or on a retrospective basis to each prior period presented after the date of adoption of the amendments in ASU 2017-12 *"Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities."* This standard became effective for First Busey beginning January 1, 2023. Adoption of this standard is not expected to have a material impact on our financial position or results of operations.

ASU 2021-08 *"Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers"* requires measurement and recognition in accordance with ASC Topic 606 *"Revenue from Contracts with Customers"* for contract assets and contract liabilities acquired in a business combination. This update became effective for First Busey beginning January 1, 2023. This standard applies prospectively to all business combinations that occur on or after the date it is adopted. Adoption of this standard is not expected to have a material impact on our financial position or results of operations.

NOTE 2. ACQUISITIONS

Cummins-American Corp.

Effective May 31, 2021, the Company completed its acquisition of CAC, the holding company for GSB. The partnership has enhanced the Company's existing deposit, commercial banking, and wealth management presence in the Chicago-Naperville-Elgin, IL-IN-WI Metropolitan Statistical Area. GSB's results of operations were included in the Company's results of operations beginning June 1, 2021. First Busey operated GSB as a separate banking subsidiary until August 14, 2021, when it was merged with and into Busey Bank. At that time, all GSB banking centers became branches of Busey Bank.

Under the terms of the definitive agreement, each share of CAC common stock issued and outstanding as of the effective date was converted into the right to receive 444.4783 shares of First Busey common stock and $14,173.96 in cash, which reflects adjustments made to the cash consideration in accordance with the terms of the definitive agreement. The fair value of the common stock of First Busey issued as part of the consideration paid to the holders of CAC common stock was determined on the basis of the closing price of First Busey's common shares on May 28, 2021, the last trading day immediately preceding the acquisition date of May 31, 2021. As additional consideration provided to CAC's stockholders in the merger, CAC paid a special dividend to its stockholders in the amount of $60.0 million, or $12,087.58 per share of CAC common stock, on May 28, 2021.

This transaction was accounted for using the acquisition method of accounting and, accordingly, assets acquired, liabilities assumed, and consideration exchanged was recorded at estimated fair values on the date of acquisition. Fair values were subject to refinement for up to one year after the closing date, as additional information regarding the closing date fair values became available, and were final as of May 31, 2022. The Company did not record any fair value adjustments during 2022.

As the total consideration paid for CAC exceeded the estimated fair value of net assets acquired, goodwill of $6.3 million was recorded as a result of the acquisition. The amount of goodwill recognized as a result of this transaction is expected to be fully tax deductible for federal income tax purposes in accordance with the Company's election pursuant to Section 338(h)(10) of the Internal Revenue Code. Goodwill recorded for this transaction reflects synergies expected from the acquisition and expansion within the Chicago-Naperville-Elgin, IL-IN-WI Metropolitan Statistical Area, and was assigned to the Banking operating segment.

First Busey incurred $0.8 million and $13.6 million in pre-tax expenses related to the acquisition of CAC for the years ended December 31, 2022, and December 31, 2021, respectively. Expenses in 2022 were comprised primarily of compensation expense and data processing expense, which are reported as components of noninterest expense in the accompanying Consolidated Statements of Income.

Estimated fair values of the assets acquired and liabilities assumed, as well as the fair value of consideration transferred, were as follows *(dollars in thousands)*:

	CAC May 31, 2021
Assets acquired	
Cash and cash equivalents	$ 298,637
Securities	702,367
Portfolio loans, net of ACL	430,470
Premises and equipment	17,034
Other intangible assets	17,340
Mortgage servicing rights	629
Other assets	8,176
Total assets acquired	1,474,653
Liabilities assumed	
Deposits	1,315,671
Other borrowings	16,651
Other liabilities	19,205
Total liabilities assumed	1,351,527
Net assets acquired	$ 123,126
Consideration paid:	
Cash	$ 70,358
Common stock	59,105
Total consideration paid	$ 129,463
Goodwill	$ 6,337

The fair value of PCD financial assets was $60.5 million on the date of acquisition. Gross contractual amounts receivable relating to the PCD financial assets was $65.2 million. The Company estimated, on the date of acquisition, that $4.2 million of the contractual cash flows specific to the PCD financial assets will not be collected.

NOTE 3. DEBT SECURITIES

The Company reassessed classification of certain securities in 2022, and transferred a portion of its commercial and residential mortgage-backed securities from available for sale to held to maturity. The transfers occurred at fair value. The unrecognized loss associated with these securities is in OCI, and is being amortized out of OCI with an offsetting entry to investment securities interest income as a yield adjustment over the remaining contractual lives of the securities. No gain or loss was recorded at the time of the transfer.

The table below provides the amortized cost, unrealized and unrecognized gains and losses, and fair values of debt securities, summarized by major category *(dollars in thousands)*:

	As of December 31, 2022			
		Unrealized		
	Amortized Cost	Gross Gains	Gross Losses	Fair Value
Debt securities available for sale				
U.S. Treasury securities	$ 117,805	$ —	$ (3,744)	$ 114,061
Obligations of U.S. government corporations and agencies	20,097	3	(321)	19,779
Obligations of states and political subdivisions	283,481	106	(26,075)	257,512
Asset-backed securities	489,558	—	(19,683)	469,875
Commercial mortgage-backed securities	124,423	—	(16,029)	108,394
Residential mortgage-backed securities	1,463,971	2	(220,717)	1,243,256
Corporate debt securities	273,118	33	(24,635)	248,516
Total debt securities available for sale	$ 2,772,453	$ 144	$ (311,204)	$ 2,461,393

		Unrecognized		
	Amortized Cost	Gross Gains	Gross Losses	Fair Value
Debt securities held to maturity				
Commercial mortgage-backed securities	$ 474,820	$ —	$ (63,738)	$ 411,082
Residential mortgage-backed securities	443,492	—	(69,279)	374,213
Total debt securities held to maturity	$ 918,312	$ —	$ (133,017)	$ 785,295

	As of December 31, 2021			
		Unrealized		
	Amortized Cost	Gross Gains	Gross Losses	Fair Value
Debt securities available for sale				
U.S. Treasury securities	$ 166,768	$ 41	$ (1,047)	$ 165,762
Obligations of U.S. government corporations and agencies	37,579	891	—	38,470
Obligations of states and political subdivisions	300,602	7,760	(1,493)	306,869
Asset-backed securities	492,055	295	(164)	492,186
Commercial mortgage-backed securities	625,339	3,425	(13,766)	614,998
Residential mortgage-backed securities	2,095,104	8,889	(34,680)	2,069,313
Corporate debt securities	296,076	1,081	(3,504)	293,653
Total debt securities available for sale	$ 4,013,523	$ 22,382	$ (54,654)	$ 3,981,251

Amortized cost and fair value of debt securities, by contractual maturity or pre-refunded date, are shown below. Mortgages underlying mortgage-backed securities and asset-backed securities may be called or prepaid; therefore, actual maturities could differ from the contractual maturities. All mortgage-backed securities were issued by U.S. government corporations and agencies *(dollars in thousands)*:

	As of December 31, 2022	
	Amortized Cost	Fair Value
Debt securities available for sale		
Due in one year or less	$ 135,698	$ 133,967
Due after one year through five years	395,914	368,754
Due after five years through ten years	364,065	330,280
Due after ten years	1,876,776	1,628,392
Debt securities available for sale	$ 2,772,453	$ 2,461,393
Debt securities held to maturity		
Due after one year through five years	$ 44,392	$ 41,483
Due after five years through ten years	64,593	57,955
Due after ten years	809,327	685,857
Debt securities held to maturity	$ 918,312	$ 785,295

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

	Years Ended December 31,		
	2022	2021	2020
Realized gains and losses on debt securities			
Gross gains on debt securities	$ 115	$ 543	$ 1,732
Gross (losses) on debt securities	(89)	(514)	(8)
Realized net gains (losses) on debt securities[1]	$ 26	$ 29	$ 1,724

1. Net gains (losses) on sales of securities reported on the Consolidated Statements of Income include the sale of equity securities, excluded in this table.

Debt securities with carrying amounts of $746.7 million on December 31, 2022, and $708.9 million on December 31, 2021, were pledged as collateral for public deposits, securities sold under agreements to repurchase, and for other purposes as required.

The following information pertains to debt securities with gross unrealized and unrecognized losses, aggregated by investment category and the length of time that individual securities have been in a continuous loss position *(dollars in thousands)*:

	As of December 31, 2022					
	Less than 12 months		12 months or more		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Debt securities available for sale						
U.S. Treasury securities[1]	$ 74	$ —	$ 113,987	$ (3,744)	$ 114,061	$ (3,744)
Obligations of U.S. government corporations and agencies	19,603	(321)	—	—	19,603	(321)
Obligations of states and political subdivisions	166,147	(10,059)	75,217	(16,016)	241,364	(26,075)
Asset-backed securities	390,164	(15,648)	79,711	(4,035)	469,875	(19,683)
Commercial mortgage-backed securities	89,428	(12,623)	18,966	(3,406)	108,394	(16,029)
Residential mortgage-backed securities	366,221	(38,111)	876,668	(182,606)	1,242,889	(220,717)
Corporate debt securities	39,037	(5,079)	204,310	(19,556)	243,347	(24,635)
Debt securities available for sale with gross unrealized losses	$ 1,070,674	$ (81,841)	$ 1,368,859	$ (229,363)	$ 2,439,533	$ (311,204)

	Less than 12 months		12 months or more		Total	
	Fair Value	Unrecognized Losses	Fair Value	Unrecognized Losses	Fair Value	Unrecognized Losses
Debt securities held to maturity						
Commercial mortgage-backed securities	$ 58,065	$ (8,009)	$ 353,017	$ (55,729)	$ 411,082	$ (63,738)
Residential mortgage-backed securities	—	—	374,213	(69,279)	374,213	(69,279)
Debt securities held to maturity with gross unrecognized losses	$ 58,065	$ (8,009)	$ 727,230	$ (125,008)	$ 785,295	$ (133,017)

1. Unrealized losses for U.S. Treasury securities that have been in a continuous loss position for less than 12 months were insignificant, rounding to zero thousand.

	As of December 31, 2021					
	Less than 12 months		12 months or more		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Debt securities available for sale						
U.S. Treasury securities	$ 163,653	$ (1,047)	$ —	$ —	$ 163,653	$ (1,047)
Obligations of states and political subdivisions	92,680	(1,493)	—	—	92,680	(1,493)
Asset-backed securities	89,983	(164)	—	—	89,983	(164)
Commercial mortgage-backed securities	389,078	(10,186)	85,905	(3,580)	474,983	(13,766)
Residential mortgage-backed securities	1,700,187	(33,453)	20,538	(1,227)	1,720,725	(34,680)
Corporate debt securities	241,153	(3,504)	—	—	241,153	(3,504)
Debt securities available for sale with gross unrealized losses	$ 2,676,734	$ (49,847)	$ 106,443	$ (4,807)	$ 2,783,177	$ (54,654)

Additional information about debt securities in an unrealized or unrecognized loss position is presented in the tables below *(dollars in thousands)*:

	As of December 31, 2022		
	Available for Sale	Held to Maturity	Total
Debt securities with gross unrealized or unrecognized losses, fair value	$ 2,439,533	$ 785,295	$ 3,224,828
Gross unrealized or unrecognized losses on debt securities	311,204	133,017	444,221
Ratio of gross unrealized or unrecognized losses to debt securities with gross unrealized or unrecognized losses	12.8 %	16.9 %	13.8 %
Count of debt securities	1,091	55	1,146
Count of debt securities in an unrealized or unrecognized loss position	1,032	55	1,087

	As of December 31, 2021		
	Available for Sale	Held to Maturity	Total
Debt securities with gross unrealized losses, fair value	$ 2,783,177	$ —	$ 2,783,177
Gross unrealized losses on debt securities	54,654	—	54,654
Ratio of gross unrealized losses to debt securities with gross unrealized losses	2.0 %	— %	2.0 %
Count of debt securities	1,252	—	1,252
Count of debt securities in an unrealized loss position	373	—	373

Unrealized and unrecognized losses were related to changes in market interest rates and market conditions that do not represent credit-related impairments. The Company does not intend to sell securities that are in an unrealized or unrecognized loss position, and it is more likely than not that the Company will recover the amortized cost prior to being required to sell the debt securities. Full collection of the amounts due according to the contractual terms of the debt securities is expected; therefore, no ACL was recorded in relation to debt securities, and the impairment related to noncredit factors is recognized in AOCI, net of applicable taxes. As of December 31, 2022, the Company did not hold general obligation bonds of any single issuer, the aggregate of which exceeded 10% of the Company's stockholders' equity.

NOTE 4. PORTFOLIO LOANS

Loan Categories

The Company's lending can be summarized into five primary categories: commercial loans, commercial real estate loans, real estate construction loans, retail real estate loans, and retail other loans. Distributions of the loan portfolio by loan category were as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Portfolio loans		
Commercial	$ 1,974,154	$ 1,943,886
Commercial real estate	3,261,873	3,119,807
Real estate construction	530,469	385,996
Retail real estate	1,657,082	1,512,976
Retail other	302,124	226,333
Total portfolio loans	$ 7,725,702	$ 7,188,998
ACL	(91,608)	(87,887)
Portfolio loans, net	$ 7,634,094	$ 7,101,111

Net deferred loan origination costs included in the balances above were $14.0 million as of December 31, 2022, compared to $9.0 million as of December 31, 2021. Net accretable purchase accounting adjustments included in the balances above reduced loans by $5.9 million as of December 31, 2022, and by $8.8 million as of December 31, 2021. Commercial balances include loans originated under the PPP with an amortized cost of $0.8 million as of December 31, 2022, compared to $75.0 million as of December 31, 2021.

The Company did not purchase any retail real estate loans during the year ended December 31, 2022, compared to $32.2 million of retail real estate loan purchases during the year ended December 31, 2021.

Pledged Loans

The Company pledged loans as collateral to the FHLB and Federal Reserve Bank for liquidity as set forth in the table below *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Pledged loans		
FHLB	$ 5,095,448	$ 4,656,331
Federal Reserve Bank	804,718	808,254
Total pledged loans	$ 5,900,166	$ 5,464,585

Risk Grading

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

- *Pass* – This category includes loans that are all considered acceptable credits, ranging from investment or near investment grade, to loans made to borrowers who exhibit credit fundamentals that meet or exceed industry standards.
- *Watch* – This category includes loans that warrant a higher-than-average level of monitoring to ensure that weaknesses do not cause the inability of the credit to perform as expected. These loans are not necessarily a problem due to other inherent strengths of the credit, such as guarantor strength, but have above average concern and monitoring.

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

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

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

All loans are graded at their inception. Commercial lending relationships that are $1.0 million or less are usually processed through an expedited underwriting process. Most commercial loans greater than $1.0 million are included in a portfolio review at least annually. Commercial loans greater than $0.35 million that have a grading of special mention or worse are typically reviewed on a quarterly basis. Interim reviews may take place if circumstances of the borrower warrant a more frequent review.

The following table is a summary of risk grades segregated by category of portfolio loans *(dollars in thousands)*:

	As of December 31, 2022					
	Pass	Watch	Special Mention	Substandard	Substandard Non-accrual	Total
Portfolio loans						
Commercial	$ 1,668,495	$ 201,758	$ 46,540	$ 51,187	$ 6,174	$ 1,974,154
Commercial real estate	2,851,709	326,455	43,526	34,539	5,644	3,261,873
Real estate construction	502,904	25,164	1	2,400	—	530,469
Retail real estate	1,639,599	10,520	1,338	2,529	3,096	1,657,082
Retail other	301,971	—	—	—	153	302,124
Total portfolio loans	$ 6,964,678	$ 563,897	$ 91,405	$ 90,655	$ 15,067	$ 7,725,702

	As of December 31, 2021					
	Pass	Watch	Special Mention	Substandard	Substandard Non-accrual	Total
Portfolio loans						
Commercial	$ 1,747,756	$ 93,582	$ 69,427	$ 26,117	$ 7,004	$ 1,943,886
Commercial real estate	2,682,441	343,304	49,695	38,394	5,973	3,119,807
Real estate construction	369,797	13,793	6	2,400	—	385,996
Retail real estate	1,491,845	12,374	1,992	3,867	2,898	1,512,976
Retail other	226,262	—	—	—	71	226,333
Total portfolio loans	$ 6,518,101	$ 463,053	$ 121,120	$ 70,778	$ 15,946	$ 7,188,998

Risk grades of portfolio loans, further sorted by origination year, are as follows *(dollars in thousands)*:

	As of December 31, 2022							
	Term Loans Amortized Cost Basis by Origination Year							
Risk Grade Ratings	**2022**	**2021**	**2020**	**2019**	**2018**	**Prior**	**Revolving Loans**	**Total**
Commercial								
Pass	$ 479,893	$ 266,122	$ 136,445	$ 52,046	$ 50,764	$ 135,000	$ 548,225	$ 1,668,495
Watch	54,195	49,382	3,288	7,201	1,258	2,160	84,274	201,758
Special Mention	1,958	937	1,642	974	1,000	17,024	23,005	46,540
Substandard	8,926	1,165	570	6,671	2,382	5,191	26,282	51,187
Substandard non-accrual	21	3,292	226	135	—	100	2,400	6,174
Total commercial	544,993	320,898	142,171	67,027	55,404	159,475	684,186	1,974,154
Commercial real estate								
Pass	883,688	819,133	478,452	297,525	161,409	198,419	13,083	2,851,709
Watch	77,346	56,113	64,282	96,664	21,592	5,758	4,700	326,455
Special Mention	11,943	5,389	12,386	1,420	6,917	5,471	—	43,526
Substandard	5,340	13,528	3,454	1,907	10,248	62	—	34,539
Substandard non-accrual	—	3,959	33	—	1,647	5	—	5,644
Total commercial real estate	978,317	898,122	558,607	397,516	201,813	209,715	17,783	3,261,873
Real estate construction								
Pass	219,112	191,724	68,015	1,490	1,901	1,751	18,911	502,904
Watch	8,530	12,019	3,169	48	—	1,398	—	25,164
Special Mention	—	—	—	1	—	—	—	1
Substandard	2,400	—	—	—	—	—	—	2,400
Total real estate construction	230,042	203,743	71,184	1,539	1,901	3,149	18,911	530,469
Retail real estate								
Pass	396,547	456,158	175,148	77,569	56,887	267,387	209,903	1,639,599
Watch	2,928	2,991	1,846	1,444	1,063	27	221	10,520
Special Mention	945	—	—	—	—	393	—	1,338
Substandard	77	732	198	81	141	1,293	7	2,529
Substandard non-accrual	10	191	107	32	390	1,708	658	3,096
Total retail real estate	400,507	460,072	177,299	79,126	58,481	270,808	210,789	1,657,082
Retail other								
Pass	134,567	43,512	13,141	13,086	5,646	991	91,028	301,971
Substandard non-accrual	14	134	3	—	—	2	—	153
Total retail other	134,581	43,646	13,144	13,086	5,646	993	91,028	302,124
Total portfolio loans	$ 2,288,440	$ 1,926,481	$ 962,405	$ 558,294	$ 323,245	$ 644,140	$ 1,022,697	$ 7,725,702

FIRST BUSEY CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

	As of December 31, 2021							
	Term Loans Amortized Cost Basis by Origination Year							
Risk Grade Ratings	**2021**	**2020**	**2019**	**2018**	**2017**	**Prior**	**Revolving Loans**	**Total**
Commercial								
Pass	$ 512,729	$ 228,811	$ 107,877	$ 84,873	$ 74,351	$ 122,418	$ 616,697	$ 1,747,756
Watch	13,847	5,913	14,274	5,060	1,361	2,866	50,261	93,582
Special Mention	7,062	898	5,961	4,025	6,790	11,845	32,846	69,427
Substandard	3,595	3,362	3,136	1,855	1,125	5,459	7,585	26,117
Substandard non-accrual	4,126	364	142	—	320	52	2,000	7,004
Total commercial	541,359	239,348	131,390	95,813	83,947	142,640	709,389	1,943,886
Commercial real estate								
Pass	969,548	637,550	425,850	235,928	200,373	198,002	15,190	2,682,441
Watch	51,560	38,820	123,324	48,088	46,761	32,608	2,143	343,304
Special Mention	9,542	7,060	6,585	10,098	6,357	9,870	183	49,695
Substandard	21,002	3,781	1,218	11,451	521	421	—	38,394
Substandard non-accrual	112	181	359	1,893	3,407	21	—	5,973
Total commercial real estate	1,051,764	687,392	557,336	307,458	257,419	240,922	17,516	3,119,807
Real estate construction								
Pass	202,082	123,491	31,927	3,155	738	1,223	7,181	369,797
Watch	7,886	4,159	54	—	1,574	120	—	13,793
Special Mention	—	—	6	—	—	—	—	6
Substandard	—	2,400	—	—	—	—	—	2,400
Total real estate construction	209,968	130,050	31,987	3,155	2,312	1,343	7,181	385,996
Retail real estate								
Pass	523,541	215,068	96,617	79,158	82,478	281,737	213,246	1,491,845
Watch	4,100	2,460	1,780	1,312	343	150	2,229	12,374
Special Mention	1,965	27	—	—	—	—	—	1,992
Substandard	1,369	232	12	71	165	1,687	331	3,867
Substandard non-accrual	235	63	—	16	227	1,705	652	2,898
Total retail real estate	531,210	217,850	98,409	80,557	83,213	285,279	216,458	1,512,976
Retail other								
Pass	59,366	22,305	26,126	16,189	7,180	1,326	93,770	226,262
Substandard non-accrual	34	10	—	14	13	—	—	71
Total retail other	59,400	22,315	26,126	16,203	7,193	1,326	93,770	226,333
Total portfolio loans	$ 2,393,701	$ 1,296,955	$ 845,248	$ 503,186	$ 434,084	$ 671,510	$ 1,044,314	$ 7,188,998

Past Due and Non-Accrual Loans

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

	As of December 31, 2022			
	Loans past due, still accruing			Non-accrual Loans
	30-59 Days	60-89 Days	90+Days	
Past due and non-accrual loans				
Commercial	$ 2	$ —	$ —	$ 6,174
Commercial real estate	124	—	—	5,644
Retail real estate	4,709	1,239	673	3,096
Retail other	414	60	—	153
Total past due and non-accrual loans	$ 5,249	$ 1,299	$ 673	$ 15,067

	As of December 31, 2021			
	Loans past due, still accruing			Non-accrual Loans
	30-59 Days	60-89 Days	90+Days	
Past due and non-accrual loans				
Commercial	$ 363	$ 10	$ 213	$ 7,004
Commercial real estate	151	441	—	5,973
Real estate construction	56	—	—	—
Retail real estate	3,312	1,830	693	2,898
Retail other	82	16	—	71
Total past due and non-accrual loans	$ 3,964	$ 2,297	$ 906	$ 15,946

Gross interest income recorded on 90+ days past due loans, and that would have been recorded on non-accrual loans if they had been accruing interest in accordance with their original terms, was $1.2 million, $1.6 million, and $1.8 million for the years ended December 31, 2022, 2021, and 2020, respectively. Interest collected on those loans and recognized on a cash basis that was included in interest income was $0.4 million for each of the years ended December 31, 2022, and 2021, and was insignificant for the year ended December 31, 2020.

Troubled Debt Restructurings

TDR loan balances are summarized as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
TDRs		
In compliance with modified terms	$ 3,032	$ 1,801
Non-performing TDRs	537	551
Total TDRs	$ 3,569	$ 2,352

Loans that were designated as TDRs during the years ended as of the dates indicated are summarized as follows *(dollars in thousands)*:

	Newly Designated TDRs		
		Recorded Investment[1]	
	Number of Contracts	Rate Modification[2]	Payment Modification[2]
December 31, 2022			
Commercial	3	$ 136	$ 996
Retail real estate	1	—	517
Total	4	$ 136	$ 1,513
December 31, 2021			
Commercial	1	$ 364	$ —
December 31, 2020			
Commercial	3	$ 130	$ —
Commercial real estate	1	651	—
Real estate construction	4	—	986
Total	8	$ 781	$ 986

1. Recorded investment for newly designated TDR's that were still outstanding as of the dates indicated.
2. TDRs may include multiple concessions; those that include an interest rate concession and payment concession are shown in the rate modification column.

There were no TDRs entered into during the 12 months ended December 31, 2022, 2021, or 2020, that had subsequent defaults. A default occurs when a loan is 90 days or more past due or transferred to non-accrual.

Gross interest income that would have been recorded during the years ended December 31, 2022, 2021, and 2020, if TDRs had performed in accordance with their original terms compared with their modified terms, was insignificant.

Collateral Dependent Loans

Management's evaluation as to the ultimate collectability of loans includes estimates regarding future cash flows from operations and the value of property, real and personal, pledged as collateral. These estimates are affected by changing economic conditions and the economic prospects of borrowers. Collateral dependent loans are loans in which repayment is expected to be provided solely by the underlying collateral and there are no other available and reliable sources of repayment. Loans are written down to the lower of cost or fair value of underlying collateral, less estimated costs to sell. The Company had $14.0 million and $7.9 million of collateral dependent loans secured by real estate or business assets as of December 31, 2022, and December 31, 2021, respectively.

Loans Modified Under the CARES Act or Interagency Statement

The CARES Act provided financial institutions the option to temporarily suspend certain requirements under GAAP related to TDRs for a limited period of time to account for the effects of COVID-19. Federal regulatory agencies, in consultation with FASB, also issued an Interagency Statement to encourage financial institutions to work with borrowers affected by COVID-19 and to update guidance to allow banks to modify loans of customers stressed by COVID-19 without having to classify the loan as a TDR. The Company's TDR loan totals do not include the following modified loans with payment deferrals that fall under the CARES Act or Interagency Statement that suspended requirements under GAAP related to TDR classification *(dollars in thousands)*:

	As of December 31, 2022		As of December 31, 2021	
	Number of Contracts	Recorded Investment	Number of Contracts	Recorded Investment
COVID-19 loan modifications				
Commercial loans: Interest-only deferrals	8	$ 20,556	32	$ 128,730
Retail loans: Mortgage and personal loan deferrals	1	99	2	137
Total COVID-19 loans modifications	9	$ 20,655	34	$ 128,867

Loans Evaluated Individually

The Company evaluates loans with disparate risk characteristics on an individual basis. The following tables provide details of loans evaluated individually, segregated by category. The unpaid principal balance represents the customer outstanding contractual principal balance excluding any partial charge-offs. Recorded investment represents the amortized cost of customer balances net of any partial charge-offs recognized on the loan. Average recorded investment is calculated using the most recent four quarters *(dollars in thousands)*:

	As of December 31, 2022					
		Recorded Investment				
	Unpaid Principal Balance	With No Allowance	With Allowance	Total	Related Allowance	Average Recorded Investment
Loans evaluated individually						
Commercial	$ 9,589	$ 656	$ 5,918	$ 6,574	$ 2,476	$ 6,761
Commercial real estate	8,039	2,334	3,903	6,237	2,000	5,219
Real estate construction	247	247	—	247	—	260
Retail real estate	2,733	2,564	25	2,589	25	2,311
Total loans evaluated individually	$ 20,608	$ 5,801	$ 9,846	$ 15,647	$ 4,501	$ 14,551

	As of December 31, 2021					
		Recorded Investment				
	Unpaid Principal Balance	With No Allowance	With Allowance	Total	Related Allowance	Average Recorded Investment
Loans evaluated individually						
Commercial	$ 10,247	$ 498	$ 6,490	$ 6,988	$ 3,564	$ 8,791
Commercial real estate	6,456	5,750	—	5,750	—	6,390
Real estate construction	272	272	—	272	—	282
Retail real estate	2,514	2,345	25	2,370	25	4,093
Total loans evaluated individually	$ 19,489	$ 8,865	$ 6,515	$ 15,380	$ 3,589	$ 19,556

Allowance for Credit Losses

Management estimates the ACL balance using relevant available information from internal and external sources, relating to past events, current conditions, and reasonable and supportable forecasts. Historical credit loss experience provides the basis for the estimation of expected credit losses. The cumulative loss rate used as the basis for the estimate of credit losses is comprised of the Company's historical loss experience beginning in 2010. Due to the continued economic uncertainty in the markets in which the Company operates, in particular the levels of delinquencies, the Company will continue to utilize a forecast period of 12 months with an immediate reversion to historical loss rates beyond this forecast period in its ACL estimate. PPP loans were excluded from the ACL calculation as they are 100% government guaranteed.

The following tables summarize activity in the ACL attributable to each loan category. Allocation of a portion of the ACL to one category does not preclude its availability to absorb losses in other categories *(dollars in thousands)*:

	Commercial	Commercial Real Estate	Real Estate Construction	Retail Real Estate	Retail Other	Total
ACL Balance, December 31, 2019	$ 18,291	$ 21,190	$ 3,204	$ 10,495	$ 568	$ 53,748
Adoption of ASC 326-30	715	9,306	2,954	3,292	566	16,833
Provision for credit losses	10,832	17,511	1,452	9,050	(48)	38,797
Charged-off	(6,376)	(1,972)	(18)	(2,057)	(665)	(11,088)
Recoveries	404	195	601	1,212	346	2,758
ACL balance, December 31, 2020	23,866	46,230	8,193	21,992	767	101,048
Day 1 PCD[1]	3,546	336	—	129	167	4,178
Provision for credit losses	(2,160)	(7,651)	(3,180)	(4,456)	2,346	(15,101)
Charged-off	(2,026)	(925)	(209)	(1,145)	(478)	(4,783)
Recoveries	629	259	298	1,069	290	2,545
ACL balance, December 31, 2021	23,855	38,249	5,102	17,589	3,092	87,887
Provision for credit losses	497	892	1,142	219	1,873	4,623
Charged-off	(1,069)	(1,375)	(23)	(251)	(461)	(3,179)
Recoveries	577	533	236	636	295	2,277
ACL balance, December 31, 2022	$ 23,860	$ 38,299	$ 6,457	$ 18,193	$ 4,799	$ 91,608

1. The Day 1 PCD is attributable to the CAC acquisition.

The following tables present the ACL and amortized cost of portfolio loans by category *(dollars in thousands)*:

	As of December 31, 2022					
	Portfolio Loans			ACL Attributed to Portfolio Loans		
	Collectively Evaluated for Impairment	Individually Evaluated for Impairment	Total	Collectively Evaluated for Impairment	Individually Evaluated for Impairment	Total
Portfolio loan category						
Commercial	$ 1,967,580	$ 6,574	$ 1,974,154	$ 21,384	$ 2,476	$ 23,860
Commercial real estate	3,255,636	6,237	3,261,873	36,299	2,000	38,299
Real estate construction	530,222	247	530,469	6,457	—	6,457
Retail real estate	1,654,493	2,589	1,657,082	18,168	25	18,193
Retail other	302,124	—	302,124	4,799	—	4,799
Portfolio loans and related ACL	$ 7,710,055	$ 15,647	$ 7,725,702	$ 87,107	$ 4,501	$ 91,608

	As of December 31, 2021					
	Portfolio Loans			ACL Attributed to Portfolio Loans		
	Collectively Evaluated for Impairment	Individually Evaluated for Impairment	Total	Collectively Evaluated for Impairment	Individually Evaluated for Impairment	Total
Portfolio loan category						
Commercial	$ 1,936,898	$ 6,988	$ 1,943,886	$ 20,291	$ 3,564	$ 23,855
Commercial real estate	3,114,057	5,750	3,119,807	38,249	—	38,249
Real estate construction	385,724	272	385,996	5,102	—	5,102
Retail real estate	1,510,606	2,370	1,512,976	17,564	25	17,589
Retail other	226,333	—	226,333	3,092	—	3,092
Portfolio loans and related ACL	$ 7,173,618	$ 15,380	$ 7,188,998	$ 84,298	$ 3,589	$ 87,887

NOTE 5. OTHER REAL ESTATE OWNED AND OTHER REPOSSESSED ASSETS

OREO and other repossessed assets represent properties and other assets acquired through foreclosure or other proceedings in settlement of loans and is included in other assets in the accompanying Consolidated Balance Sheets. The following table summarizes the composition of the Company's OREO and other repossessed asset balances as of the periods presented *(dollars in thousands)*:

	As of December 31,	
	2022	2021
OREO		
Commercial	$ —	$ 2,839
Residential	70	235
Total OREO	70	3,074
Other repossessed assets	780	1,342
OREO and other repossessed assets	$ 850	$ 4,416

The following table summarizes activity related to OREO and other repossessed assets *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Changes in OREO and other repossessed assets			
OREO and other repossessed assets beginning balance	$ 4,416	$ 4,571	$ 3,057
Additions, transfers from loans	175	1,610	2,867
Sales	(2,565)	(1,721)	(1,282)
Cash payments collected	(565)	(43)	(3)
Impairment of OREO and other repossessed assets	(611)	(1)	(68)
OREO and other repossessed assets ending balance	$ 850	$ 4,416	$ 4,571

The Company had residential real estate in the process of foreclosure totaling $1.1 million as of December 31, 2022, and $0.2 million as of December 31, 2021. The Company has elected to follow Federal Housing Finance Agency guidelines on single-family foreclosures and real estate owned evictions on portfolio loans.

Activity related to OREO and other repossessed assets included the following *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Activity for OREO and other repossessed assets			
Net loss (gain) on sales	665	173	(90)
Operating expenses, net of income	248	468	538
Activity for OREO and other repossessed assets	$ 913	$ 641	$ 448

NOTE 6. PREMISES AND EQUIPMENT

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

	As of December 31,	
	2022	2021
Premises and equipment		
Land and improvements	$ 44,193	$ 45,595
Buildings and improvements	128,669	132,011
Furniture and equipment	52,991	54,473
Premises and equipment, gross	225,853	232,079
Accumulated depreciation	99,329	95,932
Premises and equipment, net	$ 126,524	$ 136,147

Depreciation expense was $10.5 million, $11.6 million, and $12.3 million for the years ended December 31, 2022, 2021, and 2020, respectively.

NOTE 7. GOODWILL AND OTHER INTANGIBLE ASSETS

Goodwill

The Company’s goodwill is associated with its three operating segments, Banking, FirsTech, and Wealth Management. Goodwill is tested annually for impairment, and as part of this analysis, the reporting unit's carrying value is compared to its estimated fair value. Based on the impairment testing performed at December 31, 2022, there were no indicators of potential impairment based on the estimated fair value of those operating segments.

The Company did not record any new goodwill during the year ended December 31, 2022. During 2021, in connection with the acquisition of CAC, the Company recorded goodwill totaling $6.3 million and other intangible assets totaling $8.8 million in the Banking operating segment, as well as other intangible assets totaling $8.5 million in the Wealth Management segment.

The carrying amount of goodwill by operating segment is as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Goodwill		
Banking	$ 294,773	$ 294,773
FirsTech	8,992	8,992
Wealth Management	14,108	14,108
Total goodwill	$ 317,873	$ 317,873

Indefinite-lived intangible assets, such as goodwill, are not amortized. Goodwill is the Company's only indefinite-lived intangible asset.

Intangible Assets

Core deposit and customer relationship intangible assets are amortized over the estimated period during which the Company expects to benefit from the assets. Intangible asset disclosures are as follows *(dollars in thousands)*:

	As of December 31,					
	2022			2021		
	Core deposit intangible	Customer relationship intangible	Total	Core deposit intangible	Customer relationship intangible	Total
Intangible Assets						
Intangible assets, gross	$ 99,065	$ 33,138	$ 132,203	$ 99,065	$ 33,138	$ 132,203
Accumulated amortization	63,476	22,304	85,780	55,161	18,991	74,152
Intangible assets, net	$ 35,589	$ 10,834	$ 46,423	$ 43,904	$ 14,147	$ 58,051

Amortization expense related to intangible assets, as reflected in the Company's Consolidated Statements of Income, is presented in the table below *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Amortization Expense			
Core deposit intangible	$ 8,315	$ 8,253	$ 7,753
Customer relationship intangible	3,313	3,021	2,255
Amortization of intangible assets	$ 11,628	$ 11,274	$ 10,008

Future expense for the amortization of intangible assets, as estimated, is summarized in the table below *(dollars in thousands)*:

	As of December 31, 2022		
	Core deposit intangible	Customer relationship intangible	Total
Estimated amortization expense			
2023	$ 7,616	$ 2,816	$ 10,432
2024	6,902	2,318	9,220
2025	5,956	1,887	7,843
2026	5,227	1,479	6,706
2027	4,490	1,091	5,581
Thereafter	5,398	1,243	6,641
Total estimated amortization expense	$ 35,589	$ 10,834	$ 46,423

NOTE 8. DEPOSITS

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

	As of December 31,	
	2022	2021
Deposits		
Noninterest-bearing demand deposits	$ 3,393,666	$ 3,670,267
Interest-bearing transaction deposits	2,857,818	2,720,417
Saving deposits and money market deposits	2,964,421	3,442,244
Time deposits	855,375	935,649
Total deposits	$ 10,071,280	$ 10,768,577

Additional information about our deposits is as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Brokered savings deposits and money market deposits	$ 1,303	$ 2,248
Brokered time deposits	275	266
Total time deposits with a minimum denomination of $100,000	416,445	454,649
Total time deposits with a minimum denomination that meets or exceeds the FDIC insurance limit of $250,000	120,377	137,449

Scheduled maturities of time deposits are as follows *(dollars in thousands)*:

	As of December 31, 2022
Time deposits by schedule of maturities	
2023	$ 560,147
2024	229,263
2025	34,307
2026	16,637
2027	14,301
Thereafter	720
Time deposits	$ 855,375

NOTE 9. BORROWINGS

Securities Sold Under Agreements to Repurchase

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

	As of December 31,	
	2022	2021
Securities sold under agreements to repurchase	$ 229,806	$ 270,139
Weighted average rate for securities sold under agreements to repurchase	1.91 %	0.08 %

Term Loan

On May 28, 2021, the Company entered into a Second Amended and Restated Credit Agreement, pursuant to which the Company has access to (i) a $40.0 million revolving line of credit with an initial termination date of April 30, 2022, and (ii) a $60.0 million term loan with a maturity date of May 31, 2026. The loans had an annual interest rate of 1.75% plus the one-month LIBOR rate. On April 30, 2022, the agreement was amended, effecting an extension of the termination date for the revolving line of credit to April 30, 2023, and providing for the transition from a LIBOR-indexed interest rate to a SOFR-indexed interest rate. Under the terms of the amendment, the loans now have an annual interest rate of 1.80% plus the one-month forward-looking term rate based on SOFR.

Proceeds of the term loan were used to fund a part of the cash portion of the merger consideration related to the acquisition of CAC in the second quarter of 2021, and for general corporate purposes. As of December 31, 2022, there was no balance outstanding on the revolving credit facility and a total of $42.0 million outstanding on the term loan, of which $12.0 million was short-term and $30.0 million was long-term. The revolving credit facility incurs a non-usage fee based on any undrawn amounts. Quarterly payments on the term loan reduce the outstanding principal balance by $3.0 million each quarter.

Short-Term Borrowings

Short-term borrowings are summarized as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Short-term borrowings		
FHLB advances maturing in less than one year from date of origination, and the current portion of long-term FHLB advances due within 12 months	$ 339,054	$ 5,678
Term Loan, current portion due within 12 months	12,000	12,000
Total short-term debt	$ 351,054	$ 17,678

Funds borrowed from the FHLB, listed above, consisted of four notes with a weighted average interest rate of 4.28% as of December 31, 2022, and two notes with a weighted average interest rate of 0.36% as of December 31, 2021.

Federal funds purchased are short-term borrowings that generally mature between one and 90 days. The Company had no federal funds purchased as of December 31, 2022, or December 31, 2021.

Long-Term Debt

First Busey's long-term debt consists of loans maturing more than one year from the loan origination date, excluding the current portion that is due within 12 months. Long-term debt is summarized as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Long-term debt		
Notes payable, FHLB, original maturity of 5 years, collateralized by FHLB deposits, residential and commercial real estate loans and FHLB stock	$ —	$ 4,056
Term Loan	30,000	42,000
Total long-term debt	$ 30,000	$ 46,056

As of December 31, 2021, funds borrowed from the FHLB, listed above, consisted of one variable-rate note maturing in May 2023, with an interest rate of 3.04%. During the second quarter of 2022, this note became due within 12 months and the balance is now fully reflected in short-term borrowings.

Senior and Subordinated Notes

On May 25, 2017, the Company issued $40.0 million of 3.75% senior notes that matured and were redeemed on May 25, 2022. Additionally, on May 25, 2017, the Company issued $60.0 million of fixed-to-floating rate subordinated notes that were scheduled to mature on May 25, 2027, with an optional redemption in whole or in part on any interest payment date on or after May 25, 2022. The Company redeemed all outstanding $60.0 million fixed-to-floating rate subordinated notes during the third quarter of 2022. At the time of redemption, the redeemed subordinated notes carried interest at a floating rate of 3-month LIBOR plus 2.919%.

On June 1, 2020, the Company issued $125.0 million of fixed-to-floating rate subordinated notes that mature on June 1, 2030. The subordinated notes, which qualify as Tier 2 capital for First Busey, bear interest at an annual rate of 5.25% for the first five years after issuance and thereafter bear interest at a floating rate equal to a three-month benchmark rate plus a spread of 5.11%, as calculated on each applicable determination date. The subordinated notes are payable semi-annually on each June 1 and December 1 during the five-year fixed-term, and thereafter on March 1, June 1, September 1, and December 1 of each year, commencing on September 1, 2025. The subordinated notes have an optional redemption in whole or in part on any interest payment date on or after June 1, 2025. The subordinated notes are unsecured obligations of the Company.

On June 2, 2022, the Company issued $100.0 million aggregate principal amount of 5.000% fixed-to-floating rate subordinated notes maturing June 15, 2032, which qualify as Tier 2 Capital for regulatory purposes. The price to the public for the subordinated notes was 100% of the principal amount of the subordinated notes. Interest on the subordinated notes will accrue at a rate equal to (i) 5.000% per annum from the original issue date to, but excluding, June 15, 2027, payable semiannually in arrears, and (ii) a floating rate per annum equal to a benchmark rate, which is expected to be the Three-Month Term SOFR (as defined in the subordinated notes), plus a spread of 252 basis points from and including, June 15, 2027, payable quarterly in arrears. The subordinated notes have an optional redemption in whole or in part on any interest payment date on or after June 15, 2027.

Unamortized debt issuance costs related to senior notes and subordinated notes are presented in the following table *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Unamortized debt issuance costs		
Senior notes issued in 2017	$ —	$ 56
Subordinated notes issued in 2017	—	549
Subordinated notes issued in 2020	1,220	1,678
Subordinated notes issued in 2022	1,742	—
Total unamortized debt issuance costs	$ 2,962	$ 2,283

NOTE 10. JUNIOR SUBORDINATED DEBT OWED TO UNCONSOLIDATED TRUSTS

First Busey maintains statutory trusts for the sole purpose of issuing and servicing trust preferred securities and related trust common securities. Proceeds from such issuances were used by the trusts to purchase junior subordinated notes of the Company, which are the sole assets of each trust. Concurrent with the issuance of the trust preferred securities, the Company issued guarantees for the benefit of the holders of the trust preferred securities. The trust preferred securities are instruments that qualify, and are treated by the Company, as Tier 1 regulatory capital. The Company owns all of the common securities of each trust. The trust preferred securities issued by each trust rank equally with the common securities in right of payment, except that if an event of default under the indenture governing the notes has occurred and is continuing, the preferred securities will rank senior to the common securities in right of payment. In connection with the Pulaski acquisition in 2016, the Company acquired similar statutory trusts previously maintained by Pulaski and the fair value adjustment is being accreted over their weighted average remaining life, with a balance of $2.8 million remaining to be accreted. The Company had $71.8 million and $71.6 million of junior subordinated debt owed to unconsolidated trusts at December 31, 2022, and 2021, respectively, maturing in 2034 through 2036.

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

For regulatory capital purposes, current banking regulations allow for the inclusion in Tier 1 Capital qualifying trust preferred securities issued prior to May 19, 2010, by bank holding companies with less than $15.0 billion of assets, but do not allow for additional Tier 1 Capital to be raised through the future issuance of trust preferred securities. As of December 31, 2022, 100% of the trust preferred securities qualified as Tier 1 Capital; however, once the Company reaches $15.0 billion in assets, its trust preferred securities will no longer quality as Tier 1 Capital.

NOTE 11. REGULATORY CAPITAL

The Company and its subsidiary bank are subject to various regulatory capital requirements administered by federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory—and possibly additional discretionary—actions by regulators that, if undertaken, could have a direct material effect on the Company's consolidated financial statements. Capital amounts and classification also are subject to qualitative judgments by regulators about components, risk weightings, and other factors.

Banking regulations identify five capital categories for insured depository institutions: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. As of December 31, 2022, and December 31, 2021, all capital ratios of the Company and its subsidiary bank exceeded well capitalized levels under the applicable regulatory capital adequacy guidelines. Management believes that no events or changes have occurred subsequent to December 31, 2022, that would change this designation.

Current Expected Credit Loss Model

On August 26, 2020, the FDIC and other federal banking agencies adopted a final rule which provided banking organizations that adopted CECL during 2020 with the option to delay for two years the estimated impact of CECL on regulatory capital and to phase in the aggregate impact of the deferral on regulatory capital over a subsequent three-year period. Under this final rule, because the Company has elected to use the deferral option, the regulatory capital impact of our transition adjustments recorded on January 1, 2020, arising from the adoption of CECL was deferred for two years. In addition, 25 percent of the ongoing impact of CECL on our ACL, retained earnings, and average total consolidated assets from January 1, 2020, through the end of the two-year deferral period, each as reported for regulatory capital purposes, has been added to the deferred transition amounts (“adjusted transition amounts”) and deferred for the two-year period. On January 1, 2022, at the conclusion of the two-year period, the adjusted transition amounts began to be phased-in for regulatory capital purposes at a rate of 25 percent per year, with the phased-in amounts included in regulatory capital at the beginning of each year.

Changes in Capital Relating to Subordinated Debt

On May 25, 2017, the Company issued $60.0 million of fixed-to-floating rate subordinated notes that were scheduled to mature on May 25, 2027. The full balance of the subordinated note qualified as Tier 2 Capital for First Busey for the first five years, with a phase out beginning in the second quarter of 2022. The subordinated notes had an optional redemption in whole or in part on any interest payment date on or after May 25, 2022, and the Company redeemed them in full during the third quarter of 2022.

On June 2, 2022, the Company issued $100.0 million aggregate principal amount of 5.000% fixed-to-floating rate subordinated notes that mature on June 15, 2032, which qualify as Tier 2 Capital for regulatory purposes.

Capital Amounts and Ratios

The following tables summarize regulatory capital requirements applicable to the Company and its subsidiary bank *(dollars in thousands)*:

	As of December 31, 2022					
	Actual		Minimum Capital Requirement		Minimum To Be Well Capitalized	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
Common Equity Tier 1 Capital to Risk Weighted Assets						
Consolidated	$ 1,081,686	11.96 %	$ 406,980	4.50 %	$ 587,861	6.50 %
Busey Bank	1,306,716	14.49 %	405,736	4.50 %	586,063	6.50 %
Tier 1 Capital to Risk Weighted Assets						
Consolidated	$ 1,155,686	12.78 %	$ 542,640	6.00 %	$ 723,521	8.00 %
Busey Bank	1,306,716	14.49 %	540,981	6.00 %	721,308	8.00 %
Total Capital to Risk Weighted Assets						
Consolidated	$ 1,457,994	16.12 %	$ 723,521	8.00 %	$ 904,401	10.00 %
Busey Bank	1,384,024	15.35 %	721,308	8.00 %	901,635	10.00 %
Leverage Ratio of Tier 1 Capital to Average Assets						
Consolidated	$ 1,155,686	9.45 %	$ 489,124	4.00 %	N/A	N/A
Busey Bank	1,306,716	10.72 %	487,541	4.00 %	$ 609,426	5.00 %

	As of December 31, 2021					
	Actual		Minimum Capital Requirement		Minimum To Be Well Capitalized	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
Common Equity Tier 1 Capital to Risk Weighted Assets						
Consolidated	$ 995,874	11.85 %	$ 378,334	4.50 %	$ 546,482	6.50 %
Busey Bank	1,241,303	14.81 %	377,096	4.50 %	544,695	6.50 %
Tier 1 Capital to Risk Weighted Assets						
Consolidated	$ 1,069,874	12.73 %	$ 504,445	6.00 %	$ 672,594	8.00 %
Busey Bank	1,241,303	14.81 %	502,795	6.00 %	670,394	8.00 %
Total Capital to Risk Weighted Assets						
Consolidated	$ 1,320,187	15.70 %	$ 672,594	8.00 %	$ 840,742	10.00 %
Busey Bank	1,306,616	15.59 %	670,394	8.00 %	837,992	10.00 %
Leverage Ratio of Tier 1 Capital to Average Assets						
Consolidated	$ 1,069,874	8.52 %	$ 502,336	4.00 %	N/A	N/A
Busey Bank	1,241,303	9.91 %	501,104	4.00 %	$ 626,379	5.00 %

Capital Conservation Buffer

In July 2013, U.S. federal banking authorities approved the Basel III Rule for strengthening international capital standards. The Basel III Rule introduced a capital conservation buffer, composed entirely of Common Equity Tier 1 Capital, which is added to the minimum risk-weighted asset ratios. The capital conservation buffer is not a minimum capital requirement; however, banking institutions with a ratio of Common Equity Tier 1 Capital to risk-weighted assets below the capital conservation buffer will face constraints on dividends, equity repurchases, and discretionary bonus payments based on the amount of the shortfall. In order to refrain from restrictions on dividends, equity repurchases, and discretionary bonus payments, banking institutions must maintain minimum ratios of (i) Common Equity Tier 1 to risk-weighted assets of at least 7.0%, (ii) Tier 1 capital to risk-weighted assets of at least 8.5%, and (iii) Total capital to risk-weighted assets of at least 10.5%.

Subsidiary Dividend Payments

The ability of the Company to pay cash dividends to its stockholders and to service its debt is dependent on the receipt of cash dividends from its subsidiaries. Under applicable regulatory requirements, an Illinois state-chartered bank, such as Busey Bank, may not pay dividends in excess of its net profits. Busey Bank paid dividends to the Company of $95.0 million, $60.0 million, and $122.0 million during the years ended December 31, 2022, 2021, and 2020, respectively.

NOTE 12. INCOME TAXES

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

	Years Ended December 31,		
	2022	2021	2020
Income tax expense			
Current expense:			
Federal	$ 20,815	$ 20,261	$ 21,027
State	13,883	8,448	12,144
Deferred expense:			
Federal	(700)	3,644	(3,657)
State	(572)	1,021	(1,652)
Total income tax expense	$ 33,426	$ 33,374	$ 27,862

A reconciliation of federal and state income taxes at statutory rates to the income taxes included in the accompanying Consolidated Statements of Income is as follows:

	Years Ended December 31,		
	2022	2021	2020
Percent of pretax income			
Income tax at federal statutory rate	21.0 %	21.0 %	21.0 %
Effect of:			
Tax-exempt interest, net	(1.1)%	(1.1)%	(1.6)%
Stock incentive	0.1 %	— %	0.2 %
State income taxes, net	6.5 %	4.5 %	6.5 %
Income on bank owned life insurance	(0.5)%	(0.7)%	(0.9)%
Tax credit investments	(5.6)%	(3.6)%	(3.2)%
Other, net	0.3 %	1.2 %	(0.3)%
Effective income tax rate	20.7 %	21.3 %	21.7 %

Net deferred taxes, reported in other assets or other liabilities in the accompanying Consolidated Balance Sheets, include the following amounts of deferred tax assets and liabilities *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Deferred taxes		
Deferred tax assets:		
ACL	$ 26,979	$ 25,884
Unrealized loss on cash flow hedge	8,365	273
Unrealized losses on securities available for sale	88,666	9,199
Unrealized losses on securities held to maturity	11,919	—
Stock-based compensation	5,504	4,204
Deferred compensation	53	55
Purchase accounting adjustments	656	1,213
Accrued vacation	411	398
Lease liabilities	3,564	2,893
Employee costs	3,298	2,847
Other	376	390
Total deferred tax assets	149,791	47,356
Deferred tax liabilities:		
Basis in premises and equipment	(1,541)	(1,347)
Affordable housing partnerships and other investments	(6,669)	(3,696)
Purchase accounting adjustments	(1,207)	(1,362)
Mortgage servicing assets	(2,132)	(2,853)
Basis in core deposit, customer intangible assets, and asset purchase goodwill	(6,956)	(9,485)
Deferred loan origination costs	(3,845)	(2,454)
Right of use assets	(3,518)	(2,877)
Unrealized gain on equity securities	(512)	(1,099)
Other	(586)	(560)
Total deferred tax liabilities	(26,966)	(25,733)
Net deferred tax asset	$ 122,825	$ 21,623

Management believes that it is more likely than not that the other deferred tax assets included in the accompanying Consolidated Balance Sheets will be fully realized. The Company has determined that no valuation allowance is required for any deferred tax assets as of December 31, 2022, or 2021.

NOTE 13. EMPLOYEE BENEFIT PLANS

First Busey Corporation Profit Sharing Plan and Trust ("the 401(k) Plan")

All associates who meet certain age requirements are eligible to participate in the 401(k) Plan. There is no waiting period for participation in the 401(k) Plan. The 401(k) Plan offers two contribution options: (i) the traditional option allows plan participants to elect pre-tax contributions, and (ii) the Roth option allows plan participants to elect after tax contributions. Plan participants may elect to make traditional and/or Roth 401(k) contributions, up to the annual deferral and catch-up limits established by the Internal Revenue Service.

First Busey supplements participant contributions by making Safe Harbor matching and discretionary profit sharing contributions.

Safe Harbor Match

First Busey makes Safe Harbor matching contributions equal to 100% of the first 3% of eligible contributions and 50% of the next 2% of eligible contributions. The rights of participants in Safe Harbor matching contributions vest immediately.

Profit Sharing

All associates who meet certain age and service requirements are eligible to participate in the Company's profit-sharing contributions. Discretionary profit-sharing contributions and related expenses, if any, are approved solely by the First Busey board of directors, and in no case may annual contributions be greater than the amounts deductible for federal income tax purposes for that year. The rights of participants in profit-sharing contributions vest ratably over a five-year period.

401(k) Plan Expenses

Expenses related to our employee benefit plans, reported in salaries, wages, and employee benefits in the accompanying Consolidated Statements of Income, are summarized in the table below *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
401(k) Plan expenses			
Profit-sharing expenses	$ 2,960	$ 2,823	$ 2,551
Safe Harbor match expenses	$ 4,094	$ 3,708	$ 3,431
Total 401(k) Plan expenses	$ 7,054	$ 6,531	$ 5,982

NOTE 14. STOCK-BASED COMPENSATION

Stock Options

The Company has outstanding stock options that were issued under the First Community 2016 Equity Incentive Plan and assumed from acquisitions. A summary of the status of, and changes in, the Company's stock option awards follows *(dollars in thousands, except weighted-average exercise price)*:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life	Intrinsic Value
Options outstanding at December 31, 2021	31,386	$ 23.53	4.88	$ 113
Exercised	(4,840)	23.53		
Expired	(440)	23.53		
Options outstanding at December 31, 2022	26,106	$ 23.53	3.88	$ 31
Options exercisable at December 31, 2022	26,106	$ 23.53	3.88	$ 31

2020 Equity Plan

Under the terms of the 2020 Equity Plan, the Company has granted RSU, PSU, and DSU awards. Upon vesting/delivery, shares are expected (though not required) to be issued from treasury.

A description of RSU, PSU and DSU awards granted in 2022 under the terms of the 2020 Equity Plan is provided below. A description of RSU, PSU and DSU awards granted in 2021 and 2020 under the terms of the 2020 Equity Plan and 2010 Equity Plan can be found in the Company’s Annual Reports for the years ended December 31, 2021, and 2020, respectively.

The Company issued 175,225 treasury shares in conjunction with the vesting of RSUs and settlement of DSUs in 2022. The difference between the number of shares issued and the number of vested units is due to shares issued under a net share settlement option. There were 657,570 shares available for issuance under the 2020 Equity Plan as of December 31, 2022.

RSU Awards

The Company grants RSUs to members of management periodically throughout the year. Each RSU is equivalent to one share of the Company's common stock. These units have requisite service periods ranging from one year to five years, subject to accelerated vesting upon eligible retirement from the Company. Recipients earn quarterly dividend equivalents on their respective units which entitle the recipients to additional units. Therefore, dividends earned each quarter compound based upon the updated unit balances.

On March 23, 2022, under the terms of the 2020 Equity Plan, the Company granted 156,483 RSUs to members of management. The grant date fair value of the award totaled $4.0 million and will be recognized as compensation expense over the requisite service period ranging from one year to five years. The terms of these awards included an accelerated vesting provision upon eligible retirement from the Company, after a one-year minimum requisite service period. Subsequent to the requisite service period, the awards will become 100% vested.

A summary of changes in the Company's RSU awards for the year ended December 31, 2022, is as follows:

	RSU Awards	
	Shares	Weighted-Average Grant Date Fair Value
Nonvested at December 31, 2021	1,147,927	$ 23.97
Granted	156,483	25.79
Dividend equivalents earned	43,916	24.83
Vested	(203,230)	27.66
Forfeited	(48,165)	23.46
Nonvested at December 31, 2022	1,096,931	23.61

PSU Awards

The Company grants PSUs, which are restricted stock units that are subject to certain performance criteria, to members of management periodically throughout the year. Each PSU is equivalent to one share of the Company's common stock. The number of units that ultimately vest will be determined based on the achievement of the market or other performance goals, subject to accelerated service-based vesting conditions upon eligible retirement from the Company.

On March 23, 2022, the Company granted a target of 78,233 market-based PSUs with a maximum award of 125,173 units. The actual number of units issued at the vesting date could range from 0% to 160% of the initial grant, depending on attaining a market-based total stockholder return performance goal. The grant date fair value of the award is $2.1 million and will be recognized in compensation expense over the performance period ending December 31, 2024.

On March 23, 2022, the Company granted a target of 78,233 performance-based PSUs with a maximum award of 125,173 units. The actual number of units issued at the vesting date could range from 0% to 160% of the initial grant, depending on attaining an adjusted return on average tangible common equity performance goal. The grant date fair value of the award is $2.0 million and will be recognized in compensation expense over the performance period ending December 31, 2024. The actual amount of compensation expense recognized may vary, subject to achievement of the performance goal.

Further, on March 23, 2022, the Company granted a target of 38,774 PSUs with a maximum award of 77,548 units. The actual number of units issued at the vesting date could range from 0% to 200% of the initial grant, depending on attaining a performance goal based upon the compounded annual revenue growth rate of the FirsTech operating segment. The grant date fair value of the award is $1.0 million and will be recognized in compensation expense over the performance period ending December 31, 2024, subject to achievement of the performance goal.

A summary of changes in the Company’s PSU awards for the year ended December 31, 2022, is as follows:

	PSU Awards	
	Shares[1]	Weighted-Average Grant Date Fair Value
Nonvested at December 31, 2021	113,915	$ 22.86
Granted	195,240	26.14
Dividend equivalents earned[2]	832	22.63
Vested[2]	(8,694)	16.86
Forfeited[2]	(8,080)	25.21
Adjustment for performance conditions[2,3]	(7,862)	16.25
Nonvested at December 31, 2022	285,351	25.40
Vested and outstanding at December 31, 2022	8,694	16.86

1. Shares for PSU awards represent target shares at grant date.
2. PSUs granted in 2020 vested on December 31, 2022. In January 2023, it was determined that performance criteria had been met at 50% of target.
3. Adjustments for performance conditions represent the difference between the number of target shares at grant date and the number of actual shares earned for the performance period completed.

DSU Awards

The Company grants DSUs, which are restricted stock units with a deferred settlement date, to its directors and advisory directors. Each DSU is equivalent to one share of the Company’s common stock. DSUs vest over a one-year period following the grant date. These units generally are subject to the same terms as RSUs under the 2020 Equity Plan, except that, following vesting, settlement occurs within 30 days following the earlier of separation from the board or a change in control of the Company. After vesting and prior to delivery, these units will continue to earn dividend equivalents.

On March 23, 2022, the Company granted 32,658 DSUs to directors and advisory directors. The grant date fair value of the award totaled $0.8 million and will be recognized as compensation expense over the requisite service period of one year. Subsequent to the requisite service period, the awards will become 100% vested.

A summary of changes in the Company’s DSU awards for the year ended December 31, 2022, is as follows:

	DSU Awards	
	Shares	Weighted-Average Grant Date Fair Value
Nonvested at December 31, 2021	34,135	$ 24.59
Granted	32,658	25.79
Dividend equivalents earned	5,473	24.47
Vested	(41,181)	24.67
Nonvested at December 31, 2022	31,085	25.75
Vested and outstanding at December 31, 2022	112,434	23.10

2021 Employee Stock Purchase Plan

The First Busey Corporation 2021 ESPP was approved at the Company's 2021 Annual Meeting of Stockholders. The purpose of the 2021 ESPP is to provide a means through which our employees may acquire a proprietary interest in the Company by purchasing shares of our common stock at a 15% discount through voluntary payroll deductions, to assist us in retaining the services of our employees and securing and retaining the services of new employees, and to provide incentives for our employees to exert maximum efforts toward our success. Under the terms of the 2021 ESPP, all participating employees have equal rights and privileges. Substantially all of our employees are eligible to participate in the 2021 ESPP. Further details can be found within First Busey's Definitive Proxy Statement filed with the SEC on April 8, 2021.

The 2021 ESPP initially reserved for issuance and purchase an aggregate of 600,000 shares of the Company's common stock. The first offering under the 2021 ESPP began on July 1, 2021. There were 512,225 shares available for issuance under the 2021 ESPP as of December 31, 2022.

Stock-Based Compensation Expense

The Company did not record any stock option compensation expense for the years ended December 31, 2022, 2021, or 2020. As of December 31, 2022, the Company did not have any unrecognized stock option compensation expense.

The Company recognized compensation expense related to non-vested RSU, PSU, and DSU awards, as well as the 2021 ESPP, as presented in the table below *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Stock-based compensation expense			
RSU awards	$ 4,648	$ 5,809	$ 6,493
PSU awards[1]	3,240	979	77
DSU awards	876	962	565
2021 ESPP	204	114	—
Total stock-based compensation expense	$ 8,968	$ 7,864	$ 7,135

1. Expense for market-based PSU awards represents amounts based on target shares at grant date. Expense for performance-based PSU awards represents amounts based on target shares at grant date, adjusted for performance expectations as of the date indicated.

Unamortized stock-based compensation expense is presented in the table below *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Unamortized stock-based compensation		
RSU awards	$ 8,570	$ 10,204
PSU awards[1]	4,279	1,547
DSU awards	175	209
Total unamortized stock-based compensation	$ 13,024	$ 11,960
Weighted average period over which expense is to be recognized	2.5 yrs	2.9 yrs

1. Unamortized expense for market-based PSU awards represents amounts based on target shares at grant date. Unamortized expense for performance-based PSU awards represents amounts based on target shares at grant date, adjusted for performance expectations as of the date indicated.

NOTE 15. TRANSACTIONS WITH RELATED PARTIES

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

The following is an analysis of the changes in loans to related parties, as a group *(dollars in thousands)*:

	As of and for the Year Ended December 31, 2022
Balance of loans to related parties, December 31, 2021	$ 42,557
Change in relationship	(11,254)
New loans/advances	39,545
Repayments	(15,507)
Balance of loans to related parties, December 31, 2022	$ 55,341
Unused commitments to directors and executive officers	$ 12,722

Loans to related parties did not include significant amounts that were past due, nonaccrual, or TDRs.

NOTE 16. OUTSTANDING COMMITMENTS AND CONTINGENT LIABILITIES

Legal Matters

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

Credit Commitments and Contingencies

A summary of the contractual amount of the Company’s exposure to off-balance-sheet risk relating to the Company’s commitments to extend credit and standby letters of credit follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Financial instruments whose contract amounts represent credit risk		
Commitments to extend credit	$ 1,991,769	$ 1,983,655
Standby letters of credit	33,008	32,552
Total commitments	$ 2,024,777	$ 2,016,207

NOTE 17. DERIVATIVE FINANCIAL INSTRUMENTS

The Company utilizes interest rate swap agreements as part of its asset liability management strategy to help manage its interest rate risk position. Additionally, the Company enters into derivative financial instruments, including interest rate lock commitments issued to residential loan customers for loans that will be held for sale, forward sales commitments to sell residential mortgage loans to investors, and interest rate swaps with customers and other third parties. See “*Note 18. Fair Value Measurements*” for further discussion of the fair value measurement of such derivatives.

To secure its obligations under derivative contracts, the Company pledged cash and held collateral as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Cash pledged to secure obligations under derivative contracts	$ 38,609	$ 27,300
Collateral held to secure obligations under derivative contracts	29,830	—

Derivative Instruments Designated as Hedges

The Company entered into derivative instruments designated as cash flow hedges. For a derivative instrument that is designated and qualifies as a cash flow hedge, the change in fair value of the derivative instrument is reported as a component of OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. Changes in fair value of components excluded from the assessment of effectiveness are recognized in current earnings.

Interest Rate Swaps Designated as Cash Flow Hedges

Interest rate swaps with notional amounts totaling $350.0 million as of December 31, 2022, and $50.0 million as of December 31, 2021, were designated as cash flow hedges. The Company entered into one $50.0 million interest rate swap to hedge the risks of variability in cash flows for future interest payments attributable to changes in the contractually specified 3-month LIBOR benchmark interest rate on the Company’s junior subordinated debt owed to unconsolidated trusts (Debt Swap). In 2022, the Company entered into one $300.0 million receive fixed pay floating interest rate swap to reduce the Company's asset sensitivity (Loan Swap). We added duration to our loan portfolio by fixing a portion of our floating prime based loans. Interest rates had risen above their historical lows allowing us to lock in a portion of our loan portfolio to reduce asset sensitivity while creating a more stable margin in a volatile rate market. These hedges were determined to be highly effective during the period, and the Company expects its hedges to remain highly effective during the remaining terms of the swaps. Changes in fair value were recorded net of tax in OCI.

A summary of the interest-rate swaps designated as cash flow hedges is presented below *(dollars in thousands)*:

		As of December 31,	
	Location	2022	2021
Debt Swap			
Notional amount		$ 50,000	$ 50,000
Weighted average fixed pay rates		1.79 %	1.79 %
Weighted average variable 3-month LIBOR receive rates		4.77 %	0.20 %
Weighted average maturity, in years		1.71 yrs	2.71 yrs
Loan Swap			
Notional amount		$ 300,000	N/A
Weighted average fixed receive rates		4.81 %	N/A
Weighted average variable Prime pay rates		7.32 %	N/A
Weighted average maturity, in years		6.10 yrs	N/A
Gross aggregate fair value of the swaps			
Gross aggregate fair value of swap assets	Other assets	$ 2,535	$ —
Gross aggregate fair value of swap liabilities	Other liabilities	$ 32,367	$ 958
Balances carried in AOCI			
Unrealized gains (losses) on cash flow hedges, net of tax	AOCI	$ (20,985)	$ (685)

The Company expects to reclassify unrealized gains and losses from OCI to interest income and interest expense as shown in the following table, during the next 12 months *(dollars in thousands)*. Amounts actually recognized could differ from these expectations due to changes in interest rates, hedge de-designations, and the addition of other hedges subsequent to December 31, 2022.

	As of December 31, 2022
Unrealized gains (losses) in OCI expected to be recognized in income	
Unrealized gains expected to be reclassified from OCI to interest income	$ 372
Unrealized losses expected to be reclassified from OCI to interest expense	(648)
Net unrealized gains (losses) in OCI expected to be recognized in net interest income	$ (276)

Interest income (expense) recorded on swap transactions was as follows for the periods presented *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Interest income (expense) on swap transactions	$ (583)	$ (1,067)	$ (758)

The following table reflects the net gains (losses) recorded in AOCI and the Consolidated Statements of Comprehensive Income relating to cash flow derivative instruments for the periods presented *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Unrealized gains (losses) on cash flow hedges			
Net gain (loss) recognized in OCI, net of tax	$ (20,717)	$ 736	$ (2,526)
(Gain) loss reclassified from OCI to interest income	395	—	—
(Gain) loss reclassified from OCI to interest expense	22	763	542
Net change in unrealized gains (losses) on cash flow hedges, net of tax	$ (20,300)	$ 1,499	$ (1,984)

Derivative Instruments Not Designated as Hedges

Interest Rate Swaps

The Company may offer derivative contracts to its customers in connection with their risk management needs. The Company manages the risk associated with these contracts by entering into equal and offsetting derivative agreements with a third-party dealer. These contracts support variable rate, commercial loan relationships totaling $576.9 million and $491.4 million at December 31, 2022, and 2021, respectively. These derivatives generally worked together as an economic interest rate hedge, but the Company did not designate them for hedge accounting treatment. Consequently, changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Amounts and fair values of derivative assets and liabilities related to customer interest rate swaps, included in other assets and other liabilities in the Consolidated Balance Sheets, are summarized as follows *(dollars in thousands)*:

	As of December 31, 2022			
	Derivative Asset		Derivative Liability	
	Notional Amount	Fair Value	Notional Amount	Fair Value
Derivatives not designated as hedging instruments				
Interest rate swaps – pay floating, receive fixed	$ 48,728	$ 370	$ 528,183	$ 39,685
Interest rate swaps – pay fixed, receive floating	528,183	39,685	48,728	370
Total derivatives not designated as hedging instruments	$ 576,911	$ 40,055	$ 576,911	$ 40,055

	As of December 31, 2021			
	Derivative Asset		Derivative Liability	
	Notional Amount	Fair Value	Notional Amount	Fair Value
Derivatives not designated as hedging instruments				
Interest rate swaps – pay floating, receive fixed	$ 404,572	$ 17,839	$ 86,784	$ 2,259
Interest rate swaps – pay fixed, receive floating	86,784	2,259	404,572	17,839
Total derivatives not designated as hedging instruments	$ 491,356	$ 20,098	$ 491,356	$ 20,098

Changes in fair value of these derivative assets and liabilities are recorded in noninterest expense in the Consolidated Statements of Income and summarized as follows *(dollars in thousands)*:

		Years Ended December 31,		
	Location	2022	2021	2020
Interest rate swaps				
Pay floating, receive fixed	Noninterest expense	$ 19,308	$ (12,587)	$ 20,331
Pay fixed, receive floating	Noninterest expense	(19,308)	12,587	(20,331)
Net change in fair value of interest rate swaps		$ —	$ —	$ —

<u>Risk Participation Agreements</u>

To manage credit risk exposure related to a customer-facing swap, the Company entered into two risk participation agreements in conjunction with loan participation arrangements with other financial institutions. The risk participation agreements mature in 2026 and 2028, and are summarized as follows *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Risk participation agreements		
Notional amount	$ 18,899	$ 3,990
Fair value	5	—

Mortgage Banking Derivatives

<u>Interest Rate Lock Commitments</u>

Interest rate lock commitments that meet the definition of derivative financial instruments under ASC Topic 815 *"Derivatives and Hedging"* are carried at their fair values in other assets or other liabilities in the Consolidated Balance Sheets, with changes in the fair values of the corresponding derivative financial assets or liabilities recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Forward Sales Commitments

The Company economically hedges mortgage loans held for sale and interest rate lock commitments issued to its residential loan customers related to loans that will be held for sale by obtaining corresponding forward sales commitments with an investor to sell the loans at an agreed-upon price at the time the interest rate locks are issued to the customers. Forward sales commitments that meet the definition of derivative financial instruments under ASC Topic 815 *"Derivatives and Hedging"* are carried at their fair values in other assets or other liabilities in the Consolidated Balance Sheets. While such forward sales commitments generally served as an economic hedge to mortgage loans held for sale and interest rate lock commitments, the Company did not designate them for hedge accounting treatment. Changes in fair value of the corresponding derivative financial asset or liability were recorded as either a charge or credit to current earnings during the period in which the changes occurred.

Amounts and fair values of mortgage banking derivatives included in the Consolidated Balance Sheets are summarized as follows *(dollars in thousands)*:

		As of December 31, 2022		As of December 31, 2021	
	Location	Notional Amount	Fair Value	Notional Amount	Fair Value
Derivatives with positive fair value					
Interest rate lock commitments	Other assets	$ 1,517	$ 16	$ 19,384	$ 206
Forward sales commitments	Other assets	83	1	1,884	10
Mortgage banking derivatives recorded in other assets		$ 1,600	$ 17	$ 21,268	$ 216
Derivatives with negative fair value					
Interest rate lock commitments	Other liabilities	$ 83	$ 1	$ 499	$ 6
Forward sales commitments	Other liabilities	2,757	39	41,002	439
Mortgage banking derivatives recorded in other liabilities		$ 2,840	$ 40	$ 41,501	$ 445

Net gains (losses) relating to these derivative instruments are summarized as follows for the periods presented *(dollars in thousands)*:

		Years Ended December 31,		
	Location	2022	2021	2020
Net gains (losses)				
Interest rate lock commitments	Mortgage revenue	$ 15	$ 1,702	$ 9,667
Forward sales commitments	Mortgage revenue	(38)	(4,045)	(18,329)
Net gains (losses)		$ (23)	$ (2,343)	$ (8,662)

In 2020 and 2021, the impact of the net gains or losses recognized in earnings on interest rate lock commitments and forward sales commitments was almost entirely offset by the recognition of a corresponding change in the fair value of loans held for sale. In 2022, the Company began carrying loans held for sale at LOCOM, so while the Company will continue to recognize gains or losses on these mortgage banking derivative instruments in earnings, any corresponding increase in the fair value of loans held for sale will not be recognized in earnings until the loans are sold, at which time the increase is factored into the calculated gain on sale. Decreases in the market value of loans held for sale will continue to be recognized in earnings at each measurement period.

NOTE 18. FAIR VALUE MEASUREMENTS

The fair value of an asset or liability is the price that would be received by selling that asset or paid in transferring that liability (exit price) in an orderly transaction occurring in the principal market (or most advantageous market in the absence of a principal market) for such asset or liability. ASC Topic 820 *"Fair Value Measurement"* establishes a fair value hierarchy for valuation inputs that gives the highest priority to quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs. The fair value hierarchy is as follows:

- *Level 1 Inputs* – Unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- *Level 2 Inputs* – Inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. These might include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (such as interest rates, volatilities, prepayment speeds, credit risks, etc.) or inputs that are derived principally from or corroborated by market data by correlation or other means.
- *Level 3 Inputs* – Unobservable inputs for determining the fair values of assets or liabilities that reflect the Company's own assumptions about the assumptions that market participants would use in pricing the assets or liabilities.

A description of the valuation methodologies used for instruments measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy, is set forth below. These valuation methodologies were applied to those Company assets and liabilities that are carried at fair value.

In general, fair value is based upon quoted market prices, when available. If such quoted market prices are not available, fair values are measured utilizing independent valuation techniques of identical or similar securities for which significant assumptions are derived primarily from or corroborated by observable data. Valuation adjustments may be made to ensure that financial instruments are recorded at fair value. These adjustments may include amounts to reflect, among other things, counterparty credit quality and the company's creditworthiness as well as unobservable parameters. Any such valuation adjustments are applied consistently over time. While management believes the Company's valuation methodologies are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date.

Financial Assets and Liabilities Measured at Fair Value on a Recurring Basis

Debt Securities Available for Sale

Debt securities classified as available for sale are reported at fair value utilizing Level 2 inputs. The Company obtains fair value measurements from an independent pricing service. The independent pricing service utilizes evaluated pricing models that vary by asset class and incorporate available trade, bid, and other market information. Because many fixed income securities do not trade on a daily basis, the independent pricing service applies available information, focusing on observable market data such as benchmark curves, benchmarking of like securities, sector groupings, and matrix pricing, to prepare evaluations.

The independent pricing service uses model processes, such as the Option Adjusted Spread model, to assess interest rate impact and develop prepayment scenarios. Models and processes take into account market conventions. For each asset class, a team of evaluators gathers information from market sources and integrates relevant credit information, perceived market movements, and sector news into the evaluated pricing applications and models.

Market inputs that the independent pricing service normally seeks for evaluations of securities, listed in approximate order of priority, include: benchmark yields, reported trades, broker/dealer quotes, issuer spreads, two-sided markets, benchmark securities, bids, offers, and reference data including market research publications. The independent pricing service also monitors market indicators, industry, and economic events. For certain security types, additional inputs may be used or some of the market inputs may not be applicable. Evaluators may prioritize inputs differently on any given day for any security based on market conditions, and not all inputs listed are available for use in the evaluation process for each security evaluation on a given day. Because the data utilized was observable, the securities have been classified as Level 2.

Equity Securities

Equity securities are reported at fair value utilizing Level 1 or Level 2 inputs. Fair value measurements of mutual funds, when held, are determined using unadjusted quoted prices in active markets for identical assets at the measurement date and are classified as Level 1. For stock, quoted prices for identical or similar assets in markets that are not active are utilized and classified as Level 2.

Loans Held for Sale

Effective January 1, 2022, the Company elected to account for all newly originated loans held for sale at LOCOM. Prior to this change, the Company accounted for loans held for sale at fair value. Loans held for sale that were reported at fair value as of December 31, 2021, utilized Level 2 inputs. The fair values of the mortgage loans held for sale were measured using observable quoted market prices, contract prices, or market price equivalents and were classified as Level 2.

Derivative Assets and Derivative Liabilities

The majority of our derivative assets and derivative liabilities are reported at fair value utilizing Level 2 or Level 3 inputs. Derivative balances are included in other assets or other liabilities on the Consolidated Balance Sheets, and consist of interest rate swaps and risk participation agreements where there is no significant deterioration in the counterparties (loan customers) credit risk since origination of the interest rate swap or risk participation agreement, as well as mortgage banking derivatives, including interest rate lock commitments and forward sales commitments.

Fair values of derivative assets and liabilities are determined based on prices that are obtained from a third-party which uses observable market inputs and, with the exception of our risk participation agreements, are classified as Level 2. For purposes of potential valuation adjustments to our derivative positions, the Company evaluates the credit risk of its counterparties as well as its own credit risk. Accordingly, the Company has considered factors such as the likelihood of default, expected loss given default, net exposures, and remaining contractual life, among other things, in determining if any estimated fair value adjustments related to credit risk are required. The Company reviews counterparty exposure quarterly, and when necessary, appropriate adjustments are made to reflect the exposure. No changes in counterparty credit were identified.

Due to the significance of unobservable inputs, derivative assets related to our risk participation agreements are classified as Level 3.

The following tables summarize financial assets and financial liabilities measured at fair value on a recurring basis as of December 31, 2022, and 2021, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value *(dollars in thousands)*:

	As of December 31, 2022			
	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
Debt securities available for sale:				
U.S. Treasury securities	$ —	$ 114,061	$ —	$ 114,061
Obligations of U.S. government corporations and agencies	—	19,779	—	19,779
Obligations of states and political subdivisions	—	257,512	—	257,512
Asset-backed securities	—	469,875	—	469,875
Commercial mortgage-backed securities	—	108,394	—	108,394
Residential mortgage-backed securities	—	1,243,256	—	1,243,256
Corporate debt securities	—	248,516	—	248,516
Equity securities	—	11,535	—	11,535
Derivative assets	—	42,607	5	42,612
Derivative liabilities	—	72,462	—	72,462

	As of December 31, 2021			
	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
Debt securities available for sale:				
U.S. Treasury securities	$ —	$ 165,762	$ —	$ 165,762
Obligations of U.S. government corporations and agencies	—	38,470	—	38,470
Obligations of states and political subdivisions	—	306,869	—	306,869
Asset-backed securities	—	492,186	—	492,186
Commercial mortgage-backed securities	—	614,998	—	614,998
Residential mortgage-backed securities	—	2,069,313	—	2,069,313
Corporate debt securities	—	293,653	—	293,653
Equity securities	—	13,571	—	13,571
Loans held for sale	—	23,875	—	23,875
Derivative assets	—	20,314	—	20,314
Derivative liabilities	—	21,501	—	21,501

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

Certain financial assets and financial liabilities are measured at fair value on a non-recurring basis; that is, the instruments are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances (for example, when there is evidence of impairment).

Loans Evaluated Individually

The Company does not record portfolio loans at fair value on a recurring basis. However, periodically, a loan is evaluated individually and is reported at the fair value of the underlying collateral, less estimated costs to sell, if repayment is expected solely from the collateral. If the collateral value is not sufficient, a specific reserve is recorded. Collateral values are estimated using a combination of observable inputs, including recent appraisals, and unobservable inputs based on customized discounting criteria. Due to the significance of unobservable inputs, fair values of individually evaluated collateral dependent loans have been classified as Level 3.

OREO

Non-financial assets measured at fair value include OREO (upon initial recognition or subsequent impairment). OREO properties are measured using a combination of observable inputs, including recent appraisals, and unobservable inputs. Due to the significance of unobservable inputs, all OREO fair values have been classified as Level 3.

Bank Property Held for Sale

Bank property held for sale represents certain banking center office buildings which the Company has closed and consolidated with other existing banking centers. Bank property held for sale is measured at the lower of amortized cost or fair value less estimated costs to sell, and is included in premises and equipment, net on the Consolidated Balance Sheets. Fair values were based upon discounted appraisals or real estate listing prices. Due to the significance of unobservable inputs, fair values of all bank property held for sale have been classified as Level 3.

The following tables summarize assets and liabilities measured at fair value on a non-recurring basis for the periods presented, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value *(dollars in thousands)*:

	As of December 31, 2022			
	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
Loans evaluated individually, net of related allowance	$ —	$ —	$ 5,345	$ 5,345
Bank property held for sale with impairment	—	—	7,923	7,923

	As of December 31, 2021			
	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Total Fair Value
Loans evaluated individually, net of related allowance	$ —	$ —	$ 2,926	$ 2,926
OREO with subsequent impairment	—	—	51	51
Bank property held for sale with impairment	—	—	10,103	10,103

The following table presents additional quantitative information about assets measured at fair value on a non-recurring basis for which the Company has utilized Level 3 inputs to determine fair value *(dollars in thousands)*:

	As of December 31, 2022			
	Fair Value	Valuation Techniques	Unobservable Input	Range (Weighted Average)
Loans evaluated individually, net of related allowance	$ 5,345	Appraisal of collateral	Appraisal adjustments	-22.7% to -100.0% (-45.7)%
Bank property held for sale with impairment	7,923	Appraisal of collateral or real estate listing price	Appraisal adjustments	-0.7% to -70.1% (-35.1)%

	As of December 31, 2021			
	Fair Value	Valuation Techniques	Unobservable Input	Range (Weighted Average)
Loans evaluated individually, net of related allowance	$ 2,926	Appraisal of collateral	Appraisal adjustments	-50.0% to -100.0% (-55.1)%
OREO with subsequent impairment	51	Appraisal of collateral	Appraisal adjustments	-33.0% to -100.0% (-67.9)%
Bank property held for sale with impairment	10,103	Appraisal of collateral or real estate listing price	Appraisal adjustments	-0.7% to -70.1% (-41.3)%

Financial Assets and Financial Liabilities That Are Not Carried at Fair Value

Estimated fair values of financial instruments that are not carried at fair value in the Company’s Consolidated Balance Sheets, segregated by the level of the valuation inputs within the fair value hierarchy utilized to measure fair value, were as follows *(dollars in thousands)*:

	As of December 31, 2022		As of December 31, 2021	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Financial assets				
Level 1 inputs:				
Cash and cash equivalents	$ 227,164	$ 227,164	$ 836,095	$ 836,095
Level 2 inputs:				
Debt securities held to maturity	918,312	785,295	—	—
Loans held for sale[1]	1,253	1,276	—	—
Accrued interest receivable	43,372	43,372	31,064	31,064
Level 3 inputs:				
Portfolio loans, net	7,634,094	7,320,422	7,101,111	7,161,466
Mortgage servicing rights	5,861	18,284	8,608	12,133
Other servicing rights	1,914	2,331	1,830	2,268
Financial liabilities				
Level 2 inputs:				
Time deposits	$ 855,375	$ 830,596	$ 935,649	$ 935,778
Securities sold under agreements to repurchase	229,806	229,806	270,139	270,139
Short-term borrowings	351,054	351,085	17,678	17,673
Long-term debt	30,000	30,052	46,056	46,164
Junior subordinated debt owed to unconsolidated trusts	71,810	59,111	71,635	63,586
Accrued interest payable	3,978	3,978	2,728	2,728
Level 3 inputs:				
Senior notes, net of unamortized issuance costs	—	—	39,944	40,400
Subordinated notes, net of unamortized issuance costs	222,038	208,562	182,773	195,600

1. Effective January 1, 2022, recorded at LOCOM.

NOTE 19. EARNINGS PER SHARE

Basic earnings per share is computed by dividing net income for the period by the weighted average number of common shares outstanding, which include DSUs that are vested but not delivered. Diluted earnings per common share is computed using the treasury stock method and reflects the potential dilution that could occur if the Company’s outstanding stock options and warrants were exercised, stock units were vested, and ESPP shares were issued.

Earnings per common share have been computed as follows *(dollars in thousands, except per share amounts)*:

	Years Ended December 31,		
	2022	2021	2020
Net income	$ 128,311	$ 123,449	$ 100,344
Weighted average number of common shares outstanding, basic	55,387,073	55,369,476	54,567,429
Dilutive effect of common stock equivalents:			
Options	1,632	1,639	900
Warrants	1,753	1,753	1,469
RSU awards	665,998	615,759	252,153
PSU awards	58,206	5,429	—
DSU awards	15,532	10,641	4,988
ESPP	6,970	4,108	—
Weighted average number of common shares outstanding, diluted	56,137,164	56,008,805	54,826,939
Basic earnings per common share	$ 2.32	$ 2.23	$ 1.84
Diluted earnings per common share	2.29	2.20	1.83

Average shares that were excluded from the computation of diluted earnings per common share because their effect would have been anti-dilutive are summarized in the table below for the periods presented:

	Years Ended December 31,		
	2022	2021	2020
Anti-dilutive common stock equivalents			
Options	7,792	—	39,085
RSU awards	38,912	65,058	159,408
PSU awards	189,000	93,026	7,862
DSU awards	—	7,742	—
Total anti-dilutive common stock equivalents	235,704	165,826	206,355

NOTE 20. ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)

The following tables present changes in AOCI by component, net of tax, for the periods below *(dollars in thousands)*:

	Year Ended December 31, 2022		
	Before Tax	Tax Effect	Net of Tax
Unrealized/Unrecognized gains (losses) on debt securities			
Balance at beginning of period	$ (32,272)	$ 9,199	$ (23,073)
Unrealized holding gains (losses) on debt securities available for sale, net	(278,762)	79,460	(199,302)
Unrecognized losses on debt securities transferred to held to maturity from available for sale	(48,456)	13,812	(34,644)
Amounts reclassified from AOCI, net	(26)	7	(19)
Amortization of unrecognized losses on securities transferred to held to maturity	6,638	(1,893)	4,745
Balance at end of period	(352,878)	100,585	(252,293)
Unrealized gains (losses) on cash flow hedges			
Balance at beginning of period	(958)	273	(685)
Unrealized holding gains (losses) on cash flow hedges, net	(28,975)	8,258	(20,717)
Amounts reclassified from AOCI, net	583	(166)	417
Balance at end of period	(29,350)	8,365	(20,985)
Total AOCI	$ (382,228)	$ 108,950	$ (273,278)

	Year Ended December 31, 2021		
	Before Tax	Tax Effect	Net of Tax
Unrealized gains (losses) on debt securities available for sale			
Balance at beginning of period	$ 49,644	$ (14,151)	$ 35,493
Unrealized holding gains (losses) on debt securities available for sale, net	(81,977)	23,367	(58,610)
Amounts reclassified from AOCI, net	61	(17)	44
Balance at end of period	(32,272)	9,199	(23,073)
Unrealized gains (losses) on cash flow hedges			
Balance at beginning of period	(3,055)	871	(2,184)
Unrealized holding gains (losses) on cash flow hedges, net	1,030	(294)	736
Amounts reclassified from AOCI, net	1,067	(304)	763
Balance at end of period	(958)	273	(685)
Total AOCI	$ (33,230)	$ 9,472	$ (23,758)

	Year Ended December 31, 2020		
	Before Tax	Tax Effect	Net of Tax
Unrealized gains (losses) on debt securities available for sale			
Balance at beginning of period	$ 21,192	$ (6,032)	$ 15,160
Unrealized holding gains (losses) on debt securities available for sale, net	30,176	(8,615)	21,561
Amounts reclassified from AOCI, net	(1,724)	496	(1,228)
Balance at end of period	49,644	(14,151)	35,493
Unrealized gains (losses) on cash flow hedges			
Balance at beginning of period	(280)	80	(200)
Unrealized holding gains (losses) on cash flow hedges, net	(3,533)	1,007	(2,526)
Amounts reclassified from AOCI, net	758	(216)	542
Balance at end of period	(3,055)	871	(2,184)
Total AOCI	$ 46,589	$ (13,280)	$ 33,309

NOTE 21. OPERATING SEGMENTS AND RELATED INFORMATION

The Company has three reportable operating segments: Banking, FirsTech, and Wealth Management. The Company’s operating segments are strategic business units that are separately managed as they offer different products and services and have different marketing strategies.

The Banking Operating Segment

The Banking operating segment provides a full range of banking services to individual and corporate customers through its banking center network in Illinois; the St. Louis, Missouri metropolitan area; southwest Florida; and Indianapolis, Indiana. Banking services offered to individual customers include customary types of demand and savings deposits, money transfers, safe deposit services, individual retirement accounts and other fiduciary services, automated teller machines, and technology-based networks, as well as a variety of loan products including residential real estate, home equity lines of credit, and consumer loans. Banking services offered to corporate customers include commercial, commercial real estate, real estate construction, and agricultural loans, as well as commercial depository services such as cash management.

The FirsTech Operating Segment

The FirsTech operating segment provides comprehensive and innovative payment technology solutions including online, mobile, and voice-recognition bill payments; money management and credit card networks; direct debit services; lockbox remittance processing for payments made by mail; and walk-in payments. FirsTech also provides additional tools to help clients with billing, reconciliation, bill reminders, and treasury services.

FirsTech's client base represents a diverse set of industries, with a higher concentration in highly regulated industries, such as financial institutions, utility, insurance, and telecommunications industries.

The Wealth Management Operating Segment

The Wealth Management operating segment provides a full range of asset management, investment, brokerage, fiduciary, philanthropic advisory, tax preparation, and farm management services to individuals, businesses, and foundations.

Wealth management services tailored to individuals include trust and estate advisory services and financial planning. Business services include business succession planning and employee retirement plan services. Services for foundations include investment strategy consulting and fiduciary services.

Segment Financial Information

The segment financial information provided below has been derived from information used by management to monitor and manage the financial performance of the Company. The accounting policies of the three operating segments are the same as those described in the summary of significant accounting policies in "*Note 1. Significant Accounting Policies.*" The Company accounts for intersegment revenue and transfers at current market prices.

Following is a summary of selected financial information for the Company's operating segments. The "other" category included in the tables below consists of the parent company, First Busey Risk Management, and the elimination of intercompany transactions *(dollars in thousands)*:

	Goodwill		Total Assets	
	As of December 31,		As of December 31,	
	2022	2021	2022	2021
Operating segment				
Banking	$ 294,773	$ 294,773	$ 12,199,960	$ 12,746,833
FirsTech	8,992	8,992	48,715	47,481
Wealth Management	14,108	14,108	84,082	65,587
Other	—	—	3,920	(212)
Consolidated total	$ 317,873	$ 317,873	$ 12,336,677	$ 12,859,689

	Years Ended December 31,		
	2022	2021	2020
Net interest income			
Banking	$ 340,083	$ 285,678	$ 294,728
FirsTech	65	79	79
Wealth Management	—	—	—
Other	(16,710)	(15,059)	(11,872)
Total net interest income	$ 323,438	$ 270,698	$ 282,935
Noninterest income			
Banking	$ 54,154	$ 59,393	$ 61,043
FirsTech	21,720	19,629	16,548
Wealth Management	55,394	53,082	43,429
Other	(4,465)	700	(2,755)
Total noninterest income	$ 126,803	$ 132,804	$ 118,265
Noninterest expense			
Banking	$ 221,997	$ 205,905	$ 185,445
FirsTech	20,619	17,574	13,279
Wealth Management	31,545	29,198	26,086
Other	9,720	9,103	9,387
Total noninterest expense	$ 283,881	$ 261,780	$ 234,197
Income before income taxes			
Banking	$ 167,617	$ 154,267	$ 131,529
FirsTech	1,166	2,134	3,348
Wealth Management	23,849	23,884	17,343
Other	(30,895)	(23,462)	(24,014)
Total income before income taxes	$ 161,737	$ 156,823	$ 128,206
Net income			
Banking	$ 131,596	$ 117,844	$ 101,226
FirsTech	847	1,527	2,372
Wealth Management	18,543	18,570	13,181
Other	(22,675)	(14,492)	(16,435)
Total net income	$ 128,311	$ 123,449	$ 100,344

NOTE 22. LEASES

Busey as The Lessee

The Company has operating leases consisting primarily of equipment leases and real estate leases for banking centers, ATM locations, and office space. The following table summarizes lease related information and balances the Company reported in its Consolidated Balance Sheets for the periods presented *(dollars in thousands)*:

	As of December 31,	
	2022	2021
Lease balances		
Right of use assets	$ 12,829	$ 10,533
Lease liabilities	12,995	10,591
Supplemental information		
Year through which lease terms extend	2037	2031
Weighted average remaining lease term (in years)	8.90	6.47
Weighted average discount rate	3.45 %	2.16 %

The following table represents lease costs and cash flows related to leases for the periods presented *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Lease costs			
Operating lease costs	$ 2,495	$ 2,464	$ 2,524
Variable lease costs	365	540	416
Short-term lease costs	22	49	35
Total lease cost[1]	$ 2,882	$ 3,053	$ 2,975
Cash flows related to leases			
Cash paid for amounts included in the measurement of lease liabilities:			
Operating lease cash flows – Fixed payments	$ 3,080	$ 2,417	$ 2,526
Operating lease cash flows – Liability reduction	2,285	2,217	2,289
Right of use assets obtained during the period in exchange for operating lease liabilities[2]	6,206	5,818	743

1. Lease costs are included in net occupancy and equipment expense in the Consolidated Statements of Income.
2. The year ended December 31, 2021, includes $0.4 million related to a lease obtained in the acquisition of CAC.

At December 31, 2022, the Company was obligated under noncancelable operating leases for office space and other commitments. Future undiscounted lease payments with initial terms of one year or more, are as follows *(dollars in thousands)*:

	As of December 31, 2022
Rent commitments	
2023	$ 2,254
2024	1,942
2025	1,719
2026	1,442
2027	1,277
Thereafter	6,699
Total undiscounted cash flows	15,333
Less: Amounts representing interest	2,338
Present value of net future minimum lease payments	$ 12,995

Busey as The Lessor

Busey occasionally leases parking lots and office space to outside parties. Further, in connection with the acquisition of CAC in the second quarter of 2021, the Company acquired office buildings in Glenview and Northbrook, Illinois, along with operating leases for space within these buildings that is rented to third parties. Revenues recorded in connection with these leases and reported in other income on our Consolidated Statements of Income are summarized as follows *(dollars in thousands)*:

	Years Ended December 31,		
	2022	2021	2020
Rental income	$ 707	$ 566	$ 228

NOTE 23. PARENT COMPANY ONLY FINANCIAL INFORMATION

Condensed financial data for First Busey Corporation is presented below.

CONDENSED BALANCE SHEETS
(dollars in thousands)

	As of December 31,	
	2022	2021
Assets		
Cash and cash equivalents	$ 91,812	$ 78,217
Equity securities	11,535	13,571
Investments in subsidiaries:		
Bank	1,369,261	1,565,226
Non-bank	2,181	2,812
Premises and equipment, net	18	30
Other assets	22,316	22,444
Total assets	$ 1,497,123	$ 1,682,300
Liabilities and Stockholders' Equity		
Liabilities:		
Short-term borrowings	$ 12,000	$ 12,000
Long-term debt	30,000	42,000
Senior notes, net of unamortized issuance costs	—	39,944
Subordinated notes, net of unamortized issuance costs	222,038	182,773
Junior subordinated debentures owed to unconsolidated trusts	71,810	71,635
Other liabilities	15,298	14,836
Total liabilities	351,146	363,188
Total stockholders' equity	1,145,977	1,319,112
Total liabilities and stockholders' equity	$ 1,497,123	$ 1,682,300

FIRST BUSEY CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

CONDENSED STATEMENTS OF INCOME
(dollars in thousands)

	Years Ended December 31,		
	2022	2021	2020
Operating income:			
Dividends from subsidiaries:			
Bank	$ 95,000	$ 60,000	$ 122,000
Non-bank	1,630	1,745	—
Interest income	1,094	79	154
Gains (losses) recognized on equity securities, net	(2,159)	3,041	(393)
Other income	15,195	12,109	10,083
Total operating income	110,760	76,974	131,844
Expense:			
Salaries, wages, and employee benefits	20,964	17,914	16,205
Interest expense	17,854	15,163	12,056
Operating expense	7,294	7,429	7,685
Total expense	46,112	40,506	35,946
Income (loss) before income tax benefit and equity in undistributed (in excess of) net income of subsidiaries	64,648	36,468	95,898
Income tax benefit	8,286	8,974	7,727
Income (loss) before equity in undistributed (in excess of) net income of subsidiaries	72,934	45,442	103,625
Equity in undistributed (in excess of) net income of subsidiaries:			
Bank	55,986	77,941	(5,221)
Non-bank	(609)	66	1,940
Net income	$ 128,311	$ 123,449	$ 100,344

FIRST BUSEY CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

CONDENSED STATEMENTS OF CASH FLOWS
(dollars in thousands)

	Years Ended December 31,		
	2022	2021	2020
Cash Flows Provided by (Used in) Operating Activities			
Net income	$ 128,311	$ 123,449	$ 100,344
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	1,423	882	648
Distributions more (less) than net income of subsidiaries	(55,377)	(78,007)	3,281
(Gains) losses recognized on equity securities, net	2,159	(3,041)	393
Stock-based compensation	8,968	7,864	7,135
Changes in assets and liabilities:			
(Increase) decrease in other assets	(17,754)	(1,186)	405
Increase (decrease) in other liabilities	21,233	(3,302)	(5,772)
Net cash provided by (used in) operating activities	88,963	46,659	106,434
Cash Flows Provided by (Used in) Investing Activities			
Sales (purchases) of equity securities, net	598	(5,000)	—
Net cash paid for acquisitions	—	(61,656)	—
Purchases of premises and equipment	(9)	(15)	(19)
Net cash provided by (used in) investing activities	589	(66,671)	(19)
Cash Flows Provided by (Used in) Financing Activities			
Cash paid for withholding taxes on stock-based payments	(1,276)	(997)	(635)
Cash dividends paid	(50,863)	(50,764)	(48,012)
Repayments of borrowings	(112,000)	(18,500)	(74,000)
Proceeds from issuance of debt	98,094	72,500	142,634
Proceeds from stock options exercised	—	—	101
Purchase of treasury stock	(9,912)	(33,043)	(12,272)
Common stock issuance costs	—	(150)	—
Net cash provided (used in) by financing activities	(75,957)	(30,954)	7,816
Net increase (decrease) in cash and cash equivalents	13,595	(50,966)	114,231
Cash and cash equivalents, beginning of period	78,217	129,183	14,952
Cash and cash equivalents, ending of period	$ 91,812	$ 78,217	$ 129,183

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

An evaluation of our disclosure controls and procedures, as defined in Rule 13a-15(e) under the Exchange Act, was carried out as of December 31, 2022, under the supervision and with the participation of our Chief Executive Officer, Chief Financial Officer, and several other members of our senior management. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2022, our disclosure controls and procedures were effective in ensuring that the information we are required to disclose in the reports we file or submit under the Exchange Act was (i) accumulated and communicated to our management (including the Chief Executive Officer and Chief Financial Officer) to allow timely decisions regarding required disclosure, and (ii) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms.

Changes in Internal Control Over Financial Reporting

During the three months ended December 31, 2022, no change occurred in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting

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

As of December 31, 2022, management assessed the effectiveness of the Company's internal control over financial reporting based on the criteria for effective internal control over financial reporting established in *"Internal Control—Integrated Framework,"* issued by the COSO in 2013. Based on this assessment, management determined that the Company maintained effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

RSM US LLP, an independent registered public accounting firm that audited the Consolidated Financial Statements of the Company included in this Annual Report, has issued an audit opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2022. The report, which expresses an unqualified opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2022, is included in this Item under the heading *"Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting."*

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

Stockholders and the Board of Directors of
First Busey Corporation

Opinion on the Internal Control Over Financial Reporting

We have audited First Busey Corporation and Subsidiaries' (the Company) internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements of the Company and our report dated February 23, 2023, expressed an unqualified opinion.

Basis for Opinion

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

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

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ RSM US LLP
Champaign, Illinois
February 23, 2023

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

(a) Directors of the Registrant and Corporate Governance. Information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the captions *"Proposal 1: Election of Directors," "Delinquent Section 16(a) Reports,"* and *"Corporate Governance and Board of Directors Matters."*

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

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the captions "*Director Compensation*," "*Compensation Discussion and Analysis*," "*Executive Management Compensation and Succession Committee Report*," "*Compensation of Named Executive Officers*," "*CEO Pay Ratio*," and "*Executive Management Compensation and Succession Committee Interlocks and Insider Participation*."

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Stock Incentive Plans

The following table discloses the number of outstanding options, warrants and rights granted by First Busey to participants in equity compensation plans, as well as the number of securities remaining available for future issuance under these plans, as of December 31, 2022. The table provides this information separately for equity compensation plans that have and have not been approved by security holders. Additional information regarding stock incentive plans is presented in "*Note 14. Stock-based Compensation*" in the Notes to the Consolidated Financial Statements included pursuant to Item 8.

	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights[1]	(b) Weighted-average exercise price of outstanding options, warrants and rights[2]	(c) Number of securities remaining for future issuance under equity compensation plans (excluding securities reflected in column (a))[3]
Equity compensation plans			
Approved by stockholders[4]	1,563,363	$ 23.53	1,169,795
Not approved by stockholders	—	—	—
Total as of December 31, 2022	1,563,363	$ 23.53	1,169,795

1. Balance includes stock options assumed in connection with the acquisition of First Community.
2. The weighted average exercise price only relates to 26,106 stock options.
3. Shares are reserved under the First Busey Corporation 2020 Equity Incentive Plan and 2021 ESPP in the amounts of 657,570 and 512,225, respectively.
4. Includes outstanding awards under the First Busey Corporation 2020 Equity Incentive Plan, the First Busey Corporation 2010 Equity Incentive Plan, as amended, the First Community Amended and Restated 2008 Equity Incentive Plan and the First Community 2016 Equity Incentive Plan.

Other information required by Item 12 is incorporated herein by reference to First Busey's Proxy Statement for its 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the caption "*Stock Ownership of Certain Beneficial Owners and Management*."

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the captions "*Certain Relationships and Related-Person Transactions*" and "*Corporate Governance and Board of Directors Matters*."

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item is incorporated herein by reference to First Busey's Proxy Statement for its 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days of First Busey's fiscal year-end under the caption "*Audit and Related Fees*."

PART IV

ITEM 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULES

Exhibits

A list of exhibits to this Annual Report is set forth on the Exhibit Index beginning on page 154, and is incorporated into this Annual Report by reference.

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

Financial Statement Schedules

Our Consolidated Financial Statements are included as part of this Annual Report in "*Part II, Item 8. Financial Statements and Supplementary Data*," as follows:

Reports on Internal Control Over Financial Reporting are included as part of this Annual Report in "*Part II, Item 9A. Controls and Procedures*," as follows:

ITEM 16. FORM 10-K SUMMARY

None.

EXHIBIT INDEX

Exhibit Number	Description of Exhibit	Incorporated herein by reference Filing Entity [1] (File No.)	Form	Exhibit	Filing Date	Filed Herewith
3.1	Amended and Restated Articles of Incorporation of First Busey Corporation, together with: (i) the Certificate of Amendment to Articles of Incorporation, dated July 31, 2007; (ii) the Certificate of Amendment to Articles of Incorporation, dated December 3, 2009; (iii) the Certificate of Amendment to Articles of Incorporation, dated May 21, 2010; and (iv) the Certificate of Change Pursuant to Nevada Revised Statutes Section 78.209, dated September 8, 2015	BUSE (0-15950)	10-Q	3.1	11/06/2015	
3.2	Certificate of Amendment to Articles of Incorporation, dated May 22, 2020	BUSE (333-238782)	S-8	4.2	05/29/2020	
3.3	First Busey Corporation Amended and Restated By-Laws	BUSE (0-15950)	8-K	3.1	11/24/2008	
4.1	Certain instruments defining the rights of holders of long-term debt of First Busey, none of which authorize a total amount of indebtedness in excess of 10% of the total assets of the First Busey and its subsidiaries on a consolidated basis, have not been filed as exhibits. First Busey hereby agrees to furnish a copy of any of these agreements to the SEC upon request.					
4.2	Description of the Company's securities	BUSE (0-15950)	10-K	4.2	02/25/2021	
10.1†	Employment Agreement by and between Main Street Trust, Inc., and Van A. Dukeman, dated December 26, 2001	MSTI (000-30031)	10-K	10.2	03/29/2002	
10.2†	Letter Agreement between Main Street Trust, Inc., and Van A. Dukeman, dated September 20, 2006	MSTI (000-30031)	8-K	99.2	09/21/2006	
10.3†	Van A. Dukeman Addendum to Employment Agreement	BUSE (0-15950)	10-Q	10.1	05/13/2010	
10.4†	Van A. Dukeman First Amendment to Employment Agreement, dated December 31, 2008	BUSE (0-15950)	10-Q	10.1	05/08/2012	

Exhibit Number	Description of Exhibit	Incorporated herein by reference: Filing Entity [1] (File No.)	Form	Exhibit	Filing Date	Filed Herewith
10.5†	First Busey Corporation 2010 Equity Incentive Plan, as amended	BUSE (0-15950)	DEF 14A	Appendix C	04/17/2015	
10.6†	Form of Restricted Stock Unit Award Agreement under the First Busey Corporation 2010 Equity Incentive Plan, as amended	BUSE (0-15950)	10-K	10.27	02/28/2018	
10.7†	First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan	FCFP (333-185041)	S-4	10.11	11/19/2012	
10.8†	First Amendment of the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan	FCFP (333-185041)	S-4	10.12	11/19/2012	
10.9†	Second Amendment of the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan	FCFP (001-37505)	10-K	10.8	03/14/2016	
10.10†	Third Amendment of the First Community Financial Partners, Inc. Amended and Restated 2008 Equity Incentive Plan	BUSE (0-15950)	10-K	10.36	02/28/2018	
10.11†	First Community Financial Partners, Inc. 2016 Equity Incentive Plan	FCFP (333-211811)	S-8	4.4	06/03/2016	
10.12†	First Amendment of the First Community Financial Partners, Inc. 2016 Equity Incentive Plan	BUSE (0-15950)	10-K	10.38	02/28/2018	
10.13†	Form of Nonqualified Stock Option Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan	FCFP (333-211811)	S-8	4.7	06/03/2016	
10.14†	Form of Incentive Stock Option Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan	FCFP (333-211811)	S-8	4.8	06/03/2016	
10.15†	Form of Restricted Stock Unit Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan	BUSE (0-15950)	10-K	10.41	02/28/2018	

Exhibit Number	Description of Exhibit	Incorporated herein by reference: Filing Entity[1] (File No.)	Form	Exhibit	Filing Date	Filed Herewith
10.16†	Form of Director Deferred Stock Unit Award Agreement under the First Busey Corporation 2010 Equity Incentive Plan, as amended	BUSE (0-15950)	10-Q	10.1	08/07/2018	
10.17†	Form of Director Deferred Stock Unit Award Agreement under the First Community Financial Partners, Inc. 2016 Equity Incentive Plan	BUSE (0-15950)	10-Q	10.2	08/07/2018	
10.18†	Jeffrey D. Jones Employment Agreement, dated July 26, 2019	BUSE (0-15950)	8-K	10.1	07/26/2019	
10.19†	Robin N. Elliott Employment Agreement, dated December 5, 2019	BUSE (0-15950)	8-K	10.1	12/10/2019	
10.20†	Amy L. Randolph Employment Agreement, dated December 5, 2019	BUSE (0-15950)	8-K	10.2	12/10/2019	
10.21†	John J. Powers Employment Agreement, dated December 5, 2019	BUSE (0-15950)	8-K	10.3	12/10/2019	
10.22†	Jeffrey D. Jones Amendment to Employment Agreement, dated December 5, 2019	BUSE (0-15950)	8-K	10.4	12/10/2019	
10.23†	First Busey Corporation 2020 Equity Incentive Plan, as amended	BUSE (0-15950)	14A	Appendix A	04/09/2020	
10.24†	Form of Restricted Stock Unit Award Agreement under the First Busey Corporation 2020 Equity Incentive Plan	BUSE (0-15950)	S-8	4.5	05/29/2020	
10.25†	Form of Performance-Based Restricted Stock Unit Award Agreement under the First Busey Corporation 2020 Equity Incentive Plan	BUSE (0-15950)	8-K	10.1	07/09/2020	
10.26†	Form of Director Deferred Stock Unit Award Agreement under the First Busey Corporation 2020 Equity Incentive Plan	BUSE (0-15950)	10-Q	10.1	08/06/2020	
10.27†	First Busey Corporation 2021 Employee Stock Purchase Plan	BUSE (0-15950)	DEF 14A	Appendix A	04/08/2021	
10.28†	Gregory B. Lykins Letter of Understanding, dated April 1, 2021	BUSE (0-15950)	10-Q	10.33	05/06/2021	

Exhibit Number	Description of Exhibit	Incorporated herein by reference: Filing Entity [1] (File No.)	Form	Exhibit	Filing Date	Filed Herewith
10.29	Second Amended and Restated Credit Agreement, dated as of May 28, 2021, by and between First Busey Corporation and U.S. Bank National Association	BUSE (0-15950)	8-K	10.34	06/02/2021	
10.30†	First Busey Profit Sharing Plan and Trust (as amended and restated January 1, 2022)					X
21.1	List of Subsidiaries of First Busey Corporation					X
23.1	Consent of Independent Registered Public Accounting Firm, RSM US LLP					X
31.1	Certification of Principal Executive Officer, pursuant to Rule 13a-14(a) and Rule 15d-14(a)					X
31.2	Certification of Principal Financial Officer, pursuant to Rule 13a-14(a) and Rule 15d-14(a)					X
32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, from First Busey's Chief Executive Officer					X
32.2	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, from First Busey's Chief Financial Officer					X
101.INS	iXBRL Instance Document					
101.SCH	iXBRL Taxonomy Extension Schema					
101.CAL	iXBRL Taxonomy Extension Calculation Linkbase					
101.LAB	iXBRL Taxonomy Extension Label Linkbase					
101.PRE	iXBRL Taxonomy Extension Presentation Linkbase					

Exhibit Number	Description of Exhibit	Incorporated herein by reference				Filed Herewith
		Filing Entity [(1)] (File No.)	Form	Exhibit	Filing Date	
101.DEF	iXBRL Taxonomy Extension Definition Linkbase					
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101)					

(1) BUSE is First Busey Corporation. MSTI is Main Street Trust, Inc. FCFP is First Community Financial Partners, Inc.
† Management contract or compensatory plan.

SIGNATURES

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

Date: February 23, 2023

FIRST BUSEY CORPORATION

BY /s/ VAN A. DUKEMAN
Van A. Dukeman
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

BY /s/ JEFFREY D. JONES
Jeffrey D. Jones
Chief Financial Officer
(Principal Financial Officer)

BY /s/ LYNETTE M. STRODE
Lynette M. Strode
Principal Accounting Officer

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

Signature	Title	Date
/s/ VAN A. DUKEMAN Van A. Dukeman	Chairman, President and Chief Executive Officer (Principal Executive Officer)	February 23, 2023
/s/ JEFFREY D. JONES Jeffrey D. Jones	Chief Financial Officer (Principal Financial Officer)	February 23, 2023
/s/ LYNETTE M. STRODE Lynette M. Strode	Principal Accounting Officer	February 23, 2023
/s/ GREGORY B. LYKINS Gregory B. Lykins	Vice-Chairman	February 23, 2023
/s/ SAMUEL P. BANKS Samuel P. Banks	Director	February 23, 2023
/s/ GEORGE BARR George Barr	Director	February 23, 2023
/s/ STANLEY J. BRADSHAW Stanley J. Bradshaw	Director	February 23, 2023
/s/ MICHAEL D. CASSENS Michael D. Cassens	Director	February 23, 2023
/s/ KAREN M. JENSEN Karen M. Jensen	Director	February 23, 2023
/s/ FREDERIC L. KENNEY Frederic L. Kenney	Director	February 23, 2023
/s/ STEPHEN V. KING Stephen V. King	Director	February 23, 2023
/s/ CASSANDRA R. SANFORD Cassandra R. Sanford	Director	February 23, 2023

EXHIBIT 10.30

ASCENSUS LLC
DEFINED CONTRIBUTION PRE-APPROVED PLAN

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ARTICLE I
DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.1 "Account" means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

(a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from (1) the Employer's contributions in the case of a Profit Sharing Plan or Money Purchase Plan, and (2) the Employer Nonelective Contributions in the case of a 401(k) Profit Sharing Plan. In addition, Forfeitures are part of the Combined Account to the extent they are reallocated. Separate accountings shall be maintained with respect to that portion of a Participant's Account attributable to Employer contributions made pursuant to Section 12.1(a)(2) and to Employer contributions made pursuant to Section 12.1(a)(3).

(b) "Elective Deferral Account" means the account established hereunder to which Elective Deferrals (including a separate accounting for Catch-Up Contributions) are allocated. Amounts in the Participant's Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(e). The Elective Deferral Account may consist of the sub-Accounts listed below. Unless specifically stated otherwise, any reference to a Participant's Elective Deferral Account will refer to both of these sub-Accounts.

(1) "Pre-Tax Elective Deferral Account" means the portion of the Elective Deferral Account attributable to Pre-Tax Elective Deferrals (i.e., Elective Deferrals that are not subject to federal income tax at the time of their deferral to the Plan).

(2) "Roth Elective Deferral Account" means the portion of the Elective Deferral Account attributable to Roth Elective Deferrals (i.e., that are subject to federal income tax at the time of their deferral to the Plan) which does not include amounts attributable to "in-Plan Roth rollover contributions" (as defined in Section 12.11). No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to each Participant's Roth Elective Deferral Account.

(c) "In-Plan Roth Rollover Account" means the account attributable to an "in-Plan Roth rollover contribution" (an IRR) that is directly rolled over within this Plan, as defined and described in Section 12.11. The amount thus contributed retains the characteristics of the source Account from which the amount of the IRR was distributed (except for the tax treatment of such amount when distributed out of the Plan).

(d) "In-Plan Roth Transfer Account" means the account attributable an "in-Plan Roth rollover transfer" (an IRT) that is directly rolled over within this Plan, as defined and described in Section 12.11. The amount thus contributed retains the characteristics of the source Account from which the amount of the IRT was distributed (except for the tax treatment of such amount when distributed out of the Plan).

(e) "Qualified Automatic Contribution Safe Harbor Account" means the account established hereunder to which Qualified Automatic Contribution "ADP test safe harbor contributions" are allocated. Amounts in the Qualified Automatic Contribution Safe Harbor Account are subject to the distribution restrictions of Section 12.2(e). The Administrator may maintain a separate Qualified Automatic Contribution Safe Harbor Account for matching contributions and nonelective contributions made pursuant to a QACA.

(f) "Qualified Matching Contribution Account" means the account established hereunder to which Qualified Matching Contributions are allocated. Amounts in the Qualified Matching Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(e).

(g) "Qualified Nonelective Contribution Account" means the account established hereunder to which Qualified Nonelective Contributions are allocated. Amounts in the Qualified Nonelective Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 12.2(e).

(h) "Qualified Voluntary Employee Contribution Account" means the account established hereunder to which a Participant's tax-deductible qualified voluntary Employee contributions made pursuant to Section 4.9 are allocated.

(i) "Rollover Account" means the account established hereunder to which amounts transferred from a qualified plan (including this Plan) or individual retirement account in accordance with Section 4.6 are allocated.

(j) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.

(k) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.8 are allocated. Amounts recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5 shall remain subject to the limitations of Section 12.2. Therefore, a separate accounting shall be maintained with respect to that portion of the Voluntary Contribution Account attributable to after-tax voluntary Employee contributions made pursuant to Section 4.8.

1.2 "ACP" means the "Actual Contribution Percentage" determined pursuant to Section 12.6(d).

1.3 "Act" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time and includes applicable Department of Labor (DOL) guidance.

1.4 "ADP" means the "Actual Deferral Percentage" determined pursuant to Section 12.4(d).

1.5 "Administrator" means the Employer unless another person, entity or committee has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer. "Administrator" also includes any Qualified Termination Administrator (QTA) that has assumed the responsibilities of the Administrator in accordance with guidelines set forth by the Department of Labor.

1.6 "Adoption Agreement" means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan as specified by the Employer.

1.7 "Affiliated Employer" means any corporation which is a member of a controlled group of corporations (as defined in Code §414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code §414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code §414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code §414(o).

1.8 "Affirmative Election" means a Salary Deferral Agreement submitted by a Participant to the Administrator in accordance with Section 12.2 that provides instructions to defer a specific amount of Compensation (including an affirmative election to defer no amount) as an Elective Deferral to the Plan. A Participant's Affirmative Election is generally effective as of the first payroll period which follows the payroll period in which the Participant made the Affirmative Election. However, a Participant may make an Affirmative Election which is effective: (a) for the first payroll period in which he or she becomes a Participant if the Participant makes an Affirmative Election within a reasonable period following the Participant's becoming eligible to make Elective Deferrals and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the effective date of the Automatic Contribution Arrangement if the Participant makes an Affirmative Election not later than the Automatic Contribution Arrangement's effective date.

1.9 "Alternate Payee" means an alternate payee pursuant to a qualified domestic relations order that meets the requirements of Code §414(p).

1.10 "Anniversary Date" means the last day of the Plan Year.

1.11 "Annuity Starting Date" means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.12 "Automatic Contribution Arrangement" means the Automatic Deferral provisions described by Section 12.2 and, if applicable, Section 12.9.

1.13 "Automatic Deferral" means the amount (if any) that a Participant is deemed to defer in accordance with an Automatic Contribution Arrangement. The effective date of an Employee's Automatic Deferral will be as soon as practicable after the Employee is subject to Automatic Deferrals described by the Adoption Agreement, Section 12.2(b) and/or 12.9, consistent with (a) applicable law, and (b) the objective of affording the Employee a reasonable period of time after receipt of the notice to make an Affirmative Election (and, if applicable, an investment election). All Automatic Deferrals constitute Elective Deferrals.

1.14 "Beneficiary" means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is, or may become, payable upon the Participant's death as identified in records maintained by the Plan, subject to the restrictions of Sections 6.2 and 6.6.

1.15 "Catch-Up Contribution" means an Elective Deferral made to the Plan by a Catch-Up Eligible Participant that, during any taxable year of such Participant, exceeds one of the following:

(a) a statutory dollar limit on Elective Deferrals or "annual additions" as provided in Code §401(a)(30), 402(h), 403(b), 408, 415(c), or 457(b)(2) (without regard to Code §457(b)(3)), as applicable; or

(b) any Plan limit on Elective Deferrals (other than a limit described in (a) above) that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on annual additions, the dollar limitation on Elective Deferrals under Code §402(g) (not counting Catch-up Contributions) and the limit imposed by the ADP test under Code §401(k)(3). Catch-up Contributions for a participant for a taxable year may not exceed the lesser of: (1) the dollar limit on Catch-up Contributions under Code §414(v)(2)(B)(i) for the taxable year; or (2) when added to other Elective Deferrals, 100 percent of the Participant's Compensation for the taxable year.

Catch-Up Contributions for a Participant for a Participant's taxable year may not exceed the dollar limit on Catch-Up Contributions under Code §414(v) for the Participant's taxable year. The dollar limit on Catch-Up Contributions under Code §414(v)(2)(B)(i) was $5,000 for taxable years beginning in 2006. After 2006, the $5,000 limit was adjusted by the Secretary of the Treasury for cost-of-living increases under Code §414(v)(2)(C) and is $6,000 for 2018. Any such adjustments shall be in multiples of $500. Notwithstanding the preceding, different dollar limits apply to Catch-Up Contributions under SIMPLE 401(k) plans ($3,000 for 2018).

1.16 "Catch-Up Eligible Participant" means a Participant who:

(a) is eligible to make Elective Deferrals to the Plan pursuant to Section 12.2; and

(b) will attain age 50 or older by the end of such taxable year.

1.17 "Code" means the Internal Revenue Code of 1986, as it may be amended from time to time and includes applicable Internal Revenue Service (IRS) guidance.

1.18 "Compensation" means, with respect to any Participant, the amount determined in accordance with the following provisions, except as otherwise provided in the Adoption Agreement.

(a) **Base definition.** One of the following, as elected in the Adoption Agreement:

(1) Information required to be reported under Code §§6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(2) Code §3401(a) Wages. Compensation means an Employee's wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) 415 safe harbor compensation. Compensation means wages, salaries, Military Differential Pay, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c))), and excluding the following:

(i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(iv) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125), whether or not the contributions are actually excludable from the gross income of the Employee).

(b) **Earned Income for Self-Employed Individual.** Notwithstanding the foregoing, Compensation for any Self-Employed Individual shall be equal to Earned Income. Furthermore, the contributions on behalf of any "owner-Employee" shall be made only with respect to the Earned Income for such "owner-Employee" which is derived from the trade or business with respect to which such Plan is established. For this purpose, an "owner-Employee" means a sole proprietor who owns the entire interest in the Employer or a partner (or member in the case of a limited liability company treated as a partnership or sole proprietorship for federal income tax purposes) who owns more than ten percent (10%) of either the capital interest or the profits interest in the Employer and who receives income for personal services from the Employer.

(c) **Paid during "determination period."** Compensation shall include only that Compensation which is actually paid to the Participant during the "determination period." Except as otherwise provided in this Plan, the "determination period" is the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the "determination period" shall be the Plan Year.

(d) **Inclusion of deferrals.** Notwithstanding the above, unless otherwise elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

(1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code §§125, 402(e)(3), 402(h)(1)(B), 402(k), 403(b), and 132(f)(4). However, regardless of any election in the Adoption Agreement to the contrary, amounts described in the preceding sentence will be included in Compensation for purposes of making Elective Deferrals under this Plan. If specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(2) Compensation deferred under an eligible deferred compensation plan within the meaning of Code §457(b).

(3) Employee contributions (under governmental plans) described in Code §414(h)(2) that are picked up by the employing unit and thus are treated as Employer contributions.

(e) **Post-severance compensation – Code §415 Regulations.** The Administrator shall adjust Compensation for amounts that would otherwise be included in the definition of Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of Compensation) if:

(i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** Compensation shall include leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** Compensation shall include deferred compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential pay.** Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a Highly Compensated Employee immediately before becoming disabled.

(f) **Compensation Dollar limitation.** For any Plan Year (or other applicable determination period) Compensation in excess of $200,000 shall be disregarded for all purposes other than for purposes of Elective Deferrals, except that the Administrator may impose the limit for purposes of a Plan imposed limit on Elective Deferrals. The dollar amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B) and is $275,000 for 2018. The cost-of-living adjustment in effect for a calendar year applies to any "determination period" beginning with or within such calendar year. If a "determination period" consists of fewer than twelve (12) months, the $275,000 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the "determination period," and the denominator of which is twelve (12). In applying any Plan limitation on the amount of matching contributions or any Plan limit on Elective Deferrals which are subject to matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

(g) **Noneligible Employee.** If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a "determination period" shall only include Compensation while the Employee is an Eligible Employee. In addition, with respect to the determination of any matching contributions, the Plan will disregard Elective Deferrals made while the Participant is not eligible for the matching contribution component of the Plan.

(h) **Amendment.** If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

(i) **Affiliated Employers**. Affiliated Employers are treated as one Employer for purposes of Compensation. If, however, one or more Affiliated Employers are Participating Employers and the Plan (including the Adoption Agreement or a participation agreement) allocate Employer Contributions separately among the Employees directly employed by a Participating Employer, then, in computing such allocations, Compensation paid by other Participating Employers is excluded Compensation.

1.19 "Contract" or "Policy" means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.20 "Custodian" means a person or entity that has custody of all or any portion of the Plan assets.

1.21 "Directed Trustee" means a Trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed Investment Manager, a named Fiduciary, or Plan Participant.

1.22 "Discretionary Trustee" means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets.

1.23 "Early Retirement Date" means the date specified in the Adoption Agreement on which a Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.

A Participant who severs from employment after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan (other than any accelerated vesting and allocations of Employer contributions) as though the requirements for Early Retirement Age had been satisfied.

1.24 "Earned Income" means the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the employer to a qualified plan to the extent deductible under §404 of the Code. The Administrator will determine net earnings after the deduction allowed to the Self-Employed Individual for all contributions made by the Employer to a qualified plan and after the deduction allowed to the Self-Employed Individual under Code §164(f) for self-employment taxes.

If Compensation is defined to exclude any items of Compensation (other than safe harbor adjustments permitted under the Code §414(s) Regulations or limiting Compensation to periods of Plan participation), then for purposes of determining the Compensation of a Self-Employed Individual, Earned Income shall be adjusted by multiplying Earned Income by the percentage of total compensation that is included for the eligible Participants who are Nonhighly Compensated Employees. That percentage is determined by calculating the percentage of each eligible Nonhighly Compensated Participant's total Compensation prior to excluding any non-safe harbor adjustments selected in the Adjustments to Compensation Section of the Adoption Agreement that are included in the definition of Compensation and averaging those percentages.

1.25 "Effective Date" means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date. If any provision of this Plan is retroactively effective, then provisions of this Plan generally control. However, if a provision of this Plan is different from the provision of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, then the provision of such prior plan is incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the effective date of the plan merger(s).

1.26 "Elective Deferrals" means the Employer's contributions to the Plan that are made pursuant to a Participant's salary deferral election in accordance with Section 12.2. Elective Deferrals shall be subject to the requirements of Sections 12.2(d) and 12.2(e) and shall, except as otherwise provided herein, be required to satisfy the nondiscrimination requirements of the Code §401(k) Regulations. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and, if permitted by the Plan, Roth Elective Deferrals.

1.27 "Eligible Automatic Contribution Arrangement" (EACA) means an Automatic Contribution Arrangement that is intended to comply as such for purposes of Code §414(w) and that therefore complies with the Automatic Deferral provisions described in the EACA provisions set forth in Section 12.2(b).

1.28 "Eligible Employee" means any Eligible Employee as elected in the Adoption Agreement and as provided herein.

(a) **"Reclassified Employees."** With respect to a non-standardized Adoption Agreement, an individual shall not be an Eligible Employee (unless otherwise elected in Appendix A to the Adoption Agreement) if such individual is a "Reclassified Employee." A "Reclassified Employee" is any person the Employer does not treat as a common law employee or as a self-employed individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), irrespective of whether there is a binding determination that the individual is an Employee or a Leased Employee of the Employer. Self-Employed Individuals are not "Reclassified Employees."

(b) **Affiliated Employers**. With respect to a non-standardized Adoption Agreement, Employees of an Affiliated Employer will not be treated as Eligible Employees prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

(c) **"Code §410(b)(6)(C) transactions."** Employees who became Employees as the result of a "Code §410(b)(6)(C) transaction" will, unless otherwise specified in the Adoption Agreement, only be Eligible Employees after the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A "Code §410(b)(6)(C) transaction" is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business that is subject to the special rules set forth in Code §410(b)(6)(C). However, regardless of any election made in the Adoption Agreement, if a separate entity becomes an Affiliated Employer as the result of a "Code §410(b)(6)(C) transaction," then Employees of such separate entity will not be treated as Eligible Employees prior to the date the entity adopts the Plan as a Participating Employer or, with respect to a standardized Adoption Agreement, if earlier, the expiration of the transition period set forth above.

(d) **Union Employees**. If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining and if two percent (2%) or less of the Employees covered pursuant to that agreement are professionals as defined in Regulation §1.410(b)-9, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement, unless the agreement provides for coverage in the Plan (see Section 4.1(d)). For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service in each respective category are treated separately.

(e) **Nonresident aliens.** If, in the Adoption Agreement, the Employer elects to exclude nonresident aliens, then Employees who are nonresident aliens (within the meaning of Code §7701(b)(1)(B)) who received no earned income (within the meaning of Code §911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code §861(a)(3)) shall not be eligible to participate in this Plan. In addition, this paragraph shall also apply to exclude from participation in the Plan an Employee who is a nonresident alien (within the meaning of Code §7701(b)(1)(B)) but who receives earned income (within the meaning of Code §911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code §861(a)(3)), if all of the Employee's earned income from the Employer from sources within the United States is exempt from United States income tax under an applicable income tax convention. The preceding sentence will apply only if all Employees described in the preceding sentence are excluded from the Plan.

(f) **Part-Time/Temporary/Seasonal Employees**. If, in the Adoption Agreement, the Employer elects to exclude Part-Time/Temporary/Seasonal Employees, then notwithstanding any such exclusion, if any such excluded Employee actually completes or completed a Year of Service, then such Employee will cease to be within this particular excluded class. An Eligible Employee who is no longer part of this excluded class because of this subsection will become a Participant in the Plan in accordance with the Plan's eligibility and entry date provisions that apply to other Eligible Employees.

(g) **Intern.** The Employer in its Adoption Agreement may elect to exclude Employees that it defines in its payroll records as "interns." The Employer will not apply this exclusion in a manner to effectively require an age or service condition in violation of Treas. Reg. §1.401(a)-3(e)(1).

1.29 "Employee" means any person who is employed by the Employer. The term "Employee" shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code §414(n) or (o). In addition, the term "Employee" also includes a statutory employee within the meaning of Code §3508(E) (certain life insurance salespersons).

1.30 "Employer" means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

1.31 "Excess Aggregate Contributions" means, with respect to any Plan Year, the excess of:

(a) The aggregate "contribution percentage amounts" (as defined in Section 12.6) actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ACP, over

(b) The maximum "contribution percentage amounts" permitted by the ACP test in Section 12.6 (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of their "contribution percentages" beginning with the highest of such percentages).

Such determination shall be made after first taking into account corrections of any Excess Deferrals pursuant to Section 12.2 and then taking into account adjustments of any Excess Contributions pursuant to Section 12.5.

1.32 "Excess Compensation" means, with respect to a Plan that is integrated with Social Security (permitted disparity), a Participant's Compensation which is in excess of the integration level elected in the Adoption Agreement. However, if Compensation is based on less than a twelve (12) month "determination period," Excess Compensation shall be determined by reducing the integration level by a fraction, the numerator of which is the number of full months in the short period and the denominator of which is twelve (12). A "determination period" is not less than twelve (12) months solely because a Participant's Compensation does not include Compensation paid during a "determination period" while the Participant was not a Participant in this component of the Plan.

1.33 "Excess Contributions" means, with respect to any Plan Year, the excess of:

(a) The aggregate amount of Employer contributions actually made on behalf of Highly Compensated Participants for such Plan Year and taken into account in computing the numerator of the ADP, over

(b) The maximum amount of such contributions permitted by the ADP test in Section 12.4 (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual deferral ratios, beginning with the highest of such ratios).

In determining the amount of Excess Contributions to be distributed and/or recharacterized with respect to an affected Highly Compensated Participant as determined herein, such amount shall be reduced by any Excess Deferrals previously distributed to such affected Highly Compensated Participant for the Participant's taxable year ending with or within such Plan Year.

1.34 "Excess Deferrals" means, with respect to any taxable year of a Participant, either (a) those elective deferrals within the meaning of Code §§402(g) or 402A that are made during the Participant's taxable year and exceed the dollar limitation under Code §402(g) (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code §414(v)) for such year; or (b) are made during a calendar year and exceed the dollar limitation under Code §§402(g) and 402A (including, if applicable, the dollar limitation on Catch-Up Contributions defined in Code §414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer.

1.35 "Fiduciary" means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.36 "Fiscal Year" means the Employer's accounting year.

1.37 "Forfeiture" means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan. Unless otherwise elected in the Adoption Agreement, Forfeitures occur pursuant to (a) below.

(a) A Forfeiture will occur on the earlier of:

(1) The last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service, or

(2) The distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For

this purpose, a Participant's Vested benefit shall not include: (i) the Participant's Qualified Voluntary Employee Contribution Account, and (ii) the Participant's Rollover Account.

(b) If elected in the Adoption Agreement, a Forfeiture will occur as of the last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service.

Regardless of the preceding, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Participant is not eligible to share in the allocation of Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.38 "Former Employee" means an individual who has severed employment with the Employer or an Affiliated Employer.

1.39 "414(s) Compensation" means Compensation as defined in Section 1.18. However, the Employer may operationally elect to use any other definition of compensation for 414(s) Compensation provided such definition satisfies the nondiscrimination requirements of Code §414(s) and the Regulations thereunder. Solely for purposes of the definition of compensation used for ADP/ ACP testing, it is permissible for the plan to set forth one definition of compensation that satisfies Code §414(s), as long as such definition is uniformly applied. For purposes of applying the ADP and ACP tests, the period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. For all other purposes, the period of determining 414(s) Compensation must be the Plan Year or another twelve (12) month period of time ending in the Plan Year. An Employer may further limit the period taken into account to that part of the determination period in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.40 "415 Compensation" means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Code §3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation (and as defined in Subsections 1.18(a)(1)-(3) respectively). Compensation for any Self-Employed Individual shall be equal to Earned Income. Furthermore, the contributions on behalf of any "owner-Employee" shall be made only with respect to the Earned Income for such "owner-Employee" which is derived from the trade or business with respect to which such Plan is established. For this purpose, an "owner-Employee" means a sole proprietor who owns the entire interest in the Employer or a partner (or member in the case of a limited liability company treated as a partnership or sole proprietorship for federal income tax purposes) who owns more than ten percent (10%) of either the capital interest or the profits interest in the Employer and who receives income for personal services from the Employer. 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code §§402(e)(3), 402(k) and 402(h)(1)(B)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457, and 132(f)(4). In addition, Military Differential Pay is treated as 415 Compensation.

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), 415 Compensation shall also include deemed §125 compensation. Deemed §125 compensation is an amount that is excludable under §106 that is not available to a participant in cash in lieu of group health coverage under a §125 arrangement solely because the participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) **Post-severance compensation.** The Administrator shall adjust 415 Compensation for amounts that would otherwise be included in the definition of 415 Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** 415 Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of 415 Compensation) if:

(i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** 415 Compensation shall include leave cash-outs if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and

the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** 415 Compensation shall include deferred compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** 415 Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** 415 Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a Highly Compensated Employee immediately before becoming disabled.

(c) **Administrative delay ("the first few weeks") rule.** 415 Compensation for a Limitation Year shall generally not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates. However, if elected in the Compensation Section of the Adoption Agreement, 415 Compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no Compensation is included in more than one Limitation Year.

(d) **Back pay.** Back pay, within the meaning of Regulations §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(e) **Dollar limitation.** 415 Compensation will be limited to the same dollar limitations set forth in Section 1.18(f) adjusted in such manner as permitted under Code §415(d).

(f) **Amendment.** Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.41 "Highly Compensated Employee" means an Employee described in Code §414(q) and the Regulations thereunder, and generally means any Employee who:

(a) was a "five percent (5%) owner" as defined in Section 1.47(b) at any time during the "determination year" or the "look-back year"; or

(b) for the "look-back year" had 415 Compensation from the Employer in excess of $80,000 and, if elected in the Adoption Agreement, was in the Top-Paid Group for the "look-back year." The $80,000 amount is adjusted at the same time and in the same manner as under Code §415(d). In applying this rule, the Employer may adopt any rounding or tie-breaking rules it desires, so long as such rules are reasonable, nondiscriminatory, and uniformly and consistently applied.

The "determination year" means the Plan Year for which testing is being performed and the "look-back year" means the immediately preceding twelve (12) month period. However, if the calendar year data election is made in the Adoption Agreement, for purposes of (b) above, the "look-back year" shall be the calendar year beginning within the twelve (12) month period immediately preceding the "determination year."

A Highly Compensated Former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that "determination year," in accordance with Regulation §1.414(q)-1T, A-4 and IRS Notice 97-45 (or any superseding guidance).

In determining who is a Highly Compensated Employee, Employees who are nonresident aliens and who received no earned income (within the meaning of Code §911(d)) from the Employer constituting United States source income within the meaning of Code §861(a)(3) shall not be treated as Employees. If a nonresident alien Employee has U.S. source income, that Employee is treated as satisfying this definition if all of such Employee's U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty. Additionally, all Affiliated Employers shall be taken into account as a single Employer and Leased Employees within the meaning of Code §§414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code §414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

1.42 "Highly Compensated Participant" means any Highly Compensated Employee who is eligible to participate in the component of the Plan being tested.

1.43 "Hour of Service" means (a) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (b) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation §2530.200b-2 which is incorporated herein by reference); (c) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (a) or (b), as the case may be, and under (c).

Notwithstanding (b) above, (1) no more than 501 Hours of Service will be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (2) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (b) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code §414(n) or 414(o) and the Regulations thereunder. Furthermore, the provisions of Department of Labor Regulations §2530.200b-2(b) and (c) are incorporated herein by reference.

Hours of Service will be determined using the actual hours method unless one of the methods below is elected in the Adoption Agreement. If the **actual hours** method is used to determine Hours of Service, an Employee is credited with the actual Hours of Service the Employee completes with the Employer or the number of Hours of Service for which the Employee is paid (or entitled to payment).

If the **days worked** method is elected, an Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

If the **weeks worked** method is elected, an Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

If the **semi-monthly payroll periods worked** method is elected, an Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.

If the **months worked** method is elected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

If the **bi-weekly payroll periods worked** method is elected, an Employee will be credited with ninety (90) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the bi-weekly payroll period.

1.44 "Insurer" means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

1.45 "Investment Manager" means a Fiduciary as described in Act §3(38).

1.46 "Joint and Survivor Annuity" means an immediate annuity for the life of a Participant with a survivor annuity for the life of the Participant's Spouse which is not less than fifty percent (50%), nor more than one hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's Spouse which can be purchased with the Participant's Vested interest in the Plan reduced by any outstanding loan balances pursuant to Section 7.4.

1.47 "Key Employee" means an Employee as defined in Code §416(i) and the Regulations thereunder. Generally, for purposes of determining top-heavy status, any Employee or Former Employee (including any deceased Employee as well as each of the Employee's or Former Employee's Beneficiaries) is considered a Key Employee if the Employee or Former Employee, at any time during the Plan Year that contains the "determination date," has been included in one of the following categories:

(a) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code §416) having annual 415 Compensation greater than $175,000 as of 2018 (as adjusted under Code §416(i)(1));

(b) a "five percent (5%) owner" of the Employer. "Five percent (5%) owner" means any person who owns (or is considered as owning within the meaning of Code §318) more than five percent (5%) of the value of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer; and

(c) a "one percent (1%) owner" of the Employer having annual 415 Compensation from the Employer of more than $150,000. "One percent (1%) owner" means any person who owns (or is considered as owning within the meaning of Code §318) more than one percent (1%) of the value of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer.

In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code §§414(b), (c), (m) and (o) shall be treated as separate employers. In determining whether an individual has 415 Compensation of more than $150,000, 415 Compensation from each employer required to be aggregated under Code §§414(b), (c), (m) and (o) shall be taken into account.

1.48 "Late Retirement Date" means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant's actual retirement after having reached the Normal Retirement Date.

1.49 "Leased Employee" means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year (unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)), and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated workforce.

1.50 "Limitation Year" means the "determination period" used to determine Compensation. However, the Employer may elect a different Limitation Year in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption Agreement. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new "Limitation Year" must begin on a date within the "Limitation Year" in which the amendment is made. The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

1.51 "Military Differential Pay" means any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of compensation that was paid to the individual while working for the Employer. Notwithstanding the preceding sentence, an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an Employee of the Employer making the payment.

The Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the Military Differential Pay. The preceding sentence applies only if all Employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

1.52 "Nonelective Contribution" means the Employer's contributions to the Plan other than Elective Deferrals, any Qualified Nonelective Contributions and any Qualified Matching Contributions.

1.53 "Nonhighly Compensated Employee/Participant" means any Employee/Participant who is not a Highly Compensated Employee. However, if pursuant to Sections 12.4 or 12.6 the prior year testing method is used to calculate the ADP or the ACP, a Nonhighly Compensated Employee/Participant shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year.

1.54 "Non-Key Employee" means any Employee or Former Employee (and such Employee's or Former Employee's Beneficiaries) who is not a Key Employee.

1.55 "Normal Retirement Age" means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if the Participant is employed by the Employer on or after that date). For money purchase pension plans, if the Employer enforces a mandatory retirement age, then the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

1.56 "Normal Retirement Date" means the date elected in the Adoption Agreement.

1.57 "1-Year Break in Service" means, if the Hour of Service method is used, the applicable computation period that is used to determine a Year of Service during which an Employee or Former Employee has not completed more than 500 Hours of Service. However, if the Employer selected, in the Service Crediting Method Section of the Adoption Agreement, to define a Year of Service as less than 1,000 Hours of Service, then the 500 Hours of Service in this definition of 1-Year Break in Service shall be proportionately reduced. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the elapsed time method is elected in the Service Crediting Method Section of the Adoption Agreement, then a "1-Year Break in Service" means a twelve (12) consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or Former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

1.58 "Participant" means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the individual has an Account balance in the Plan).

1.59 "Participant Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

1.60 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.61 "Participating Employer" means an Employer which, with the consent of the "lead Employer" adopts the Plan pursuant to Section 11.1 or Article XIV. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

1.62 "Period of Service" means the aggregate of all periods of service commencing with an Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance, or for benefit accrual purposes, ending on the severance from service date. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit by treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For purposes of benefit accrual, a Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, expressed in the number of whole years represented by such sum. For this purpose, fractional periods of a year will be expressed in terms of days.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement. However, for a standardized Adoption Agreement, the recognition of service with any other employer (1) is limited to the period which does not exceed 5 years immediately preceding the year in which an amendment crediting such service becomes effective, (2) must be credited to all Employees on a reasonably uniform basis, and (3) must otherwise comply with Regulation §1.401(a)(4)-5(a)(3).

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service method to the elapsed time method, an Employee will receive credit for a Period of Service consisting of:

(a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and

(b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

1.63 "Period of Severance" means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for "maternity or paternity" reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for "maternity or paternity" reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.64 "Plan" means this instrument hereinafter referred to as Ascensus LLC Defined Contribution Pre-Approved Plan (Basic Plan Document #05 and the Adoption Agreement) as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

1.65 "Plan Year" means the Plan's accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

1.66 "Pre-Retirement Survivor Annuity" means an immediate annuity for the life of a Participant's Spouse, the payments under which must be equal to the benefit which can be provided with the percentage, as specified in the Adoption Agreement, of the Participant's Vested interest in the Plan as of the date of death. If no election is made in the Adoption Agreement, the percentage shall be equal to fifty percent (50%). Furthermore, if less than one hundred percent (100%) of the Participant's Vested interest in the Plan is used to provide the Pre-Retirement Survivor Annuity, a proportionate share of each of the Participant's Accounts subject to the Pre-Retirement Survivor Annuity shall be used to provide the Pre-Retirement Survivor Annuity.

1.67 "Pre-Tax Elective Deferrals" means a Participant's Elective Deferrals that are not includible in the Participant's gross income at the time deferred.

1.68 "Qualified Automatic Contribution Arrangement" (QACA) means an automatic contribution arrangement which meets the requirements of Section 12.9.

1.69 "Qualified Matching Contribution" (QMAC) means any Employer matching contributions that are made pursuant to Sections 12.1(a)(2) (if elected in the Adoption Agreement), 12.5 and 12.7 or pursuant to any other Plan provision which provides for such contributions.

1.70 "Qualified Nonelective Contribution" (QNEC) means the Employer's contributions to the Plan that are made pursuant to Sections 12.1(a)(4), 12.5 and 12.7 or pursuant to any other Plan provision which provides for such contributions.

1.71 "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.72 "Retirement Date" means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant's Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

1.73 "Roth Elective Deferrals" means a Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals at the time of the deferral. Roth Elective Deferrals shall be subject to the requirements of Sections 12.2(d) and 12.2(e) and shall, except as otherwise provided herein, be required to satisfy the nondiscrimination requirements of Regulation §1.401(k)-1(b), the provisions of which are incorporated herein by reference. A Participant's Roth Elective Deferrals will be maintained in a separate account containing only the Participant's Roth Elective Deferrals and gains and losses attributable to those Roth Elective Deferrals. In addition, the Administrator shall, to the extent necessary for proper reporting, separately account for any "in-Plan Roth rollover contributions" (as defined in Section 12.11) that are transferred to a Participant's Roth Elective Deferral Account. The portion of a Participant's Account attributable to "in-Plan Roth rollover contributions" is not subject to the distribution restrictions of Section 12.2(e).

1.74 "Salary Deferral Agreement" means an agreement between a Participant and the Employer, whereby the Participant elects to reduce Compensation by a specific dollar amount or percentage and the Employer agrees to contribute such amount into the 401(k) Plan. The election may be made electronically in a manner permitted by the Employer. A Salary Deferral Agreement may require that an election be stated in specific percentage increments (not greater than one percent (1%) increments) or in specific dollar amount increments (not greater than dollar increments that could exceed one percent (1%) of Compensation).

A Salary Deferral Agreement may not be effective prior to the later of: (a) the date the Employee becomes a Participant; (b) the date the Participant agrees (including by automatic consent) to the Salary Deferral Agreement; or (c) the date the 401(k) plan is adopted by the Employer or applicable Participating Employer. A Salary Deferral Agreement is valid even though it is executed by an Employee before he or she actually becomes a Participant, so long as the Salary Deferral Agreement is not effective before the date the Employee becomes a Participant. A Salary Deferral Agreement may only apply to Compensation that becomes currently available to the Employee after the effective date of the Salary Deferral Agreement.

1.75 "Self-Employed Individual" means an individual who has Earned Income for the taxable year from the trade or business for which the Plan is established, and, also, an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year. A Self-Employed Individual shall be treated as an Employee.

1.76 "Short Plan Year" means, if specified in the Adoption Agreement or as the result of an amendment, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the elapsed time method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year. The determination of whether an Employee has completed a Year of Service (or Period of Service) for vesting and eligibility purposes shall be made in accordance with Department of Labor Regulation §2530.203-2(c). In addition, if this Plan is integrated with Social Security, then the integration level shall be proportionately reduced based on the number of months in the Short Plan Year.

1.77 "Spouse" means a spouse as determined under federal tax law. In addition, with respect to benefits or rights not mandated by law (e.g., Section 6.2(e)(1) with respect to death benefits in excess of the Pre-Retirement Survivor Annuity), Spouse also includes a spouse as elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). The Employer may also elect, in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to require that a Participant be married for at least one (1) year before the Participant is treated as married (and having a Spouse) for all purposes of the Plan other than for purposes of determining eligible hardship distribution expenses.

1.78 "Taxable Wage Base" means, with respect to any Plan Year, the contribution and benefit base under Section 230 of the Social Security Act at the beginning of such Plan Year.

1.79 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated with the Employer (including an Affiliated Employer) or applicable Participating Employer, other than by death, Total and Permanent Disability or retirement.

1.80 "Top-Heavy Plan" means a plan described in Section 9.2(a).

1.81 "Top-Heavy Plan Year" means a Plan Year during which the Plan is a Top-Heavy Plan.

1.82 "Top-Paid Group" shall be determined pursuant to Code §414(q) and the Regulations thereunder and generally means the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of 415 Compensation received from the Employer during such year. All Affiliated Employers shall be taken into account as a single employer, and Leased Employees shall be treated as Employees if required pursuant to Code §414(n) or (o). Employees who are nonresident aliens who received no earned income (within the meaning of Code §911(d)(2)) from the Employer constituting United States source income within the meaning of Code §861(a)(3) shall not be treated as Employees. Furthermore, for the purpose of determining the number of Employees in any year, the following additional Employees may also be excluded, however, such Employees shall still be considered for the purpose of identifying the particular Employees in the Top-Paid Group:

(a) Employees with less than six (6) months of service;

(b) Employees who normally work less than 17 1/2 hours per week;

(c) Employees who normally work less than six (6) months during a year; and

(d) Employees who have not yet attained age twenty-one (21).

In addition, if ninety percent (90%) or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representatives and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the Top-Paid Group.

The foregoing exclusions set forth in this Section shall be applied on a uniform and consistent basis for all purposes for which the Code §414(q) definition is applicable. Furthermore, in applying such exclusions, the Employer may substitute any lesser service, hours or age.

1.83 "Total and Permanent Disability" means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

1.84 "Trustee" means any person or entity that has agreed to serve as Trustee pursuant to the terms of the Trust agreement, or any successors thereto. The Employer may designate Trustees by business position or title. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured. The Employer has no reliance on the IRS opinion letter with respect to the separate Trust agreement.

1.85 "Trust Fund" means, if the Plan is funded with a trust, the assets of the Plan and Trust as the same shall exist from time to time.

1.86 "Valuation Date" means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, for purposes of the determination and allocation of earnings and losses, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants' Accounts during the Plan Year, which may include any day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, or any stock exchange used by such agent, are open for business.

1.87 "Vested" means the nonforfeitable portion of any Account maintained on behalf of a Participant.

1.88 "Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a lower number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). Unless otherwise elected in the Service Crediting Method Section of the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) Years of Service for eligibility purposes upon completing two (2) consecutive Years of Service without an intervening 1-Year Break in Service (referred to as the two (2) 1-Year Breaks in Service rule).

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Service Crediting Method Section of the Adoption Agreement. If no election is made in the Service Crediting Method Section of the Adoption Agreement, then the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other employer shall be recognized as elected in the Adoption Agreement. However, for a standardized Adoption Agreement, the recognition of service with any other employer (1) is limited to the period which does not exceed 5 years immediately preceding the year in which an amendment crediting such service becomes effective, (2) must be credited to all Employees on a reasonably uniform basis, and (3) must otherwise comply with Regulation §1.401(a)(4)-5(a)(3).

In the event the method of crediting service is amended from the elapsed time method to the Hour of Service method, an Employee will receive credit for Years of Service equal to:

(a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and

(b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method, if any, elected in the Adoption Agreement) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

ARTICLE II
ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee (or Insurer) and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove one or more Trustees (or Insurers) and Administrators from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan, the Code, and the Act. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Funding policy and method.** The Employer shall establish a "funding policy and method," i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. If the Trustee (or Insurer) has discretionary authority, the Employer or its delegate shall communicate such needs and goals to the Trustee (or Insurer), who shall coordinate such Plan needs with its investment policy. The communication of such a "funding policy and method" shall not, however, constitute a directive to the Trustee (or Insurer) as to the investment of the Trust Funds. Such "funding policy and method" shall be consistent with the objectives of this Plan and with the requirements of Title I of the Act.

(c) **Appointment of Investment Manager.** Unless prohibited by the terms of the Trust agreement, the Employer may appoint, at its option, one or more Investment Managers, investment advisers, or other agents to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

(d) **Review of fiduciary performance.** The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

(e) **Indemnity.** To the extent permitted by the Code and the Act, and unless otherwise specified in a separate agreement, the Employer will indemnify and hold harmless the Administrator, officers, directors, shareholders, employees, and agents of the Employer; the Plan; the Trustees, Fiduciaries, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees or DOL fiduciary breach sanctions and penalties) arising out of or relating to the Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan. This indemnity provision shall continue to apply to the Employer with respect to the period the entity was maintaining this Plan, even if the Employer ceases to maintain the Plan.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written or electronic acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. If no such delegation is made by the Employer, then the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee (or Insurer) in writing of such action and specify the responsibilities of each Administrator. The Trustee (or Insurer) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee (or Insurer) a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code §401(a), and shall comply with the terms of the Act and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

(a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;

(b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;

(c) to compute, certify, and direct the Trustee (or Insurer) with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

(d) to authorize and direct the Trustee (or Insurer) with respect to all discretionary or otherwise directed disbursements from the Trust Fund;

(e) to maintain all necessary records for the administration of the Plan;

(f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;

(g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;

(h) to compute and certify to the Employer and to the Trustee (or Insurer) from time to time the sums of money necessary or desirable to be contributed to the Plan;

(i) to consult with the Employer and the Trustee (or Insurer) regarding the short and long-term liquidity needs of the Plan in order that the Trustee (or Insurer) can exercise any investment discretion (if the Trustee (or Insurer) has such discretion), in a manner designed to accomplish specific objectives;

(j) to prepare and implement a procedure for notifying Participants and Beneficiaries of their rights to elect Joint and Survivor Annuities and Pre-Retirement Survivor Annuities if required by the Plan, Code and Regulations thereunder;

(k) to assist Participants regarding their rights, benefits, or elections available under the Plan;

(l) to act as the named Fiduciary responsible for communicating with Participants as needed to maintain Plan compliance with Act §404(c) (if the Employer intends to comply with Act §404(c)) including, but not limited to, the receipt and transmission of Participants' directions as to the investment of their Accounts under the Plan and the formation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their Accounts; and

(m) to determine the validity of, and take appropriate action with respect to, any "qualified domestic relations order" received by it.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

2.6 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

2.7 INFORMATION FROM EMPLOYER

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise the Trustee (or Insurer) of such of the foregoing facts as may be pertinent to the Trustee's (or Insurer's) duties with respect to the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator or Trustee (or Insurer) in carrying out the instructions of Participants as to the directed investment of their Accounts (if permitted) and other specialists and their agents, the costs of any bonds required pursuant to Act §412, and other costs of administering the Plan. If liquid assets of the Plan are insufficient to cover the fees of the Trustee (or Insurer) or the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

Expenses may be charged to Account. Unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee.

2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number but may authorize one or more of them to sign all papers on their behalf.

2.10 CLAIMS PROCEDURES

(a) **Initial claim.** Claims for benefits under the Plan may be filed in writing with the Administrator. Written or electronic notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) after the application is filed, or such period as is required by applicable law or Department of Labor regulation. Any electronic notification shall comply with the standards imposed by Department of Labor Regulation §2520.104b-1(c)(1)(i), (iii) and (iv) or any subsequent guidance. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

(b) **Claims review.** Any Employee, Former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.10 shall be entitled to request the Administrator to give further consideration to the claim by filing with the Administrator a written request. Such request, together with a written statement of the reasons why the claimant believes such claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 2.10(a). A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) of receipt of the appeal (unless there has been an extension of sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts)). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. The communication may be written or electronic (provided the electronic communication complies with the standards imposed by Department of Labor Regulation §2520.104b-1(c)(1)(i), (iii) and (iv) or any subsequent guidance). Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

(c) **Deadline to file claim.** To be considered timely under the Plan's claims procedures, a claim must be filed under Sections 2.10(a) or (b) above within one year after the claimant knew or reasonably should have known of the principal facts upon which the claim is based. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to the claimant for the purpose of applying this deadline.

(d) **Exhaustion of administrative remedies.** The exhaustion of the claims procedures is mandatory for resolving every claim and dispute arising under this Plan. As to such claims and disputes: (1) no claimant shall be permitted to commence any legal action to recover Plan benefits or to enforce or clarify rights under the Plan, under Act §502 or §510 or under any other provision of law, whether or not statutory, until the claims procedures set forth in Subsections (a) and (b) above have been exhausted in their entirety; and (2) in any such legal action all explicit and all implicit determinations by the Administrator (including, but not limited to, determinations as to whether the claim, or a request for a review of a denied claim, was timely filed) shall be afforded the maximum deference permitted by law.

(e) **Deadline to file action.** No legal action to recover Plan benefits or to enforce or clarify rights under the Plan, under Act §502 or §510 or under any other provision of law, whether or not statutory, may be brought by any claimant on any matter pertaining to this Plan unless the legal action is commenced in the proper forum before the earlier of: (1) thirty (30) months after the claimant knew or reasonably should have known of the principal facts on which the claim is based, or (2) six (6) months after the claimant has exhausted the claims procedure under this Plan. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to every claimant who is or claims to be a Beneficiary of the Participant or otherwise claims to derive an entitlement by reference to the Participant for purposes of applying the previously specified periods.

(f) **Plan Administrator discretion; court review.** The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

(g) **Overriding procedures.** The Administrator may adopt other claims procedures that override all or a portion of the provisions set forth in this Plan Section 2.10 provided such provisions or procedures are consistent with the requirements of ERISA.

ARTICLE III
ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

An Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility, if any, elected in the Adoption Agreement. The Administrator may, on a uniform and consistent basis, apply Plan provisions relating to months based on a 30-day month.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement. Regardless of any election in the Adoption Agreement to the contrary, an Eligible Employee who has satisfied the maximum age (21) and service requirements (one (1) Year (or Period) of Service (or, with respect to contributions other than Elective Deferrals, more than one (1) year if full and immediate vesting)) and who is otherwise entitled to participate, will become a Participant no later than the earlier of (1) six (6) months after such requirements are satisfied, or (2) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

(b) **Rehired Employee.** If an Eligible Employee is not employed on the date determined pursuant to (a) above, but is reemployed before a 1-Year Break in Service has occurred, then such Eligible Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment. If such Employee incurs a 1-Year Break in Service, then eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(c) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

(d) **Noneligible to eligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to noneligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(f) **Matching contributions.** With respect to the determination of any matching contributions, the Plan will disregard Elective Deferrals made while a Participant is not eligible for the matching contribution component of the Plan unless otherwise elected in the Adoption Agreement.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan and the Act. Such determination shall be subject to review pursuant to Section 2.10(b).

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the elapsed time method is used) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

3.5 REHIRED EMPLOYEES AND 1-YEAR BREAKS IN SERVICE

(a) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee or unless the Employee does not satisfy the eligibility conditions taking into account prior service to the extent such prior service is not disregarded pursuant to Section 3.5(d) or (e) below. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

(b) **Rehired Eligible Employee who satisfied eligibility.** If any Eligible Employee had satisfied the Plan's eligibility requirements but, due to a severance of employment, did not become a Participant, then such Eligible Employee shall become a Participant as of the later of (1) the entry date on which he or she would have entered the Plan had there been no severance of employment, or (2) the date of his or her re-employment. Notwithstanding the preceding, if the rehired Eligible Employee's prior service is disregarded pursuant to Section 3.5(d) or (e) below, then the rehired Eligible Employee shall be treated as a new hire.

(c) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan. However, in applying any shift in an eligibility computation period, the Eligible Employee is not treated as a new hire unless prior service is disregarded in accordance with Section 3.5(d) or (e) below.

(d) **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions).** If any Employee is reemployed after five (5) 1-Year Breaks in Service has occurred, Years of Service (or Periods of Service if the elapsed time method is being used) shall include Years of Service (or Periods of Service if the elapsed time method is being used) prior to the five (5) 1-Year Breaks in Service subject to the rules set forth below. The Employer may elect in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to make the provisions of this paragraph inapplicable for purposes of eligibility and/or vesting.

(1) In the case of a Former Employee who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (i) five (5) or (ii) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Employee who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded.

(e) **One-Year Hold-Out Rule.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the "one-year hold-out" rule under Code §410(a)(5)(C) applies. Under this rule, a Participant who has severed employment will incur a suspension of participation in the Plan after incurring a 1-Year Break in Service and the Plan disregards a Participant's service completed prior to a 1-Year Break in Service until the Participant completes one Year of Service following the 1-Year Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the eligibility computation period following the eligibility computation period in which the Participant incurs the 1-Year Break in Service.

(1) **Completion of one Year of Service.** If a Participant completes one Year of Service following a 1-Year Break in Service, the Plan restores the Participant's pre-break service retroactively to the first day of the eligibility computation period in which the Participant first completes one Year of Service following the 1-Year Break in Service.

(2) **Eligibility computation period.** The Administrator measures the initial eligibility computation period under this Subsection from the date the Participant first receives credit for an Hour of Service following the 1-Year Break in Service. The Administrator measures any subsequent eligibility computation periods, if necessary, in a manner consistent with the eligibility computation periods, using the re-employment commencement date in determining the anniversary of the date of hire, if applicable.

(3) **Application to Employee who did not enter.** The Administrator also will apply the one-year hold-out rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions, but who incurs a separation from service and a 1-Year Break in Service prior to becoming a Participant.

(4) **No restoration under two (2) 1-Year Breaks in Service rule.** The Administrator in applying this Subsection does not restore any service disregarded under the two (2) 1-Year Breaks in Service rule in Section 1.88.

(5) **No application to Elective Deferrals.** The Administrator will not apply the provisions of this Subsection with respect to eligibility to make Elective Deferrals under the Plan.

(6) **USERRA.** An Employee who has completed qualified military service and who the Employer has rehired under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), does not incur a 1-Year Break in Service under the Plan by reason of the period of such qualified military service.

(f) **Vesting after five (5) 1-Year Breaks in Service.** If a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer-derived Account balance in the Plan attributable to post-break service.

(g) **Buyback provisions.** If any Former Employee who had been a Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Participant had received a distribution of the entire Vested interest prior to reemployment, then the forfeited account shall be reinstated only if the Participant repays the full amount which had been distributed (including amounts from Accounts that were fully Vested such as the Elective Deferral Account). The Employer, may, however, on a uniform and nondiscriminatory basis, only require the Participant to repay amounts that relate to the Account that was not fully Vested. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. If the Participant repays the distribution with after-tax amounts, such amounts are not after-tax voluntary Employee contributions subject to the ACP Test set forth in Section 12.6.

In the event the Participant repays the full amount distributed, the undistributed forfeited portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore the Participant's Account, provided, however, that if a discretionary contribution is made for such year, such contribution will first be applied to restore any such accounts and the remainder shall be allocated in accordance with the terms of the Plan. If a non-Vested Participant was deemed to have received a distribution and such Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, then such Participant will be deemed to have repaid the deemed distribution as of the date of reemployment.

(h) **Waiver of allocation or contribution conditions.** If the Employer elects in the Adoption Agreement to waive allocations or contributions due to retirement (early or normal retirement), then a Participant shall only be entitled to one such waiver. Accordingly, if a Participant retires and allocation or contribution conditions are waived, then the Plan will not waive the allocation or contribution conditions if the Participant is rehired and then retires again.

3.6 ELECTION NOT TO PARTICIPATE

(a) **Standardized plans.** If the Employer has adopted a standardized Adoption Agreement, then an Employee is not permitted to elect not to participate in the Plan.

(b) **Non-standardized plans.** If the Employer has adopted a non-standardized Adoption Agreement, then an Employee may, subject to the approval of the Employer, elect voluntarily not to participate in any component of the Plan before the Employee first becomes eligible to participate in any qualified plan (subject to Code §401(a)) maintained by the Employer. Such election must be made upon inception of the Plan or any other plan or arrangement of the Employer that is described in Code §219(g)(5)(A) (whether or not terminated) or at any time prior to the time the Employee first becomes eligible to participate under any such plan maintained by the Employer. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the date the Employee would have otherwise entered the Plan. Notwithstanding anything in this Section to the contrary, if any prior Plan document of this Plan contained a provision permitting an Employee to make a revocable election not to participate and an Employee made such revocable election not to participate while that prior Plan document was in effect, then such Employee's waiver shall continue to be in effect.

(c) **Effect of election.** An Employee who elects, or had previously elected, not to participate under the Plan is treated as a nonbenefiting Employee for purposes of the minimum coverage requirements under Code §410(b) and, if such election applies to Elective Deferrals, the Employee is not an eligible Participant for purposes of the ADP test set forth in Section 12.4 or the ACP test set forth in Section 12.6.

3.7 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer may take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System (i.e., Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any subsequent guidance).

ARTICLE IV
CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **For a Money Purchase Plan:**

(1) The Employer will make contributions on the following basis. On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount elected in the Adoption Agreement. All contributions by the Employer will be made in cash. In the event a funding waiver is obtained, this Plan shall be deemed to be an individually designed plan.

(2) Notwithstanding the foregoing, with respect to an Employer which is not a tax-exempt entity, the Employer's contribution for any Fiscal Year shall not exceed the maximum amount allowable as a deduction to the Employer under the provisions of Code §404. However, to the extent necessary to provide the top-heavy minimum allocations, the Employer shall make a contribution even if it exceeds the amount that is deductible under Code §404.

(b) **For a Profit Sharing Plan:**

(1) For each Plan Year, the Employer may (or will in the case of a "prevailing wage contribution" as set forth in the Profit Sharing Formula Section of the Adoption Agreement) contribute to the Plan such amount as elected by the Employer in the Adoption Agreement. In addition, the Employer may make a discretionary "gateway contribution" pursuant to Section 4.3(b)(4).

(2) Additionally, the Employer will contribute to the Plan the amount necessary, if any, to provide the top-heavy minimum allocations even if it exceeds current or accumulated net profit or the amount that is deductible under Code §404.

(3) Subject to the consent of the Trustee (or Insurer), the Employer may make its contribution to the Plan in the form of unencumbered property instead of cash, provided the contribution of property is not a prohibited transaction. The decision to make a contribution of property is subject to the general fiduciary rules under the Act.

(c) **Frozen Plans.** The Employer may designate that the Plan is a frozen Plan at the Contribution Types Section of the Adoption Agreement. As a frozen Plan, the Employer will not make any Employer contributions with respect to Compensation earned after the date the Plan is frozen, and if the Plan is a 401(k) Plan, no Participant will be permitted to make Elective Deferrals to the Plan for any period following such date. In addition, once a Plan is frozen, no additional Employees shall become Participants.

(d) **Union Employees.** Regardless of any provision in this Plan to the contrary, Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The benefits, including but not limited to, contributions, allocations and vesting, under this Plan shall be those set forth in the Adoption Agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. The provisions of this Subsection only apply if no more than two percent (2%) of the Employees covered pursuant to the agreement are professionals as defined in Regulation §1.410(b)-9. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service and Compensation in each respective category are treated separately for purposes of the Plan.

4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. However, the Employer shall pay its contribution for each Plan Year not later than the time prescribed by law for filing the Employer's Federal income tax return for the fiscal (or taxable) year with or within which such Plan Year ends (including extensions thereof). If, pursuant to Section 12.8, the "ADP test safe harbor contribution" being made to the Plan (including a contribution being made pursuant to a QACA as described in Section 12.9) is a matching contribution that is made on a basis other than the Plan Year, then the matching contributions must be contributed to the Plan by the last day of the Plan Year quarter immediately following the Plan Year quarter to which the contributions relate. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

Participant Contribution remittance: Elective Contribution and after-tax voluntary Employee contribution remittances must be deposited with the Trust as soon as administratively feasible as of the earliest date by which such contributions can reasonably be segregated from the employer's general assets. Assets to be remitted to the Trust by the Employer under this section include amounts (other than union dues) that a Participant or Beneficiary pays to an Employer or amounts that a Participant has withheld from his or her wages by an Employer for contribution to the Plan.

For Employers with less than 100 Participants at the beginning of the Plan Year, any amount remitted to the Trust must not occur later than:

- The 7th business day following the day on which such amount is received by the Employer (in the case of amounts that a Participant or Beneficiary pays to an Employer), or
- The 7th business day following the day on which such amount would otherwise have been payable to the Participant in cash (in the case of amounts withheld by an Employer from a Participant's wages)

4.3 ALLOCATION OF CONTRIBUTIONS, FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an Account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) **Money Purchase allocation.** For a Money Purchase Plan (other than a Money Purchase Plan which is integrated by allocation):

(i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.

(ii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement and Section 3.5(h) are satisfied, unless a top-heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or is employed on the last day of the Plan Year. Furthermore, with respect to a non-standardized Adoption Agreement, regardless of any election in the Adoption Agreement to the contrary, for the Plan Year in which this Plan terminates, a Participant shall only be eligible to share in the allocation of the Employer's contributions for the Plan Year if the Participant is employed at the end of the Plan Year and has completed a Year of Service (or Period of Service if the elapsed time method is elected).

(2) **Permitted disparity allocation.** For an integrated Profit Sharing Plan or 401(k) Profit Sharing Plan allocation or a Money Purchase Plan which is integrated by allocation:

(i) Subject to the "overall permitted disparity limits," the Employer's contribution shall be allocated to each Participant's Account in a dollar amount equal to 5.7% of the sum of each Participant's Compensation plus Excess Compensation. If the Employer does not contribute such amount for all Participants, each Participant will be allocated a share of the contribution in the same proportion that each such Participant's Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus the total Excess Compensation of all Participants for that year. However, in the case of any Participant who has exceeded the "cumulative permitted disparity limit," the allocation set forth in this paragraph shall be based on such Participant's Compensation rather than Compensation plus Excess Compensation.

Regardless of the preceding, 4.3% shall be substituted for 5.7% above if Excess Compensation is based on more than 20% and less than or equal to 80% of the Taxable Wage Base. If Excess Compensation is based on less than 100% and more than 80% of the Taxable Wage Base, then 5.4% shall be substituted for 5.7% above.

(ii) The balance of the Employer's contribution over the amount allocated above, if any, shall be allocated to each Participant's Account in the same proportion that each such Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for such year.

(iii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement and Section 3.5(h) are satisfied, unless a top-heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or is employed on the last day of the Plan Year.

(iv) The following "overall permitted disparity limits" (which consist of the "annual overall permitted disparity limit" and the "cumulative permitted disparity limit") apply to the allocations set forth above.

(A) "Annual overall permitted disparity limit." Notwithstanding the preceding paragraphs, if in any Plan Year this Plan "benefits" any Participant who "benefits" under another qualified plan or simplified employee pension, as defined in Code §408(k), maintained by the Employer that either provides for or imputes permitted disparity (integrates), then such plans will be considered to be one plan and will be considered to comply with the permitted disparity rules if the extent of the permitted disparity of all such plans does not exceed 100%. For purposes of the preceding sentence, the extent of the permitted disparity of a plan is the ratio, expressed as a percentage, which the actual benefits, benefit rate, offset rate, or employer contribution rate, whatever is applicable under the Plan, bears to the limitation under Code §401(l) applicable to such Plan.

(B) "Cumulative permitted disparity limit." With respect to a Participant who "benefits" or "has benefited" under a defined benefit or target benefit plan of the Employer, the "cumulative permitted disparity limit" for the Participant is thirty-five (35) total cumulative permitted disparity years. Total cumulative permitted disparity years means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer, while such plan either provides for or imputes permitted disparity. For purposes of determining the Participant's "cumulative permitted disparity limit," all years ending in the same calendar year are treated as the same year. If the Participant has not "benefited" under a defined benefit or target benefit plan which neither provides for nor imputes permitted disparity for any year beginning on or after January 1, 1994, then such Participant has no cumulative disparity limit.

For purposes of this Section, "benefiting" means benefiting under the Plan for any Plan Year during which a Participant received or is deemed to receive an allocation in accordance with Regulation §1.410(b)-3(a).

(3) **Other profit sharing allocations.** For a Profit Sharing Plan or 401(k) Profit Sharing Plan with a non-integrated allocation formula, a uniform points allocation formula, a "prevailing wage contribution" allocation formula, an "age-weighted method" allocation formula, or a "grouping method" allocation formula as elected in the Employer Profit Sharing Contribution Section of the Adoption Agreement:

(i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method below that corresponds to the elections in the Adoption Agreement. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the provisions below.

(ii) If the Employer's contribution is fixed, the Employer shall allocate the contribution in a set percentage to each Participant. If the Employer elects to contribute a uniform dollar amount for each Participant, the pro rata allocation shall allocate that uniform dollar amount to each Participant.

(iii) If the Employer's contribution is discretionary and non-integrated, the contribution shall be allocated either in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants, in the same dollar amount to all Participants (per capita), or in the same dollar amount per Hour of Service completed by each Participant.

(iv) If the Employer's Contribution is allocated under a uniform points allocation formula, the allocation for each Participant shall be determined based on the Participant's total points for the Plan Year, as determined under the Adoption Agreement. A Participant's allocation of the Employer Contribution is determined by multiplying the Employer Contribution by a fraction, the numerator of which is the Participant's total points for the Plan Year and the denominator of which is the sum of the points for all Participants for the Plan Year. A Participant shall receive points for each year(s) of age and/or each Year(s) of Service. In addition, a Participant also may receive points based on his or her Compensation.

(v) If the Employer's contribution is a "prevailing wage contribution", it shall be allocated to each Participant who performs services subject to the Service Contract Act, Davis-Bacon Act or similar federal, state, or municipal prevailing wage statutes. The "prevailing wage contribution" will be an amount equal to the balance of the prevailing wage defined bona fide fringe benefit amount based on the Participant's employment classification as designated on the prevailing wage determination appropriate for that classification. Notwithstanding anything in the Plan to the contrary, the "prevailing wage contribution" shall be fully Vested. Furthermore, the "prevailing wage contribution" shall not be subject to any age, service or employment condition requirements set forth in the Adoption Agreement and the Employer shall make such contribution to the Plan as frequently as is required under applicable law.

(vi) If the Employer's contribution is allocated according to a "grouping method," the Employer may contribute to the Plan on behalf of each of the classifications of Participants set forth in the Adoption Agreement such amount as shall be determined by the Employer. The Employer shall provide the Administrator, if other than the Employer, with written notification of the amount of the contribution to be allocated to each classification on or before the due date of the Employer's tax return for the year of allocation, through written instructions from the Employer to the Administrator. The Employer may elect to specify any number of classifications and a classification may consist of any number of Participants.

(vii) If the Employer's contribution is allocated according to an "age-weighting method," the Employer's contribution for the Plan Year shall be allocated to each Participant's Account in the same proportion that each such Participant's total points with respect to such year, bear to the total points awarded to all Participants with respect to such year. The conditional allocation provided for in the preceding sentence shall become the final allocation for the year only if it is not a Top-Heavy Plan Year; or if the minimum allocation required for Top-Heavy Plan Years is provided to all Employees eligible to receive such minimum allocation. If any such Employee does not receive the top-heavy minimum allocation, then in lieu of the conditional allocation, the Employer's contribution shall instead be allocated first to the affected Employees in an amount equal to their conditional allocation plus any additional amount necessary to provide the top-heavy minimum allocation.

The remainder of the Employer's contribution shall then be allocated as provided under the conditional allocation method, but for this purpose, those Employees who did not receive the top-heavy minimum allocation under the initial conditional allocation shall not be considered. If under the secondary allocation provided in the preceding sentence, an Employee who received a top-heavy minimum contribution under the conditional allocation no longer receives the same, then the steps outlined in the preceding paragraph and sentence shall be repeated until such time as all affected Employees have been allocated the top-heavy minimum contribution and the remaining contribution has been allocated, at which time, the allocations for the year shall be final.

A Participant's points with respect to any Plan Year shall be computed as follows:

(A) Multiply the Participant's Compensation for the Plan Year by 1%.

(B) Multiply the product for each Participant as determined in (a) above by the product of:

1. the factor in Table I in Exhibit A to the Adoption Agreement, such factor to be determined by reference to the Participant's Normal Retirement Age, and

2. the factor in Table II of Exhibit A to the Adoption Agreement, such factor to be determined by reference to the number of years remaining from the Participant's attained age as of the allocation date to his or her Normal Retirement Age.

The schedule of Age-Weighted Allocation Factors is set forth in Exhibit A to the Adoption Agreement, (which is hereby incorporated by reference and made a part of the Plan) and shall be based on the interest rate selected in the Adoption Agreement (if no selection is made, 8.5% interest shall be deemed to have been elected).

3. The resulting number shall be the number of points allocated to the Participant.

(viii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement and Section 3.5(h) are satisfied, unless a top-heavy contribution is required pursuant to Section 4.3(f). If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than five hundred (500) Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or is employed on the last day of the Plan Year.

(4) **Gateway contribution.** In addition to any other Nonelective Contribution, for any Plan Year that the Employer is treating Nonelective Contributions to this Plan as if such Contributions were benefit accruals under a defined benefit plan for purposes of satisfying the nondiscrimination requirements of IRC Section 401(a)(4) and the regulations thereunder (i.e., conducting a "cross" test), the Employer shall also contribute the minimum amount of Gateway Contribution. In applying the provisions of this Subsection (4), the term "Employer contributions" shall also include any Forfeitures that are allocated to a Participant, other than Forfeitures that are subject to Code §401(m) because they are allocated as a matching contribution. Furthermore, in applying the provisions of this Subsection (4) to a 401(k) Profit Sharing Plan, the term "Employer contributions" means any Employer Nonelective Contributions, nonelective "ADP test safe harbor contributions," and, except as otherwise provided in Subsections (4)(ii) and (iv) below, Qualified Nonelective Contributions, and such term excludes any matching contributions.

(i) Any "gateway contribution" made pursuant to this Subsection for a Plan Year will be allocated to each Nonhighly Compensated Participant who receives an allocation of other "Employer contributions," for such Plan Year. In applying the provisions of this subsection, the term "Employer contributions" means any Nonelective Contributions (including any amount that is contributed solely for the purpose of meeting any top heavy contribution requirement), any ADP Safe Harbor Nonelective Contributions and, except as otherwise provided in subsections (ii) and (iv) below, any Qualified Nonelective Contributions, but such term excludes any Matching Contributions. Furthermore, the term "Employer contributions" shall also include any Forfeitures that are allocated to a Participant, other than Forfeitures that are subject to Code §401(m) because those Forfeitures are allocated as Matching Contributions. The "gateway contribution" will be allocated without regard to any allocation conditions otherwise applicable to "Employer contributions" under the Plan. However, Participants who the Administrator disaggregates pursuant to Regulation §1.410(b)-7(c)(3) because they have not satisfied the greatest minimum age and service conditions permissible under Code §410(a) shall not be eligible to receive an allocation of any "gateway contribution" made pursuant to this Subsection unless such an allocation is necessary to satisfy Code §401(a)(4).

(ii) The "gateway contribution" will be allocated pro rata on the basis of Compensation (as defined in (iii) or (iv) below, whichever is applicable) of each eligible Participant (as described in Subsection (i) above) but in no event will an allocation of the "gateway contribution" exceed the lesser of: (A) five percent (5%) of Compensation or (B) one-third (1/3) of the highest allocation rate for any Highly Compensated Participant for the Plan Year. Any allocation under the prior sentence will be reduced by the amount of any other "Employer contributions," excluding any Qualified Nonelective Contributions that are used to satisfy the ADP test set forth in Section 12.4 or the ACP test set forth in Section 12.6, allocated for the same Plan Year to such Participant, provided that if an eligible Participant is receiving only a Qualified Nonelective Contribution and such contribution amount equals or exceeds the "gateway contribution," then the contribution satisfies the "gateway contribution" requirement as to that Participant.

(iii) For allocation purposes under the 5% "gateway contribution" under (A) of Subsection (ii) above, Compensation means 415 Compensation except that it may be determined for the Plan Year (rather than the Limitation Year) and shall exclude 415 Compensation paid while an Employee is not a Participant in the Plan.

(iv) For purposes of the 1/3 "gateway contribution" alternative under (B) of Subsection (ii) above, the Administrator will (A) determine the allocation rate, and (B) allocate the "gateway contribution," using a Participant's Compensation, provided the definition of Compensation satisfies Regulation §1.414(s). In addition, the allocation rate for any Participant is determined by dividing the total "Employer contribution" made on behalf of such Participant by the Participant's Compensation (as defined in the preceding sentence). However, solely for purposes of determining the allocation rate of any Nonhighly Compensated Participant, Qualified Nonelective Contributions that are used to satisfy the ADP test set forth in Section 12.4 or the ACP test set forth in Section 12.6, shall not be taken into account.

(v) Notwithstanding the foregoing, the Employer may increase the "gateway contribution" to satisfy the provisions of Regulation §1.401(a)(4)-9(b)(2)(v)(D) if the plan (for nondiscrimination testing purposes) consists of one or more defined contribution plans and one or more defined benefit plans.

(c) **Gains or losses.** Except as otherwise provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in accordance with such rules and procedures that are established by the Administrator and that are applied in a uniform and nondiscriminatory manner based upon the investments of the Trust Fund and the Participants' accounts to which the net income is allocated. For purposes of this Section, the term "net income" means the net of any interest, dividends, unrealized appreciation and depreciation, capital gains and losses, and investment expenses of the Trust Fund determined on each Valuation Date. However, Participants' accounts which have been segregated for investment purposes (including any Participant Directed Accounts) will only have the net income earned thereon allocated thereto. Policy dividends or credits will be allocated to the Participant's Account for whose benefit the Policy is held.

ERISA recapture account. The Administrator in its discretion may use an "ERISA Recapture Account" to pay non-settlor Plan expenses and may allocate funds in the "ERISA Recapture Account" (or excess funds therein after payment of Plan expenses) as earnings or as otherwise permitted by applicable law. The Administrator will exercise its discretion in a reasonable, uniform and nondiscriminatory manner. An "ERISA Recapture Account" is an account designated to receive amounts which a Plan service provider receives in the form of 12b-1 fees, sub-transfer agency fees, shareholder servicing fees or similar amounts (also known as "revenue sharing"), which are received by the service provider from a source other than the Plan and which the service provider may remit to the Plan.

Late trading and market timing settlement. In the event the Plan becomes entitled to a settlement from a mutual fund or other investment relating to late trading, market timing or other activities, the Administrator will allocate the settlement proceeds to Participants and Beneficiaries in accordance with Department of Labor Field Assistance Bulletin 2006-01 or other applicable law.

(d) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) **Forfeitures.** Forfeitures must be disposed of no later than the last day of the Plan Year following the Plan Year in which the Forfeiture occurs. The Employer may direct the Administrator to use Forfeitures to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 3.5(g), to satisfy any contribution that may be required pursuant to Section 6.10, or, to pay any Plan expenses. With respect to a Money Purchase Plan, any remaining Forfeitures will be disposed of in accordance with the elections in the Adoption Agreement. With respect to all other plans, the Employer must direct the Administrator to use any remaining Forfeitures in accordance with any combination of the following methods, including a different method based on the source of such Forfeitures. Forfeitures may be:

(1) Added to any Employer discretionary contribution (e.g., matching or profit sharing) and allocated in the same manner;

(2) Used to reduce any Employer contribution (e.g., matching or profit sharing);

(3) Added to any Employer matching contribution and allocated as an additional matching contribution; or

(4) Allocated to all Participants in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.

If Forfeitures are allocated to Participants (rather than used to reduce Employer contributions) then the Employer must also direct the Administrator as to which Participants are eligible to share in such allocation. The maximum allocation conditions the Employer may require are that Participants complete one (1) Year of Service (or Period of Service) and be employed on the last day of the Plan Year in order to share in the allocation of Forfeitures for such Plan Year. Notwithstanding the foregoing, if the Employer has adopted a standardized Adoption Agreement, then the maximum allocation conditions are that Participants complete more than five hundred (500) Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or be employed on the last day of the Plan Year.

(f) **Minimum allocations required for Top-Heavy Plan Years.** Notwithstanding the foregoing, for any Top-Heavy Plan Year, the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Non-Key Employee or each Participant, if elected in the Adoption Agreement, shall be equal to at least three percent (3%) of such Employee's 415

Compensation for the Plan Year or the calendar year ending within the Plan Year (reduced by contributions and Forfeitures, if any, allocated to each such Employee in any defined contribution plan included with this Plan in a "required aggregation group" (as defined in Section 9.2(f)). However, if (1) the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Key Employee for such Top-Heavy Plan Year is less than three percent (3%) of each Key Employee's 415 Compensation and (2) this Plan is not required to be included in a "required aggregation group" (as defined in Section 9.2(f)) to enable a defined benefit plan to meet the requirements of Code §401(a)(4) or 410, the sum of the Employer's contributions and Forfeitures allocated to the Participant's Combined Account of each Employee entitled to the top-heavy minimum contribution shall be equal to the largest percentage allocated to the Participant's Combined Account of any Key Employee. The minimum allocation required (to the extent required to be nonforfeitable under Code §416(b)) may not be forfeited under Code §411(a)(3)(B) or 411(a)(3)(D).

However, for each Employee who is a Participant in a Profit Sharing Plan or 401(k) Profit Sharing Plan and a Money Purchase Plan, the minimum three percent (3%) allocation specified above shall be provided in the Money Purchase Plan unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(g) **Top-heavy contribution allocation.** For purposes of the minimum allocations set forth above, the percentage allocated to the Participant's Combined Account of any Key Employee shall be equal to the ratio of the sum of the Employer's contributions and Forfeitures allocated on behalf of such Key Employee divided by the 415 Compensation for such Key Employee.

(h) **Participants eligible for top-heavy allocation.** Notwithstanding anything in this Plan to the contrary, for any Top-Heavy Plan Year, the minimum allocations set forth in this Section shall only be allocated to the Participant's Combined Account of all Non-Key Employees, and Key Employees if elected in the Adoption Agreement, who are Participants and who are employed by the Employer on the last day of the Plan Year (unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)), including Employees who have (1) failed to complete a Year of Service; (2) declined to make mandatory contributions (if required) or, in the case of a cash or deferred arrangement, Elective Deferrals to the Plan; or (3) Compensation less than a stated amount. In addition, pursuant to Code §416(i)(4), Participants whose employment is governed by a collective bargaining agreement between the Employer and employee representatives under which retirement benefits were the subject of good faith bargaining shall not be eligible to receive the top-heavy minimum allocations unless otherwise provided in the collective bargaining agreement.

(i) **Top-heavy allocation if DB and DC plans maintained.** Notwithstanding anything herein to the contrary, in any Plan Year in which the Employer maintains both this Plan and a non-frozen defined benefit pension plan included in a "required aggregation group" (as defined in Section 9.2(f)) which is top-heavy, the Employer will not be required (unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)) to provide Employees with both the full separate minimum defined benefit plan benefit and the full separate defined contribution plan top-heavy minimum allocations. In such case, the top-heavy minimum benefits will be provided as elected in the Adoption Agreement and, if applicable, as follows:

(1) If the 5% defined contribution minimum is elected in the Adoption Agreement:

(i) The requirements of Section 9.1 will apply except that each Employee who is entitled to the Top-Heavy minimum benefit in the Profit Sharing Plan or Money Purchase Plan and who accrues a benefit in the Defined Benefit Plan will receive a minimum allocation of five percent (5%) of such Participant's 415 Compensation from the "applicable defined contribution plan(s)."

(ii) For each Employee who is a participant only in the Defined Benefit Plan, the Employer will provide a minimum non-integrated benefit equal to two percent (2%) of such participant's highest five (5) consecutive year average 415 Compensation for each Year of Service while a participant in such plan, in which the Plan is top-heavy, not to exceed ten (10) such years.

(iii) For each Employee who is a Participant only in this defined contribution plan, the Employer will provide a minimum allocation equal to three percent (3%) of such Participant's 415 Compensation.

(2) If the 2% defined benefit minimum is elected in the Adoption Agreement, then for each Employee who is entitled to the Top-Heavy minimum benefit only in the defined benefit plan, the Employer will provide a minimum non-integrated benefit equal to two percent (2%) of such participant's highest five (5) consecutive year average of 415 Compensation for each Year of Service while a participant in the plan, in which the plan is top-heavy, not to exceed ten (10) such years.

(j) **Matching contributions used to satisfy top-heavy contribution.** Unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the ACP test and other requirements of Code §401(m).

(k) **Contributions under other plans.** The Employer may provide, in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) and matching contributions with respect to which the requirements of Code §401(m)(11) apply). The Employer must specify the name of the other plan, the minimum benefit that will be provided under such other plan, and the Employees who will receive the minimum benefit under such other plan.

(l) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

(m) **410(b) ratio percentage fail-safe provisions.** Notwithstanding anything in this Section to the contrary, the provisions of this Subsection apply for any Plan Year if, in the non-standardized Adoption Agreement, the Employer elected to apply the 410(b) ratio percentage fail-safe provisions and the Plan fails to satisfy the "ratio percentage test" due to a last day of the Plan Year allocation condition or an Hours of Service (or months of service) allocation condition. A plan satisfies the "ratio percentage test" if, on the last day of the Plan Year, the "benefiting ratio" of the Nonhighly Compensated Employees who are "includible" is at least 70% of the "benefiting ratio" of the Highly Compensated Employees who are "includible." The "benefiting ratio" of the Nonhighly Compensated Employees is the number of "includible" Nonhighly Compensated Employees "benefiting" under the Plan divided by the number of "includible" Employees who are Nonhighly Compensated Employees. The "benefiting ratio" of the Highly Compensated Employees is the number of Highly Compensated Employees "benefiting" under the Plan divided by the number of "includible" Highly Compensated Employees. "Includible" Employees are all Employees other than: (1) those Employees excluded from participating in the Plan for the entire Plan Year by reason of the collective bargaining unit exclusion or the nonresident alien exclusion described in the Code or by reason of the age and service requirements of Article III; and (2) any Employee who incurs a separation from service during the Plan Year and fails to complete at least 501 Hours of Service (or three (3) months of service if the elapsed time method is being used) during such Plan Year.

For purposes of this Subsection, an Employee is "benefiting" under the Plan on a particular date if, under the Plan, the Employee is entitled to an Employer contribution or an allocation of Forfeitures for the Plan Year.

If this Subsection applies and the Hours of Service method is used, then the Administrator will suspend the allocation conditions and expand the group of the "includible" Nonhighly Compensated Employees who are Participants by including the minimum number of Participants eligible to share in the contribution, beginning first with the "includible" Employees employed by the Employer on the last day of the Plan Year who have completed the greatest number of Hours of Service in the Plan Year, then the "includible" Employees who have completed the greatest number of Hours of Service during the Plan Year, and continuing to suspend the allocation conditions for each "includible" Employee who completed Hours of Service, from the greatest number of Hours of Service to the least, until the Plan satisfies the "ratio percentage test" for the Plan Year. If two or more "includible" Employees have the same number of Hours of Service, then the Administrator will suspend the allocation conditions for all such "includible" Employees, irrespective of whether the Plan can satisfy the "ratio percentage test" by accruing benefits for fewer than all such "includible" Employees. If the Plan for any Plan Year suspends the allocation conditions for an "includible" Employee, then that Employee will share in the allocation for that Plan Year of the Employer contribution and Forfeitures, if any, without regard to whether the Employee has satisfied the other allocation conditions set forth in this Section.

If this Subsection applies and the elapsed time method is used, then the Administrator will suspend the allocation conditions for the "includible" Nonhighly Compensated Employees who are Participants, beginning first with the "includible" Employees employed by the Employer on the last day of the Plan Year, then the "includible" Employees who have the latest separation from service during the Plan Year, and continuing to suspend the allocation conditions for each "includible" Employee who incurred an earlier separation from service, from the latest to the earliest separation from service date, until the Plan satisfies the "ratio percentage test" for the Plan Year. If two or more "includible" Employees have a separation from service on the same day, then the Administrator will suspend the allocation conditions for all such "includible" Employees, irrespective of whether the Plan can satisfy the "ratio percentage test" by accruing benefits for fewer than all such "includible" Employees. If the Plan for any Plan Year suspends the allocation conditions for an "includible" Employee, then that Employee will share in the allocation for that Plan Year of the Employer contribution and Forfeitures, if any, without regard to whether the Employee has satisfied the other allocation conditions set forth in this Section.

Notwithstanding the foregoing, if the portion of the Plan which is not a Code §401(k) or 401(m) plan would fail to satisfy Code §410(b) if the coverage tests were applied by treating those Participants whose only allocation would otherwise be provided under the top-heavy formula as if they were not currently benefiting under the Plan, then, for purposes of applying this Subsection (m), such Participants shall be treated as not benefiting.

4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Calculation of "annual additions."**

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer," or an individual medical benefit account (as

defined in Code §415(l)(2)) maintained by the "employer," or a simplified employee pension (as defined in Code §408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the Administrator shall determine the "maximum permissible amount" for each Participant for such Limitation Year on the basis of the Participant's actual 415 Compensation for such Limitation Year.

(b) **"Annual additions" if a Participant is in more than one plan.**

(1) Except as provided in Subsection (c) below, this Subsection applies if, in addition to this Plan, a Participant is covered under another "employer" maintained qualified defined contribution plan, welfare benefit fund (as defined in Code §419(e)), individual medical benefit account (as defined in Code §415(l)(2)), or simplified employee pension (as defined in Code §408(k)), which provides "annual additions," during any Limitation Year. The "annual additions" which may be credited to a Participant's Accounts under this Plan for any such Limitation Year shall not exceed the "maximum permissible amount" reduced by the "annual additions" credited to a Participant's accounts under the other plans and welfare benefit funds, individual medical benefit accounts, and simplified employee pensions for the same Limitation Year. If the "annual additions" with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the "employer" are less than the "maximum permissible amount" and the "employer" contribution that would otherwise be contributed or allocated to the Participant's accounts under this Plan would cause the "annual additions" for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the "annual additions" under all such plans and welfare benefit funds for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants. If the "annual additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical benefit accounts and simplified employee pensions in the aggregate are equal to or greater than the "maximum permissible amount," no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the "maximum permissible amount" for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(4) If, pursuant to Section 4.4(b)(2), a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code §412, regardless of the actual allocation date.

(5) If an "excess amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "excess amount" attributed to this Plan will be the product of:

(i) the total "excess amount" allocated as of such date, times

(ii) the ratio of (A) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(c) **Coverage under another plan.** If the Participant is covered under another qualified defined contribution plan maintained by the "employer," "annual additions" which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the "employer" provides other limitations in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(d) **Time when "annual additions" credited.** An "annual addition" is credited to the Account of a Participant for a particular Limitation Year if it as allocated to the Participant's Account under the Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of any date within a Limitation Year if such allocation is dependent upon participation in the Plan as of any date subsequent to such date.

For purposes of this subparagraph, "employer" contributions are not deemed credited to a Participant's Account for a particular Limitation Year unless the contributions are actually made to the Plan no later than thirty (30) days after the end of the period described in Code §404(a)(6) applicable to the taxable year with or within which the particular Limitation Year ends. In the case of an Employer that is exempt from federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant's Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or Fiscal Year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(e) **Definitions.** For purposes of this Section, the following terms shall be defined as follows:

(1) **"Annual additions"** means the sum credited to a Participant's accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (e)(6)(ii) below shall not apply to: (1) any contribution for medical benefits (within the meaning of Code §419A(f)(2)) after separation from service which is otherwise treated as an "annual addition," or (2) any amount otherwise treated as an "annual addition" under Code §415(l)(1).

(i) **Restorative payments.** "Annual additions" for purposes of Code §415 and this Section shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a Fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under the Act or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under the Act are not restorative payments and generally constitute contributions that are considered "annual additions."

(ii) **Other amounts.** "Annual additions" for purposes of Code §415 and this Section shall not include: (A) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (B) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (C) Repayments of loans made to a Participant from the Plan; and (D) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(2) **"Defined contribution dollar limitation"** means $56,000 (or the amount as adjusted under Code §415(d)).

(3) **"Employer"** means, for purposes of this Section, the Employer that adopts this Plan and all Affiliated Employers, except that for purposes of this Section, the determination of whether an entity is an Affiliated Employer shall be made by applying Code §415(h).

(4) **"Excess amount"** means the excess of the Participant's "annual additions" for the Limitation Year over the "maximum permissible amount."

(5) **"Maximum permissible amount"** means, except to the extent permitted under this Plan and Code §414(v), the maximum "annual addition" that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:

(i) the "defined contribution dollar limitation," or

(ii) one hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

The 415 Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §§401(h) or 419A(f)(2)) which is otherwise treated as an "annual addition."

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the "maximum permissible amount" will not exceed the "defined contribution dollar limitation" multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

(f) **Special rules.**

(1) **Aggregation of plans.** For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the "employer" (or a "predecessor employer") under which the Participant receives "annual additions" (including voluntary employee contribution accounts in a defined benefit plan, mandatory contributions to a defined benefit plan, individual medical benefit accounts under§401(h), key employee accounts under a welfare benefit plan described in §419, and simplified employee pensions under§408(k)) of the employer or a predecessor employer, whether or not terminated, will be treated as one defined contribution plan for purposes of the limitations under§ 415(c). Where the employer is a member of a controlled group of corporations or commonly controlled trades or businesses, or a member of an affiliated service group, within the meaning of §§414(b), (c) or (m) and 415(g) and (h), the plan must provide that all such employers are treated as a single employer for purposes of the plan's application of the §415 limitations. Notwithstanding the preceding, multiemployer plans are not aggregated with other multiemployer plans for purposes of §415. For purposes of this Section:

(i) A former "employer" is a "predecessor employer" with respect to a participant in a plan maintained by an "employer" if the "employer" maintains a plan under which the participant had accrued a benefit while performing services for the former "employer," but only if that benefit is provided under the plan maintained by the "employer." For this purpose, the "formerly affiliated plan" rules in Regulation §1.415(f)-1(b)(2) apply as if the "employer" and "predecessor employer" constituted a single employer under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately prior to the "cessation of affiliation" (and as if they constituted two, unrelated employers under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately after the "cessation of affiliation") and "cessation of affiliation" was the event that gives rise to the "predecessor employer" relationship, such as a transfer of benefits or plan sponsorship.

(ii) With respect to an "employer" of a Participant, a former entity that antedates the "employer" is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the "employer" constitutes a continuation of all or a portion of the trade or business of the former entity.

(2) **Break-up of an affiliated employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an "employer" is taken into account for purposes of applying the Code §415 limitations to the "employer," but the "formerly affiliated plan" is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an "employer" is a plan that, immediately prior to the "cessation of affiliation," was actually maintained by one or more of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)), and immediately after the "cessation of affiliation," is not actually maintained by any of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single "employer" under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the "employer" under the employer affiliation rules of Regulation §1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(3) **Mid-year aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no "annual additions" are credited to the Participant's Account after the date on which the plans are required to be aggregated.

4.5 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

Notwithstanding any provision of the Plan to the contrary, if the "annual additions" (as defined in Section 4.4) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any superseding guidance.

4.6 ROLLOVERS

(a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." Furthermore, any Roth Elective Deferrals that are accepted as "rollovers" in this Plan on or after January 1, 2006 shall be separately accounted for. A Participant's Rollover

Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include Former Employees if the Employer and Administrator consent to accept "rollovers" of distributions made to Former Employees from any plan of the Employer. Regardless of whether new loans are permitted, if the Plan permits rollovers, the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers of loans into this Plan if the terms of such loans meet the requirements of being definite, have a reasonable rate of interest, and/or have a definite repayment period (e.g., an asset purchase acquisition whereby the acquiring Employer may choose to accept the rollover of Participant loans from a prior employer in a uniform and nondiscriminatory manner).

(b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Distribution of "rollovers."** At such time as the conditions set forth in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount credited to the Rollover Account maintained on behalf of such Participant. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. Furthermore, unless otherwise elected in the Adoption Agreement, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of "rollover" contributions that may be accepted by the Plan.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code §401(a) which is exempt from tax under Code §501(a)), an annuity plan described in Code §403(a), an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A), and an annuity contract described in Code §403(b).

(g) **Pre-Participation Rollovers.** If an Eligible Employee makes a Rollover Contribution to the Plan prior to satisfying the Plan's eligibility conditions or prior to reaching his or her Entry Date, then the Administrator will treat the Employee as a limited Participant (as described in Rev. Rul. 96-48). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Forfeitures and may not make Elective Deferrals if the Plan is a 401(k) Plan, until the Employee actually becomes a Participant in the Plan.

4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator, amounts may be transferred (within the meaning of Code §414(l)) to this Plan from other tax qualified plans under Code §401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Transfer Account." Furthermore, for vesting purposes, the Participant's Transfer Account may be treated as a separate "Participant's Account."

(b) **Accounting of transfers.** Amounts in a Participant's Transfer Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the

Adoption Agreement and Subsection (d) below, provided the restrictions of Subsection (c) below and Section 6.16 are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination and such combination does not result in the impermissible elimination of any Code §411(d)(6) protected benefits.

(c) **Restrictions on Elective Deferrals.** Except as permitted by Regulations (including Regulation §1.411(d)-4), amounts attributable to elective contributions (as defined in Regulation §1.401(k)-6), including amounts treated as elective contributions, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in the Code §401(k) Regulations.

(d) **Distribution of plan-to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(e) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(f) **Protected benefits.** Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall not result in the elimination or reduction of any "Section 411(d)(6) protected benefit" (as described in Section 8.1(e)) that may not be eliminated or reduced pursuant to Regulation §1.411(d)-4.

(g) **Pre-Participation Transfers.** The Administrator has the discretion to accept a Transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the Entry Date in a uniform and nondiscriminatory manner. If the Plan accepts such a direct transfer of plan assets, then the Administrator will treat the Employee as a limited Participant pursuant to Section 4.6(g).

(h) **Elective Transfers.** The Administrator may authorize the Trustee to (in accordance with the proper election of a Participant or Beneficiary), to enter into an agreement with the trustee of any other plan to transfer as an "Elective Transfer" to the other plan or to receive as an "Elective Transfer" into this Plan, all or a portion of the Account of the electing Participant or Beneficiary. The specific requirements for an "Elective Transfer" depend upon the type of "Elective Transfer" that is utilized to effect the transfer, as described herein.

(1) **Definition of "Elective Transfer."** An "Elective Transfer" is a transfer made at the election of a Participant (or, as applicable, a Beneficiary) and which satisfies the requirements of this Subsection (h).

(2) **Code §411(d)(6)(D) transfer.** A Code §411(d)(6)(D) Transfer means a transfer under Code §411(d)(6)(D) between defined contribution plans, and which a Participant or Beneficiary elects following required statutory notice. Under this Subsection (h)(2), the, the Account need not be distributable at the time of transfer and Code §411(d)(6) protected benefits specifically relating to distribution methods do not carry over to the transferee plan, except, if applicable, the qualified joint and survivor annuity rules set forth in Sections 6.5 and 6.6.

(3) **Acquisition or employment change transfer.** An acquisition or employment change transfer means a transfer under Regulation §1.411(d)-4 Q/A-3(b), between such defined contribution plans as described therein, and which a Participant elects. Under this Subsection (h)(3), the Account need not be distributable at the time of transfer and Code §411(d)(6) protected benefits do not carry over to the transferee plan, except, if applicable, the qualified joint and survivor annuity rules set forth in Sections 6.5 and 6.6.

(4) **Distributable event transfer.** A distributable event transfer means a transfer under Regulation §1.411(d)-4 Q/A-3(c), between Code §401(a) plans, and which a Participant elects. Under this Subsection (h)(4), the Account must be distributable at the time of transfer, but not entirely as a lump-sum which is an eligible rollover distribution. Code §411(d)(6) protected benefits do not carry over to the transferee plan

4.8 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **Not permitted in Money Purchase or Profit Sharing Plan.** Except as provided in Section 4.8(b) below, this Plan will not accept after-tax voluntary Employee contributions. If this is an amendment to a Plan that had previously allowed after-tax voluntary

Employee contributions, then this Plan will not accept after-tax voluntary Employee contributions for Plan Years beginning after the Plan Year in which this Plan is adopted by the Employer.

(b) **After-tax voluntary Employee contributions allowed in 401(k) Plans.** For 401(k) Plans, if elected in the Adoption Agreement, each Participant who is eligible to make Elective Deferrals may, in accordance with nondiscriminatory procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution (other than Roth Elective Deferrals) made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is separately accounted for under the Plan.

(c) **Full vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(d) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event a Participant has received a hardship distribution under the safe harbor hardship provisions of the Code §401(k) Regulations from any plan maintained by the Employer, then the Participant shall be barred from making any after-tax voluntary Employee contributions for a period of six (6) months after receipt of the hardship distribution. Any prior elections to make after-tax voluntary Employee contributions will become void upon the receipt of the hardship distribution that triggers the suspension period of this paragraph.

(e) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

(f) **Prior mandatory contributions.** To the extent a Participant has previously made mandatory Employee contributions under prior provisions of this Plan, such contributions will be treated as after-tax voluntary Employee contributions, except that the provisions of Subsection (d) above permitting a distribution at any time shall not apply to mandatory Employee contributions.

4.9 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **Maintenance of existing QVEC Accounts.** If this is an amendment to a Plan that previously permitted deductible voluntary Employee contributions, then each Participant who made "qualified voluntary Employee contributions" within the meaning of Code §219(e)(2) as it existed prior to the enactment of the Tax Reform Act of 1986, shall have such contributions held in a separate Qualified Voluntary Employee Contribution Account which shall be fully Vested at all times. Such contributions, however, shall not be permitted for taxable years beginning after December 31, 1986.

(b) **Distribution from QVEC Account.** A Participant may, upon written request delivered to the Administrator, make withdrawals from such Participant's Qualified Voluntary Employee Contribution Account. Any distribution shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

(c) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Qualified Voluntary Employee Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

4.10 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted by the Administrator and the terms of the Trust, Participants may direct the Trustee (or Insurer) as to the investment of all or a portion of their individual Account balances in accordance with the Plan's procedures. Participants may direct the Trustee (or Insurer), in writing (or in such other form which is acceptable to the Trustee (or Insurer)), to invest their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the Account of any Participant that is subject to investment direction of such Participant will be considered a Participant Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of gains or losses.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee (or Insurer) that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Discretionary Trustee (or Insurer) reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Discretionary Trustee (or Insurer). Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) or force majeure. The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Other documents required by directed investments.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

4.11 INTEGRATION IN MORE THAN ONE PLAN

If the Employer maintains qualified retirement plans that provide for permitted disparity (integration), the provisions of Section 4.3(b)(2) will apply.

4.12 QUALIFIED MILITARY SERVICE

(a) **USERRA.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code §414(u)(4).

(b) **Qualified reservist distribution.** If elected in the Adoption Agreement, a Participant may elect to receive a "qualified reservist distribution." A "qualified reservist distribution" is any distribution to an individual who is ordered or called to active duty, if: (1) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (2) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (3) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

(c) **Benefit accrual.** If the Employer elects in the Adoption Agreement to apply this Subsection, then for benefit accrual purposes, the Plan treats an individual who becomes Totally and Permanently disabled or dies while performing "qualified military service" (as defined in Code §414(u)) with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), on the day preceding Total and Permanent Disability and terminated employment on the actual date of Total and Permanent Disability.

The Plan will determine the amount of after-tax voluntary Employee contributions and Elective Deferrals of an individual treated as reemployed under this Section for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual after-tax voluntary Employee contributions or Elective Deferrals for the lesser of: (1) the 12-month period of service with the Employer immediately prior to "qualified military service" (as defined in Code §414(u)); or (2) the actual length of continuous service with the Employer.

(d) **Death benefits.** If a Participant dies while performing "qualified military service" (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals (unless otherwise elected in the Adoption Agreement) relating to the period of "qualified military service" but including vesting credit for such period and any other ancillary life insurance or other survivor benefits) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's "qualified military service" as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

(e) **Military Differential Pay.** The following applies with respect to Military Differential Pay: (1) an individual receiving Military Differential Pay is treated as an Employee of the Employer making the payment; (2) the Military Differential Pay is treated as 415 Compensation (and Compensation unless otherwise elected in the Adoption Agreement); and (3) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the Military Differential Pay. The Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any Elective Deferrals, and if applicable, any matching contributions, attributable to Military Differential Pay.

Subsection (e)(3) above applies only if all Employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive Military Differential Pay on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §410(b)(3), (4), and (5)).

(f) **Deemed Severance.** Notwithstanding Subsection (e)(1) above, if elected in the Adoption Agreement, a Participant who performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than thirty (30) days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution of Elective Deferrals on account of this deemed severance, then the individual may not make an Elective Deferral or after-tax voluntary Employee contribution during the six (6) month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a "qualified reservist distribution" as defined in Subsection (a) above), then the other Plan provision will control and the six (6) month suspension will not apply.

4.13 TRANSFER OF ASSETS FROM TERMINATED EMPLOYER DEFINED BENEFIT PENSION PLAN

(a) **Transferred DB Assets.** The Employer may transfer an amount to this Plan from the Employer's terminated defined benefit plan in accordance with Code §4980(d)(2)(B). The amounts transferred into this Plan shall be held in a "transferred assets suspension account." Amounts released from the "transferred assets suspension account" pursuant to the provisions of this Section shall be allocated in the same manner and to the same Participants that Employer Nonelective Contributions are allocated, as described in Section 4.3. If the Plan does not provide for Nonelective Contributions, then the amounts released from the "transferred assets suspension account" pursuant to the provisions of this Section shall be allocated to each Participant eligible to share in allocations in the same ratio as such Participant's Compensation bears to the total Compensation of all Participants eligible to share in allocations. The Employer may, however, designate some or all of the allocated amounts as Qualified Non-Elective Contributions. Amounts transferred to the Plan pursuant to this Section may not, however, be used to offset any matching contributions permitted under the Plan.

The Employer will determine, in its discretion, the amount to be released from the "transferred suspension account." However, the minimum amount that shall be released from the "transferred assets suspension account" for any Plan Year is the percentage of the account based on the following table:

Years Since Transfer	Percentage of Suspense Account
0	14.2857%
1	16.6667%
2	20.0000%
3	25.0000%
4	33.3333%
5	50.0000%
6	100.0000%

(b) **Earnings.** The amount in the "transferred suspension account" shall be credited with earnings and losses as of each Valuation Date in accordance with Section 4.3, except that Participants may not direct the investment of amounts in the "transferred suspension account." Amounts released from the account prior to the last day of a Plan Year shall not share in such earnings or losses.

(c) **Annual additions.** Notwithstanding anything in the Plan to the contrary, amounts in the "transferred suspension account" shall not be treated as "annual additions" pursuant to Section 4.4 until such amounts are released and allocated to Participants.

(d) **Plan termination.** If upon the termination of the Plan any amount credited to the "transferred suspension account" remains unallocated, then such amount shall be allocated as provided above to the Accounts of Participants as of such date of Plan termination, but limited as to each Participant to avoid allocating exceeding the limitations of Code §415 as set forth in Section 4.4. Any amount that cannot be allocated to a Participant under the preceding sentence shall be reallocated to remaining Participants, but only to the extent that no Participant receives an amount that exceeds the limitations of Code §415 as set forth in Section 4.4. The reallocation process will continue until all amounts in the "transferred suspension account" have been reallocated. If all Participants have received the maximum "annual addition" permitted pursuant to Section 4.4, then any remaining amounts shall revert to the Employer.

ARTICLE V
VALUATIONS

5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee (or Insurer), as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee (or Insurer) shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all expenses for which the Trustee (or Insurer) has not yet been paid by the Employer or the Trust Fund. The Trustee (or Insurer), when determining the net worth of the assets, may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

5.2 METHOD OF VALUATION

Except as otherwise provided in the Trust agreement, in determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee (or Insurer) to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee, the Administrator (if the Trustee is a directed Trustee), or Insurer may appraise such assets itself (assuming it has the appropriate expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

ARTICLE VI
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the severance of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without severance of employment with the Employer (subject to Sections 6.11 and 12.2(e)), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant (unless a distribution is mandatory under the other terms of the Plan), of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) **100% vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary.

(c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) **Beneficiary designation.** Unless otherwise elected in the manner prescribed in Section 6.6, the Beneficiary of the Pre-Retirement Survivor Annuity shall be the Participant's surviving Spouse. Except, however, the Participant may designate a Beneficiary other than the Spouse for the Pre-Retirement Survivor Annuity if:

(1) the Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the Spouse has waived the right to be the Participant's Beneficiary,

(2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code §414(p) which provides otherwise),

(3) the Participant has no Spouse, or

(4) the Spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the IRS) notice of such revocation or change with the Administrator. However, the Participant's Spouse must again consent in writing (or in such other form as permitted by the IRS) to any change in Beneficiary unless the original consent acknowledged that the Spouse had the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elected to relinquish such right.

(e) **Beneficiary if no Beneficiary elected by Participant.** A Participant may, at any time, designate a Beneficiary for death benefits, if any, payable under the Plan that are in excess of the Pre-Retirement Survivor Annuity without the waiver or consent of the Participant's Spouse. In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

(1) The Participant's surviving Spouse;

(2) The Participant's issue, per stirpes;

(3) The Participant's surviving parents, in equal shares; or

(4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate). For purposes of these provisions, and with respect to any Beneficiary designations, adopted children shall be treated as children.

(f) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), if a Participant has designated the Spouse as a Beneficiary, then a divorce decree that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code §414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(g) **Simultaneous death of Participant and Beneficiary.** If a Participant and his or her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Administrator will presume conclusively that the Beneficiary predeceased the Participant.

(h) **Slayer statute.** The Administrator may apply slayer statutes, or similar rules which prohibit inheritance by a person who murders someone from whom he or she stands to inherit, under applicable state laws.

(i) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(j) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully

Vested. In the event of a Participant's Total and Permanent Disability, the Participant's entire Vested interest in the Plan will be distributable and may be distributed in accordance with the provisions of Sections 6.5 and 6.7.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on severance of employment.** If a Participant's employment with the Employer and any Affiliated Employer is severed for any reason other than death, Total and Permanent Disability, or attainment of the Participant's Retirement Date, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Administrator may direct the Trustee (or Insurer), when agreed to by the Terminated Participant, to assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee (or Insurer) the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee (or Insurer), pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed $5,000 (or such lower amount as elected in the Adoption Agreement), the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include (1) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B) and (2) if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account. If a mandatory distribution is made pursuant to this paragraph and such distribution is greater than $1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Section 6.15 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Section 6.15, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. The Administrator may establish a uniform and nondiscriminatory procedure as to whether a Participant who fails to make an Affirmative Election with respect to a mandatory distribution of $1,000 or less is treated as having made a "direct rollover" election. For purposes of determining whether the $1,000 threshold set forth in this paragraph is met, the mandatory distribution includes amounts in a Participant's Rollover Account. For purposes of determining whether the $5,000 threshold in this paragraph is met, a Participant's Rollover Account is taken into account unless otherwise elected in the Adoption Agreement. Furthermore, for purposes of applying the $1,000 threshold, the Administrator may apply this paragraph by treating a Participant's Roth Elective Deferral Account separately from the Participant's other Accounts.

(b) **Vesting schedule.** The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or Periods of Service if the elapsed time method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date).

(c) **Top-heavy vesting schedule.** For any Top-Heavy Plan Year, the minimum top-heavy vesting schedule elected by the Employer in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) will automatically apply to the Plan. The minimum top-heavy vesting schedule applies to all benefits within the meaning of Code §411(a)(7) except those attributable to Employee contributions, including benefits accrued before the effective date of Code §416 and benefits accrued before the Plan became top-heavy. Further, no decrease in a Participant's Vested percentage shall occur in the event the Plan's status as top-heavy changes for any Plan Year. However, this Subsection does not apply to the Account balances of any Employee who does not have an Hour of Service after the Plan has initially become top-heavy and the Vested percentage of such Employee's Participant's Account shall be determined without regard to this Section 6.4(c). Furthermore, pursuant to Code §416(i)(4), Participants whose employment is governed by a collective bargaining agreement between the Employer and employee representatives under which retirement benefits were the subject of good faith bargaining will not be subject to this Subsection unless otherwise provided in the collective bargaining agreement and enumerated in the Adoption Agreement.

If in any subsequent Plan Year the Plan ceases to be a Top-Heavy Plan, then unless a specific Plan amendment is made to provide otherwise, the Administrator will continue to use the vesting schedule in effect while the Plan was a Top-Heavy Plan.

(d) **100% vesting on partial or full Plan termination.** Upon the complete discontinuance of the Employer's contributions to the Plan (if this is a profit sharing plan) or upon any full or partial termination of the Plan, all amounts then credited to the Account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) **No reduction in Vested percentage due to change in vesting schedule.** If this is an amended or restated Plan, then notwithstanding the vesting schedule specified in the Adoption Agreement, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the Effective Date or adoption date of this amendment and restatement. The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Article, or due to changes in the Plan's status as a Top-Heavy Plan. Furthermore, if the Plan's vesting schedule is amended (including a change in the calculation of Years of Service or Periods or Service), then the amended schedule will only apply to those Participants who complete an Hour of Service after the effective date of the amendment.

(f) **Continuation of old schedule if 3 Years of Service.** If the Plan's vesting schedule is amended, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to a top-heavy vesting schedule, then each Participant with at least three (3) Years of Service (or Periods of Service if the elapsed time method is elected) as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment, or deemed adoption date, and shall end sixty (60) days after the latest of:

(1) the adoption date, or deemed adoption date, of the amendment,

(2) the effective date of the amendment, or

(3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

(g) **Excludable service for vesting.** In determining Years of Service or Periods of Service for purposes of vesting under the Plan, Years of Service or Periods of Service shall be excluded as elected in the Adoption Agreement. For this purpose, a predecessor plan is described in Regulation §1.411(a)-5(b)(3).

6.5 DISTRIBUTION OF BENEFITS

(a) **Qualified Joint and Survivor Annuity.**

(1) Unless otherwise elected as provided below, a Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all Plan benefits in the form of a Joint and Survivor Annuity. The Joint and Survivor Annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the Spouse during the Spouse's lifetime at a rate equal to either fifty percent (50%), seventy-five percent (75%) (or, sixty-six and two-thirds percent (66 2/3%) if the Insurer used to provide the annuity does not offer a joint and seventy-five percent (75%) survivor annuity), or one hundred percent (100%) of the rate at which such benefits were payable to the Participant. Unless otherwise elected in the Adoption Agreement, a joint and fifty percent (50%) survivor annuity shall be considered the designated qualified Joint and Survivor Annuity and the normal form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect an alternative Joint and Survivor Annuity, which alternative shall be equal in value to the designated qualified Joint and Survivor Annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the Joint and Survivor Annuity by a married Participant, but without fulfilling the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(2) Any election to waive the Joint and Survivor Annuity must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and be consented to in writing (or in such other form as permitted by the IRS) by the Participant's Spouse. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the Spouse expressly permits designations by the Participant without the requirement of further consent by the Spouse). Such Spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no Spouse, the Spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's Spouse may be revoked by the Participant in writing (or in such other form as permitted by the IRS) without the consent of the Spouse at any time during the election period. A revocation of a prior election shall cause the

Participant's benefits to be distributed as a Joint and Survivor Annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former Spouse's waiver shall not be binding on a new Spouse.

(3) The election period to waive the Joint and Survivor Annuity shall be the one-hundred eighty (180) day period ending on the Annuity Starting Date.

(4) For purposes of this Section and Section 6.6, Spouse or surviving Spouse means the Spouse or surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or surviving Spouse and a current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a "qualified domestic relations order" as described in Code §414(p).

(5) With regard to the election, except as otherwise provided herein, the Administrator shall, in accordance with Regulation §1.417(a)(3)-1, provide to the Participant no less than thirty (30) days and no more than one-hundred eighty (180) days before the Annuity Starting Date a written (or such other form as permitted by the IRS) explanation of:

(i) the terms and conditions of the qualified Joint and Survivor Annuity and the "qualified optional survivor annuity" that is payable in lieu of the qualified Joint and Survivor Annuity,

(ii) the Participant's right to make and the effect of an election to waive the Joint and Survivor Annuity,

(iii) the right of the Participant's Spouse to consent to any election to waive the Joint and Survivor Annuity, and

(iv) the right of the Participant to revoke such election, and the effect of such revocation.

(6) Any distribution provided for in this Section may commence less than thirty (30) days after the notice required by Code §417(a)(3) is given provided the following requirements are satisfied:

(i) the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the Joint and Survivor Annuity and to elect (with spousal consent) a form of distribution other than a Joint and Survivor Annuity;

(ii) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant;

(iii) the Annuity Starting Date is after the time that the explanation of the Joint and Survivor Annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and

(iv) distribution in accordance with the affirmative distribution election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant.

(b) **Alternative forms of distributions.** In the event a married Participant duly elects pursuant to paragraph (a)(2) above not to receive the benefit in the form of a Joint and Survivor Annuity, or if such Participant is not married, in the form of a life annuity, the Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement.

(1) One lump-sum payment in cash or in property, provided that if a distribution of property is permitted, it shall be limited to property that is specifically allocated and identifiable with respect to such Participant.

(2) Partial withdrawals.

(3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the joint life expectancy of the Participant and the Participant's designated Beneficiary). Once payments have begun, a Participant may elect to accelerate the payments (reduce the term and increase payments).

(4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(c) **Consent to distributions.** Benefits may not be paid without the Participant's and the Participant's Spouse's consent if the present value of the Participant's Joint and Survivor Annuity derived from Employer and Employee contributions exceeds $5,000 and the benefit is "immediately distributable." However, spousal consent is not required if the distribution will be made in the form of a qualified Joint and Survivor Annuity and the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving Spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62.

Notwithstanding the foregoing, if the value of the Participant's benefit derived from Employer and Employee contributions does not exceed $5,000, then the Administrator may only distribute such benefit in a lump-sum. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant and the Participant's Spouse consent in writing (or in such other form as permitted by the IRS) to such distribution. Any consent required under this paragraph must be obtained not more than one-hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2).

For purposes of this Subsection, the Participant's benefit derived from Employer and Employee contributions shall not include: (1) the Participant's Qualified Voluntary Employee Contribution Account, and (2) if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account.

(d) **Obtaining consent.** The following rules will apply with respect to the consent requirements set forth in Subsection (c):

(1) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan that would satisfy the notice requirements of Code §417;

(2) The Participant must be informed of the right, if any, to defer receipt of the distribution, and a description of the consequences of failing to defer any distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions that are required under Section 6.8;

(3) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than one-hundred eighty (180) days before the Annuity Starting Date;

(4) Written (or such other form as permitted by the IRS) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than one-hundred eighty (180) days before the Annuity Starting Date; and

(5) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

(e) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Section 6.8.

(f) **Annuity Contracts.** All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or Spouse shall comply with all of the requirements of this Plan.

(g) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Plan Section 6.8(a)(4).

(h) **Distribution from partially Vested Account.** If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account, and the Participant may increase the Vested percentage in such Account, then at any relevant time the Participant's Vested portion of the Account will be equal to an amount ("X") determined by the formula: X = P (AB plus D) minus D. For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the Account balance at the relevant time, D is the amount of distribution, and the relevant time is the time at which, under the Plan, the Vested percentage in the Account cannot increase.

(i) **Qualified optional survivor annuity.**

(1) **Right to elect "qualified optional survivor annuity."** Notwithstanding the preceding, effective with respect to Plan Years beginning after December 31, 2007 and prior to the date this Plan is adopted, the Plan satisfied the "qualified optional survivor annuity" provisions set forth in this Subsection. A Participant who elected to waive the qualified Joint and Survivor Annuity form of benefit was entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the Joint and Survivor Annuity explains the terms and conditions of the "qualified optional survivor annuity."

(2) **Definition of "qualified optional survivor annuity."**

(i) **General.** For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

(A) For the life of the Participant with a survivor annuity for the life of the Participant's Spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's Spouse, and

(B) Which is the actuarial equivalent of a single annuity for the life of the Participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(ii) **Applicable percentage.** For purposes of this Subsection, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified Joint and Survivor Annuity bears to the annuity payable during the joint lives of the Participant and the Participant's Spouse). If the survivor annuity percentage is less than seventy-five percent (75%), then the "applicable percentage" is seventy-five percent (75%); otherwise, the "applicable percentage" is fifty percent (50%).

(j) **Source of distribution.** If the Administrator does not set forth a distribution source order from which a partial distribution should occur (e.g., pro rata from all Account sources) in the distribution form or some other administrative procedure, then the Participant or Beneficiary may elect the Account source(s) from which the distribution should occur. This Subsection (j) does not apply to the extent that a Participant or Beneficiary is required under the Plan terms to receive a distribution only from one or more specific Account(s) source or where the Plan terms specifically provide other alternative rules.

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) **Qualified Pre-Retirement Survivor Annuity (QPSA).** Unless otherwise elected as provided below, a Vested Participant who dies before the Annuity Starting Date and who has a surviving Spouse shall have the Pre-Retirement Survivor Annuity paid to the surviving Spouse. The Participant's Spouse may direct that payment of the Pre-Retirement Survivor Annuity commence within a reasonable period after the Participant's death. If the Spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the Spouse may elect a later commencement date. Any distribution to the Participant's Spouse shall be subject to the rules specified in Section 6.8.

(b) **Election to waive QPSA.** Any election to waive the Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and shall require the Spouse's irrevocable consent in the same manner provided for in Section 6.5(a)(2). Further, the Spouse's consent must acknowledge the specific non-Spouse Beneficiary. Notwithstanding the foregoing, the non-Spouse Beneficiary need not be acknowledged, provided the consent of the Spouse acknowledges that the Spouse has the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elects to relinquish such right.

(c) **Time to waive QPSA.** The election period to waive the Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains age 35 and end on the date of the Participant's death. An earlier waiver (with spousal consent) may be made provided a written (or such other form as permitted by the IRS) explanation of the Pre-Retirement Survivor Annuity is given to the Participant and such waiver becomes invalid at the beginning of the Plan Year in which the Participant turns age 35. In the event a Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

(d) **QPSA notice.** With regard to the election, the Administrator shall provide each Participant within the applicable election period, with respect to such Participant (and consistent with Regulations), a written (or such other form as permitted by the IRS) explanation of the Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Section 6.5(a)(5). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:

(1) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35;

(2) A reasonable period after the individual becomes a Participant;

(3) A reasonable period ending after the Plan no longer fully subsidizes the cost of the Pre-Retirement Survivor Annuity with respect to the Participant; or

(4) A reasonable period ending after Code §401(a)(11) applies to the Participant.

For purposes of applying this Subsection, a reasonable period ending after the enumerated events described in (2), (3) and (4) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the "applicable period" for such Participant shall be redetermined.

(e) **Pre-REA.** The Pre-Retirement Survivor Annuity provided for in this Section shall apply only to Participants who are credited with an Hour of Service on or after August 23, 1984. Participants who are not credited with an Hour of Service on or after August 23, 1984, shall be provided with rights to the Pre-Retirement Survivor Annuity in accordance with Section 303(e)(2) of the Retirement Equity Act of 1984.

(f) **Consent.** If the value of the Pre-Retirement Survivor Annuity (or the death benefit in the case of a Profit Sharing Plan or 401(k) Plan that is not required to provide a Pre-Retirement Survivor Annuity) derived from Employer and Employee contributions does not exceed $5,000, the Administrator shall direct the distribution of such amount to the Participant's Spouse in a single lump-sum as soon as practicable. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Spouse consents in writing (or in such other form as permitted by the IRS). If the value exceeds $5,000, an immediate distribution of the entire amount may be made to the surviving Spouse, provided such surviving Spouse consents in writing (or in such other form as permitted by the IRS) to such distribution. Any consent required under this paragraph must be obtained not more than one-hundred eighty (180) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2).

(g) **Alternative forms of distribution.** Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Section 6.8 and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant in the event there is an election to waive the Pre-Retirement Survivor Annuity, and for any death benefits in excess of the Pre-Retirement Survivor Annuity. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution.

(1) One lump-sum payment in cash or in property that is allocated to the Accounts of the Participant at the time of the distribution.

(2) Partial withdrawals.

(3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity Contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.

(4) In the form of an annuity over the life expectancy of the Beneficiary.

(5) If death benefits in excess of the Pre-Retirement Survivor Annuity are to be paid to the surviving Spouse, such benefits may be paid pursuant to (1), (2) or (3) above, or used to purchase an annuity so as to increase the payments made pursuant to the Pre-Retirement Survivor Annuity.

(h) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

(i) **Payment to a child.** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.

(j) **Voluntary Contribution Account.** In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's Spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

(k) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Section 6.8(a)(4).

6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. Notwithstanding anything in the Plan to the contrary, unless a Participant otherwise elects, payments of benefits under the Plan will begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer. The failure of a Participant and, if applicable, the Participant's Spouse, to request a distribution shall be deemed to be an election to defer the commencement of payment of any benefit until the time otherwise permitted under the Plan.

6.8 REQUIRED MINIMUM DISTRIBUTIONS

(a) **General rules**

(1) **Effective Date.** Subject to the Joint and Survivor Annuity requirements set forth in Plan Section 6.5, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan.

(2) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).

(3) **Limits on distribution periods.** As of the first "distribution calendar year," distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Participant, (ii) the joint lives of the Participant and a "designated Beneficiary," (iii) a period certain not extending beyond the "life expectancy" of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "designated Beneficiary."

(4) **TEFRA Section 242(b)(2) elections.**

(i) Notwithstanding the other provisions of this Section, other than the Spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

(A) The distribution by the Plan is one which would not have disqualified such Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(B) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(C) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(D) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.

(iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(b) **Time and manner of distribution**

(1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date."

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows as elected in the Distributions Upon Death Section of the Adoption Agreement (or if no election is made, then the Beneficiary may elect either the lifetime method or the five-year method and if the Beneficiary makes no election, the five-year method shall apply):

(i) **Lifetime method (Spouse).** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," then, except as otherwise provided herein, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) **Lifetime method (non-Spouse).** If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(b)(3) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) **Five-year method.** If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death or if otherwise elected pursuant to the Adoption Agreement with respect to a "designated Beneficiary," the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) **Death of Spouse.** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary" and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.8(b)(2) and Section 6.8(b)(3), unless Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date." If Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date," as of the first "distribution calendar year" distributions will be made in accordance with Sections 6.8(c) and 6.8(d) and only in a form of distribution provided in Section 6.5 or 6.6, as applicable. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Regulations thereunder.

(c) **Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following:

(i) the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(ii) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the "Participant's account balance" by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year."

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," the remaining "life expectancy" of the surviving Spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining "life expectancy" of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** Except as provided in Sections 6.8(b)(2) and 6.8(b)(3), if the Participant dies before the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as provided in Section 6.8(d)(1).

(ii) **No "designated Beneficiary."** If the Participant dies before the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i), this Section 6.8(d)(2) will apply as if the surviving Spouse were the Participant.

(e) **Definitions.** For purposes of this Section, the following definitions apply:

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under Code §401(a)(9) and Regulation §1.401(a)(9)-4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.

(4) "Participant's account balance" means the Participant's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(a) **Reduction for QLACs.** A Participant's account balance is reduced by any QLACs (as defined below). This paragraph applies only to QLACs purchased on or after July 2, 2014.

(b) **Definition of QLAC.** A QLAC is qualifying longevity annuity contract as defined in A-17 of Regulation §1.401(a)(9)-6. Pursuant to such Regulation, a QLAC is an annuity contract that is purchased from an insurance company for a Participant and that, in accordance with the rules of application of paragraph (c) below, satisfies each of the following requirements:

(1) The premiums paid with respect to the contract on a date do not exceed the lesser of the following amounts, determined in accordance with the provisions of paragraph (b) of A-17 of Regulation §1.401(a)(9)-6.

(a) An amount equal to the excess of $125,000 (as adjusted under paragraph (d)(2) of A–17 of Regulation §1.401(a)(9)-6), over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the Participant under the Plan, or any other plan, annuity, or account described in Code §401(a), 403(a), 403(b), or 408 or eligible governmental plan under §457(b).

(b) An amount equal to the excess of 25% of the Participant's account balance under the Plan (including the value of any QLAC held under the Plan for the Participant) as of that date, over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the Participant under the Plan.

(2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the eighty-fifth (85^{th}) anniversary of the Employee's birth;

(3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of paragraph (c) of A-17 of Regulation §1.401(a)(9)-6 (other than the requirement that annuity payments commence on or before the required beginning date (RBD));

(4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6;

(5) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (c) of A-17 of Regulation §1.401(a)(9)-6;

(6) Except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6, when the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(7) The contract is not a variable contract under Code §817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

(c) **Rules of application relating to premiums.**

(1) **Reliance on representations.** For purposes of the limitation on premiums described in paragraphs (b)(1) and (2) above, unless the Administrator has actual knowledge to the contrary, the Administrator may rely on an Employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in such paragraphs, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the Employer or an entity that is treated as a single employer with the Employer under Code §414(b), (c), (m), or (o).

(2) **Consequences of excess premiums.** If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b)(1)(a) above, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the Participant's

account in accordance with paragraph (d)(1)(ii)(B) of A-17 of Regulation §1.401(a)(9)-6. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under paragraph (a) above as of the date on which the contract ceases to be a QLAC.

If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the Participant's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (b)(1)(a) above at any time, and the value of the contract will not be included in the employee's account balance under paragraph (a) above. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the Participant's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the Participant's account balance for that calendar year must be increased to reflect that excess premium in the same manner as a Participant's account balance is increased under Regulation §1.401(a)(9)–7, A–2 to reflect a rollover received after the last valuation date.

(3) **Application of 25-percent limit.** For purposes of the 25% limit under paragraph (b)(1)(b) above, a Participant's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

(d) **Dollar and age limitations subject to adjustments.** In the case of calendar years beginning on or after January 1, 2015, the $125,000 amount under paragraph (b)(1)(a) will be adjusted at the same time and in the same manner as the limits are adjusted under Code §415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this paragraph that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000. The maximum age set forth in paragraph (b)(2) may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents.

If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(1)(a) or the age limitation in paragraph (b)(2), any subsequent adjustment that is made pursuant to this paragraph (d) will not cause the contract to become a QLAC.

(5) "Required beginning date" means, except as otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires, except that benefit distributions to a "5-percent owner" must commence by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

(6) "5-percent owner" means a Participant who is a 5-percent owner as defined in Code §416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

If, in the opinion of the Administrator, a Participant or Beneficiary entitled to a distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age in the case of a minor, then the Administrator shall direct the distribution to the Participant's or Beneficiary's valid power of attorney, court appointed guardian, or any other person authorized under state law to receive the benefit (including a custodian under a Uniform Transfers or Gifts to Minors Act), upon furnishing evidence of such status satisfactory to the Administrator. The Administrator and the Trustee (or Insurer) do not have any liability with respect to payments so made and neither the Administrator nor the Trustee (or Insurer) has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). Before treating any Participant as being missing, the Administrator must conduct a reasonable and diligent search for the Participant, using one or more of search methods the Plan Administrator determines are appropriate under the circumstances, such as the methods suggested by DOL Field Assistance Bulletin 2014-01. Such search methods include:

(1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail;

(2) check with the administrator of other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts;

(3) identify and contact the Participant's Designated Beneficiary;

(4) use one or more free internet search tools;

(5) attempt contact via email or telephone, or

(6) use proprietary internet search tools, commercial locator services, credit reporting agencies, information brokers, or other search methods. Regarding search methods (2) and (3) above, if the Plan Administrator encounters privacy concerns, the Plan Administrator may request that the Employer or other plan fiduciary (under (2)), or the Designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan Administrator.

In addition, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed $1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b), or use the PBGC Missing Participant Program, or any successor program, at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture and prior to the time the Plan has been terminated, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Section 6.15(b)(1) may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

6.11 IN-SERVICE DISTRIBUTION

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the Accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder. The Plan may, however, make a partial distribution pursuant to this Section regardless of whether partial distributions are otherwise permitted pursuant to the Adoption Agreement. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts. The Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions on in-service distributions made pursuant to this Section.

6.12 DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** Except to the extent Section 12.10 applies, if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to an amount necessary to satisfy the Participant's immediate and heavy financial need, determined in accordance with the remaining provisions of this Section. Distribution of Elective Deferrals (and any earnings credited to a participant's Elective Deferral and Qualified Matching and Qualified Nonelective accounts as of the later of December 31, 1988, and or the end of the last Plan Year ending before July 1, 1989) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Such distributions may also be made from those Accounts from which such distribution are authorized by the remaining provisions of this Section. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

(1) Expenses for (or necessary to obtain) medical care (as defined in Code §213(d));

(2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));

(4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B));

(5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(d) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

6.13 SPECIAL RULE FOR CERTAIN PROFIT SHARING PLANS

(a) The provisions of this Section apply to a Participant in a Profit Sharing Plan or 401(k) Profit Sharing Plan to the extent elected in the Adoption Agreement. However, unless otherwise permitted pursuant to Regulation §1.411(d)-4, this Section shall not apply with respect to amounts that are transferred directly or indirectly (i.e., other than by a rollover) to this Plan from a defined benefit plan, money purchase pension plan, target benefit plan, or stock bonus or profit sharing plan which is subject to the survivor annuity requirements of Code §§401(a)(11) and 417.

(b) If an election is made to not offer life annuities as a form of distribution, then a Participant shall be prohibited from electing benefits in the form of a life annuity and the Joint and Survivor Annuity provisions of Section 6.5 shall not apply.

(c) If an election is made to offer life annuities as a form of distribution but not as the normal form of distribution, then the Joint and Survivor Annuity provisions of Section 6.5 shall not apply if a Participant does not elect an annuity form of distribution. Furthermore, Subsection (e) shall not apply if a Participant elects an annuity form of distribution.

(d) Notwithstanding anything in Sections 6.2 and 6.6 to the contrary, upon the death of a Participant, the automatic form of distribution will be a lump-sum rather than a Qualified Pre-Retirement Survivor Annuity. Furthermore, the Participant's Spouse will be the Beneficiary of the Participant's entire Vested interest in the Plan unless an election is made to waive the Spouse as Beneficiary. The other provisions in Section 6.2 shall be applied by treating the death benefit in this Subsection as though it is a Pre-Retirement Survivor Annuity.

(e) Except to the extent otherwise provided in this Section, the provisions of Sections 6.2 and 6.5 regarding spousal consent shall be inoperative with respect to this Plan.

(f) If a distribution is one to which Code §§401(a)(11) and 417 do not apply, such distribution may commence less than thirty (30) days after the notice required under Regulation §1.411(a)-11(c) is given, provided that:

(1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(2) the Participant, after receiving the notice, affirmatively elects a distribution.

6.14 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All benefits provided to a Participant in this Plan shall be subject to the rights afforded to any Alternate Payee under a "qualified domestic relations order." Furthermore, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), a distribution to an Alternate Payee shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not reached the "earliest retirement age." For the purposes of this Section, "qualified domestic relations order" and "earliest retirement age" shall have the meanings set forth under Code §414(p).

A domestic relations order that otherwise satisfies the requirements for a "qualified domestic relations order" will not fail to be a "qualified domestic relations order": (i) solely because the order is issued after, or revises, another domestic relations order or "qualified domestic relations order"; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death.

6.15 DIRECT ROLLOVERS

(a) **Right to direct rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least $500. Furthermore, the Administrator may apply this Section by treating a Participant's Roth Elective Deferral Account separately from the Participant's other Accounts.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) **Eligible rollover distribution.** An "eligible rollover distribution" means any distribution described in Code §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" "designated Beneficiary," or for a specified period of ten (10) years or more; (b) any distribution to the extent such distribution is required under Code §401(a)(9); (c) any hardship distribution; (d) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (e) any loans that are treated as deemed distributions under Code §72(p) which are not also an offset distribution; (f) dividends paid on employer securities described in Code §404(k); (g) the costs of life insurance coverage (P.S. 58 costs); (h) prohibited allocations treated as deemed distributions under Code §409(p); and (i) permissible withdrawals from a EACA described in Code §414(w); (k) any other distributions described in Regulation §1.402(c)-2; and (j) any other distribution reasonably expected to total less than $200 during a year. For purposes of the $200 rule, a distribution from a designated Roth account and a distribution from other accounts under the Plan may be treated as made under separate plans.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to:

(i) a traditional individual retirement account or annuity described in Code §408(a) or (b) (a "traditional IRA")

(ii) a Roth individual account or annuity described in Code §408A (a "Roth IRA"), or

(iii) a qualified defined contribution plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan.** An "eligible retirement plan" is a "traditional IRA," a "Roth IRA," a qualified trust (an employees' trust) described in Code §401(a) which is exempt from tax under Code §501(a), an annuity plan described in Code §403(a), an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code §403(b), and for distributions made after December 18, 2015, a SIMPLE IRA to the extent permitted under Code §408(p)(1)(B), that accepts the "distributee's" "eligible rollover distribution." The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is an Alternate Payee. If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. A "direct rollover" of a distribution from a Roth Elective Deferral Account (other than an "in-Plan Roth rollover contribution" (as defined in Section 12.11)) will only be made to another Roth Elective Deferral Account under an applicable retirement plan described in Code §402A(e)(1) or to a Roth IRA described in Code §408A, and only to the extent that the rollover is permitted under the rules of Code §402(c). In the case of a "distributee" who is a non-Spouse designated Beneficiary, (i) the "direct rollover" may be made only to a traditional or Roth individual retirement account or an annuity described in Code §408(b) ("IRA") that is established on behalf of the designated non-Spouse Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11), and (ii) the determination of any required minimum distribution required under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

(3) **Distributee.** A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employee's or Former Employee's Spouse or former Spouse who is the Alternate Payee, are "distributees" with regard to the interest of the Spouse or former Spouse.

(4) **Direct rollover.** A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided within the same thirty (30) – one-hundred eighty (180) day timeframe applicable to the Participant consent notice as set forth in Section 6.5(d)(3). The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than $200.

(d) **Non-Spouse Beneficiary rollover right.** A non-Spouse Beneficiary who is a "designated Beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion an "eligible rollover distribution" to an IRA the Beneficiary establishes for purposes of receiving the distribution. If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a "designated Beneficiary."

6.16 RESTRICTIONS ON DISTRIBUTION OF ASSETS TRANSFERRED FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code §414(l), to this Plan from a money purchase pension plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution). Notwithstanding anything in the Plan to the contrary, a Participant may not obtain an in-service distribution with respect to such transferred amounts prior to the earlier of the Participant's Normal Retirement Age or attainment of age 62.

6.17 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs established by the IRS or the Department of Labor.

6.18 UNCASHED CHECKS

Subject to the provisions of Section 6.10, the Plan Administrator operationally may dispose of an uncashed distribution from the Plan to a lost Participant at the time and in the manner described in this Section). Prior to doing so, the Plan Administrator must make reasonable and diligent efforts to contact the lost Participant, including using such search methods the Plan Administrator determines are appropriate under the circumstances. At the discretion of the Administrator, Plan distributions that remain uncashed, and which the Administrator chooses not to reinvest in the Plan may be: (1) voluntarily remitted to a State unclaimed property department, but no sooner than the appropriate state dormancy period has expired; or (2) deposited for the benefit of the lost Participant either to a: (a) bank account, or (b) individual retirement account if the original distribution was an eligible rollover distribution.

For purposes of this Section 6.18, a distribution is "uncashed" if it remains uncashed by the "cash-by" date on the check or in an accompanying notice, e.g., a date prescribed by the bank or the Plan. This "cash-by" date must be at least forty-five (45) days after the check is issued. If there is no prescribed "cash-by" date, then the amount is considered uncashed if it is not cashed by the check's stale date.

ARTICLE VII
TRUST, TRUSTEE AND CUSTODIAN

7.1 CONFLICT WITH PLAN

In the event of any conflicts between the provisions of this Plan and the Trust agreement, the provisions of this Plan control.

7.2 POWERS AND DUTIES OF CUSTODIAN

Subject to the terms of the Trust agreement, the Employer may appoint a Custodian of the Plan assets. The duties of the Custodian are those set forth in the agreement with the Custodian. Any reference in the Plan to a Trustee also is a reference to a Custodian unless the Employer has appointed a Custodian separate from the Trustee or the context of the Plan indicates otherwise.

7.3 LIFE INSURANCE

(a) **Permitted insurance.** To the extent not prohibited under the terms of the Trust agreement, the Trustee (or Insurer), in accordance with nondiscriminatory operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of a Profit Sharing Plan (including a 401(k) Plan), on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than $1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a Profit Sharing Plan (including a 401(k) Plan), to the portion of the Participant's Account, other than the Participant's Elective Deferral Account, Qualified Matching Account and Qualified Nonelective Contribution Account, that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** Subject to the survivor annuity requirements of Sections 6.5 and 6.6 (if applicable), the Administrator must direct the Trustee (or Insurer) to distribute the Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the Participant's actual retirement date.

(c) **Limitations on purchase.** Notwithstanding anything herein above to the contrary, amounts credited to a Participant's Qualified Voluntary Employee Contribution Account pursuant to Section 4.9, shall not be applied to the purchase of life insurance Contracts. Furthermore, no life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) **Proceeds payable to Plan.** The Trustee (or Insurer) must be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee (or Insurer); however, the Trustee (or Insurer) shall be required to pay over all proceeds of the Contract to the Participant's "designated Beneficiary" in accordance with the distribution provisions of Article VI as directed by the Administrator. A Participant's Spouse will be the "designated Beneficiary" pursuant to Section 6.2, unless a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee (or Insurer) shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code §401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

(e) **No responsibility for act of Insurer.** The Employer, the Administrator and the Trustee shall not be responsible for the validity of the provisions under a Contract issued hereunder or for the failure or refusal by the Insurer to provide benefits under such Contract. The Employer, Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the Contract or which renders the Contract invalid or unenforceable in whole or in part.

7.4 LOANS TO PARTICIPANTS

(a) **Permitted loans.** To the extent not prohibited under the terms of the Trust agreement, the Administrator may, in the Administrator's sole discretion, make loans to Participants or Beneficiaries. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Participants; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees.

(b) **Spousal consent.** If the Vested interest of a Participant is used to secure any loan made pursuant to this Section, then the written (or such other form as permitted by the IRS) consent of the Participant's Spouse shall be required in a manner consistent with Section 6.5(a), provided the spousal consent requirements of such Section apply to the Plan. Such consent must be obtained within the one-hundred eighty (180) day period prior to the date the loan is made. A new consent shall be required if the Vested interest of a Participant is used for renegotiation, extension, renewal or other revision of the loan. However, unless the loan program established pursuant to this Section provides otherwise, no spousal consent shall be required under this paragraph if the total interest subject to the security is not in excess of $5,000. If a valid spousal consent has been obtained in accordance with this Subsection, then, notwithstanding any other provision of this Plan, the portion of the Participant's Vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's Vested Account balance (determined without regard to the preceding sentence) is payable to the surviving Spouse, then the Account balance shall be adjusted by first reducing the Vested Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse.

(c) **Loan program.** The Administrator shall be authorized to establish a Participant loan program to provide for loans under the Plan. The loan program shall be established in accordance with Department of Labor Regulation §2550.408(b)-1(d)(2) providing for loans by the Plan to parties-in-interest under said Plan, such as Participants or Beneficiaries. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

(1) the identity of the person or positions authorized to administer the Participant loan program;

(2) a procedure for applying for loans;

(3) the basis on which loans will be approved or denied;

(4) limitations, if any, on the types and amounts of loans offered;

(5) the procedure under the program for determining a reasonable rate of interest;

(6) the types of collateral which may secure a Participant loan; and

(7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(d) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations. Notwithstanding anything in the Plan's loan policy to the contrary, if a loan is accelerated due to a Participant's termination of employment, then the Plan may direct that the loan note be transferred or directly rolled over to another plan that will accept the transfer or rollover of the note.

(e) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

7.5 AUDIT

(a) **Duty to engage accountant.** If an audit of the Plan's records shall be required by the Act and the regulations thereunder for any Plan Year, the Administrator shall engage on behalf of all Participants an independent qualified public accountant for that purpose. Such accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Administrator and the Trustee a report of the audit setting forth the accountant's opinion as to whether any statements, schedules or lists, that are required by Act §103 or the Secretary of Labor to be filed with the Plan's annual report, are presented fairly in conformity with generally accepted accounting principles applied consistently.

(b) **Payment of fees.** All auditing and accounting fees shall be an expense of and may, at the election of the Employer, be paid from the Trust Fund.

(c) **Information to be provided to Administrator.** If some or all of the information necessary to enable the Administrator to comply with Act §103 is maintained by a bank, insurance company, or similar institution, regulated, supervised, and subject to periodic examination by a state or federal agency, then it shall transmit and certify the accuracy of that information to the Administrator as provided in Act §103(b) within one hundred twenty (120) days after the end of the Plan Year or such other date as may be prescribed under regulations of the Secretary of Labor.

7.6 PLAN-TO-PLAN TRANSFERS

Notwithstanding any other provision contained in this Plan and to the extent not prohibited under the terms of the Trust agreement, the Administrator may direct the Trustee to transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code §401(a), provided that the trust to which such transfers are made permits the transfer to be made and further provided that the terms of the transferee plan properly allocates the funds in each account to a transferee account that preserves all the required features and restrictions applicable to such account under this Plan. However, the transfer of amounts from this Plan to a nonqualified foreign trust is treated as a distribution and the transfer of assets and liabilities from this Plan to a plan that satisfies Section 1165 of the Puerto Rico Code is also treated as distribution from the transferor plan.

7.7 EMPLOYER SECURITIES AND REAL PROPERTY

Subject to the provisions of Section 7.8 and to the extent not prohibited by the terms of the Trust agreement, the Plan permits the Trustee to acquire and hold "qualifying employer securities" and "qualifying employer real property," as those terms are defined in the Act. However, no more than one hundred percent (100%), in the case of a Profit Sharing Plan or 401(k) Plan, or ten percent (10%), in the case of a Money Purchase Plan, of the fair market value of all the assets in the Trust Fund may be invested in "qualifying employer securities" and "qualifying employer real property."

Any such investment shall only be made upon written direction of the Employer who shall be solely responsible for the propriety of such investment, except to the extent Participants direct the investment of their Accounts in such investment. Additional directives regarding the purchase, sale, or retention of such securities may be addressed in a funding policy, statement of investment policy, or other separate procedures or documents governing the investment of Plan assets.

Notwithstanding the preceding, if the Plan does not permit Participants to direct the investment of their Elective Deferral Accounts, then the Trust Fund shall only be permitted to acquire or hold "qualifying employer securities" and "qualifying employer real property" to the extent permitted under Act §407.

7.8 DIVESTMENT OF EMPLOYER SECURITIES

(a) **Application of Section.** This Section only applies to a Plan that is an "applicable defined contribution plan." Except as provided herein or in Regulations, an "applicable defined contribution plan" means a defined contribution plan that holds employer securities (within the meaning of Regulation §1.401(a)(35)-1(f)(3)) that are publicly traded (within the meaning of Regulation §1.401(a)(35)-1(f)(5)). An "applicable defined contribution plan" does not include a one-participant plan, as defined in Code §401(a)(35)(E)(iv) or an employee stock ownership plan ("ESOP") as defined in Code §4975(e)(7) if: (1) the ESOP holds no contributions (or related earnings) that are (or were ever) subject to Code §§401(k) or 401(m); and (2) the ESOP is a separate plan, for purposes of Code §414(l), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers. Except as provided in Regulation §1.401(a)(35)-1(f)(2)(iv) or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), the Plan is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a "publicly traded Employer security."

(b) **Rule applicable to Elective Deferrals, Employee contributions and rollovers.** If any portion of an "applicable individual's" account attributable to Elective Deferrals, after-tax voluntary Employee contributions or rollover contributions is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Subsection (e). For purposes of this Section, an "applicable individual" means: (1) a Participant; (2) an Alternate Payee who has an account under the Plan; or (3) a Beneficiary of a deceased Participant.

(c) **Rule applicable to Employer contributions.** If any portion of an "applicable individual's" account attributable to Employer contributions (other than Elective Deferrals) is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Subsection (d) below.

(1) **Definition of "Applicable individual."** For purposes of this Subsection, an "applicable individual" means: (i) a Participant who has completed at least three (3) Years of Service; (ii) an Alternate Payee who has an account under the Plan with respect to a Participant who has completed at least three (3) Years of Service; or (iii) a Beneficiary of a deceased Participant. For this purpose, a Participant completes three (3) Years of Service on the last day of the vesting computation period provided for under the Plan that constitutes the completion of the third year of service under Code §411(a)(5). However, if the Plan uses the elapsed time method of crediting service for vesting purposes (or the Plan provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), a Participant completes three (3) years of service on the day immediately preceding the third anniversary of the Participant's date of hire.

(2) **Definition of "publicly traded Employer security."** For purposes of this Section, a "publicly traded Employer security" means a security which is traded on a national securities exchange that is registered under Section 6 of the Securities Exchange Act of 1935 or which is traded on a foreign national securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority and the security is deemed by the securities and Exchange commission as having a "ready market" under SEC Rule 14c3-1 (17 CFR 240.15c3). In addition, if the Employer, or any member of a controlled group of corporations (as described in Regulation §1.401(a)(35)-1(f)(2)(iv)(A) which includes the Employer, has issued a class of stock which is a publicly traded employer security, and the Plan hold employer securities which are not publicly traded Employer securities, then the Plan shall be treated as holding publicly traded Employer securities.

(d) **Investment options.** For purposes of this Section, other investment options must include not less than three (3) investment options, other than Employer securities, to which the individual who the right to divest under Subsections (c) or (d) may direct the proceeds from the divestment of Employer securities. Each of the three (3) investment options must be diversified and have materially different risk and return characteristics. For this purpose, investment options that constitute a broad range of investment alternatives within the meaning of Department of Labor Regulation §2550.404c–1(b)(3) are treated as being diversified and having materially different risk and return characteristics.

(e) **Restrictions or conditions on investments in Employer securities.** The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Furthermore, except as permitted by Regulation §1.401(a)(35)-1(e), the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets.

ARTICLE VIII
AMENDMENT, TERMINATION AND MERGERS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.

(b) **Permissible amendments.** The Employer may amend the Plan to accomplish any of the following items without affecting reliance on the opinion letter: (1) change the choice of options in the Adoption Agreement or Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), (2) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments where the IRS has provided that their adoption will not cause the Plan to be treated as an individually designed plan, (3) add a list of any "Section 411(d)(6) protected benefits" which must be preserved, (4) adjust the limitations under Code §§415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual cost-of-living increases, and (5) change the pre-approved plan Provider's name. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Code §412(c), will no longer participate in this pre-approved plan and this Plan will be considered to be an individually designed plan for purposes of reliance. A Plan amendment does not include an amendment or substitution of the Trust.

(c) **Provider amendments.** The Employer (and every Participating Employer) expressly delegates authority to the Provider, the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this preapproved plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the preapproved plan as amended qualifies under Code §401(a) (unless a ruling or determination is not required by the IRS). The Provider, as defined in section 4.08 of Rev. Proc. 2017-41, may amend any part of the Plan. However, for purposes of reliance on an Opinion Letter, the Provider will no longer have the authority to amend the Plan on behalf of the Employer as of the date (1) the Employer amends the plan to incorporate a type of Plan described in section 6.03 of Rev. Proc. 2017-41 that is not permitted under the Pre-approved Plan program, or (2) the Internal Revenue Service notifies the Employer, in accordance with section 8.06(3) of Rev. Proc. 2017-41, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan. For purposes of Provider amendments, the mass submitter shall be recognized as the agent of the Provider. If the Provider does not adopt the amendments made by the mass submitter, it will no longer be identical to or a minor modifier of the mass submitter plan. The mass submitter reserves the right to amend the Plan Documents from time to time in accordance with this Section 8.1(c).

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(e) **Anti-cutback restrictions.** No Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" which results in a further restriction on such benefits (even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in Code §§411(a)(3) – (11)) unless such "Section 411(d)(6) protected benefits" are preserved in operation with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. Notwithstanding the preceding, "Section 411(d)(6) protected benefits" may be eliminated or reduced to the extent permitted by Code §412(d)(2) or Regulations (including Regulation §§1.411(d)-3 and 1.411(d)-4) or other IRS guidance. For purposes of this Subsection, a plan amendment which has the effect of decreasing a Participant's "Section 411(d)(6) protected benefits" with respect to benefits attributable to service before the amendment shall be treated as reducing a "Section 411(d)(6) protected benefit." "Section 411(d)(6) protected benefits" are benefits described in Code §411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. The preceding shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. The Employer has no obligation or liability whatsoever to maintain the Plan for any specific length of time and may terminate the Plan or discontinue contributions under the Plan at any time without liability hereunder for any such discontinuance. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan (in the case of a Profit Sharing Plan), all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5, except that no Participant or spousal consent is required. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of "Section 411(d)(6) protected benefits" as described in Section 8.1(e). In addition, to the extent Section 6.13 (Special Rule for Certain Profit Sharing Plans) could apply to all or a portion of the assets, then, subject to Section 12.2, the Administrator will direct the distribution of assets to Participants in a lump-sum distribution. Such distribution will be made as soon as reasonable after the Plan termination, regardless of: (1) the amount of the Participant's Vested Account balance; (2) the Participant's age; and (3) whether the Participant consents to the distribution. Furthermore, to the extent a distribution is required to be made pursuant to this Section and the Participant does not consent to such distribution, then the Administrator may make a direct distribution to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b).

(c) **Abandoned plan.** If the Employer, in accordance with DOL guidance, abandons the Plan, then the Trustee (or Insurer) or other party permitted to take action as a qualified terminal administrator (QTA), may terminate the Plan in accordance with applicable DOL and IRS regulations and other guidance.

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to, any other plan provided the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411(d)(6) protected benefits" as described in Section 8.1(e).

ARTICLE IX
TOP-HEAVY PROVISIONS

9.1 TOP-HEAVY PLAN REQUIREMENTS

Notwithstanding anything in this Plan to the contrary, for any Top-Heavy Plan Year, the Plan shall provide the special vesting requirements of Code §416(b) pursuant to Section 6.4 of the Plan and the special minimum allocation requirements of Code §416(c) pursuant to Section 4.3(f) of the Plan. Except as otherwise provided in the Plan, the minimum allocation shall be an Employer Nonelective Contribution and, if no vesting schedule has been selected in the Adoption Agreement or the selection is invalid, shall be subject to the 6 Year Graded vesting schedule described in the Adoption Agreement.

Notwithstanding the above, the Top-Heavy Plan Year requirements of this Article and Code §416 shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) or §401(k)(13) and matching contributions meet the requirements of Code §401(m)(11) or §401(m)(12).

9.2 DETERMINATION OF TOP-HEAVY STATUS

(a) **Definition of Top-Heavy Plan.** This Plan shall be a Top-Heavy Plan if any of the following conditions exists:

(1) if the "top-heavy ratio" for this Plan exceeds sixty percent (60%) and this Plan is not part of any "required aggregation group" or "permissive aggregation group";

(2) if this Plan is a part of a "required aggregation group" but not part of a "permissive aggregation group" and the "top-heavy ratio" for the group of plans exceeds sixty percent (60%); or

(3) if this Plan is a part of a "required aggregation group" and part of a "permissive aggregation group" and the "top-heavy ratio" for the "permissive aggregation group" exceeds sixty percent (60%).

(b) **Top-heavy ratio.** "Top-heavy ratio" means, with respect to a "determination date":

(1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan (as defined in Code §408(k))) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the "determination date" has or has had accrued benefits, the top-heavy ratio for this Plan alone or for the "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the "determination date" (including any part of any Account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or Total and Permanent Disability), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or Total and Permanent Disability), both computed in accordance with Code §416 and the Regulations thereunder.

Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the "determination date," but which is required to be taken into account on that date under Code §416 and the Regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the "determination date" has or has had any accrued benefits, the top-heavy ratio for any "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the "present value" of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the "determination date," and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all participants, determined in accordance with (1) above, and the "present value" of accrued benefits under the defined benefit plan or plans for all participants as of the "determination date," all determined in accordance with Code §416 and the Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the "determination date" (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or Total and Permanent Disability).

(3) For purposes of (1) and (2) above, the value of Account balances and the "present value" of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the "determination date," except as provided in Code §416 and the Regulations thereunder for the first and second plan years of a defined benefit plan. The Account balances and accrued benefits of a Participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the 1-year period ending on the "determination date" will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code §416 and the Regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of Account balances and accrued benefits will be calculated with reference to the "determination dates" that fall within the same calendar year.

The accrued benefit of a participant other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code §411(b)(1)(C).

(c) **Determination date.** "Determination date" means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" means the last day of that Plan Year.

(d) **Permissive aggregation group.** "Permissive aggregation group" means the "required aggregation group" of plans plus any other plan or plans of the Employer or any Affiliated Employer which, when considered as a group with the "required aggregation group," would continue to satisfy the requirements of Code §§401(a)(4) and 410.

(e) **Present value.** "Present value" means the present value based only on the interest and mortality rates specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(f) **Required aggregation group.** "Required aggregation group" means: (1) each qualified plan of the Employer or any Affiliated Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the "determination date" or any of the four preceding Plan Years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer or any Affiliated Employer which enables a plan described in (l) to meet the requirements of Code §401(a)(4) or 410.

(g) **Valuation Date.** Valuation Date means the date elected by the Employer in the Adoption Agreement as of which Account balances or accrued benefits are valued for purposes of calculating the "top-heavy ratio."

ARTICLE X
MISCELLANEOUS

10.1 EMPLOYER ADOPTIONS

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement.

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

10.2 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

10.3 ALIENATION

(a) **General rule.** Subject to the exceptions provided below and as otherwise permitted by the Code and the Act, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 7.4. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 2.10.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code §414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former Spouse of a Participant shall be treated as the Spouse or surviving Spouse for all purposes under the Plan.

(d) **Exception for certain debts to Plan.** Notwithstanding any provision of this Section to the contrary, an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code §§401(a)(13)(C) and (D).

10.4 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION

(a) **Applicable law.** This Plan shall be construed and enforced according to the Code, the Act and the laws of the state or commonwealth in which the Employer's principal office is located (unless otherwise designated in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)), other than its laws respecting choice of law, to the extent not pre-empted by federal law.

(b) **Administrator's discretion/nondiscriminatory administration.** The Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Administrator makes under the Plan is final and binding upon any affected person. The Administrator must exercise all of its Plan powers and discretion, and perform all of its duties, in a uniform and nondiscriminatory manner.

(c) **Communications.** All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Administrator (or, as applicable, the Trustee or Insurer) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.

(d) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator, Trustee and Insurer are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(e) **Plan terms binding.** The Plan is binding upon all parties, including but not limited to, the Employer, Trustee, Insurer, Administrator, Participants and Beneficiaries.

(f) **Parties to litigation.** Except as otherwise provided by applicable law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust or any Fiduciary. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon all parties, including the Employer, the Administrator, Trustee, Insurer, Participants and Beneficiaries.

(g) **Fiduciaries not insurers.** The Trustee, Administrator and the Employer in no way guarantee the Plan assets from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Plan. The liability of the Employer, the Administrator and the Trustee to make any distribution from the Trust at any time and all times is limited to the then available assets of the Trust.

(h) **Construction/severability.** The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with the Act and other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

(i) **Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

(j) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

10.5 GENDER, NUMBER AND TENSE

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

10.6 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

10.7 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact pursuant to Act §403(c)(2)(A), the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

(c) **Contribution conditioned on deductibility.** Except as specifically stated in the Plan, any contribution made by the Employer to the Plan (if the Employer is not tax-exempt) is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following a final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a court of competent jurisdiction, demand repayment of such disallowed contribution and the Trustee (or Insurer) shall return such contribution within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

10.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

10.9 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

10.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, including those referenced in Section 6.9, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

10.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

10.12 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The "named Fiduciaries" of this Plan are (a) the Employer, (b) the Administrator, (c) the Trustee (if the Trustee has discretionary authority), and (d) any Investment Manager appointed hereunder. The Employer may, however, modify the preceding sentence to add or remove named Fiduciaries. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan, trust agreement, or similar agreement (as applicable) including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under the Plan; and shall have the sole authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's "funding policy and method"; and to amend the elective provisions of the Adoption Agreement or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. If the Trustee has discretionary authority, it shall have the sole responsibility of management of the assets held under the Trust, except those assets, the management of which has been assigned to an Investment Manager or Administrator, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

10.13 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan or an amendment to the Plan is adopted, or such later date as the Secretary of Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code §§401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this pre-approved plan and will be considered an individually designed plan.

10.14 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11, 6.12 and 12.10, only upon death, Total and Permanent Disability, normal or early retirement, severance of employment, or termination of the Plan.

10.15 ELECTRONIC MEDIA

The Administrator may use any electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law. Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Regulation §1.401(a)-21.

10.16 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under the Act. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate Fiduciary or Plan official in undertaking correction of a fiduciary breach, including correction under the DOL Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC. If the Plan is a 401(k) Plan, to correct an operational error, the Administrator may require the Trustee (or Insurer) to distribute from the Plan Elective Deferrals or Vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code §415, Code §402(g), or a failure of the ADP or ACP tests. Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

10.17 NONTRUSTEED PLANS

If the Plan is funded solely with Contracts, then notwithstanding Sections 10.7 and 10.13, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual Contracts that provide a Participant's benefit under the Plan, such individual Contracts shall constitute the Participant's Account balance. If this Plan is funded by group Contracts, under the group annuity or group insurance Contract, premiums or other consideration received by the Insurer must be allocated to Participants' Accounts under the Plan.

ARTICLE XI
PARTICIPATING EMPLOYERS

11.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer, any Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer (a participation agreement). In the event a Participating Employer is not an Affiliated Employer, then the provisions of Article XIV shall apply rather than the provision of this Article XI.

11.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) **Permissible variations of participation agreement.** The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the Employer shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the Employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the Employer's Adoption Agreement. To the extent that the participation agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the Employer. If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer." Notwithstanding the other provisions of this Section, if a standardized Adoption Agreement is being used, then the elections available to Participating Employers must be limited to the elections available to the Employer in order to ensure the Plan, by design, satisfies the minimum coverage requirements of Code §410(b) and the nondiscrimination requirements of Code §401(a)(4).

(b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.

(c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

11.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

11.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a severance of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

11.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

For non-standardized Adoption Agreements, if elected by a Participating Employer in its participation agreement, then to the extent permitted under Code §411(d)(6), effective with respect to Plan Years beginning in and after the Plan Year in which the provisions of this Plan are adopted, any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share in the contribution and Forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed. Alternatively (if so elected), and with respect to standardized Adoption Agreements, any contribution or Forfeiture subject to allocation during each Plan Year shall be allocated among all Participants of all Participating Employers in accordance with the provisions of this Plan. However, if a Participating Employer is not an Affiliated Employer then any contributions made by such Participating Employer will only be allocated among the Participants eligible to share in the contribution and Forfeiture allocation of the Participating Employer.

On the basis of the information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

11.6 AMENDMENT

Any Participating Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. Any such amendment is effective and binding upon existing Participating Employers.

11.7 DISCONTINUANCE OF PARTICIPATION

Except in the case of a standardized Adoption Agreement, any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee (or insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any "Section 411(d)(6) protected benefits" as described in Section 8.1(e). If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the Employees of such Participating Employer.

11.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

11.9 PARTICIPATING EMPLOYER CONTRIBUTION FOR AFFILIATE

If any Participating Employer is prevented in whole or in part from making a contribution which it would otherwise have made under the Plan by reason of having no current or accumulated earnings or profits, or because such earnings or profits are less than the contribution which it would otherwise have made, then, pursuant to Code §404(a)(3)(B), so much of the contribution which such Participating Employer was so prevented from making may be made, for the benefit of the participating employees of such Participating Employer, by other Participating Employers who are members of the same affiliated group within the meaning of Code §1504 to the extent of their current or accumulated earnings or profits, except that such contribution by each such other Participating Employer shall be limited to the proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution to the Plan made without regard to this paragraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the Participating Employers remaining after adjustment for all contributions made to the Plan without regard to this paragraph.

A Participating Employer on behalf of whose employees a contribution is made under this paragraph shall not be required to reimburse the contributing Participating Employers.

ARTICLE XII
CASH OR DEFERRED PROVISIONS

Except as specifically provided elsewhere in this Plan, the provisions of this Article shall apply with respect to any 401(k) Profit Sharing Plan regardless of any provisions in the Plan to the contrary.

12.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **Permitted contributions.** For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

(1) The amount of the total salary deferral elections of all Participants made pursuant to Section 12.2(a), which amount shall be deemed Elective Deferrals, plus

(2) If elected in the Adoption Agreement, a matching contribution equal to the percentage, if any, specified in the Adoption Agreement of the Elective Deferrals of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution or Qualified Matching Contribution as elected in the Adoption Agreement, plus

(3) If elected in the Adoption Agreement, a discretionary amount determined each year by the Employer, which amount if any, shall be deemed an Employer Nonelective Contribution, or a "prevailing wage contribution" as set forth in the Adoption Agreement, which amount shall be an Employer Nonelective Contribution or a Qualified Nonelective Contribution as elected in the Adoption Agreement, plus

(4) A Qualified Nonelective Contribution in a discretionary amount, subject to the provisions of Section 12.12.

(5) Regardless of any provision in the Plan to the contrary, Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The contributions and allocations under this Plan shall be those set forth in the collective bargaining agreement and enumerated in the Adoption Agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. The provisions of this Subsection only apply if no more than two percent (2%) of the Employees covered pursuant to the agreement are professionals as defined in Regulation §1.410(b)-9.

(b) **Timing and form of contributions.** Notwithstanding the foregoing, if the Employer is not a tax-exempt entity, then the Employer's contributions for any Fiscal Year may generally not exceed the maximum amount allowable as a deduction to the Employer under the provisions of Code §404. However, to the extent necessary to provide the top-heavy minimum allocations, the Employer shall make a contribution even if it exceeds current or accumulated net profit or the amount that is deductible under Code §404. Subject to the consent of the Trustee (or Insurer), the Employer may make its contribution to the Plan in the form of property, provided such contribution does not constitute a prohibited transaction under the Code or the Act. The decision to make a contribution of property is subject to the general fiduciary rules under the Act.

12.2 PARTICIPANT'S SALARY DEFERRAL ELECTION

(a) **Salary deferral elections.** Each Participant may elect to defer a portion of Compensation which would have been received in the Plan Year, but for the salary deferral election, subject to the limitations of this Section and the Adoption Agreement. A salary deferral election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election, or if later, the later of the date the Employer adopts this cash or deferred arrangement or the date such arrangement first became effective. Any elections made pursuant to this Section, including a modification or termination of an election, shall become effective as soon as is administratively feasible following the receipt of such election by the Administrator. Furthermore, if the Employer elects in the Adoption Agreement to apply the Automatic Contribution Arrangement provisions, then in the event a Participant fails to make an Affirmative Election, such Participant shall be deemed to have made a salary deferral election in accordance with the provisions selected in the Adoption Agreement and such other procedures that the Administrator may establish and apply in a uniform and nondiscriminatory basis.

Regardless of the definition of Compensation selected in the Adoption Agreement, the Administrator may adopt a uniform policy for purposes of determining the amount of a Participant's Elective Deferrals by excluding "non-cash Compensation." For purposes of this Section, "non-cash Compensation" means tips, fringe benefits, and other items of Compensation not regularly paid in cash or cash equivalents, or for which the Employer does not or may not have the ability to withhold Elective Deferrals in cash for the purpose of transmitting the Elective Deferrals to the Plan pursuant to the Participant's Salary Deferral Agreement. Additionally, the Employer may, on a uniform and nondiscriminatory basis, permit different salary deferral elections for different items of Compensation (e.g., a separate salary deferral election for bonuses), and may exclude for purposes of calculating Elective Deferrals one or more items of irregular pay (e.g., bonuses or car allowances).

If elected in the Adoption Agreement, effective as of the date specified in the Adoption Agreement, a Participant may make a salary deferral election to have Roth Elective Deferrals contributed to the Plan. Roth Elective Deferrals are includible in the Participant's gross income at the time deferred and must be irrevocably designated as Roth Elective Deferrals by the Participant in the Salary Deferral Agreement (or if applicable, in the Automatic Deferral provisions of the Plan).

The amount by which Compensation is reduced shall be that Participant's Elective Deferrals and shall be treated as an Employer contribution and allocated to that Participant's Elective Deferral Account. If the Plan permits Roth Elective Deferral contributions, then a Participant's Pre-Tax Elective Deferrals shall be allocated to the Participant's Pre-Tax Elective Deferral Account and a Participant's Roth Elective Deferrals shall be allocated to the Participant's Roth Elective Deferral Account. Except in the case of an "in-Plan Roth Rollover Contribution" made pursuant to Section 12.11, Elective Deferrals contributed to the Plan as one type, either Roth Elective Deferrals or Pre-Tax Elective Deferrals, may not later be reclassified as the other type.

Notwithstanding anything in the Plan to the contrary, Participants may not make Elective Deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code §401(a)(17). Furthermore, for purposes of this Section, the annual dollar limitation of Code §401(a)(17) ($200,000 as adjusted) shall not apply except that the Administrator may elect to apply such limit as part of the salary deferral election procedures established hereunder. In applying any Plan limit(s) on Elective Deferrals which are subject to matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

Once made, a Participant's election to reduce Compensation shall remain in effect until modified or terminated. The Administrator shall establish procedures setting forth the conditions on modifications of an election. However, Participants must be permitted to modify elections at least once each Plan Year. Furthermore, terminations may be made at any time.

(b) **Eligible Automatic Contribution Arrangement (EACA).** If elected in the Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as an Eligible Automatic Contribution Arrangement (EACA) and the following provisions will apply:

(1) **Participants subject to EACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the EACA Automatic Deferral on the "EACA Effective Date" thereof which may include some or all current Participants or may be limited to those Employees who become Participants after the EACA Effective Date. The "EACA Effective Date" means the date on which the EACA goes into effect, either as to the overall Plan or as to an individual Participants as the context requires. An EACA becomes effective as to the Plan as of the date the Employer elects in the Adoption Agreement. A Participant's "EACA Effective Date" is as soon as practicable after the Participant is subject to Automatic Deferrals under the EACA, consistent with: (i) applicable law; and (ii) the objective of affording the Participant a reasonable period of time after receipt of the EACA notice to make an Affirmative Election (and, if applicable, an investment election).

(2) **Uniformity.** The Automatic Deferral percentage must be a uniform percentage of Compensation. However, the Plan does not violate the uniform Automatic Deferral percentage requirement merely because the Plan applies any of the following provisions:

(i) **Years of participation.** The Automatic Deferral percentage varies based on the number of Plan Years (or portions) the Participant has participated in the Plan while the Plan has applied EACA provisions;

(ii) **No reduction from prior percentage.** The Plan does not reduce a deferral percentage that, immediately prior to the EACA's effective date was higher (for any Participant) than the Automatic Deferral percentage;

(iii) **Applying statutory limits.** The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code §401(a)(17), 402(g) (determined without regard to Age 50 Catch-Up Deferrals), or 415;

(iv) **No Automatic Deferrals during hardship suspension.** The Plan does not apply the Automatic Deferral during a period of suspension, under the Plan's hardship distribution provisions, of Participant's right to make Elective Deferrals to the Plan following a hardship distribution; or

(v) **Disaggregated groups.** The Plan applies different default percentages to different groups if the groups can be disaggregated under Regulation §1.401(k)-1(b)(4).

(3) **EACA notice.** The Administrator annually will provide a notice to each Participant covered by the EACA provisions (including, if elected in the Adoption Agreement, Participants who made an Affirmative Election) within a reasonable period of time prior to each Plan Year the Employer maintains the Plan as an EACA ("EACA Plan Year").

(i) **Deemed reasonable notice/new Participant.** The Administrator is deemed to provide timely notice if the Administrator provides the EACA notice at least thirty (30) days and not more than ninety (90) days prior to the beginning of the EACA Plan Year.

(ii) **Mid-year notice/new Participant or Plan.** If: (A) an Employee becomes eligible to make Elective Deferrals in the Plan during an EACA Plan Year but after the Administrator has provided the annual EACA notice for that Plan Year; or (B) the Employer adopts mid-year a new Plan as an EACA, the Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Elective Deferrals. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(iii) **Content.** The EACA notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant in accordance with applicable law.

(4) **EACA permissible withdrawal.** If elected in the Adoption Agreement, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Subsection. Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

(i) **Amount.** If a Participant elects a permissible withdrawal under this Subsection, then the Plan must make a distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for allocable gains and losses to the date of the distribution). The Plan may separately account for Automatic Deferrals, in which case the entire account will be distributed. If the Plan does not separately account for the Automatic Deferrals, then the Plan must determine earnings or losses in a manner similar to the refund of Excess Contributions.

(ii) **Fees.** Notwithstanding the above, the Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section than applies to other distributions. The Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

(iii) **Timing.** The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than ninety (90) days, or such shorter period as specified in the Adoption Agreement, after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. For this purpose, EACAs under the Plan are aggregated, except that the mandatory disaggregation rules of Code §410(b) apply. In addition, a Participant's withdrawal right is not restricted due to the Participant making an Affirmative Election during the ninety (90) day period (or shorter period as specified in the Adoption Agreement).

(iv) **Rehired Employees.** For purposes of paragraph (iii) above, an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA will be treated as having not had such contributions for any prior Plan Year as well.

(v) **Effective date of the withdrawal election.** The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of (A) the pay date of the second payroll period beginning after the election is made, or (B) the first pay date that occurs at least thirty (30) days after the election is made. The election will also be deemed to be an Affirmative Election to have no Elective Deferrals made to the Plan.

(vi) **Related matching contributions.** The Administrator will not take any Elective Deferrals withdrawn pursuant to this Section into account in computing and allocating matching contributions. If the Employer has already allocated matching contributions to the Participant's Account with respect to Elective Deferrals being withdrawn pursuant to this Subsection (4), then such matching contributions, as adjusted for gains and losses, must be forfeited.

(vii) **Treatment of withdrawals.** With regard to Elective Deferrals withdrawn pursuant to this Subsection, (A) the Administrator will disregard such Elective Deferrals in the Actual Deferral Percentage Test (if applicable); (B) the Administrator will disregard such Elective Deferrals for purposes of the limitation on Elective Deferrals under Code §402(g); (C) such Elective Deferrals are not subject to the consent requirements of Code §401(a)(11) or 417. The Administrator will disregard any matching contributions forfeited under paragraph (vi) above in the ACP Test (if applicable).

(viii)**Effect of Affirmative Election.** A Participant's Affirmative Election continues in effect until the Participant subsequently revokes or modifies his or her Salary Deferral Agreement, or the Affirmative Election no longer applies (e.g., due to re-enrollment). A Participant who has an Affirmative Election in effect is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes the Affirmative Election, unless the Participant is subject to the EACA. In addition, a Participant who is subject to the EACA provisions who revokes his or her Affirmative Election, will be deemed to have made an Affirmative Election to have no Elective Deferrals made to the Plan.

(c) **Catch-Up Contributions.** If selected in the Adoption Agreement, all Employees who are eligible to make Elective Deferrals under this Plan and who have attained age 50 before the close of the taxable year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the dollar limitations of, Code §414(v)(2)(B)(i) for the taxable year. The limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code §414(v)(2)(C). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §§402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code §401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such Catch-Up Contributions (but Catch-Up Contributions made in prior years are counted in determining whether the Plan is a Top-Heavy Plan). If selected in the Adoption Agreement, Catch-Up Contributions shall not be treated as Elective Deferrals for purposes of applying any Employer matching contributions. Such option cannot be selected if the Plan elects to follow the safe harbor provisions of Section 12.8.

(d) **Full vesting.** The balance in each Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account shall be fully Vested at all times and, except as otherwise provided herein, shall not be subject to Forfeiture for any reason.

(e) **Distribution restrictions.** Amounts held in a Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account may only be distributable as provided in (4) below or as provided under the other provisions of this Plan, but in no event prior to the earlier of the following events or any other events permitted by the Code or Regulations:

(1) the Participant's severance of employment (regardless of when the severance of employment occurred), Total and Permanent Disability, or death;

(2) the Participant's attainment of age 59 1/2;

(3) the proven financial hardship of the Participant, subject to the limitations of Section 12.10(d) (or, for a non-standardized Adoption Agreement, Section 6.12);

(4) the termination of the Plan without the existence at the time of Plan termination of another defined contribution plan or the establishment of a successor defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution plan does not include an employee stock ownership plan (as defined in Code §4975(e)(7) or 409(a)), a simplified employee pension plan (as defined in Code §408(k)), a SIMPLE individual retirement account plan (as defined in Code §408(p)), a plan or contract that satisfies the requirements of Code §403(b), or a plan that is described in Code §457(b) or (f). A distribution that is made because of this paragraph (4) must be made in a lump-sum;

(5) the Participant's call to active duty, because of the Participant's status as a member of a reserve component, for a period of at least 180 days or for an indefinite period, i.e., a "qualified reservist distribution" within the meaning of Section 6.18; or

(6) a Participant's service in the uniformed services while on active duty for a period of at least 30 days, i.e., a "deemed distribution" within the meaning of Section 6.18.

(f) **Code §402(g) dollar limit.** A Participant's Elective Deferrals made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan during any calendar year shall not exceed the dollar limitation imposed by Code §402(g), as in effect at the beginning of such calendar year, except to the extent permitted under Section 12.2(c) and Code §414(v), if applicable. The limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code §402(g)(4). For this purpose, "elective deferrals" means, with respect to a calendar year, the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code §401(k), any salary reduction simplified employee pension (as defined in Code §408(k)(6)), any SIMPLE IRA plan described in Code §408(p), any eligible deferred compensation plan under Code §457, any plans described under Code §501(c)(18), and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code §403(b) pursuant to a salary deferral agreement.

(g) **Excess Deferrals.** If a Participant has Excess Deferrals for a taxable year, the Participant may, not later than March 1st following the close of such taxable year, notify the Administrator in writing of such excess and request that the Participant's Elective Deferrals under this Plan be reduced by an amount specified by the Participant. In such event, the Administrator shall direct the distribution of such excess amount (and any "income" allocable to such excess amount) to the Participant not later than the first April 15th following the close of the Participant's taxable year. Any distribution of less than the entire amount of Excess Deferrals and "income" shall be treated as a pro rata distribution of Excess Deferrals and "income." The amount distributed shall not exceed the Participant's Elective Deferrals under the Plan for the taxable year. Any distribution on or before the last day of the Participant's taxable year must satisfy each of the following conditions:

(1) the Participant shall designate the distribution as Excess Deferrals;

(2) the distribution must be made after the date on which the Plan received the Excess Deferrals; and

(3) the Plan must designate the distribution as a distribution of Excess Deferrals.

Regardless of the preceding, if a Participant has Excess Deferrals solely from Elective Deferrals made under this Plan or any other plan maintained by the Employer, a Participant will be deemed to have notified the Administrator of such excess amount and the Administrator shall direct the distribution of such Excess Deferrals in a manner consistent with the provisions of this Subsection.

For the purpose of this Subsection, "income" means the amount of income or loss allocable to a Participant's Excess Deferrals, which amount shall be allocated in the same manner as income or losses are allocated pursuant to Section 4.3(c). The Administrator may not distribute "income" allocable to Excess Deferrals for the period between the end of the Participant's taxable year in which the Excess Deferral occurred and the date of the distribution (the "gap period").

Notwithstanding the above, for any years in which a Participant makes both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the distribution of any Excess Deferrals for such year shall be made, as operationally determined by the Administrator, from the Participant's Pre-Tax Elective Deferral Account or Participant's Roth Elective Deferral Account. Matching contributions which relate to Excess Elective Deferrals (regardless of whether such Excess Elective Deferrals are Pre-Tax Elective Deferrals or Roth Elective Deferrals) shall be treated as a Forfeiture.

Any distribution of Excess Deferrals made pursuant to this Subsection shall be made first from unmatched Elective Deferrals (regardless of whether they are attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals) and, thereafter, from Elective Deferrals which are matched. Matching contributions which relate to Excess Deferrals that are distributed pursuant to this Section 12.2(g) shall be treated as a Forfeiture to the extent required pursuant to Code §401(a)(4) and the Regulations thereunder.

(h) **Coordination with ADP test.** Notwithstanding the preceding, a Participant's Excess Deferrals shall be reduced, but not below zero, by any distribution and/or recharacterization of Excess Deferrals pursuant to Section 12.5(b) for the Plan Year beginning with or within the taxable year of the Participant.

(i) **Suspension due to hardship or deemed severance.** In the event a Participant has received a hardship distribution pursuant to Regulation §1.401(k)-1(d)(3) from any other plan maintained by the Employer or from the Participant's Elective Deferral Account pursuant to Section 12.10, or has received a distribution on account of deemed severance on account of qualified military service from this Plan or any other plan maintained by the Employer, then such Participant shall not be permitted to elect to have Elective Deferrals contributed to the Plan in accordance with the rules set forth herein for such distributions.

(j) **Distributable based on other terms of Plan.** At Normal Retirement Date, or such other date when the Participant shall be entitled to receive benefits, the fair market value of the Participant's Elective Deferral Account shall be used to provide benefits to the Participant or the Participant's Beneficiary.

(k) **Adjustment due to anticipated failure of ADP test.** If during a Plan Year, it is projected that the aggregate amount of Elective Deferrals to be allocated to all Highly Compensated Participants under this Plan would cause the Plan to fail the tests set forth in Section 12.4, then the Administrator may automatically reduce the Elective Deferrals of affected Highly Compensated Participants, beginning with the Highly Compensated Participant who has the highest actual deferral ratio until it is anticipated the Plan will pass the tests or until the actual deferral ratio equals the actual deferral ratio of the Highly Compensated Participant having the next highest actual deferral ratio. This process may continue until it is anticipated that the Plan will satisfy one of the tests set forth in Section 12.4. Alternatively, the Employer may specify a maximum percentage of Compensation that may be deferred by Highly Compensated Participants (and any such limitation shall be a Plan-imposed limit for purposes of determining Catch-up Contributions).

(l) Procedures must be established. The Employer and the Administrator shall establish procedures necessary to implement the salary deferral elections provided for herein. Such procedures may contain limits on salary deferral elections such as limiting elections to whole percentages of Compensation or to equal dollar amounts per pay period that an election is in effect. The Employer may elect to impose a limit on Elective Deferrals in the Adoption Agreement, as amended from time to time and accompanied by providing timely notice to the Participants. Any such limit change made during a Plan Year applies only prospectively and applies until the

Administrator changes or revokes the limit. The Employer and Administrator may not, however, in a SIMPLE 401(k) Plan impose any Plan limit on Elective Deferrals except as provided under Code §408(p).

(1) **Automatic contribution arrangements.** Unless otherwise provided in Subsection (b) above or any elections in the Adoption Agreement, the procedures may provide for a reasonable period time for a Participant to election out of the automatic contribution arrangement or the Automatic Deferral and/or Automatic Escalation of Affirmative Election provisions. The Employer may also provide for the re-enrollment of all or some Participants (such as requiring re-enrollment for just those Participants who have an Affirmative Election below a certain percentage or amount). Furthermore, the Plan has a reasonable period of time to implement an Automatic Deferral or an Automatic Escalation after a Participant is first subject to the Automatic Deferral and/or Automatic Escalation of Affirmative Election provisions. Such Automatic Escalation cannot be more frequently than annually. If this Section applies to a Participant, then each year on the Change Date specified in the Adoption Agreement, the Participant's affirmative deferral election will expire. If the Participant fails to complete a new affirmative election subsequent to the Change Date, the Participant becomes subject to the adjusted deferral percentage determined under Election 27 of the Adoption Agreement. Each year, the Participant can always complete a new affirmative election and designate a new deferral percentage.

(2) **Rehired Participants.** Unless otherwise provided in Subsection (b) above, any elections in the Adoption Agreement, the Salary Deferral Agreement, or the Plan's procedures, the termination of a Participant's employment with the Employer automatically revokes the Participant's Salary Deferral Agreement with regard to periods after the Participant is rehired. The Plan is permitted to establish procedures whereby termination of employment for a short period of time will not revoke an Affirmative Election or be treated as a termination of employment for purposes of the Plan's Automatic Contribution Arrangement and/or Automatic Escalation of Affirmative Election provisions.

12.3 ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

(a) **Separate accounting.** The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) **Contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate contributions as follows:

(1) With respect to Elective Deferrals made pursuant to Section 12.1(a)(1), to each Participant's Elective Deferral Account in an amount equal to each such Participant's Elective Deferrals for the year.

(2) With respect to the Employer matching contribution made pursuant to Section 12.1(a)(2), to each Participant's Account, or Participant's Qualified Matching Contribution Account, as elected in the Adoption Agreement, in accordance with Section 12.1(a)(2) and Section 12.12.

Except, however, in order to be entitled to receive any Employer matching contribution, a Participant must satisfy the conditions for sharing in the Employer matching contribution as set forth in the Adoption Agreement.

(3) With respect to the Employer Nonelective Contribution made pursuant to Section 12.1(a)(3), to each Participant's Account in accordance with the provisions of Section 4.3(b)(2) or (3) (including the "gateway contribution" pursuant to Section 4.3(b)(4)), whichever is applicable.

(4) With respect to the Employer Qualified Nonelective Contribution made pursuant to Section 12.1(a)(4), to each Participant's Qualified Nonelective Contribution Account in the amount specified by the Employer. With respect to a standardized Adoption Agreement, however, if an HCE will receive an allocation of the Qualified Nonelective Contribution made pursuant to Section 12.1(a)(4), then the contribution shall be allocated to each Participant's Qualified Nonelective Contribution Account in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.

(c) **Elective Deferrals not taken into account Top-Heavy minimums.** Notwithstanding anything in the Plan to the contrary, in determining whether a Non-Key Employee (and Key Employee if elected in the Adoption Agreement) has received the required minimum allocation pursuant to Section 4.3(f) such Non-Key Employee's (and Key Employee's) Elective Deferrals shall not be taken into account. In addition, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the ACP test and other requirements of Code §401(m).

(d) **Elective Deferrals not conditioned on service during a year.** Notwithstanding anything herein to the contrary, Participants who terminated employment during the Plan Year shall share in the Elective Deferral contributions made by the Employer for the year of termination without regard to the Hours of Service credited.

(e) **Conditions for sharing in contributions/allocations.** Notwithstanding anything herein to the contrary (other than Sections 3.5(h), 4.3(f) and 12.3(f)), Participants shall only share in the allocations of the Employer matching contribution made pursuant to Section 12.1(a)(2), the Employer Nonelective Contributions made pursuant to Section 12.1(a)(3), the Employer Qualified Nonelective Contribution made pursuant to Section 12.1(a)(4), and Forfeitures as provided in the Adoption Agreement. If no election is made in the Adoption Agreement, then a Participant shall be eligible to share in the allocation of the Employer's contribution for the year if the Participant completes more than 500 Hours of Service (or three (3) consecutive calendar months if the elapsed time method is chosen in the Adoption Agreement) during the Plan Year or is employed on the last day of the Plan Year.

(f) **Code §410(b) fail-safe.** Notwithstanding anything in this Section to the contrary, if, in the non-standardized Adoption Agreement, the Employer elected to apply the 410(b) ratio percentage fail-safe provisions, then the provisions of Section 4.3(m) shall apply. Furthermore, if the Plan includes Employer matching contributions subject to ACP testing, then Section 4.3(m) shall be applied separately to the Code §401(m) portion of the Plan.

12.4 ACTUAL DEFERRAL PERCENTAGE TESTS

(a) **ADP test.** Except as otherwise provided herein, this Subsection applies if the prior year testing method is elected in the Adoption Agreement. The "Actual Deferral Percentage" (hereinafter ADP) for a Plan Year for Participants who are Highly Compensated Employees (hereinafter "HCEs") for each Plan Year and the prior year's ADP for Participants who were Nonhighly Compensated Employees (hereinafter "NHCEs") for the prior Plan Year must satisfy one of the following tests:

(1) The ADP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ADP for Participants who were "NHCEs" for the prior Plan Year multiplied by 1.25; or

(2) The ADP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ADP for Participants who were "NHCEs" for the prior Plan Year multiplied by 2.0, provided that the ADP for Participants who are "HCEs" does not exceed the prior year's ADP for Participants who were "NHCEs" in the prior Plan Year by more than two (2) percentage points.

Notwithstanding the above, for purposes of applying the foregoing tests with respect to the first Plan Year (as defined in Regulation §1.401(k)-2(c)(2)) in which the Plan permits any Participant to make Elective Deferrals, the ADP for the prior year's "NHCEs" shall be the greater of three percent (3%) or the current Plan Year's ADP for these Participants. However, the provisions of this paragraph may not be used if the Plan is a successor plan or is otherwise prohibited from using such provisions pursuant to Regulation §1.401(k)-2(c)(2).

(b) **Current year testing method.** Notwithstanding the foregoing, if the current year testing method is elected in the Adoption Agreement, or if no election is made in the Adoption Agreement, and for any Plan Year for which the Employer has either reserved the right to make a nonelective "ADP test safe harbor contribution" pursuant to Section 12.8 or amended the Plan to make an "ADP test safe harbor contribution," the ADP tests in (a)(1) and (a)(2) above shall be applied by comparing the current Plan Year's ADP for Participants who are "HCEs" with the current Plan Year's ADP (rather than the prior Plan Year's ADP) for Participants who are "NHCEs" for the current Plan Year. Once made, the Employer can elect prior year testing for a Plan Year only if the Plan has used current year testing for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years the Plan has been in existence) or if, as a result of a merger or acquisition described in Code §410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing and a plan using current year testing and the change is made within the transition period described in Code §410(b)(6)(C)(ii).

(c) **Determination of "HCEs" and "NHCEs."** A Participant is an "HCE" for a particular Plan Year if the Participant meets the definition of an "HCE" in effect for that Plan Year. Similarly, a Participant is an "NHCE" for a particular Plan Year if the Participant does not meet the definition of an "HCE" in effect for that Plan Year.

(d) **Calculation of ADP.** For the purposes of this Section and Section 12.5, ADP means, for a specific group of Participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) the amount of Employer contributions actually paid over to the Plan on behalf of such Participant for the Plan Year to (2) the Participant's 414(s) Compensation for such Plan Year. Employer contributions on behalf of any Participant shall only include: (1) any Elective Deferrals made pursuant to the Participant's salary deferral election (including Excess Deferrals of "HCEs"), but excluding (i) Excess Deferrals of "NHCEs" that arise solely from Elective Deferrals made under the plan or plans of this Employer and (ii) Elective Deferrals that are taken into account in the ACP tests set forth in Section 12.6 (provided the ADP test is satisfied both with and without exclusion of these Elective Deferrals); and (2) except as provided in Subsections (f) and (g), at the election of the Employer, all or a portion of any Qualified Nonelective Contributions and Qualified Matching Contributions that are not used to satisfy the ACP test.

The actual deferral ratio for each Participant and the ADP for each group shall be calculated to the nearest one-hundredth of one percent. Furthermore, Elective Deferrals allocated to each Highly Compensated Participant's Elective Deferral Account shall not be reduced by Excess Deferrals to the extent such excess amounts are made under this Plan or any other plan maintained by the Employer.

(e) **Participants taken into account.** For purposes of this Section and Section 12.5, a Highly Compensated Participant and a Nonhighly Compensated Participant shall include any Employee eligible to make salary deferrals pursuant to Section 12.2 for the Plan Year. Such Participants who fail to make Elective Deferrals shall be treated for ADP purposes as Participants on whose behalf no Elective Deferrals are made. If a Participant has no 414(s) Compensation for the Plan Year, then such Participant is disregarded for purposes of calculating the ADP test.

(f) **Contributions taken into account.** For purposes of determining the ADP and the amount of Excess Contributions pursuant to Section 12.5, only Qualified Nonelective Contributions and Qualified Matching Contributions contributed to the Plan prior to the end of the twelve (12) month period immediately following the Plan Year to which the contributions relate shall be considered. A Participant's Elective Deferrals are only taken into account for purposes of determining the ADP for a Plan Year if allocated to the Participant's Elective Deferral Account as of a date within that Plan Year and are only made with respect to Compensation that would have either been received by the Participant in the Plan Year (but for the salary deferral election) or is attributable to services performed by the Participant in the Plan Year and would have been paid within two and one-half (2 1/2) months after the close of the Plan Year (but for the salary deferral election).

(g) **Targeted contributions.** Notwithstanding the preceding, Qualified Nonelective Contributions cannot be taken into account in determining the ADP for a Plan Year for an "NHCE" to the extent such contributions exceed the product of that "NHCE's" 414(s) Compensation and the greater of five percent (5%) or two (2) times the Plan's "representative contribution rate." Any Qualified Nonelective Contribution taken into account under an ACP test under Regulation §1.401(m)-2(a)(6) (including the determination of the "representative contribution rate" for purposes of Regulation §1.401(m)-2(a)(6)(v)(B)), is not permitted to be taken into account for purposes of this paragraph (including the determination of the "representative contribution rate" under this Section). For purposes of this Subsection:

(1) The Plan's "representative contribution rate" is the lowest "applicable contribution rate" of any eligible "NHCE" among a group of eligible "NHCEs" that consists of half of all eligible "NHCEs" for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible "NHCE" in the group of all eligible "NHCEs" for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and

(2) The "applicable contribution rate" for an eligible "NHCE" is the sum of the Qualified Matching Contributions taken into account under Subsection (d) for the eligible "NHCE" for the Plan Year and the Qualified Nonelective Contributions made for the eligible "NHCE" for the Plan Year, divided by the eligible "NHCE's" 414(s) Compensation for the same period.

Notwithstanding the above, Qualified Nonelective Contributions that are made in connection with an Employer's obligation to pay prevailing wages under the Davis-Bacon Act (46 Stat. 1494), Public Law 71-798, Service Contract Act of 1965 (79 Stat. 1965), Public Law 89-286, or similar legislation can be taken into account for a Plan Year for an "NHCE" to the extent such contributions do not exceed 10 percent (10%) of that "NHCE's" 414(s) Compensation.

Qualified Matching Contributions may only be used to calculate the ADP to the extent that such Qualified Matching Contributions are matching contributions that are not precluded from being taken into account under the ACP test for the Plan Year under the rules of Regulation §1.401(m)-2(a)(5)(ii).

Qualified Nonelective Contributions and Qualified Matching Contributions cannot be taken into account to determine the ADP to the extent such contributions are taken into account for purposes of satisfying any other ADP test, any ACP test, or the requirements of Regulation §1.401(k)-3, 1.401(m)-3 or 1.401(k)-4. Thus, for example, matching contributions that are made pursuant to Regulation §1.401(k)-3(c) cannot be taken into account under the ADP test. Similarly, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation §1.401(k)-2(c), Qualified Nonelective Contributions that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year as Qualified Nonelective Contributions used to correct or lessen the degree of an ADP testing failure may only be made utilizing the current year testing method.

(h) **Aggregation with other plans.** In the event this Plan satisfies the requirements of Code §401(a)(4), 401(k), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ADP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's "NHCEs" are involved in a plan coverage change as defined in Regulation §1.401(k)-2(c)(4), then any adjustments to the "NHCEs" ADP for the prior year will be made in accordance with such Regulations, if the Employer has elected in the Adoption Agreement to use the prior year testing method. Plans may be aggregated in order to satisfy Code §401(k) only if they have the same Plan Year and use the same ADP testing method.

(i) **ADP if multiple plans.** The ADP for any Participant who is an "HCE" for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Nonelective Contributions or Qualified Matching Contributions, or both, if treated as Elective Deferrals for purposes of the ADP test) allocated to such Participant's accounts under two (2) or more arrangements described in Code §401(k), that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Nonelective

Contributions or Qualified Matching Contributions, or both) were made under a single arrangement for purposes of determining such "HCE's" actual deferral ratio. If an "HCE" participates in two or more arrangements described in Code §401(k) of the Employer that have different plan years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code §401(k).

(j) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 12.5 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(k)-6. Furthermore, the provisions of Code §401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the minimum age and service requirements of Code §410(a)(1)(A). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code §410(b) provided such date is applied on a consistent and uniform basis to all Participants.

(k) **"HCEs" as sole Eligible Employees.** If, for the applicable year for determining the ADP of the "NHCEs" for a Plan Year, there are no eligible "NHCEs," then the Plan is deemed to satisfy the ADP test for the Plan Year.

12.5 ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TESTS

(a) **Authority to correct.** In the event the Plan does not satisfy one of the tests set forth in Section 12.4, the Administrator shall adjust Excess Contributions or, if the current year testing method is being used, the Employer shall make contributions pursuant to the options set forth below or any combination thereof.

(b) **Corrective distribution and/or recharacterization.** On or before the close of the following Plan Year (or with respect to recharacterization as after-tax voluntary Employee contributions, on or before the fifteenth day of the third month following the end of each Plan Year), the Highly Compensated Participant allocated the largest amount of Elective Deferrals shall have a portion of such Elective Deferrals (and "income" allocable to such amounts) distributed (and/or, at the Participant's election, recharacterized as an after-tax voluntary Employee contribution pursuant to Section 4.8) until the total amount of Excess Contributions has been distributed, or until the amount of the Participant's Elective Deferrals equals the Elective Deferrals of the Highly Compensated Participant having the next largest amount of Elective Deferrals allocated. This process shall continue until the total amount of Excess Contributions has been distributed. However, in the event the Plan permits Catch-Up Contributions, then any "HCE" who is eligible to make Catch-Up Contributions pursuant to Section 12.2(c) shall have any amount that would have otherwise been distributed pursuant to this Section recharacterized as a Catch-Up Contribution (up to the maximum catch-up dollar limitation). Any distribution and/or recharacterization of Excess Contributions shall be made in the following order:

(1) With respect to the distribution of Excess Contributions, such distribution:

(i) shall be made first from unmatched Elective Deferrals used in the ADP and, thereafter, simultaneously from such Elective Deferrals which are matched and matching contributions which relate to such Elective Deferrals (if the matching contributions are used in the ADP). Matching contributions which are not used in the ADP but which relate to Elective Deferrals that are distributed pursuant to this Subsection shall be forfeited unless the related matching contributions are distributed as Excess Aggregate Contributions pursuant to Section 12.7;

(ii) shall be made, as operationally determined by the Administrator, from the Participant's Pre-Tax Elective Deferral Account or the Participant's Roth Elective Deferral Account, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the Plan Year;

(iii) shall be adjusted for "income"; and

(iv) shall be designated by the Employer as a distribution of Excess Contributions (and "income").

(2) With respect to the recharacterization of Excess Contributions as after-tax voluntary Employee contributions pursuant to (a) above, such recharacterized amounts:

(i) shall be deemed to have occurred on the date on which the last of those Highly Compensated Participants with Excess Contributions to be recharacterized is notified of the recharacterization and the tax consequences of such recharacterization;

(ii) shall not exceed the amount of Elective Deferrals on behalf of any Highly Compensated Participant for any Plan Year;

(iii) shall be treated as after-tax voluntary Employee contributions for purposes of Code §401(a)(4) and Regulation §1.401(k)-1(b). However, for purposes of Sections 4.3(f) and 9.2 (top-heavy rules), recharacterized Excess Contributions continue to be treated as Employer contributions that are Elective Deferrals. Excess Contributions (and "income" attributable to such amounts) recharacterized as after-tax voluntary Employee contributions shall continue to be nonforfeitable and subject to the same distribution rules provided for in Section 12.2(d); and

(iv) are not permitted if the amount recharacterized plus after-tax voluntary Employee contributions actually made by such Highly Compensated Participant exceed the maximum amount of after-tax voluntary Employee contributions (determined prior to application of Section 12.6) that such Highly Compensated Participant is permitted to make under the Plan in the absence of recharacterization.

(3) Any distribution and/or recharacterization of less than the entire amount of Excess Contributions shall be treated as a pro rata distribution and/or recharacterization of Excess Contributions and "income."

(4) For the purpose of this Section, "income" means the income or losses allocable to Excess Contributions, which amount shall be determined and allocated, at the discretion of the Administrator, using any of the methods set forth below. The method must be used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year. The Administrator will not calculate and distribute "income" for the period between the end of the Plan Year in which the Excess Contribution and prior to the date of the distribution (the "gap period").

(i) **Method of allocating "income."** The Administrator may use any reasonable method for computing the "income" allocable to Excess Contributions, provided that the method does not violate Code §401(a)(4), is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating "income" to Participant's Accounts. A Plan will not fail to use a reasonable method for computing the "income" allocable to Excess Contributions merely because the "income" allocable to Excess Contributions is determined on a date that is no more than seven (7) days before the distribution.

(ii) **Alternative method of allocating Plan Year income.** The Administrator may allocate "income" to Excess Contributions for the Plan Year by multiplying the "income" for the Plan Year allocable to the Elective Deferrals and other amounts taken into account under this Section (including contributions made for the Plan Year), by a fraction, the numerator of which is the Excess Contributions for the Employee for the Plan Year, and the denominator of which is the sum of the:

(A) Account balance attributable to Elective Deferrals and other contributions taken into account under this Section as of the beginning of the Plan Year, and

(B) Any additional amount of such contributions made for the Plan Year.

(iii) **Safe harbor method of allocating gap period income.** The Administrator may use the safe harbor method in this paragraph to determine "income" on Excess Contributions for the "gap period." Under this safe harbor method, "income" on Excess Contributions for the "gap period" is equal to ten percent (10%) of the "income" allocable to Excess Contributions for the Plan Year that would be determined under paragraph (ii) above, multiplied by the number of calendar months that have elapsed since the end of the Plan Year. For purposes of calculating the number of calendar months that have elapsed under the safe harbor method, a corrective distribution that is made on or before the fifteenth day of a month is treated as made on the last day of the preceding month and a distribution made after the fifteenth day of a month is treated as made on the last day of the month.

(iv) **Alternative method for allocating Plan Year and gap period income.** The Administrator may determine the allocable gain or loss for the aggregate of the Plan Year and the "gap period" by applying the alternative method provided by paragraph (ii) above to this aggregate period. This is accomplished by substituting the "income" for the Plan Year and the "gap period" for the "income" for the Plan Year and by substituting the contributions taken into account under this Section for the Plan Year and the "gap period" for the contributions taken into account under this Section for the Plan Year in determining the fraction that is multiplied by that "income."

(5) Excess Contributions shall be treated as Employer contributions for purposes of Code §§404 and 415 even if distributed from the Plan.

(c) **Corrective contributions.** Notwithstanding the above, if the current year testing method is used, then within twelve (12) months after the end of the Plan Year, any corrective contribution must be determined in accordance with the formula stated at Question 41 on the Adoption Agreement. If the prior year testing method is used, then a Qualified Nonelective Contribution and a Qualified Matching Contribution may not be made to correct the tests set forth in Section 12.4. The Employer shall provide the Administrator with written notification of the amount of the contribution being made. The term "Non-Highly Compensated Employee" shall mean, for this purpose, a Non-Highly Compensated Employee taken into account for purposes of the (current-year) ADP Test.

(1) A Qualified Nonelective Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ADP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ADP test set forth in Section 12.4 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ADP

test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.4 is satisfied.

(2) A Qualified Matching Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ADP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ADP test set forth in Section 12.4 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ADP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.4 is satisfied.

(d) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section 12.5 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(k)-6. Furthermore, the provisions of Code §401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the minimum age and service requirements of Code §410(a)(1)(A). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code §410(b) provided such date is applied on a consistent and uniform basis to all Participants.

(e) **Excise tax after 2 1/2 months (or 6 months).** Any Excess Contributions (and "income") which are distributed after 2 1/2 months, or 6 months with respect to a Plan Year in which the EACA requirements of Section 12.2 are met, after the end of the Plan Year are subject to a ten percent (10%) Employer excise tax imposed by Code §4979.

12.6 ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) **ACP test.** Except as otherwise provided herein, this Subsection applies if the prior year testing method is elected in the Adoption Agreement. The "Actual Contribution Percentage" (hereinafter ACP) for Participants who are Highly Compensated Employees (hereinafter "HCEs") for each Plan Year and the prior year's ACP for Participants who were Nonhighly Compensated Employees (hereinafter "NHCEs") for the prior Plan Year must satisfy one of the following tests:

(1) The ACP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ACP for Participants who were "NHCEs" for the prior Plan Year multiplied by 1.25; or

(2) The ACP for a Plan Year for Participants who are "HCEs" for the Plan Year shall not exceed the prior year's ACP for Participants who were "NHCEs" for the prior Plan Year multiplied by 2.0, provided that the ACP for Participants who are "HCEs" does not exceed the prior year's ACP for Participants who were "NHCEs" in the prior Plan Year by more than two (2) percentage points.

Notwithstanding the above, for purposes of applying the foregoing tests with respect to the first Plan Year (as defined in Regulation §1.401(m)-2(c)(2)) in which the Plan permits any Participant to make "Employee contributions", provides for "matching contributions", or both, the ACP for the prior year's "NHCEs" shall be the greater of three percent (3%) or the current Plan Year's ACP for these Participants. However, the provisions of this paragraph may not be used if the Plan is a successor plan or is otherwise prohibited from using such provisions pursuant to Regulation §1.401(m)-2(c)(2).

(b) **Current year testing method.** Notwithstanding the preceding, if the current year testing method is elected in the Adoption Agreement or if no election is made in the Adoption Agreement, and for any Plan Year for which the Employer has either reserved the right to make a nonelective "ADP test safe harbor contribution" pursuant to Section 12.8 or amended the Plan to make an "ADP test safe harbor contribution," the ACP tests in (a)(1) and (a)(2) above shall be applied by comparing the current Plan Year's ACP for Participants who are "HCEs" with the current Plan Year's ACP (rather than the prior Plan Year's ACP) for Participants who are "NHCEs" for the current Plan Year. Once made, the Employer can elect prior year testing for a Plan Year only if the Plan has used current year testing for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years the Plan has been in existence) or if, as a result of a merger or acquisition described in Code §410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing and a plan using current year testing and the change is made within the transition period described in Code §410(b)(6)(C)(ii).

(c) **Determination of "HCEs" and "NHCEs."** A Participant is an "HCE" for a particular Plan Year if the Participant meets the definition of an "HCE" in effect for that Plan Year. Similarly, a Participant is an "NHCE" for a particular Plan Year if the Participant does not meet the definition of an "HCE" in effect for that Plan Year.

(d) **Calculation of ACP.** For the purposes of this Section and Section 12.7, ACP for a specific group of Participants for a Plan Year means the average of the "contribution percentages" (calculated separately for each Participant in such group). For this purpose, "contribution percentage" means the ratio (expressed as a percentage) of the Participant's "contribution percentage amounts" to the Participant's 414(s) Compensation. The actual contribution ratio for each Participant and the ACP for each group, shall be calculated to the nearest one-hundredth of one percent of the Participant's 414(s) Compensation.

(e) **Amounts included in ACP.** "Contribution percentage amounts" means the sum of (1) after-tax voluntary Employee contributions, (2) Employer "matching contributions" made pursuant to Section 12.1(a)(2) (including Qualified Matching Contributions to the extent such Qualified Matching Contributions are not used to satisfy the tests set forth in Section 12.4), (3) Excess Contributions recharacterized as nondeductible voluntary Employee contributions pursuant to Section 12.5, and (4) Qualified Nonelective Contributions, to the extent the Qualified Nonelective Contributions are not used to satisfy the tests set forth in Section 12.4 and do not exceed the limitations of the targeted contribution limitation of Section 12.4(g). However, "contribution percentage amounts" shall not include "matching contributions" that are forfeited either to correct Excess Aggregate Contributions or due to Code §401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions. In addition, "contribution percentage amounts" may include Elective Deferrals provided the ADP test in Section 12.4 is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test.

(f) **Participants taken into account.** For purposes of this Section and Section 12.7, a Highly Compensated Participant and a Nonhighly Compensated Participant shall include any Employee eligible to have "matching contributions" made pursuant to Section 12.1(a)(2) (whether or not a salary deferral election was made or suspended pursuant to the Plan) allocated to such Participant's Account for the Plan Year or to make after-tax voluntary Employee contributions pursuant to Section 4.8 (whether or not after-tax voluntary Employee contributions are made) allocated to the Participant's Account for the Plan Year.

(g) **Allocations taken into account.** For purposes of determining the ACP test, "Employee contributions" are considered to have been made in the Plan Year in which contributed to the Plan. "Matching contributions" and Qualified Nonelective Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the date after the close of the Plan Year. Excess Contributions recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5(b)(2) are taken into account in the ACP for the Plan Year in which the contribution would have been received in cash if there had not been a salary deferral election. A "matching contribution" will be taken into account in the ACP for a Plan Year only if (1) it is made on account of the Participant's nondeductible voluntary "employee contributions" or on account of a Participant's Elective Deferrals under a plan maintained by the Employer for that Plan Year and (2) it is allocated to the Participant's Account as of any date within that Plan Year.

(h) **Definition of "matching contribution" and "employee contribution."** For purposes of this Section and Section 12.7, "matching contribution" means an Employer contribution made to the Plan, or to a contract described in Code §403(b), on behalf of a Participant on account of a nondeductible voluntary "employee contribution" made by such Participant, or on account of a Participant's elective deferrals under a plan maintained by the Employer. "Employee contribution" means any contribution (other than Roth Elective Deferrals) made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is maintained under separate account to which earnings and losses are allocated.

(i) **Targeted matching contributions.** Notwithstanding the preceding, a "matching contribution" with respect to an Elective Deferral for a year is not taken into account in determining the ACP for "NHCEs" to the extent it exceeds the greatest of:

(1) five percent (5%) of the Participant's 414(s) Compensation for the year;

(2) the Employee's Elective Deferrals for the year; or

(3) the product of two (2) times the Plan's "representative matching rate" and the Participant's Elective Deferrals for the year.

For purposes of this Subsection, the Plan's "representative matching rate" is the lowest "matching rate" for any eligible "NHCE" among a group of "NHCEs" that consists of half of all eligible "NHCEs" in the Plan for the Plan Year who make Elective Deferrals for the Plan Year (or, if greater, the lowest "matching rate" for all eligible "NHCEs" in the Plan who are employed by the Employer on the last day of the Plan Year and who make Elective Deferrals for the Plan Year).

For purposes of this Subsection, the "matching rate" for an Employee generally is the "matching contributions" made for such Employee divided by the Employee's Elective Deferrals for the year. If the "matching rate" is not the same for all levels of Elective Deferrals for an Employee, the Employee's "matching rate" is determined assuming that an Employee's Elective Deferrals are equal to six percent (6%) of 414(s) Compensation.

If the Plan provides a match with respect to the sum of the Employee's after-tax voluntary Employee contributions and Elective Deferrals, then for purposes of this Subsection, that sum is substituted for the amount of the Employee's Elective Deferrals and Employees who make either after-tax voluntary Employee contributions or Elective Deferrals are taken into account in determining the Plan's "representative matching rate." Similarly, if the Plan provides a match with respect to the Employee's after-tax voluntary Employee contributions, but not Elective Deferrals, then for purposes of this Subsection, the Employee's after-tax voluntary Employee contributions are substituted for the amount of the Employee's Elective Deferrals and Employees who make after-tax voluntary Employee contributions are taken into account in determining the Plan's "representative matching rate."

(j) **Aggregation with other plans.** In the event that this Plan satisfies the requirements of Code §401(a)(4), 401(m), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ACP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's "NHCEs" are involved in a plan coverage change as defined in Regulation §1.401(m)-2(c)(4), then any adjustments to the "NHCE's" ACP for the prior year will be made in accordance with such Regulations, if the Employer has elected in the Adoption Agreement to use the prior year testing method. Plans may be aggregated in order to satisfy Code §401(m) only if they have the same Plan Year and use the same ACP testing method.

(k) **ACP if multiple plans.** For the purposes of this Section, if an HCE is a Participant under two (2) or more plans (other than an employee stock ownership plan as defined in Code §4975(e)(7)) which are maintained by the Employer or an Affiliated Employer to which "matching contributions," nondeductible voluntary Employee contributions, or both, are made, all such contributions on behalf of such HCE shall be aggregated for purposes of determining such HCE's actual contribution ratio. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code §401(m).

(l) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 12.7 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(m)-5. Furthermore, the provisions of Code §401(m)(5)(C) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the minimum age and service requirements of Code §410(a)(1)(A). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code §410(a) provided such date is applied on a consistent and uniform basis to all Participants.

(m) **"HCEs" as sole Eligible Employees.** If, for the applicable year for determining the ACP of the "NHCEs" for a Plan Year, there are no eligible "NHCEs," then the Plan is deemed to satisfy the ACP test for the Plan Year.

12.7 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) **Authority to correct.** In the event the Plan does not satisfy one of the tests set forth in Section 12.6, the Administrator shall adjust Excess Aggregate Contributions or, if the current year testing method is used, the Employer shall make contributions pursuant to the options set forth below or any combination thereof.

(b) **Corrective distribution or Forfeiture.** On or before the close of the following Plan Year, the Highly Compensated Participant having the largest allocation of "contribution percentage amounts" shall have a portion of such "contribution percentage amounts" (and "income" allocable to such amounts) distributed or, if non-Vested, Forfeited (including "income" allocable to such Forfeitures) until the total amount of Excess Aggregate Contributions has been distributed, or until the amount of the Participant's "contribution percentage amounts" equals the "contribution percentage amounts" of the Highly Compensated Participant having the next largest amount of "contribution percentage amounts." This process shall continue until the total amount of Excess Aggregate Contributions has been distributed or forfeited. Any distribution and/or Forfeiture of "contribution percentage amounts" shall be made in the following order:

(1) Employer "matching contributions" distributed and/or forfeited pursuant to Section 12.5(b)(1);

(2) After-tax voluntary Employee contributions including Excess Contributions recharacterized as after-tax voluntary Employee contributions pursuant to Section 12.5(b)(2);

(3) Unmatched Elective Deferrals used in the ACP and, thereafter, simultaneously from such Elective Deferrals used in the ACP which are matched and "matching contributions" which relate to such Elective Deferrals (if the "matching contributions" are used in the ACP). "Matching contributions" which are not used in the ACP but which relate to Elective Deferrals that are distributed to Highly Compensated Participants pursuant to this Subsection shall be forfeited unless the related "matching contributions" are distributed as Excess Aggregate Contributions pursuant to this Subsection;

(4) To the extent Elective Deferrals are distributed pursuant to the preceding paragraph, then the distribution shall be made, as operationally determined by the Administrator, from the Participant's Pre-Tax Elective Deferral Account or the Participant's Roth Elective Deferral Account, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the Plan Year, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the Plan Year; and

(5) Remaining Employer "matching contributions."

(c) **Source of corrective distribution or Forfeiture.** Any distribution or Forfeiture of less than the entire amount of Excess Aggregate Contributions (and "income") shall be treated as a pro rata distribution of Excess Aggregate Contributions and "income." Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and "income"). Forfeitures of Excess Aggregate Contributions shall be treated in accordance with Section 4.3. However, no such Forfeiture may be allocated to a Highly Compensated Participant whose contributions are reduced pursuant to this Section.

(d) **Determination of income or loss.** For the purpose of this Section, "income" means the income or losses allocable to Excess Aggregate Contributions, which amount shall be determined and allocated, at the discretion of the Administrator, using any of the methods set forth in Section 12.5(b)(4) with respect to the calculation of "income" for Excess Contributions (applied by substituting

Excess Contributions with Excess Aggregate Contributions and by substituting amounts taken into account under the ACP test for amounts taken into account under the ADP test in Section 12.4). However, the Administrator will not calculate and distribute "income" for the period between the end of the Plan Year in which the Excess Aggregate Contribution and prior to the date of the distribution (the "gap period").

(e) **Treatment of excess amounts.** Excess Aggregate Contributions attributable to amounts other than nondeductible voluntary Employee contributions, including forfeited "matching contributions," shall be treated as Employer contributions for purposes of Code §§404 and 415 even if distributed from the Plan.

(f) **Ordering of tests.** The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions, if any, to be treated as nondeductible voluntary Employee contributions due to recharacterization for the Plan Year of any other qualified cash or deferred arrangement (as defined in Code §401(k)) maintained by the Employer that ends with or within the Plan Year or which are treated as after-tax voluntary Employee contributions due to recharacterization pursuant to Section 12.5.

(g) **Corrective contributions.** Notwithstanding the above, if the current year testing method is being used, then within twelve (12) months after the end of the Plan Year, any corrective contribution must be determined in accordance with the formula stated at Question 41 on the Adoption Agreement. If the prior year testing method is used, then a Qualified Nonelective Contribution or an Employer "matching contribution" may not be made to correct the tests set forth in Section 12.6. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and to which provision it relates. The term "Non-Highly Compensated Employee" shall mean, for this purpose, a Non-Highly Compensated Employee taken into account for purposes of the (current-year) ACP Test.

(1) A Qualified Nonelective Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ACP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ACP test set forth in Section 12.7 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ACP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.7 is satisfied.

(2) A Qualified Matching Contribution, if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ACP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ACP test set forth in Section 12.7 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ACP test pursuant to Section 12.4(g) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.7 is satisfied.

(3) A Matching Contribution (not a QMAC), if specified on the Adoption Agreement, shall be allocated to those Nonhighly Compensated Employees specified on the Adoption Agreement in an amount sufficient to satisfy the ACP Test. As indicated on the Adoption Agreement, such contribution shall be allocated in (1) the same dollar amount, or (2) in the proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees for such year, or (3) using the "bottom-up" method whereby such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Participant having the lowest 414(s) Compensation, until the applicable ACP test set forth in Section 12.7 is satisfied, or until such Nonhighly Compensated Participant has received the lesser of the maximum "annual addition" pursuant to Section 4.4 or the maximum that may be taken into account in the ACP test pursuant to Section 12.7(i) (Targeted Contributions), continuing this process until one of the tests set forth in Section 12.7 is satisfied.

(h) **Disaggregation and otherwise excludable Employees.** Notwithstanding anything in this Section to the contrary, the provisions of this Section 12.7 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation §1.401(k)-6. Furthermore, the provisions of Code §401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the minimum age and service requirements of Code §410(a)(1)(A). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code §410(b) provided such date is applied on a consistent and uniform basis to all Participants.

(i) **Excise tax after 2 1/2 months (or 6 months).** Any Excess Aggregate Contributions (and "income") which are distributed after 2 1/2 months, or 6 months with respect to a Plan Year in which the EACA requirements of Section 12.2(b) are met, after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code §4979.

12.8 401(k) ADP TEST SAFE HARBOR PROVISIONS

(a) **Election of "ADP test safe harbor."** The provisions of this Section will apply if the Employer has elected, in the 401(k) ADP Test Safe Harbor Provisions Section of the Adoption Agreement, to use the "ADP test safe harbor" or "ACP test safe harbor." If the Employer has elected to use the "ADP test safe harbor" for a Plan Year, then the provisions relating to the ADP test described in Section 12.4 and in Code §401(k)(3) do not apply for such Plan Year to the group of Participants subject to the "ADP test safe harbor" provisions. In addition, if the Employer has also elected to use the "ACP test safe harbor" for a Plan Year, then the provisions relating to the ACP test described in Section 12.6 and in Code §401(m)(2) do not apply for such Plan Year to the group of Participants subject to the "ACP test safe harbor" provisions. Furthermore, to the extent any other provision of the Plan is inconsistent with the provisions of this Section, the provisions of this Section will govern. In accordance with Regulation §1.401(k)-1(e)(7) and Regulation §1.401(m)-1(c)(2), it is impermissible for the Employer to use the ADP test or the ACP test for a Plan Year in which it is intended for the Plan, through its written terms, to use the "ADP test safe harbor" or "ACP test safe harbor" and the Employer fails to satisfy the requirements of such safe harbors for the Plan Year.

(b) **Definitions.** For purposes of this Section and Section 12.9, the following definitions apply:

(1) "ACP test safe harbor" means the method described in Subsection (d) below for satisfying the ACP test of Code §401(m)(2).

(2) "ACP test safe harbor matching contributions" means "matching contributions" described in Subsection (d)(1).

(3) "ADP test safe harbor" means the method described in Subsection (c) for satisfying the ADP test of Code §401(k)(3).

(4) "ADP test safe harbor contributions" means the contributions made pursuant to Subsection (c)(1) below.

(5) "Compensation" means Compensation as defined in Section 1.18, except, for purposes of this Section, no dollar limit, other than the limit imposed by Code §401(a)(17), applies to the Compensation of a Nonhighly Compensated Employee.

(6) "Eligible Participant" means a Participant who is eligible to make Elective Deferrals under the Plan for any part of the Plan Year (or who would be eligible to make Elective Deferrals but for a suspension due to a hardship distribution described in Section 12.10 or to statutory limitations, such as Code §§402(g) and 415) and who is not excluded as an "eligible Participant" in the 401(k) ADP Test Safe Harbor Provisions Section of the Adoption Agreement.

(7) "Matching contributions" means contributions made by the Employer on account of an "eligible Participant's" Elective Deferrals.

(c) **Satisfying ADP safe harbor.** The provisions of this Subsection apply for purposes of satisfying the "ADP test safe harbor."

(1) The "ADP test safe harbor contribution" is the contribution, elected by the Employer in the 401(k) ADP Test Safe Harbor Provisions Section of the Adoption Agreement, to be used to satisfy the "ADP test safe harbor." However, if no contribution is elected in the Adoption Agreement, the Employer will contribute to the Plan for the Plan Year a "basic matching contribution" on behalf of each Eligible Employee. The "basic matching contribution" is equal to (i) one hundred percent (100%) of the amount of an "eligible Participant's" Elective Deferrals that do not exceed three percent (3%) of the Participant's "Compensation" for the Plan Year, plus (ii) fifty percent (50%) of the amount of the Participant's Elective Deferrals that exceed three percent (3%) of the Participant's "Compensation" but do not exceed five percent (5%) of the Participant's "Compensation." However, if the contribution is being made pursuant to a QACA as described in Section 12.9, then the "basic matching contribution" is equal to (i) one hundred percent (100%) of the amount of an "eligible Participant's" Elective Deferrals that do not exceed one percent (1%) of the Participant's "Compensation" for the Plan Year, plus (ii) fifty percent (50%) of the amount of the Participant's Elective Deferrals that exceed one percent (1%) of the Participant's "Compensation" but do not exceed six percent (6%) of the Participant's "Compensation." If pursuant to this Section, the "ADP test safe harbor contribution" being made to the Plan (including a contribution being made pursuant to a QACA as described in Section 12.9) is a matching contribution that is made on a basis other than the Plan Year, then the matching contributions must be contributed to the Plan by the last day of the Plan Year quarter immediately following the Plan Year quarter to which the contributions relate.

(2) Except as provided in Subsection (e) below, for purposes of the Plan, a "basic matching contribution" or an "enhanced matching contribution" will be treated as a Qualified Matching Contribution and a nonelective "ADP test safe harbor contribution" will be treated as a Qualified Nonelective Contribution. Accordingly, "ADP test safe harbor contributions" will be fully Vested and subject to the distribution restrictions set forth in Section 12.2(e) other than on account of a hardship (i.e., may generally not be distributed earlier than severance of employment, death, Total and Permanent Disability, an event described in Code §401(k)(10), or, in case of a profit sharing plan, the attainment of age 59 1/2.). In addition, such contributions must satisfy the "ADP test safe harbor" without regard to permitted disparity under Code §401(l). An "enhanced matching contribution" is a

matching contribution that, at rate of Elective Deferrals, is at least equal to what the matching contribution would be if under the "basic matching contribution."

(3) Notwithstanding the requirement that the Employer make the "ADP test safe harbor contribution" to this Plan, if the Employer so elects in the Adoption Agreement, the "ADP test safe harbor contribution" will be made to the defined contribution plan indicated in the Adoption Agreement. However, such contributions will be made to this Plan unless (i) each Employee eligible under this Plan is also eligible under the other plan, and (ii) the other plan has the same Plan Year as this Plan.

(4) Within a reasonable period before the beginning of the Plan Year (or, in the year an Eligible Employee becomes a Participant, within a reasonable period before the Employee becomes eligible), the Employer will provide each "eligible Participant" a comprehensive notice of the Participant's rights and obligations under the Plan, written in a manner calculated to be understood by the average Participant. The determination of whether a notice satisfies the timing requirement of this paragraph is based on all of the relevant facts and circumstances. However, the timing requirement of the notice is deemed to be satisfied if at least thirty (30) days, but not more than ninety (90) days, before the beginning of the Plan Year, the Employer will provide each "eligible Participant" a comprehensive notice of the Participant's rights and obligations under the Plan, written in a manner calculated to be understood by the average Participant. However, if an Employee becomes eligible after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice must be provided no more than ninety (90) days before the Employee becomes eligible but not later than the date the Employee becomes eligible.

(5) In addition to any other election periods provided under the Plan, each "eligible Participant" may make or modify a salary deferral election during the thirty (30) day period immediately following receipt of the notice described in Subsection (4) above. Furthermore, if the "ADP test safe harbor contribution" is a "matching contribution" each Eligible Employee must be permitted to elect sufficient Elective Deferrals to receive the maximum amount of "matching contributions" available to the Participant under the Plan.

(d) **Application of "ACP test safe harbor."** The provisions of this Subsection apply if the Employer has elected to satisfy the "ACP test safe harbor."

(1) In addition to the "ADP test safe harbor contributions," the Employer will make any "matching contributions" in accordance with elections made in the Adoption Agreement. Such additional "matching contributions" will be considered "ACP test safe harbor matching contributions." "Matching contributions" are taken into account for a Plan Year purposes of the "ACP test safe harbor" in accordance with the allocation and timing rules of Regulation §1.401(m)-2(a), which provides that a matching contribution will be taken into account for a Plan Year only if (1) it is made on account of the Participant's nondeductible voluntary "employee contributions" or elective deferrals under a plan maintained by the Employer for that Plan Year and (2) it is allocated to the Participant's account as of any date within that Plan Year, and (3) it is actually paid to the plan no later than twelve (12) months after the close of the Plan Year.

(2) Notwithstanding any election in the Adoption Agreement to the contrary, (1) an "eligible Participant's" Elective Deferrals in excess of six percent (6%) of "Compensation" may not be taken into account in applying "ACP test safe harbor matching contributions," (2) In addition, any portion of an "ACP test safe harbor matching contribution" attributable to a discretionary "matching contribution" may not exceed four percent (4%) of an "eligible Participant's" "Compensation," (3) the rate of match may not increase as the rate of Elective Deferrals increases; and (4) any Participant who is a Highly Compensated Employee may not receive a rate of match that is greater than any Non-Highly Compensated Participant deferring the same amount (as a percentage of Compensation).

(e) **Application of ACP test.** The Plan is required to satisfy the ACP test of Code §401(m)(2), using the current year testing method, if the Plan permits after-tax voluntary Employee contributions or if matching contributions that do not satisfy the "ACP test safe harbor" may be made to the Plan. In such event, only "ADP test safe harbor contributions" or "ACP test safe harbor contributions" that exceed the amount needed to satisfy the "ADP test safe harbor" or "ACP test safe harbor" (if the Employer has elected to use the "ACP test safe harbor") may be treated as Qualified Nonelective Contributions or Qualified Matching Contributions in applying the ACP test. In addition, in applying the ACP test, elective contributions may not be treated as "matching contributions" under Code §401(m)(3). Furthermore, in applying the ACP test, the Employer may operationally elect to disregard with respect to all "eligible Participants" (1) all "matching contributions" if the Plan satisfies the "ACP test safe harbor" and (2) "matching contributions" that do not exceed four percent (4%) (3 1/2% if a QACA) of each Participant's "Compensation" if the Plan satisfies the "ADP test safe harbor" using "matching contributions" (the "basic matching contribution" or the "enhanced matching contribution") and the "ACP test safe harbor" is not satisfied.

(f) **Modification of top-heavy rules.** The top-heavy requirements of Code §416 and the Plan shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) and "matching contributions" with respect to which the requirements of Code §401(m)(11) are met.

(g) **Plan Year requirement.** Except as provided in Regulation §1.401(k)-3(e), the Plan will fail to satisfy the requirements of Code §401(k)(12) and this Section for a Plan Year unless such provisions remain in effect for an entire twelve (12) month Plan Year.

(h) **Discretionary safe harbor nonelective contribution.** If the Employer has elected in the Adoption Agreement to either not use the 401(k) safe harbor provisions of this Section or to utilize the "maybe" election with respect to the nonelective "ADP test safe harbor contribution," then the Employer may elect to utilize the "ADP test safe harbor" provisions for a Plan Year after the Plan Year has commenced in accordance with the provisions of this Subsection. In order to utilize this Subsection, the Employer must provide a notice in accordance with Section 12.8(c)(4) above, except that the notice must provide that the Employer may provide the nonelective "ADP test safe harbor contribution" and that a supplemental notice will be provided at least thirty (30) days prior to the last day of the Plan Year if the Employer decides to make the nonelective "ADP test safe harbor contribution". In order to implement the 401(k) safe harbor provisions of this Section for the Plan Year, the Employer must (1) amend the Adoption Agreement to provide for the nonelective "ADP test safe harbor contribution" and, (2) provide a supplemental notice to Participants indicating its intention to provide such nonelective "ADP test safe harbor contribution". The supplemental notice indicating the Employer's intention to make the nonelective "ADP test safe harbor contribution" must be provided no later than thirty (30) days prior to the last day of the Plan Year for the Plan in order for the provisions of this Section to apply.

(i) **Elimination of safe harbor contributions or matching contributions.** The Employer may amend the Plan during a Plan Year to reduce or eliminate "ADP test safe harbor contributions" or matching contributions for such Plan Year subject to the following provisions.

(1) An amendment may be made during a Plan Year to reduce or eliminate prospectively any or all "ADP test safe harbor contributions" provided a supplemental notice is given to all "eligible Participants" explaining the consequences and effective date of the amendment, and that such "eligible Participants" have a reasonable opportunity (including a reasonable period) to change their Elective Deferral (and if applicable, their Voluntary Employee Contribution) elections. An amendment reducing or eliminating an "ADP test safe harbor contribution" must be effective no earlier than the later of: (i) thirty (30) days after "eligible Participants" are given the supplemental notice or (ii) the date the amendment is adopted. If the Employer amends the Plan to reduce or eliminate the "ADP test safe harbor contributions," then except as provided in Code §§401(k) and 401(m) and the Regulations thereunder, the Plan is subject to the ADP test set forth in Section 12.4 and the ACP test set forth in Section 12.6 for the entire Plan Year using current year testing and the Employer must also satisfy the provisions of this Section 12.8 until the amendment becomes effective.

(2) Notwithstanding the preceding, an amendment may be made during a Plan Year to eliminate a nonelective "ADP test safe harbor contribution" for such Plan Year only in accordance with the provisions of Regulation §1.401(k)-3(g) and, if applicable, Regulation §1.401(m)-3(h)).

(3) If the Employer eliminates a matching contribution that is not an "ADP test safe harbor contribution," then the "ADP test safe harbor" provisions of this Section continue to apply (i.e., the provisions relating to the ADP test described in Section 12.4 and in Code §401(k)(3) do not apply for such Plan Year to the group of Participants subject to the "ADP test safe harbor" provisions).

(j) **Mid-year amendments.** Notwithstanding anything in this Section to the contrary, effective for mid-year amendments adopted after January 28, 2016, the Employer may amend the Plan effective on a date other than the first day of the Plan Year, or with a retroactive effective date, so long as the amendment complies with IRS Notice 2016-16 and other IRS Guidance. For permissible mid-year Plan changes impacting a Plan's required safe harbor notice content, a notice will be provided to all Eligible Employees pursuant to IRS Notice 2016-16 or any later IRS Guidance.

Each employee required to be provided an updated safe harbor notice pursuant to Notice 2016-16 must be given a reasonable opportunity (including a reasonable period after receipt of the updated notice) before the effective date of the mid-year change to change the employee's cash or deferred election (and/or any after-tax employee contribution election). For this purpose, a 30-day election period is deemed to be a reasonable period to make or change a cash or deferred election. If it is not practicable for the election opportunity to be provided before the effective date of the change (for example, in the case of a mid-year change to increase matching contributions retroactively for the entire plan year), an employee is treated as having a reasonable opportunity to make or change an election if the election opportunity begins as soon as practicable after the date the updated notice is provided to the employee, but not later than 30 days after the date the change is adopted.

12.9 QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT

(a) **Qualified Automatic Contribution Arrangement (QACA).** If elected in the Adoption Agreement, the Employer maintains a Plan with Automatic Deferral provisions as a Qualified Automatic Contribution Arrangement (QACA) and the provisions of this Section will apply. Except as otherwise provided in this Section, the Plan's "ADP test safe harbor" and "ACP test safe harbor" provisions set forth in Section 12.8 apply. The Employer will contribute on behalf of the Participants specified in the Adoption Agreement, "ADP test safe harbor contributions," as elected in the Adoption Agreement.

(b) **Participants subject to the QACA.** The Employer in its Adoption Agreement will elect which Participants are subject to the QACA Automatic Deferral on the "QACA Effective Date" thereof which may include some or all current Participants or may be limited to those Employees who become Participants after the "QACA Effective Date." The "QACA Effective Date" means the date on which the QACA goes into effect, either as to the overall Plan or as to an individual Participants as the context requires. A QACA becomes effective as to the Plan as of the date the Employer elects in the Adoption Agreement. A Participant's "QACA Effective

Date" is as soon as practicable after the Participant is subject to Automatic Deferrals under the QACA, consistent with: (A) applicable law; and (B) the objective of affording the Participant a reasonable period of time after receipt of the QACA notice to make an Affirmative Election (and, if applicable, an investment election).

(c) **QACA Automatic Deferral amount.** Except as provided in Subsection (d) below (relating to uniformity requirements), the Plan must apply to all Participants subject to the QACA, a uniform Automatic Deferral amount, as a percentage of each Participant's Compensation, which does not exceed ten percent (10%), and which is at least the following minimum amount:

(1) **Initial period.** 3% for the period that begins when the Participant first has contributions made pursuant to a default election under the QACA and ends on the last day of the following Plan Year;

(2) **Third Plan Year.** 4% for the third Plan Year of the Participant's participation in the QACA;

(3) **Fourth Plan Year.** 5% for the fourth Plan Year of the Participant's participation in the QACA; and

(4) **Fifth and later Plan Years.** 6% for the fifth Plan Year of the Participant's participation in the QACA and for each subsequent Plan Year.

For purposes of the above, the Plan will treat an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the QACA as not having made such contributions for any prior Plan Year.

(d) **Uniformity.** The "Automatic Deferral Percentage" must be a uniform percentage of Compensation. The "Automatic Deferral Percentage" is the percentage of Automatic Deferral which the Employer elects in the Adoption Agreement (including any scheduled increase to the "Automatic Deferral Percentage"). However, the Plan does not violate the uniform "Automatic Deferral Percentage" merely because:

(1) **Years of participation.** The "Automatic Deferral Percentage" varies based on the number of Plan Years the Participant has participated in the Plan while the Plan has applied the QACA provisions;

(2) **No reduction from prior default percentage.** The Plan does not reduce an "Automatic Deferral Percentage" that, immediately prior to the QACA's effective date was higher (for any Participant) than the "Automatic Deferral Percentage."

(3) **Applying statutory limits.** The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code §401(a)(17), 402(g) (determined without regard to Catch-Up Contributions), or 415;

(4) **No Automatic Deferrals during hardship suspension.** The Plan does not apply the Automatic Deferral during a period of suspension, under the Plan's hardship distribution provisions, of Participant's right to make Elective Deferrals to the Plan following a hardship distribution; or

(5) **Disaggregated groups.** The Plan applies different default percentages to different groups if the groups can be disaggregated under Regulation §1.401(k)-1(b)(4).

(e) **Safe harbor notice.** The Plan's safe harbor notice provisions apply as set forth in Section 12.8, except the Employer must provide the initial QACA safe harbor notice sufficiently early so that an Employee has a reasonable period after receiving the notice and before the first Automatic Deferral to make an Affirmative Election. In addition, the notice must state: (1) the Automatic Deferral amount that will apply in absence of the Employee's Affirmative Election; (2) the Employee's right to elect not to have any Automatic Deferral amount made on the Employee's behalf or to elect to make Elective Deferrals in a different amount or percentage of Compensation; and (iii) how the Plan will invest the Automatic Deferrals. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice nonetheless will be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date. For this purpose, the Administrator is deemed to provide timely notice if the Administrator provides the notice at least thirty (30) days and not more than ninety (90) days prior to the beginning of the QACA Plan Year.

(f) **Distributions.** A Participant's Account balance attributable to QACA "ADP test safe harbor contributions" is subject to the distribution restrictions set forth in Section 12.2(e) other than on account of a hardship (i.e., may generally not be distributed earlier than severance of employment, death, Total and Permanent Disability, an event described in Code §401(k)(10), or, in case of a profit sharing plan, the attainment of age 59 1/2).

(g) **Vesting.** A Participant's Account balance attributable to QACA "ADP test safe harbor contributions" is Vested in accordance with the vesting schedule, if any, elected in the Adoption Agreement.

(h) **Compensation.** Compensation for purposes of determining the "Automatic Deferral Percentage" has the same meaning as Compensation with regard to Elective Deferrals.

(i) **Modification of top-heavy rules.** The top-heavy requirements of Code §416 and the Plan shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(13) and "matching contributions" with respect to which the requirements of Code §401(m)(12) is met.

12.10 DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** If elected in the Adoption Agreement, the Administrator, at the election of a Participant, shall direct the Trustee (or Insurer) to distribute to the Participant in any one Plan Year up to an amount necessary to satisfy the Participant's immediate and heavy financial need, determined in accordance with the remaining provisions of this Section. Distribution of Elective Deferrals (and any earnings credited to a participant's Elective Deferral and Qualified Matching and Qualified Nonelective accounts as of the later of December 31, 1988, and or the end of the last Plan Year ending before July 1, 1989) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Except for when the provisions of Section 6.13 apply, hardship distributions are subject to the spousal consent requirements contained in the provisions of this Plan which reflect the requirements of Code §§ 401(a)(11) and 417. Such distributions may also be made from those Accounts from which such distribution are authorized by the remaining provisions of this Section. For purposes of this Section, a Participant shall include an Employee (or if elected in the Adoption Agreement, a former employee) who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. A withdrawal under this Section shall be authorized only if the distribution is for one of the following or any other item permitted under Regulation §1.401(k)-1(d)(3)(iii)(B) or any other federally enacted legislation (the Administrator operationally and in a nondiscriminatory manner may limit the deemed immediate and heavy financial need events to only certain of the events specified below):

(1) expenses for (or necessary to obtain) medical care (as defined in Code §213(d));

(2) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));

(4) payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §152(b)(1), (b)(2), and (d)(1)(B));

(5) payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or

(6) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state, or local taxes or penalties reasonably anticipated to result from the distribution);

(2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer (to the extent the loan would not increase the hardship); and

(3) The Plan, and all other plans maintained by the Employer, provide that the Participant's Elective Deferrals and nondeductible voluntary Employee contributions will be suspended for at least six (6) months after receipt of the hardship distribution.

(d) **Limitation on Account withdrawals.** Notwithstanding the above, distributions from the Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account pursuant to this Section shall be limited solely to the Participant's Elective Deferrals and any income attributable thereto credited to the Participant's Elective Deferral Account as of December 31, 1988.

(e) **Other limits and conditions.** Hardship distributions shall be made from an Account only to the extent that such Account has become Vested at the time of such distribution. If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(f) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code §§411(a)(11) and 417 and the Regulations thereunder.

12.11 IN-PLAN ROTH ROLLOVER CONTRIBUTIONS/TRANSFERS

(a) **Right to elect In-Plan Roth Rollover Contribution/Transfer.** If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant may elect an "In-Plan Roth Rollover Contribution" (hereinafter referred to as an IRR) and/or an "In-Plan Roth Transfer" (hereinafter referred to as an IRT) in accordance with the provisions of the Plan, this Section and the elections made in the Adoption Agreement. IRRs and IRTs will be subject to the Plan rules related to designated Roth accounts. Participants shall be fully Vested in the portion of their Accounts attributable to IRRs and IRTs.

(b) **Parties eligible to elect.** The Employer in its Adoption Agreement can limit to Employees the right to elect to make IRRs or IRTs. If the Employer does not make this election, then for purposes of eligibility for an IRR, the Plan will treat a Participant's surviving spouse Beneficiary or alternate payee spouse or alternate payee former spouse as a Participant. A non-spouse Beneficiary may not make an In-Plan Roth Rollover.

(c) **Partially Vested accounts.** IRRs and IRTs are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts unless the Employer elects otherwise in its Adoption Agreement. If a distribution is made to a Participant who has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account, then at any relevant time Section 6.5(h) will apply to determine the Participant's Vested portion of the Account.

(d) **Amount limitation.** The Employer in its Adoption Agreement may specify a minimum amount which will be accepted as an IRR or IRT.

(e) **Policy.** The Administrator may adopt a policy setting for reasonable, nondiscriminatory procedures and administrative rules relating to In-Plan Roth Rollover Contributions. Such a policy can prescribe administrative forms and limit the maximum number of such rollovers a Participant may make during a Plan Year.

(f) **Form and source of IRRs and IRTs.**

(1) **Direct Rollover.** An IRR and an IRT may be made only by a direct rollover.

(2) **Account source.** A Participant may make an IRR or IRT from any account (other than a Designated Roth Account) unless the Employer otherwise elects in its Adoption Agreement.

(3) **Cash or in-kind.** The Administrator may permit an IRR or IRT either by converting to cash any non-cash investments prior to rolling over the Participant's distribution election amount to the In-Plan Roth Rollover Account or In-Plan Roth Transfer Account, or by rolling over the Participant's current investments to the respective Accounts. A Plan loan so transferred (if such transfer is permitted) without changing the repayment schedule is not treated as a new loan.

(4) **No rollover or distribution treatment.** Notwithstanding any other Plan provision, an IRR or an IRT is not a rollover contribution for purposes of the Plan. Accordingly, the Plan will take into account the amounts attributable to an "in-Plan Roth rollover contribution" in determining whether a Participant's Vested Account balance exceeds $5,000 for purposes of Code §411(a)(11). In addition, an "in-Plan Roth rollover contribution" is not a distribution for purposes of Code §§401(a)(11) (relating to spousal consent) and 3405(c) (relating to mandatory income tax withholding). Furthermore, it is not a distribution for purposes of applying any limitations that a Plan may impose with respect to the number of in-service distributions permitted by the Plan.

(5) **Eligibility and amount of IRR.** A Participant must be eligible for a distribution in order to roll over a distribution to an In-Plan Roth Rollover Contribution Account in accordance with this Section. A Participant may not make an IRR with regard to an amount which is not an "eligible rollover distribution" as defined in Section 6.15. If specified in the Adoption Agreement, a Participant may take an in-service distribution only for purposes of electing an IRR to an In-Plan Roth Rollover Contribution Account. If elected in the Adoption Agreement, a portion of the amount that is eligible to be rolled over to an In-Plan Roth Rollover Contribution Account may be distributed solely for the purpose of federal or state income tax withholding for the Participant's anticipated tax obligations regarding the amount includible in the Participant's gross income by reason of the In-Plan

Roth Rollover Contribution (and the amount withheld for income taxes). The Administrator may limit the amount of the 100% withholding distribution to the amount the Administrator reasonably determines is sufficient to satisfy the Participant's federal and/or state income tax liability relating to the Plan distribution.

(g) **Withdrawal of IRRs and IRTs.** A Participant may withdraw amounts from the Participant's In-Plan Roth Rollover Contribution Account or In-Plan Roth Transfer Account only when the Participant is eligible for a distribution from the Plan account that is the source of the IRR or IRT. This Section does not expand (except, if elected, for distributions for withholding) or eliminate any distribution rights on amounts that a Participant elects to treat as an IRR or IRT.

(h) **Definitions.**

(1) **In-Plan Roth Rollover Contribution ("IRR").** An "in-Plan Roth rollover contribution" (IRR) means a rollover contribution to the Plan that consists of a distribution from a Participant's Plan account, other than a designated Roth account, that the Participant rolls over to the Participant's designated In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4).

(2) **In-Plan Roth Rollover Transfer ("IRT").** An "in-Plan Roth rollover transfer" (IRT) means a rollover contribution to the Plan that consists of a distribution from a Participant's Plan account, other than a designated Roth account, that the Participant rolls over to the Participant's designated In-Plan Roth Transfer Account in the Plan, in accordance with Code §402(c)(4).

12.12 INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS

For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "discretionary matching contribution" is made to the Plan for the Plan Year.

Solely for purposes of this Section, a matching contribution is to be considered as being a "Flexible Discretionary Match" contribution unless the Employer has provided a definitely determinable allocation formula for the matching contribution on the Adoption Agreement. In order to be definitely determinable, then the components of the allocation formula described in the preceding sentence must be specified on the Adoption Agreement and cannot themselves be discretionary. Thus, regardless of whether the contribution formula for the matching contribution is fixed or discretionary, the provisions of the preceding paragraph apply unless the amount to be allocated to the Participant for the Plan Year can be determined without any discretion on the part of the Employer.

ARTICLE XIII
SIMPLE 401(K) PROVISIONS

13.1 SIMPLE 401(k) PROVISIONS

(a) If elected in the Adoption Agreement, this Plan is intended to be a SIMPLE 401(k) plan which satisfies the requirements of Code §§401(k)(11) and 401(m)(10).

(b) The provisions of this Article apply for a "year" only if the following conditions are met:

(1) The Employer adopting this Plan is an "eligible employer." An "eligible employer" means, with respect to any "year," an Employer that had no more than 100 Employees who received at least $5,000 of "compensation" from the Employer for the preceding "year." In applying the preceding sentence, all employees of an Affiliated Employer and Leased Employees are taken into account.

An "eligible employer" that has elected to use the SIMPLE 401(k) provisions but fails to be an "eligible employer" for any subsequent "year," is treated as an "eligible employer" for the two (2) "years" following the last "year" the Employer was an "eligible employer." If the failure is due to any acquisition, disposition, or similar transaction involving an "eligible employer," the preceding sentence applies only if the provisions of Code §410(b)(6)(C)(i) are satisfied.

(2) No contributions are made, or benefits accrued for services during the "year," on behalf of any "eligible employee" under any other plan, contract, pension, or trust described in Code §219(g)(5)(A) or (B), maintained by the Employer.

(c) To the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article govern.

13.2 DEFINITIONS

(a) "Compensation" means, for purposes of this Article, the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in Code §6051(a)(3)) and the Employee's salary deferral contributions made under this or any other 401(k) plan, and, if applicable, elective deferrals under a Code §408(p) SIMPLE plan, a SARSEP, or a Code §403(b) annuity contract and compensation deferred under a Code §457 plan, required to be reported by the Employer on Form W-2 (as described in Code §6051(a)(8)). For Self-Employed Individuals, "compensation" means net earnings from self-employment determined under Code §1402(a) prior to subtracting any contributions made under this Plan on behalf of the individual. "Compensation" also includes amounts paid for domestic service (as described in Code §3401(a)(3)). The provisions of the Plan implementing the limit on Compensation under Code §401(a)(17) apply to the "compensation" under this Article.

(b) "Eligible employee" means, for purposes of this Article, any Participant who is entitled to make Elective Deferrals described in Code §402(g) under the terms of the Plan.

(c) "Year" means the calendar year.

13.3 CONTRIBUTIONS

(a) **Salary deferral contributions**

(1) Each "eligible employee" may make a salary deferral election to have "compensation" reduced for the "year" in any amount selected by the Employee subject to the limitation in Subsection (c) below. The Employer will make a salary deferral contribution to the Plan, as an Elective Deferral, in the amount by which the Employee's "compensation" has been reduced.

(2) The total salary deferral contribution for the "year" for any Employee cannot exceed the limitation on salary deferral contributions in effect for the "year" pursuant to Code §408(p)(2). The limit will be adjusted by the Secretary of the Treasury for cost-of living increases under Code §408(p)(2)(E). Any such adjustments will be in multiples of $500. The amount of an Employee's salary deferral contributions permitted for a "year" is increased for Employees aged 50 or over by the end of the "year" by the amount of allowable Catch-Up Contributions pursuant to Code §414(v)(2). The limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code §414(v)(2)(C). Any such adjustments will be in multiples of $500. Catch-Up Contributions are otherwise treated the same as other salary deferral contributions.

(b) **Other contributions**

(1) Matching contributions. Unless (2) below is elected, each "year" the Employer will make a matching contribution to the Plan on behalf of each Employee who makes a salary deferral election under Section 13.3(a). The amount of the matching contribution will be equal to the Employee's salary deferral contribution up to a limit of three percent (3%) of the Employee's "compensation" for the full "year."

(2) Nonelective Contributions. For any "year," instead of a matching contribution, the Employer may elect to contribute a Nonelective Contribution of two percent (2%) of "compensation" for the full "year" for each "eligible employee" who received at least $5,000 of "compensation" from the Employer for the "year."

(c) **Limitation on Other Contributions**

No Employer or Employee contributions may be made to this Plan for the "year" other than salary deferral contributions described in Section 13.3(a), matching or Nonelective Contributions described in Section 13.3(b) and rollover contributions described in Regulation §1.402(c)-2, Q&A-1(a). Furthermore, the provisions of Section 4.4 which implement the limitations of Code §415 apply to contributions made pursuant to this Section (other than Catch-Up Contributions).

13.4 ELECTION AND NOTICE REQUIREMENTS

(a) **Election period**

(1) In addition to any other election periods provided under the Plan, each "eligible employee" may make or modify a salary deferral election during the 60-day period immediately preceding each January 1st.

(2) For the "year" an Employee becomes eligible to make salary deferral contributions under this Article, the 60-day election period requirement of Subsection (a)(1) is deemed satisfied if the Employee may make or modify a salary deferral election during a 60-day period that includes either the date the Employee becomes eligible or the day before.

(3) Each "eligible employee" may terminate a salary deferral election at any time during the "year."

(b) **Notice requirements**

(1) The Employer will notify each "eligible employee" prior to the 60-day election period described in Section 13.4(a) that a salary deferral election or a modification to a prior election may be made during that period.

(2) The notification described in (1) above will indicate whether the Employer will provide a matching contribution described in Section 13.3(b)(1) or a two percent (2%) Nonelective Contribution described in Section 13.3(b)(2) for that "year."

13.5 VESTING REQUIREMENTS

All benefits attributable to contributions made pursuant to this Article are nonforfeitable at all times, and all previous contributions made under the Plan are nonforfeitable as of the beginning of the Plan Year that the 401(k) SIMPLE provisions apply.

13.6 TOP-HEAVY RULES

The Plan is not treated as a top-heavy plan under Code §416 for any "year" for which the provisions of this Article are effective and satisfied.

13.7 NONDISCRIMINATION TESTS

The Plan is treated as meeting the requirements of Code §§401(k)(3)(A)(ii) and 401(m)(2) for any "year" for which the provisions of this Article are effective and satisfied. Accordingly, Sections 12.4, 12.5, 12.6 and 12.7 shall not apply to the Plan for any "year" for which this Article applies.

ARTICLE XIV
MULTIPLE EMPLOYER PROVISIONS

14.1 ELECTION AND OVERRIDING EFFECT

If a Participating Employer that is not an Affiliated Employer adopts this Plan, then the provisions of this Article XIV shall apply to such Participating Employer as of the Effective Date specified in its participation agreement and supersede any contrary provisions in the basic Plan document or the Adoption Agreement. If this Article XIV applies, then the Plan shall be a multiple employer plan as described in Code §413(c). In this case, the Employer and each Participating Employer acknowledge that the Plan is a multiple employer plan subject to the rules of Code §413(c) and the Regulations thereunder, and specific annual reporting requirements. For purposes of this Article, Participating Employers that are Affiliated Employers are treated as a single Participating Employer.

14.2 DEFINITIONS

The following definitions shall apply to this Article XIV and shall supersede any conflicting definitions in the Plan:

(a) **Employee.** "Employee" means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. Either the Adoption Agreement or a participation agreement to the Adoption Agreement may designate any Employee, or class of Employees, as not eligible to participate in the Plan.

(b) **Lead Employer.** "Lead Employer" means the signatory Employer to the Adoption Agreement execution page, and does not include any Affiliated Employer or Participating Employer. The "lead Employer" has the same meaning as the Employer for purposes of making Plan amendments and other purposes regardless of whether the "lead Employer" is also a Participating Employer under this Article XIV. The "lead Employer" may execute a Participation Agreement setting forth elections which are specific to the "lead Employer".

14.3 PARTICIPATING EMPLOYER ELECTIONS

The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the "lead Employer" shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the "lead Employer's" Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the "lead Employer." If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer." Notwithstanding the other provisions of this Section, if a standardized Adoption Agreement is being used, then the elections available to Participating Employers must be limited to the elections available to the "lead Employer" that ensure the Plan, by design, satisfies the minimum coverage requirements of Code §410(b) and the nondiscrimination requirements of Code §401(a)(4).

14.4 HIGHLY COMPENSATED EMPLOYEE STATUS

Status as a Highly Compensated Employee shall be determined separately with respect to each Participating Employer which is not an Affiliated Employer.

14.5 TESTING

(a) **Separate status.** The Administrator shall perform the tests listed below separately for each Participating Employer, with respect to the Employees of that Participating Employer. For this purpose, the Employees of a Participating Employer, and their allocations and accounts, shall be treated as though they were in separate plan. Any correction action, such as additional contributions or corrective distributions, shall only affect the Employees of the Participating Employer. The tests subject to this separate treatment are:

(1) The ADP test in Section 12.4.

(2) The ACP test in Section 12.6.

(3) Nondiscrimination testing as described in Code §401(a)(4) and the applicable Regulations.

(4) Coverage testing as described in Code §410(b) and the applicable Regulations.

(b) **Joint status.** The Administrator shall perform the following tests for the Plan as whole, without regard to employment by a particular Participating Employer:

(1) Applying the Code §415 limitation in Section 4.4.

(2) Applying the Code §402(g) limitation in Section 12.2.

(3) Applying the limit on Catch-Up Contributions in Section 12.2.

14.6 TOP HEAVY PROVISIONS

The Plan will apply the provisions of Article IX separately to each Participating Employer. The Plan will be considered separate plans for each Participating Employer and its Employees for purposes of determining whether such a separate plan is top-heavy under Section 9.1 or is entitled to the exemption described in Section 12.8(f) or 12.9(i). For purposes of applying this Article to a Participating Employer, the Participating Employer and any business which is related to that Participating Employer shall be the "Employer" for purposes of Section 9.1, and the terms "Key Employee" and "Non-Key Employee" shall refer only to the Employees of that Participating Employer. If such a Participating Employer's separate plan is top-heavy, then:

(a) **Highest contribution rate.** The Administrator shall determine the highest Key Employee contribution rate under Section 4.3(g) by reference to the Key Employees and their allocations in the separate plan of that Participating Employer;

(b) **Top-heavy minimum allocation.** The Administrator shall determine the amount of any required top-heavy minimum allocation separately for that separate plan under Section 4.3(f); and

(c) **Plan Which Will Satisfy.** The Participating Employer shall make any additional contributions Section 4.3(k) requires.

14.7 COMPENSATION

(a) **Separate determination.** For the following purposes, a Participant's Compensation shall be determined separately for each Participating Employer:

(1) **Nondiscrimination and coverage.** All of the separate tests listed in Section 14.5(a).

(2) **Top-heavy.** Application of the top-heavy rules in Article IX.

(3) **Allocations.** Application of allocations under Article IV.

(4) **HCE determination.** The determination of an Employee's status as a Highly Compensated Employee.

(b) **Joint status.** For all Plan purposes other than those described in Section 14.7(a), including but not limited to determining the Code §415 limits in Section 4.4, Compensation includes all Compensation paid by or for any Participating Employer.

14.8 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service or had a severance from employment.

14.9 REQUIRED MINIMUM DISTRIBUTIONS

If a Participant is a more than 5% Owner (under Code §416(i) and Section 6.8(e)(6)) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's "required beginning date" under Section 6.8(e)(5) shall be the April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

14.10 COOPERATION AND INDEMNIFICATION

(a) **Cooperation.** Each Participating Employer agrees to timely provide all information the Administrator deems necessary to insure the Plan is operated in accordance with the requirements of the Code and the Act and will cooperate fully with the "lead Employer," the Plan, the Plan fiduciaries and other proper representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(b) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Administrator, the "lead Employer" and its subsidiaries; officers, directors, shareholders, employees, and agents of the "lead Employer"; the Plan; the Trustees, Fiduciaries, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees or DOL fiduciary breach sanctions and penalties) arising out of or relating to the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan. This indemnity provision shall continue to apply to a Participating Employer with respect to the period such entity was a Participating Employer, even if the Participating Employer withdraws or is removed pursuant to Sections 14.11 or 14.12.

14.11 INVOLUNTARY TERMINATION

Unless the "lead Employer" provides otherwise in an addendum hereto, the "lead Employer" shall have the power to terminate the participation of any Participating Employer (hereafter "Terminated Employer") in this Plan. If and when the "lead Employer" wishes to exercise this power, the following shall occur:

(a) **Notice.** The "lead Employer" shall give the "Terminated Employer" a notice of the "lead Employer's" intent to terminate the "Terminated Employer's" status as a Participating Employer of the Plan. The "lead Employer" will provide such notice not less than thirty (30) days prior to the date of termination unless the "lead Employer" determines that the interest of Plan Participants requires earlier termination.

(b) **Spin-off.** The "lead Employer" shall establish a new defined contribution plan, using the provisions of this Plan with any modifications contained in the "Terminated Employer's" participation agreement, as a guide to establish a new defined contribution plan (the "spin-off plan"). The "lead Employer" will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to the "spin-off plan." The "Terminated Employer" shall be the Employer, Administrator, and sponsor of the "spin-off plan." The Trustee of the "spin-off plan" shall be the person or entity designated by the "Terminated Employer," or, in the absence of any such designation, the chief executive officer of the "Terminated Employer." If state law prohibits the "Terminated Employer" from serving as Trustee, the Trustee is the president of a corporate "Terminated Employer," the managing partner of a partnership "Terminated Employer," the managing member of a limited liability company "Terminated Employer," the sole proprietor of a proprietorship "Terminated Employer," or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing. However, the "lead Employer" shall have the option to designate an appropriate financial institution as Trustee instead if necessary to protect the interest of the Participants. The "lead Employer" shall have the authority to charge the "Terminated Employer" or the Accounts of the Employees of the "Terminated Employer" a reasonable fee to pay the expenses of establishing the "spin-off plan."

(c) **Alternative.** The "Terminated Employer," in lieu of creation of the "spin-off plan" under (b) above, has the option to elect a transfer alternative in accordance with this Subsection (c).

(1) **Election.** To exercise the option described in this Subsection, the "Terminated Employer" must inform the "lead Employer" of its choice and must supply any reasonably required documentation as soon as practical. If the "lead Employer" has not received notice of a "Terminated Employer's" exercise of this option within ten (10) days prior to the stated date of termination, the "lead Employer" can choose to disregard the exercise and proceed with the Spin-off.

(2) **Transfer.** If the "Terminated Employer" selects this option, the Administrator shall transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to a qualified plan the "Terminated Employer" maintains. To exercise this option, the "Terminated Employer" must deliver to the "lead Employer" or Administrator in writing the name and other relevant information of the transferee plan and must provide such assurances that the Administrator shall reasonably require to demonstrate that the transferee plan is a qualified plan.

(d) **Participants.** The Employees of the "Terminated Employer" shall cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the "Terminated Employer," effective as of the date of termination. To the extent that these Employees have accrued but unpaid contributions as of the date of termination, the "Terminated Employer" shall pay such amounts to the Plan or the "spin-off plan" no later than thirty (30) days after the date of termination, unless the "Terminated Employer" effectively selects the Transfer option under Subsection (c)(2) above.

(e) **Consent.** By its signature on the participation agreement, the Terminated Employer specifically consents to the provisions of this Article and agrees to perform its responsibilities with regard to the "spin-off plan," if necessary.

14.12 VOLUNTARY TERMINATION

A Participating Employer (hereafter "withdrawing employer") may voluntarily withdraw from participation in this Plan at any time. If and when a "withdrawing employer" wishes to withdraw, the following shall occur:

(a) **Notice.** The "withdrawing employer" shall inform the "lead Employer" and the Administrator of its intention to withdraw from the Plan. The Withdrawing Employer must give the notice not less than thirty (30) days prior to the effective date of its withdrawal.

(b) **Procedure.** The "withdrawing employer" and the "lead Employer" shall agree upon procedures for the orderly withdrawal of the "withdrawing employer" from the plan. Such procedures may include any of the optional spin-off or transfer options described in Section 14.11.

(c) **Costs.** The "withdrawing employer" shall bear all reasonable costs associated with withdrawal and transfer under this Section.

(d) **Participants.** The Employees of the "withdrawing employer" shall cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the "withdrawing employer," effective as of the effective date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of the effective date of withdrawal, the "withdrawing employer" shall contribute such amounts to the Plan or the "spin-off plan" promptly after the effective date of withdrawal, unless the accounts are transferred to a qualified plan the "withdrawing employer" maintains.

14.13 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

ASCENSUS LLC NON-STANDARDIZED MODIFICATIONS

FIRST BUSEY CORPORATION PROFIT SHARING PLAN AND TRUST

The enclosed Plan is being submitted for expedited review as a Non-Standardized Plan.

No modifications from the approved specimen plan have been made to this Plan.

ADOPTION AGREEMENT FOR
ASCENSUS LLC
NON-STANDARDIZED
DEFINED CONTRIBUTION PRE-APPROVED PLAN

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION
(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: First Busey Corporation

Address: 100 W. University Ave.
Street

Champaign (City) Illinois (State) 61820 (Zip)

Telephone: (217) 365-4500

Taxpayer Identification Number (TIN): 37-1078406

Employer's Fiscal Year ends: December 31

2. TYPE OF ENTITY
a. [X] Corporation (including tax-exempt or non-profit Corporation)
b. [ ] Professional Service Corporation
c. [ ] S Corporation
d. [ ] Limited Liability Company that is taxed as:
  1. [ ] a partnership or sole proprietorship
  2. [ ] a Corporation
  3. [ ] an S Corporation
e. [ ] Sole Proprietorship
f. [ ] Partnership (including limited liability)
g. [ ] Other: ____________ (must be a legal entity recognized under federal income tax laws)

3. AFFILIATED EMPLOYERS/PARTICIPATING EMPLOYERS (Plan Sections 1.7 and 1.61). Is the Employer an Affiliated Employer (i.e., a member of a controlled group or an affiliated service group (within the meaning of Code §414(b), (c), (m) or (o)))?
a. [ ] No
b. [X] Yes, the Employer is a member of (select one or both of 1. - 2. AND select one of 3. - 4. below):
  1. [X] A controlled group
  2. [ ] An affiliated service group

  AND, will any of the Affiliated Employers adopt the Plan as Participating Employers?
  3. [X] Yes (Complete a participation agreement for each Participating Employer.)
  4. [ ] No (The Plan could fail to satisfy the Code §410(b) coverage rules.)

MULTIPLE EMPLOYER PLAN (Plan Article XIV). Will any Employers who are not Affiliated Employers adopt this Plan as part of a multiple employer plan (MEP) arrangement?
c. [X] No
d. [ ] Yes (Complete a participation agreement for each Participating Employer.)

PLAN INFORMATION
(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9 through 10.)

4. PLAN NAME:

First Busey Corporation Profit Sharing Plan and Trust

5. PLAN STATUS
   a. [ ] New Plan
   b. [X] Amendment and restatement of existing Plan
   CYCLE 3 RESTATEMENT (leave blank if not applicable)
      1. [X] This is an amendment and restatement to bring a plan into compliance with the legislative and regulatory changes set forth in IRS Notice 2017-37 (i.e., the 6-year pre-approved plan restatement cycle).

6. EFFECTIVE DATE (Plan Section 1.25) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

   Initial Effective Date of Plan (except for restatements, cannot be earlier than the first day of the current Plan Year)

   a. January 1, 1984 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below. NOTE: If the Effective Date of deferrals in the Plan is a different date than what is provided in this Section 6.a., Section 25.D.i. must also be completed. The Effective Date of 25.D.i. must be concurrent with or after the Effective Date in 6.a.)

   Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

   b. January 1, 2022 (enter month day, year. NOTE: The restatement date may not be prior to the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.65) means, except as otherwise provided in d. below:
   a. [X] the calendar year
   b. [ ] the twelve-month period ending on ___________ (e.g., June 30th)
   c. [ ] other: ____ (e.g., a 52/53 week year ending on the date nearest the last Friday in December).

   SHORT PLAN YEAR (Plan Section 1.76). Select below if there is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 15) (leave blank if not applicable):
   d. [ ] beginning on __ (enter month day, year; e.g., July 1, 2020)
   and ending on __ (enter month day, year).

8. VALUATION DATE (Plan Section 1.86) means:
   a. [ ] every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
   b. [X] the last day of each Plan Year
   c. [ ] the last day of each Plan Year half (semi-annual)
   d. [ ] the last day of each Plan Year quarter
   e. [ ] other (specify day or days): _______________ (must be at least once each Plan Year)

   NOTE: The Plan always permits interim valuations.

9. PLAN NUMBER (3-digit number for Form 5500 reporting)
   a. [ ] 001
   b. [X] 002
   c. [ ] Other: ___________

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER
   (If none is named, the Employer will be the Administrator (Plan Section 1.5).)
   a. [X] Employer (use Employer address and telephone number)
   b. [ ] The Committee appointed by the Employer (use Employer address and telephone number)
   c. [ ] Other:

   Name: ______________________________

   Address: ______________________________
   Street

   ______________ ______________ ______________
   City State Zip

   Telephone: ______________________________

11. TYPE OF PLAN (select one)
   a. [X] 401(k) Plan.
   b. [ ] Profit Sharing Plan. (under Current Contributions, may only elect 12.e., and/or 12.f.)
   c. [ ] Money Purchase Pension Plan. (under Current Contributions, may only elect 12.e., and/or 12.f.)

12. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

a. [ ] This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
   1. [ ] All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select prior contributions at i. – p. below (optional), skip questions 13-19 and 23-33)
   2. [ ] All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - h.)

   Effective date
   3. [ ] as of ______________ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CURRENT CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

b. [X] **Elective Deferrals** (Question 25). Also select below if Roth Elective Deferrals are permitted.
   1. [X] Roth Elective Deferrals (Plan Section 1.73)
      a. [ ] Special Effective Date for Roth Elective Deferrals (choose if applicable) ______________ (select if Roth deferrals added in addition to and after Elective Deferrals)
c. [X] **401(k) "ADP test safe harbor contributions"** (Question 28)
   1. [X] **401(k) "ADP test safe harbor contributions"** (other than QACA "ADP test safe harbor contributions") (Match, Nonelective)
   2. [ ] **QACA "ADP test safe harbor contributions"**
d. [X] **Employer matching contributions** (Question 29)
e. [X] **Employer Nonelective Contributions** (includes Employer Profit Sharing contributions, Money Purchase Pension Plan contributions and/or "prevailing wage contributions") (Questions 30-31)
f. [X] **Rollover contributions** (Question 43)
g. [ ] **After-tax voluntary Employee contributions** (Question 44)
h. [ ] **SIMPLE 401(k) contributions** (Plan Section 13.1) (may not be selected with 12.c., 12.d., 12.e., or 12.g.)

PRIOR CONTRIBUTIONS

The Plan used to permit, but no longer does, the following contributions (choose all that apply, if any):

i. [ ] **Pre-tax Elective Deferrals**
j. [ ] **Roth Elective Deferrals**
k. [ ] **401(k) "ADP test safe harbor contributions"**
l. [ ] **Employer matching contributions**
m. [ ] **Employer Nonelective Contributions** (includes Employer Profit Sharing contributions, Money Purchase Pension Plan contributions)
n. [ ] **Rollover contributions**
o. [ ] **After-tax voluntary Employee contributions**
p. [ ] **SIMPLE 401(k) contributions**

ELIGIBILITY REQUIREMENTS

13. ELIGIBLE EMPLOYEES (Plan Section 1.28) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

a. [ ] **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 14).
b. [X] **Exclusions - same for all contribution types.** The following Employees are not Eligible Employees for all contribution types (select one or more of e. – p. below):
c. [ ] **Exclusions - different exclusions apply.** The following Employees are not Eligible Employees for the designated contribution types (select one or more of d. – p. below; also select column 1. OR all that apply of columns 2. - 4. for each exclusion selected at d. – n.) (may only be selected with 401(k) Plans):

NOTE: **For 401(k) Plans -** Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions; Matching includes QMACs; and Nonelective includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the exclusions for Elective Deferrals except as provided in Question 28.**

Exclusions			1. All Contributions		2. Elective Deferrals/SH	3. Matching	4. Nonelective
d.	[ ]	No exclusions	N/A		[ ]	[ ]	[ ]
e.	[X]	Union Employees (Plan Section 1.28(d))	[X]	OR	[ ]	[ ]	[ ]
f.	[X]	Nonresident aliens (Plan Section 1.28(e))	[X]	OR	[ ]	[ ]	[ ]
g.	[ ]	Highly Compensated Employees (Plan Section 1.41)	[ ]	OR	[ ]	[ ]	[ ]
h.	[X]	Leased Employees (Plan Section 1.49)	[X]	OR	[ ]	[ ]	[ ]
i.	[ ]	Residents of Puerto Rico	[ ]	OR	[ ]	[ ]	[ ]
j.	[ ]	Interns (Plan Section 1.28(g))	[ ]	OR	[ ]	[ ]	[ ]
k.	[ ]	Part-time Employees (Plan Section 1.28(f)) A part-time Employee is an Employee whose regularly scheduled service is less than ______ Hours of Service in the relevant eligibility computation period. See Note below.	[ ]	OR	[ ]	[ ]	[ ]
l.	[ ]	Temporary Employees (Plan Section 1.28(f)) A temporary Employee is an Employee who is categorized as a temporary Employee on the Employer's payroll records. See Note below.	[ ]	OR	[ ]	[ ]	[ ]
m.	[ ]	Seasonal Employees (Plan Section 1.28(f)) A seasonal Employee is an Employee who is categorized as a seasonal Employee on the Employer's payroll records. See Note below.	[ ]	OR	[ ]	[ ]	[ ]
n.	[ ]	Other: ______________________________ (must (1) be definitely determinable and may not be based on age or length of service (except in a manner consistent with k., l., and m. above) or level of Compensation, (2) be nondiscriminatory under Code §401(a)(4) and the regulations thereunder and, (3) if using the average benefits test to satisfy Code §410(b) coverage testing, must be a reasonable classification within the meaning of Regulation §1.410(b)-4(b)).	[ ]	OR	[ ]	[ ]	[ ]

o. [ ] Other: _________________________ (must (1) specify contributions to which exclusions apply, (2) be definitely determinable and not based on age or length of service (except in a manner consistent with k., l., and m. above) or level of Compensation, (3) be nondiscriminatory under Code §401(a)(4) and the regulations thereunder, and (4) if using the average benefits test to satisfy Code §410(b) coverage testing, be a reasonable classification within the meaning of Regulation §1.410(b)-4(b)).

p. [ ] **Code §410(b)(6)(C) inclusion.** The Code §410(b)(6)(C) exclusion set forth in Plan Section 1.28 will not apply with respect to the following (such Employees must still satisfy any applicable eligibility conditions) (select one):

1. [ ] All Employees.
2. [ ] Only the following Employees _________ (e.g., those who became Employees due to the acquisition of the assets of ABC Company)

NOTE: If option k. – m. (part-time, temporary and/or seasonal exclusions) is selected, then any such excluded Employee actually completes 1 Year of Service, then such Employee will no longer be part of this excluded class. For this purpose, the Hours of Service method will be used for the 1 Year of Service override regardless of any contrary selection at Question 17.

14. CONDITIONS OF ELIGIBILITY (Plan Section 3.1)

a. [ ] **No age and service required.** No age and service required for all contribution types (skip to Question 15).

b. [ ] **Eligibility - same for all contribution types.** An Eligible Employee will be eligible to participate in the Plan for all contribution types upon satisfaction of the following (select one or more of e. - n. below):

c. [X] **Eligibility - different conditions apply.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following either for all contribution types or to the designated contribution type (select one or more of d. - n. below; also select column 1. OR all that apply of columns 2. - 4. for each condition selected at d. - m.) (may only be selected with 401(k) Plans):

NOTE: **For 401(k) Plans** - Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions (unless otherwise selected at Question 43); Matching includes QMACs; and Nonelective includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the conditions for Elective Deferrals except as provided in Question 28.**

Eligibility Conditions	**1. All Contributions**		**2. Elective Deferrals/SH**	**3. Matching**	**4. Nonelective**
d. [ ] No age and service required	N/A		[ ]	[ ]	[ ]
e. [ ] Age 20 1/2	[ ]	**OR**	[ ]	[ ]	[ ]
f. [X] Age 21	[X]	**OR**	[ ]	[ ]	[ ]
g. [ ] Age ______ (may not exceed 21)	[ ]	**OR**	[ ]	[ ]	[ ]
h. [ ] ______ (not to exceed 12) months of service (elapsed time)	[ ]	**OR**	[ ]	[ ]	[ ]
i. [X] 1 Year of Service	[ ]	**OR**	[ ]	[ ]	[X]
j. [ ] 2 Years of Service	[ ]	**OR**	[ ]	[ ]	[ ]
k. [ ] ______ (not to exceed 12) consecutive month period from the Eligible Employee's employment commencement date and during which at least ______ (not to exceed 1,000) Hours of Service are completed. If an Eligible Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the 1 Year of Service requirement in i. above.	[ ]	**OR**	[ ]	[ ]	[ ]
l. [ ] ______ (not to exceed 12) consecutive months of employment from the Eligible Employee's employment commencement date. If an Eligible Employee does not complete the stated number of months, the Employee is subject to the 1 Year of Service requirement in i. above.	[ ]	**OR**	[ ]	[ ]	[ ]
m. [ ] Other: ______________________ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)	[ ]	**OR**	[ ]	[ ]	[ ]

n. [ ] Other: __________________________ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must specify contributions to which conditions apply and satisfy the Notes below)

NOTE: If m. or n. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 21 and for Elective Deferrals, 1 Year of Service; for Employer matching and/or Nonelective Contributions, may not exceed 2 Years of Service. If more than 1 Year of Service is required for Employer matching and/or Nonelective Contributions, 100% immediate vesting is required.

NOTE: If the service requirement is or includes a fractional year, then, except in a manner consistent with k., an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year. If expressed in months of service, then an Employee will not be required to complete any specified number of Hours of Service in a particular month, unless selected in k. above. In both cases, the Hours of Service method will be used for the 1 Year of Service override (e.g., options k. and l.) regardless of any contrary selection at Question 17.

NOTE: Year of Service means Period of Service if the elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

Requirements waived	**1. All Contributions**		**2. Elective Deferrals/SH**	**3. Matching**	**4. Nonelective**
o. [ ] If employed on _____________ the following requirements, and the entry date requirement, will be waived. (select a. and/or b. AND c. and/or d. if applicable) (for 401(k)	[ ]	**OR**	[ ]	[ ]	[ ]

plans, also select column 1. OR all that apply of columns 2. - 4.):
a. [ ] service requirement (may let part-time Eligible Employees into the Plan)
b. [ ] age requirement

The waiver applies to any Eligible Employee unless c. selected below.
c. [ ] waiver is for: _____________ (e.g., Employees of a specific division or Employees covered by a Code §410(b)(6)(C) acquisition)

Such Employees will enter the Plan as of the above date unless d. selected below
d. [ ] _____________ (specify a date)

p. [ ] If employed on _____________ the following requirements, and the entry date requirement, will be waived. (select a. and/or b. AND c. and/or d. if applicable) (for 401(k) plans, also select column 1. OR all that apply of columns 2. - 4.): [ ] **OR** [ ] [ ] [ ]
a. [ ] service requirement (may let part-time Eligible Employees into the Plan)
b. [ ] age requirement

The waiver applies to any Eligible Employee unless c. selected below.
c. [ ] waiver is for: _____________ (e.g., Employees of a specific division or Employees covered by a Code §410(b)(6)(C) acquisition)

Such Employees will enter the Plan as of the above date unless d. selected below
d. [ ] _____________ (specify a date)

Amendment or restatement to change eligibility requirements

q. [ ] This amendment or restatement (or a prior amendment or restatement) modified the eligibility and/or entry date requirements and the prior eligibility and/or entry date conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility and entry date conditions set forth above.
1. [ ] The modified eligibility and entry date conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
2. [ ] The modified eligibility and entry date conditions above only apply to individuals who were hired on or after the effective date of the modification.

15. EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)

a. [ ] **Entry date same for all contribution types.** An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan for all contribution types as of the entry date selected below (select one of c. - k.) (for 401(k) plans, h. and i. are not permitted for all contribution types):

b. [X] **Entry date - different dates apply.** An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan for the designated contribution type as of the entry dates selected below (select one or more of c. - k. below; also select all that apply of columns 2. - 4. for each entry date selected at c. - j.) (may only be selected with 401(k) Plans)

NOTE: **For 401(k) Plans** - Option g. below can only be selected when eligibility for Elective Deferral purposes is six months of service or less and age is 20 1/2 or less. Options g.3. and g.4. may be selected when eligibility is 1 1/2 Years of Service or less and age is 20 1/2 or less and the Plan provides for 100% vesting.

NOTE: **For 401(k) Plans** - Unless otherwise specified in this Section or any other Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions (unless otherwise selected at Question 43); Matching includes QMACs; and Nonelective includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the provisions for Elective Deferrals except as provided in Question 28.**

Entry Date		**1. All Contributions**		**2. Elective Deferrals/SH**	**3. Matching**	**4. Nonelective**
c. [X]	Date requirements met	[ ]	**OR**	[X]	[X]	[ ]
d. [ ]	First day of the month coinciding with or next following date requirements met	[ ]	**OR**	[ ]	[ ]	[ ]
e. [X]	First day of the Plan Year quarter coinciding with or next following date requirements met	[ ]	**OR**	[ ]	[ ]	[X]
f. [ ]	First day of Plan Year or first day of 7th month of Plan Year coinciding with or next following date requirements met	[ ]	**OR**	[ ]	[ ]	[ ]
g. [ ]	First day of Plan Year coinciding with or next following date requirements met	[ ]	**OR**	[ ]	[ ]	[ ]
h. [ ]	First day of Plan Year in which requirements met	N/A		N/A	[ ]	[ ]
i. [ ]	First day of Plan Year nearest date requirements met	N/A		N/A	[ ]	[ ]
j. [ ]	Other: ________________ (must be definitely determinable and satisfy Note below)	[ ]	**OR**	[ ]	[ ]	[ ]

k. [ ] Other: ________________ (must specify contributions to which the conditions apply, must be definitely determinable, and must satisfy the Note below)

NOTE: If j. or k. above is selected, then it must be completed in a manner that ensures an Eligible Employee who has satisfied the maximum age (21) and service requirements (1 Year (or Period) of Service (or more than 1 year if full and immediate vesting)) and who is otherwise entitled to participate, will become a Participant not later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

SERVICE

16. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.62 and 1.88)

a. [X] No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 17).

b. [ ] Service with the designated employers is recognized as follows (select c. - f. and one or more of columns 1. - 3.; choose other options as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option k. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)):

Other Employer		**1. Eligibility**	**2. Vesting**	**3. Contribution Allocation**
c. [ ]	Employer name: ________________	[ ]	[ ]	[ ]
d. [ ]	Employer name: ________________	[ ]	[ ]	[ ]
e. [ ]	Employer name: ________________	[ ]	[ ]	[ ]
f. [ ]	Any entity or business the Employer acquires whether by asset or stock purchase, but only with respect to individuals who are employees of the acquired entity at the time of the acquisition	[ ]	[ ]	[ ]
Limitations				
g. [ ]	The following provisions or limitations apply with respect to the recognition of service with other employers: ________________ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)	[ ]	[ ]	[ ]

h. [ ] The following provisions or limitations apply with respect to the recognition of service with other employers: _______________ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.62 and 1.88 regardless of any selections above.

17. SERVICE CREDITING METHOD (Plan Sections 1.62 and 1.88)

NOTE: If any Plan provision is based on a Year of Service, then the provisions set forth in the definition of Year of Service in Plan Section 1.88 will apply, including the following defaults, except as otherwise elected below:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
2. Hours of Service (Plan Section 1.43) will be based on actual Hours of Service except that for Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees) the monthly equivalency method will be used).
3. For eligibility purposes, the computation period will be as defined in Plan Section 1.88 (i.e., shift to the Plan Year if the eligibility condition is 1 Year of Service or less).
4. For vesting, allocation, and distribution purposes, the computation period will be the Plan Year.
5. The one-year hold-out rule after a 1-Year Break in Service will not be used.

a. [ ] **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:
   1. [ ] all purposes (skip to Question 18)
   2. [ ] the following purposes (select one or more):
      a. [ ] eligibility to participate
      b. [ ] vesting
      c. [ ] allocations, distributions and contributions

b. [ ] **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
   1. [ ] **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service.
   2. [ ] **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
   3. [ ] **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
      a. [ ] all purposes
      b. [ ] the following purposes (select one or more):
         1. [ ] eligibility to participate
         2. [ ] vesting
         3. [ ] allocations, distributions and contributions

      Such method will apply to:
      c. [ ] all Employees
      d. [ ] Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
      e. [ ] other: _____________ (e.g., per-diem Employees only)

      Hours of Service will be determined on the basis of:
      f. [ ] days worked (10 hours per day)
      g. [ ] weeks worked (45 hours per week)
      h. [ ] semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
      i. [ ] months worked (190 hours per month)
      j. [ ] bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
      k. [ ] other: _____________ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees)

   4. [ ] **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least ______ (not to exceed 1,000) Hours of Service for:
      a. [ ] all purposes
      b. [ ] the following purposes (select one or more):
         1. [ ] eligibility to participate
         2. [ ] vesting
         3. [ ] allocations, distributions and contributions

c. [ ] **Other service crediting provisions:** _________________ (must be definitely determinable and nondiscriminatory; e.g., for vesting a Year of Service is based on 1,000 Hours of Service but for eligibility a Year of Service is based on 900 Hours of Service. NOTE: Must not list more than 1,000 hours in this Section.) This servicing credit provision will be used for:
  1. [ ] All purposes
  2. [ ] The following purposes (select one or more):
    a. [ ] eligibility to participate
    b. [ ] vesting
    c. [ ] allocations, distributions and contributions

VESTING

18. VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))

a. [ ] N/A (no Employer Nonelective Contributions (other than "prevailing wage contributions")) (for 401(k) plans, also no matching contributions or QACA "ADP test safe harbor contributions") (skip to Question 20)

b. [X] The vesting provisions selected below apply to all Participants unless otherwise selected below. In addition, option l. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) can be used to specify any exceptions to the provisions below.
Vesting waiver. Employees who were employed on the date(s) indicated below and were Participants as of such date are 100% Vested. For Participants who enter the Plan after such date, the vesting provisions selected below apply (leave blank if no waiver applies):
  1. [ ] For all contributions. The vesting waiver applies to all contributions if employed on ______ (enter date)
  2. [ ] For designated contributions. The vesting waiver applies to (select one or more) (may only be selected with 401(k) Plans):
    a. [ ] Employer Nonelective Contributions if employed on ______
    b. [ ] Employer matching contributions if employed on ______
    c. [ ] QACA "ADP test safe harbor contributions" if employed on ______

Vesting for Employer Nonelective Contributions

c. [ ] N/A (no Employer Nonelective Contributions (other than "prevailing wage contributions"); skip to f.) (may only be selected with 401(k) Plans)

d. [ ] 100% vesting. Participants are 100% Vested in Employer Nonelective Contributions upon entering Plan (required if eligibility requirement is greater than 1 Year (or Period) of Service).

e. [X] The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer Nonelective Contributions:
  1. [ ] 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
  2. [ ] 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  3. [X] 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  4. [ ] 3 Year Cliff: 0-2 years-0%; 3 years-100%
  5. [ ] Other - Must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Years (or Periods) of Service	Percentage
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%

Vesting for Employer matching contributions (may only be selected with 401(k) Plans)

f. [ ] N/A (there are no Employer matching contributions that can be subject to a vesting schedule; skip to j.)

g. [X] The schedule above will also apply to Employer matching contributions.

h. [ ] 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan. (required if eligibility requirement is greater than 1 Year (or Period) of Service)

i. [ ] The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
  1. [ ] 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
  2. [ ] 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  3. [ ] 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  4. [ ] 3 Year Cliff: 0-2 years-0%; 3 years-100%
  5. [ ] Other - must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Years (or Periods) of Service	Percentage
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%

Vesting for QACA safe harbor contributions (may only be selected with 401(k) Plans)

j. [X] N/A (no QACA "ADP test safe harbor contributions"; skip to Question 19)

k. [ ] 100% vesting. Participants are 100% Vested in QACA "ADP test safe harbor contributions" upon entering Plan (skip to Question 19).

l. [ ] The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to the Participant's Qualified Automatic Contribution Safe Harbor Account:

1. [ ] 100% after two years: 0-1 year-0%; 2 years-100%
2. [ ] Other - Must be at least as liberal as 1. above in each year:

Years (or Periods) of Service	Percentage
Less than 1	______%
1	______%
2	100%

19. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

a. [ ] Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))

b. [ ] Service prior to the computation period in which an Employee has attained age 18

Vesting for death, Total And Permanent Disability and Early Retirement Date. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

c. [X] Death

d. [X] Total and Permanent Disability

e. [ ] Early Retirement Date

NOTE: Unless otherwise elected at option v. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the options above apply to QACA "ADP test safe harbor contributions," if any, as well as to Employer Nonelective Contributions and matching contributions.

RETIREMENT AGES

20. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.55) means:

a. [X] **Specific age.** The date a Participant attains age _59 1/2_ (see Note below).

b. [ ] **Age/participation.** The later of the date a Participant attains age ______ (see Note below) or the ______ (not to exceed 5th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

NOTE: A Participant's age specified above may not exceed 65 and, if this Plan is a Money Purchase Pension Plan or includes transferred pension assets, a Participant's age may not be less than age 62 unless the Employer has evidence that the representative typical retirement age for the adopting Employer's industry is a lower age, but may be no less than age 55. If an age between 55 and less than 62 is inserted, no reliance will be afforded on the Opinion Letter issued to the Plan that such age is reasonably representative of the typical retirement age for the industry in which the Participants work.

21. NORMAL RETIREMENT DATE (Plan Section 1.56) means, with respect to any Participant, the:

a. [X] date on which the Participant attains "NRA"

b. [ ] first day of the month coinciding with or next following the Participant's "NRA"

c. [ ] first day of the month nearest the Participant's "NRA"

d. [ ] Anniversary Date coinciding with or next following the Participant's "NRA"

e. [ ] Anniversary Date nearest the Participant's "NRA"

f. [ ] Other: ______________________ (e.g., first day of the month following the Participant's "NRA")

22. EARLY RETIREMENT DATE (Plan Section 1.23)

a. [X] N/A (no early retirement provision provided)

b. [ ] Early Retirement Date means the:

1. [ ] date on which a Participant satisfies the early retirement requirements

2. [ ] first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
3. [ ] Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

Early retirement requirements

4. [ ] Participant attains age _______
   AND, completes.... (leave blank if not applicable)
   a. [ ] at least _______ Years (or Periods) of Service for vesting purposes
   b. [ ] at least _______ Years (or Periods) of Service for eligibility purposes

COMPENSATION

23. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.18 and 1.40).

Base definition

a. [ ] Wages, tips and other compensation on Form W-2
b. [ ] Code §3401(a) wages (wages for withholding purposes)
c. [X] 415 safe harbor compensation

NOTE: Plan Sections 1.18(d) and 1.40 provide that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457.

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option h. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)):

d. [X] the Plan Year
e. [ ] the Fiscal Year coinciding with or ending within the Plan Year
f. [ ] the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.18). Compensation will be adjusted by:

g. [ ] **No adjustments.** No adjustments to Compensation for all contribution types (skip to Question 24).
h. [X] **Adjustments - same for all contribution types.** The following Compensation adjustments apply to all contribution types (select one or more of l. – v. below) (k. may also be selected for Profit Sharing Plans or Money Purchase Pension Plans):
i. [ ] **Adjustments - different adjustments apply.** The following Compensation adjustments for the designated contribution type (select one or more of k. – v. below; also select column 1. OR all that apply of columns 2. - 5. for each adjustment selected at j. – u.) (may only be selected with 401(k) Plans):

NOTE: **For 401(k) Plans** - Elective Deferrals include Roth Elective Deferrals, Matching includes QMACs and matching "ADP test safe harbor contributions" (including those made pursuant to a QACA), and Nonelective includes Profit Sharing contributions, Money Purchase Pension Plan contributions and QNECs unless specified otherwise. ADP Safe Harbor Nonelective includes nonelective "ADP test safe harbor contributions" (including those made pursuant to a QACA).

Adjustments	**1. All Contributions**		**2. Elective Deferrals**	**3. Matching**	**4. Nonelective**	**5. ADP Safe Harbor Nonelective**
j. [ ] no Adjustments	N/A		[ ]	[ ]	[ ]	[ ]
k. [ ] excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457)	N/A		N/A	N/A	[ ]	[ ]
l. [ ] excluding reimbursements or other expense, allowances, fringe benefits (cash or non-cash) (see IRS Publication 15-B), moving expenses, deferred compensation (other than deferrals specified in k. above) and welfare benefits.	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
m. [X] excluding Compensation paid during the "determination period" while not a Participant in the component of the Plan for which the definition applies.	[X]	**OR**	[ ]	[ ]	[ ]	[ ]

n. [ ]	excluding Compensation paid during the "determination period" while not a Participant in *any* component of the Plan for which the definition applies.	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
o. [ ]	excluding Military Differential Pay	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
p. [ ]	excluding amounts in excess of $______ a. [ ] limited to HCEs (must be selected for ADP Safe Harbor Plans)	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]

The following adjustments will require annual nondiscrimination testing.

q. [ ]	excluding overtime	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
r. [ ]	excluding bonuses	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
s. [ ]	excluding commissions	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
t. [X]	excluding Compensation paid by an Affiliated Employer that has not adopted this Plan	[X]	**OR**	[ ]	[ ]	[ ]	[ ]
u. [ ]	other: ________________________ (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay))	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]

v. [ ] other: ____ (e.g., describe Compensation from the elections available above or a combination thereof as to a contribution source and Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay))

NOTE: If q., r., s., t., u., or v. is selected, the definition of Compensation could violate the nondiscrimination rules.

NOTE: **For 401(k) Plans** – q., r., s., t., u., or v. are not recommended if the Plan is using the ADP/ACP safe harbor provisions.

24. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

415 Compensation (post-severance compensation adjustments) (select all that apply at a. - b.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.40), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

a. [ ] The defaults listed above apply except for the following (select one or more):
   1. [ ] Leave cash-outs will be **excluded**
   2. [ ] Nonqualified unfunded deferred compensation will be **excluded**
   3. [ ] Disability continuation payments will be **included** for:
      a. [ ] Nonhighly Compensated Employees only
      b. [ ] all Participants and the salary continuation will continue for the following fixed or determinable period: ________________________
   4. [ ] Other: ____ (must be definitely determinable and nondiscriminatory in accordance with Code §401(a)(4) and the regulations thereunder)

b. [ ] The last paycheck ("administrative delay") rule will be applied (amounts paid in the first few weeks of a Limitation Year due to administrative delay relate back to the prior Limitation Year).

Plan Compensation (post-severance compensation adjustments)

c. [X] **Defaults apply.** For all contribution types, Compensation will **include** (to the extent provided in Plan Section 1.18 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans (skip to Question 25).

d. [ ] **Exclude all post-severance compensation.** Exclude all post-severance compensation for all contribution types (may violate the nondiscrimination requirements) (skip to Question 25).

e. [ ] **Post-severance adjustments - same for all contribution types.** The defaults listed at c. apply except for the following for all contribution types (select one or more of i. - l. below):

f. [ ] **Post-severance adjustments - different adjustments apply.** The defaults listed at c. apply except for the following for the designated contribution type (select one or more of g. - l. below; also select column 1. OR all that apply of columns 2. - 5. for each adjustment selected at g. – l.) (may only be selected with 401(k) Plans):

Adjustments	**1. All Contributions**		**2. Elective Deferrals**	**3. Matching**	**4. Nonelective**	**5. ADP Safe Harbor Nonelective**
g. [ ] Defaults apply	N/A		[ ]	[ ]	[ ]	[ ]
h. [ ] Exclude all post-severance compensation (may violate the nondiscrimination requirements)	N/A		[ ]	[ ]	[ ]	[ ]
i. [ ] Regular pay will be **excluded** (may violate the nondiscrimination requirements)	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
j. [ ] Leave cash-outs will be **excluded**	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
k. [ ] Nonqualified unfunded deferred compensation will be **excluded**	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]
l. [ ] Disability continuation payments will be **included** for: a. [ ] NHCEs only b. [ ] all Participants and the salary continuation will continue for the following fixed or determinable period: ______	[ ]	**OR**	[ ]	[ ]	[ ]	[ ]

m. [ ] Other: _____________ (must be definitely determinable and nondiscriminatory in accordance with Code §401(a)(4) and the regulations thereunder.)

CONTRIBUTIONS AND ALLOCATIONS

25. SALARY DEFERRAL ARRANGEMENT - ELECTIVE DEFERRALS (Plan Section 12.2) (skip if Elective Deferrals NOT selected at Question 12.b.) (Roth Elective Deferrals are permitted if selected at Question 12.b.1)

A. **Elective Deferral limit.** Each Participant may elect to have Compensation deferred by:
- a. [ ] up to (select one):
  - 1. [ ] ______% of Compensation
  - 2. [ ] $______
- b. [ ] from (select one):
  - 1. [ ] ______% to ______% of Compensation
  - 2. [ ] $______ to $______
- c. [X] up to the maximum amount allowed by law (i.e., Code §§402(g) and 415)
- d. [ ] **Minimum deferral amount.** A Participant's Elective Deferrals may not be less than: ____________ *(specify dollar amount (not greater than $10,000) and/or percentage of Compensation (not greater than 10%)).*

B. **Additional Elective Deferral limits.** Regardless of the above limits (if any), the following apply (select all that apply; leave blank if none apply):
- e. [ ] If a. or b. above is selected, a Participant may make a separate election to defer with respect to irregular pay (e.g., bonus)
  - 1. [ ] For purposes of the separate election, a Participant may elect to defer up to ______% of irregular pay (regardless of the limitation in a. or b. above)
- f. [ ] For Participants who are HCEs determined as of the beginning of a Plan Year, then instead of 25.A. applying, the Elective Deferral limit is (must be equal to or lower than limit selected in 25.A.; may not be selected if HCEs are excluded at 13.g.1 or 13.g.2) (select one):
  - 1. [ ] ______% of Compensation
  - 2. [ ] other: __________________________ (e.g., must be a specific limit that only applies to some or all HCEs)

C. **Catch-Up Contributions** (Plan Section 1.15). May eligible Participants make Catch-Up Contributions?
- g. [ ] No (skip to D. below)
- h. [X] Yes, and the following provisions apply:

  Matching Catch-Up Contributions. Catch-Up Contributions will be taken into account in applying any matching contribution under the Plan unless selected below.
  - 1. [ ] Matching contributions will not be made for amounts attributable to Catch-Up Contributions (may not be selected if this Plan provides for matching "ADP test safe harbor contributions," "ACP test safe harbor matching contributions," or SIMPLE Plans)

Special effective date (choose if applicable)
2. [ ] The effective date of the Catch-Up Contribution provisions is ___________ (Enter special effective date. The special effective date of the CODA cannot be prior to the Effective Date of the Plan (6.a) or, if applicable, the Effective Date of the Restatement (6.b).

D. **Elective Deferral special effective date** (choose if applicable)
i. [ ] The effective date of the Elective Deferral component of the Plan, which is also the first Entry Date for the Elective Deferral component of the Plan, is ___________ (enter month day, year) Note: The date chosen may not be earlier than the date on which the Employer first adopts the Elective Deferral component of the Plan and the Employer must operationally begin taking deferrals from Compensation as soon as administratively feasible thereafter.

26. AUTOMATIC CONTRIBUTION ARRANGEMENT (Plan Section 12.2 and 12.9) (skip if Elective Deferrals are NOT selected at Question 12.b.)

A. **Automatic Deferral provisions.** Will the Plan include Automatic Deferral provisions?
a. [X] No (skip to Question 28)
b. [ ] Yes, this Plan includes (select one):
1. [ ] A traditional Automatic Contribution Arrangement (not an Eligible Automatic Contribution Arrangement (EACA) or a Qualified Automatic Contribution Arrangement (QACA))
2. [ ] An Eligible Automatic Contribution Arrangement (EACA) but not a Qualified Automatic Contribution Arrangement (QACA)
3. [ ] A Qualified Automatic Contribution Arrangement (QACA) (a QACA, by definition, satisfies the requirements of an Eligible Automatic Contribution Arrangement (EACA)) (must be selected if QACA safe harbor contributions is selected at 12.c.2.)

B. **Participants subject to the Automatic Deferral provisions.** The Automatic Deferral provisions apply to Employees who become Participants on or after the effective date of these Automatic Deferral provisions, except as otherwise provided herein.

Application to existing Eligible Employees. If the effective date of these Automatic Deferral provisions is later than the date Elective Deferrals were first permitted under this Plan, then the following rules apply to Eligible Employees who were Participants immediately prior to the effective date of these Automatic Deferral provisions (if an EACA and not a QACA, see the Note below; select c. or d. and/or e.):
c. [ ] The Automatic Deferral provisions are either already an ongoing arrangement or will be implemented prospectively on a limited basis (if selected, do not select d.)
1. [ ] **No existing Eligible Employees.** These Automatic Deferral provisions have applied since the date Elective Deferrals were first permitted under this Plan.
2. [ ] **No application to existing Participants.** These Automatic Deferral provisions do not apply to Employees who were Participants immediately prior to the effective date of these Automatic Deferral provisions. (may not be selected with QACA).
3 [ ] **New hires only (not applicable to QACA).** These Automatic Deferral provisions only apply to Employees whose employment commencement date (or reemployment commencement date) is on or following the effective date of these Automatic Deferral provisions or the following date:
Other effective date. (optional; specify a date)
a. [ ] _____________
d. [ ] These Automatic Deferral provisions apply to existing Participants in accordance with the following (select one):
1. [ ] **All Participants.** All existing Participants, regardless of any prior Salary Deferral Agreement.
2. [ ] **Affirmative Election of at least Automatic Deferral amount.** All existing Participants, except those who have an Affirmative Election in effect on the effective date of these Automatic Deferral provisions that is at least equal to the Automatic Deferral amount.
3. [ ] **No existing Affirmative Election.** All existing Participants, except those who have an Affirmative Election in effect on the effective date of these Automatic Deferral provisions.
e. [ ] Other (may not be used if a QACA): __________ (must be definitely determinable in accordance with Regulation §1.401-1(b)(1)(ii))

NOTE: Option B.e. may be used to exclude other Participants from the Automatic Deferral provisions.

NOTE: If an EACA and not a QACA and c. is selected (i.e., EACA does not apply to existing Participants), then the six-month period for relief from the excise tax under Code §4979(f)(1) will not apply. In addition, the six-month period for relief from the excise tax will only apply if all HCEs and NHCEs are covered Employees under the EACA for the entire Plan Year (or for the portion of the Plan Year that such Employees are Eligible Employees under the Plan within the meaning of Code §410(b)).

C. **Automatic Deferral amount.** Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral amount (select one):
f. [ ] ______% of Compensation for each payroll period (if a QACA, must not be more than 10% and may not be less than 3% if escalation provisions used in h.1. below or 6% if no escalation provisions are selected)
g. [ ] $______ for each payroll period (may not be selected if a QACA or EACA)

h. [ ] **QACA statutory minimum schedule** (may select even if Plan is not a QACA). Unless a modified QACA statutory schedule is selected below, the Employer will withhold from a Participant's Compensation each payroll period the percentage of Compensation set forth in the following, which is based on the Plan Year of application to a Participant: 1-2 years-3%; 3 years-4%; 4 years-5%; 5 or more-6%. (if selected, skip D.)

1. [ ] The following modified QACA statutory schedule will apply (the limitations in the parentheses below only applies to QACAs):

Plan Year of application to a Participant	Automatic Deferral Percentage
1	______% (not less than 3)
2	______% (not less than 3)
3	______% (not less than 4)
4	______% (not less than 5)
5	______% (not less than 6 and not more than 10)
6	______% (not less than 6 and not more than 10)
7	______% (not less than 6 and not more than 10)
8	______% (not less than 6 and not more than 10)
9	______% (not less than 6 and not more than 10)
10 and thereafter	______% (not less than 6 and not more than 10)

i. [ ] **Other:** ________________________________ (in order to satisfy the QACA requirements (if applicable), an alternative Automatic Deferral amount schedule (i) must be uniform based on the number of years, or portions of years, since the beginning of the initial period for a Participant, (ii) must satisfy the minimum percentage requirement in h. above throughout the Plan Year, and (iii) must not exceed 10% of Compensation)

D. **Escalation of Automatic Deferral amount** (may not be selected with 26.h.)

j. [ ] No escalation or Plan is a QACA (any escalation for a QACA must be set forth above)

k. [ ] **Scheduled increases.** The initial Automatic Deferral amount will increase as selected below (may not be selected with h. above):

1. [ ] by ______% point(s) of Compensation (choose a. below if applicable)
   a. [ ] up to a maximum of ______% of Compensation
2. [ ] by $______ (may not be selected if an EACA; choose a. below if applicable)
   a. [ ] up to a maximum of $______
3. [ ] other: ____________ (in order to satisfy the QACA requirements (if applicable), an alternative Automatic Deferral amount schedule (i) must be uniform based on the number of years, or portions of years, since the beginning of the initial period for a Participant, (ii) must satisfy the minimum percentage requirement in h. above throughout the Plan Year, and (iii) must not exceed 10% of Compensation)

Change Date

4. [ ] N/A (entry at k.3. includes timing provision)
5. [ ] The escalation provision above will apply as of:
   a. [ ] each anniversary of the Participant's date of hire
   b. [ ] each anniversary of the Participant's Entry Date
   c. [ ] the first day of each Plan Year
   d. [ ] the first day of each calendar year
   e. [ ] other: ____________________________ (must be a specified date that occurs at least annually after the Plan Year in which the Participant is first subject to the Automatic Contribution Arrangement)

First change date of application. Unless selected below, the escalation provision above will apply as of the first change date specified above that begins after the period in which the Participant first has contributions made pursuant to a default election.

f. [ ] The escalation provision will apply as of the second change date period after the Participant first has contributions made pursuant to a default election.

E. **Other Automatic Deferral elections** (leave blank if none apply)

l. [ ] **Optional elections** (select one or more)

Type of Elective Deferral. The Automatic Deferral is a Pre-Tax Elective Deferral unless selected below (may only be selected if Roth Elective Deferrals are selected at 12.b.1.):

1. [ ] the Automatic Deferral is a Roth Elective Deferral
2. [ ] other: ____________________________ (e.g., 50% Pre-Tax and 50% Roth Elective Deferrals)

Special effective dates (optional; may choose one or both)

3. [ ] The Automatic Deferral provisions set forth above are effective as of ____________

4. [ ] Other: ____________ (If there are multiple retroactive special effective dates, complete this Question 26 based on the current Plan provisions and, if desired, duplicate this Question 26 and attach as an Appendix to indicate other special effective dates and the provisions that applied.)

F. **EACA elections** (skip if NOT a QACA or EACA)

Permissible withdrawals. Does the Plan permit Participant permissible withdrawals (as described in Plan Section 12.2(b)(4)) within 90 days (or less) of first Automatic Deferral?

m. [ ] No
n. [ ] Yes, within 90 days of first Automatic Deferral
o. [ ] Yes, within: _________ days (may not be less than 30 nor more than 90 days)

Affirmative Election. Will Participants who are eligible to defer (even if they have made an Affirmative Election) continue to be covered by the EACA provisions (i.e., their Affirmative Election will remain intact but they must receive an annual notice)? (skip if a QACA)

p. [ ] Yes (if selected, then the annual notice must be provided to Participants)
q. [ ] No (if selected, then the Plan cannot use the six-month period for relief from the excise tax of Code §4979(f)(1))

27. AUTOMATIC ESCALATION OF PARTICIPANTS WITH AFFIRMATIVE ELECTIONS

The following Automatic Escalation provisions apply to Participants who have made an Affirmative Election (see Question 26 for Automatic Deferral provisions that apply to Participants who have made no Affirmative Election). (skip if Elective Deferrals are NOT selected at Question 12.b.)

A. **Automatic Escalation of Affirmative Elections.** Will the Plan automatically escalate Participants with an Affirmative Election?

a. [X] No (skip to Question 28)
b. [ ] Yes. If Automatic Escalation applies to a Participant, this constitutes a provision that the Participant's affirmative election will expire annually.

Under a 401(k) plan, the plan may provide that an affirmative election expires annually. If a participant fails to complete a new affirmative election subsequent to their prior election expiring, the participant becomes subject to the default deferral percentage as outlined in this Election 27 and in Plan Section 12.2(l)(1). Each year, the participant can always complete a new affirmative election and designate a new deferral percentage.

B. **Participants affected**. The Automatic Escalation provisions apply to the following Participants with Affirmative Elections (select one of c., d., or e.):

c. [ ] **All Deferring Participants**. All Participants who have a Salary Reduction Agreement in effect as of the effective date of these automatic deferral provisions to defer at least ______% of Compensation.
d. [ ] **New Deferral Elections**. All Participants who file a Salary Reduction Agreement after the effective date of these provisions to defer at least _____ % of Compensation.
e. [ ] **Describe affected Participants**: ______________________________ (the group of Participants must be definitely determinable and if an EACA (including a QACA) as elected in Question 26, must be uniform)

C. **Automatic Increases.** Affirmative Elections of Participants covered by this Question 27 will be increased as follows (select one):

f. [ ] **Same as Automatic Enrollment escalation**. The same escalation provisions selected in Question 26 apply to Participants covered by this Question 27 (if selected, skip the remaining Questions).
g. [ ] **Scheduled increases.** The Affirmative Election amount will increase as selected below
    1. [ ] by ______% point(s) of Compensation (choose a. below if applicable)
        a. [ ] up to a maximum of ______% of Compensation
    2. [ ] by $______ (may not be selected if an EACA; choose a. below if applicable)
        a. [ ] up to a maximum of $______
    3. [ ] other: ___________ (must be uniform if an EACA)

Change Date

4. [ ] N/A (entry at g.3. includes timing provision)
5. [ ] The escalation provision above will apply as of:
    a. [ ] each anniversary of the Participant's date of hire
    b. [ ] each anniversary of the Participant's Entry Date
    c. [ ] the first day of each Plan Year
    d. [ ] the first day of each calendar year
    e. [ ] other: ___________________________

First change date. Unless selected below, the escalation provision above will apply as of the first change date specified above that begins after the period in which the Participant first has an Affirmative Election subject to these provisions.

f. [ ] The escalation provision will apply as of the second change date after the Participant first has an Affirmative Election subject to these provisions.

D. **Other Automatic Escalation provisions** (leave blank if none apply)

h. [ ] **Optional elections** (select one or more)

Type of Elective Deferral. The Automatic Escalation will be the same, or proportionate, type of Elective Deferral (i.e., Pre-Tax Elective Deferral or Roth Elective Deferral) as elected by the Participant in the Affirmative Election unless selected below (may only be selected if Roth Elective Deferrals are selected at 12.b.1.):

1. [ ] the Automatic Escalation is a Roth Elective Deferral
2. [ ] other: ____ (e.g., 50% Pre-Tax and 50% Roth Elective Deferrals)

Special effective dates (optional; may choose one or both)

3. [ ] The Automatic Escalation provisions set forth above are effective on and after ________________
4. [ ] Other: __________ (If there are multiple retroactive special effective dates, complete this Question 27 based on the current Plan provisions and, if desired, duplicate this Question 27 and attach as an Appendix to indicate other special effective dates and the provisions that applied.)

28. 401(k) ADP TEST SAFE HARBOR PROVISIONS (Plan Sections 12.8 and 12.9) (skip if "ADP test safe harbor contributions" are NOT selected at Question 12.c.)

NOTE: If the Employer wants the discretion to determine whether the provisions will apply on a year-by-year basis, then the Employer may select 28.a. or b. and 28.d.3.

NOTE: If the Employer will make the safe harbor contribution to another plan, complete this Question 28 and mark 28.e. to specify the name of the plan to which the safe harbor contribution will be deposited.

A. **ADP and ACP test safe harbor.** For any Plan Year in which any type of matching contribution is made, will the "ADP and ACP test safe harbor" provisions be used?

a. [ ] No. Only the "ADP (and NOT the ACP) test safe harbor" provisions will be used.

b. [X] Yes. Both the "ADP and ACP test safe harbor" provisions will be used for any Plan Year in which any type of matching contribution is made. (If selected, complete the provisions of the Adoption Agreement relating to Employer matching contributions (i.e., Question 29) that will apply, if any, in addition to any selections made in c. below. Also, no allocation conditions may be imposed at 29.E. unless no HCEs are eligible to receive the matching contribution)

B. **Safe harbor contribution.** The Employer will make the following "ADP test safe harbor contribution" for the Plan Year:

NOTE: The "ACP test safe harbor" is automatically satisfied if the only matching contribution made to the Plan is either, as described below, (1) a basic matching contribution (traditional or QACA) or (2) an enhanced matching contribution (traditional or QACA) that does not provide a match on Elective Deferrals in excess of 6% of Compensation.

c. [X] **Safe harbor matching contribution** (select one of 1. - 4. **AND** one of 5. - 9.). The Employer will make matching "ADP test safe harbor contributions" to the Account of each "eligible Participant" as elected below.

1. [X] **Traditional basic matching contribution** (may not be selected if a QACA). The Employer will contribute an amount equal to the sum of 100% of the amount of the Participant's Elective Deferrals that do not exceed 3% of the Participant's Compensation, plus 50% of the amount of the Participant's Elective Deferrals that exceed 3% of the Participant's Compensation but do not exceed 5% of the Participant's Compensation.

2. [ ] **Traditional enhanced matching contribution** (may not be selected if a QACA). The Employer will contribute an amount equal to the sum of:

a. [ ] ______% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed _ _% (may not be less than 3% or may be less than 3% provided the rate of match will result in a matching contribution of at least 100% on Elective Deferrals up to 3%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus

b. [ ] ______% of the Participant's Elective Deferrals that exceed ______% (must be the same % entered at a.) of the Participant's Compensation but do not exceed ______% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus

c. [ ] ______% of the Participant's Elective Deferrals that exceed ______% (must be the same % entered at b.) of the Participant's Compensation but do not exceed ______% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

NOTE: a., b. and c. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making basic matching contributions (as defined in 28.c.1. above), but the rate of match cannot increase as Elective Deferrals increase. For example, if a. is completed to provide a matching contribution equal to 100% of Elective Deferrals up to 4% of Compensation, then b. and c. need not be completed.

3. [ ] **QACA basic matching contribution.** The Employer will contribute an amount equal to the sum of 100% of a Participant's Elective Deferrals that do not exceed 1% of Participant's Compensation, plus 50% of the Participant's Elective Deferrals that exceed 1% of the Participant's Compensation but do not exceed 6% of the Participant's Compensation.
4. [ ] **QACA enhanced matching contribution.** The Employer will contribute an amount equal to the sum of:
   a. [ ] ______% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed _ _% (may not be less than 1%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
   b. [ ] ______% of the Participant's Elective Deferrals that exceed ______% (must be the same % entered at a.) of the Participant's Compensation but do not exceed ______% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
   c. [ ] ______% of the Participant's Elective Deferrals that exceed ______% (must be the same % entered at b.) of the Participant's Compensation but do not exceed ______% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

   NOTE: a., b. and c. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making QACA basic matching contributions (as defined in 28.c.3. above), but the rate of match cannot increase as Elective Deferrals increase. For example, if a. is completed to provide a matching contribution equal to 100% of Elective Deferrals up to 4% of Compensation, then b. and c. need not be completed.

Determination period. The matching "ADP test safe harbor contribution" above will be applied on the following basis (and Elective Deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):

5. [ ] the Plan Year (potential annual true-up required)
6. [X] each payroll period (no true-up)
7. [ ] all payroll periods ending within each month (potential monthly true-up contribution required)
8. [ ] all payroll periods ending within each Plan Year quarter (potential quarterly true-up required)
9. [ ] each payroll unit (e.g., hour) (no true-up)

d. [ ] **Safe harbor nonelective contributions** (select one)
   1. [ ] **3% contribution.** The Employer will make a nonelective "ADP test safe harbor contribution" for the Plan Year to the Account of each "eligible Participant" in an amount equal to 3% of each Participant's Compensation.
   2. [ ] **Stated contribution.** The Employer will make a nonelective "ADP test safe harbor contribution" to the Account of each "eligible Participant" in an amount equal to ______% (may not be less than 3%) of each Participant's Compensation.
   3. [ ] **"Maybe" election.** The Employer may elect to make a nonelective "ADP test safe harbor contribution" after a Plan Year has commenced in accordance with the provisions of Plan Section 12.8(h). If this option d.3. is selected, the nonelective "ADP test safe harbor contribution" will be required only for a Plan Year for which the Plan is amended to provide for such contribution and the appropriate supplemental notice is provided to Participants.

e. [ ] **Safe harbor contribution to another Plan.** The Employer will make a nonelective or matching "ADP test safe harbor contribution" to another defined contribution plan maintained by the Employer (specify the name of the other plan): ____.

C. **Excluded Participants.** For purposes of the "ADP test safe harbor contribution," the term "eligible Participant" means any Participant who is eligible to make Elective Deferrals unless otherwise excluded below (leave blank if no exclusions):

f. [ ] Exclusions (select one or more):
   1. [ ] Highly Compensated Employees (HCEs). The Employer may, however, make a discretionary "ADP test safe harbor contribution" and/or "ACP test safe harbor contribution" for any or all HCEs in a percentage that does not exceed the amount (or in the case of a matching "ADP test safe harbor contribution," the rate) provided to the NHCEs.
   2. [ ] Employees who have not satisfied the greatest minimum age and service conditions permitted under Code §410(a) (i.e., age 21 and 1 Year of Service), with the following deemed effective date of participation (if selected, the top-heavy exemption in Plan Section 12.8(f) will not apply):
      a. [ ] the earlier of the first day of the first month or the first day of the seventh month of the Plan Year immediately following the date such conditions are satisfied
      b. [ ] the first day of the Plan Year in which the requirements are met
      c. [ ] other: ________________________ (not later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied)
   3. [ ] Union Employees (as defined in Plan Section 1.28)

4. [ ] Other: ________________________ (must be an HCE or an Employee who can be excluded under the permissive or mandatory disaggregation rules of Regulations §§1.401(k)-1(b)(4) and 1.401(m)-1(b)(4); e.g., Employees who have not completed 6 months of service)

D. **Special effective dates** (may be left blank if no special effective dates need to be specified in this Plan) (select all that apply)

g. [ ] **Safe harbor provisions (other than QACA).** The "ADP and ACP test safe harbor" provisions are effective as of: ____________________ (enter the date the provisions are effective and, if necessary, enter any other special effective dates that apply with respect to the provisions; generally must be the first day of a Plan Year or the date Elective Deferrals are first permitted).

h. [ ] **QACA provisions.** The QACA provisions are effective as of:__________________________ (enter the date the provisions are effective and, if necessary, enter any other special effective dates that apply with respect to the provisions; generally must be the first day of a Plan Year or the date Elective Deferrals are first permitted)

i. [ ] **Other:**____________________ (If there are multiple retroactive special effective dates, complete this Question 28 based on the current Plan provisions and then duplicate this Question 28 and attach as an Appendix to indicate the special retroactive effective dates and provisions that applied.)

E. **Elective Deferrals considered for matching contribution.** If a matching contribution is selected above, then the Plan will disregard a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant unless otherwise elected below.

j. [ ] The Plan will include a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant.

29. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 12.1(a)(2) and Plan Section 12.12) (skip if matching contributions are NOT selected at Question 12.d.)

If the "ACP test safe harbor" provisions are being used (i.e., Question 28.b. is selected), then the Plan will only take into account Elective Deferrals up to 6% of Compensation in applying the matching contribution set forth below and the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.

A. **Matching formula.**

a. [X] Employer matching contribution as follows (select 1. or 2.):

1. [X] **Flexible Discretionary Match.** A "Flexible Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Except as specified below, the Employer retains discretion over the formula or formulas for allocating the Flexible Discretionary Match, including the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants or categories of Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "Flexible Discretionary Matching Formula"), except as the Employer otherwise elects in its Adoption Agreement. Such contributions will be subject to the Instructions and Notice requirement of Section 12.12, reproduced below, unless the Employer elects to use a "Rigid Discretionary Match" in Election 29.A.a.1.a. below.

The discretionary matching contribution under this Question 29.A.a. is a "Flexible Discretionary Match" unless the Employer elects to use a "Rigid Discretionary Match." (Choose a. if applicable.)

a. [X] **Rigid Discretionary Match.** A "Rigid Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Such discretion will only pertain to the amount of the annual contribution. The Employer must select the allocation method for this Contribution by selecting among those Adoption Agreement options which confer no Employer Discretion regarding the allocation of such discretionary amount, for example, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s). This "Rigid Discretionary Match" is not subject to the Instructions and Notice requirement of Section 12.12.

Section 12.12 provides: INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS. For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary

Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" is made to the Plan for the Plan Year.

2. [ ] **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to ______% (e.g., 50) of the Participant's Elective Deferrals, plus (select a. or leave blank if not applicable):
   a. [ ] an additional matching contribution of a discretionary percentage determined by the Employer,
      1. [ ] but not to exceed ______% of Compensation (leave blank if not applicable). Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

Matching limit on Elective Deferrals. In determining the Employer matching contribution above, only the following will be matched. Elective Deferrals up to (select 3. OR 4.; leave blank if not applicable):

3. [X] the percentage or dollar amount specified below (select one or both)
   a. [X] 6 % of a Participant's Compensation.
   b. [ ] $______.
4. [ ] a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis for all Participants. Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

b. [ ] **Discretionary - tiered.** The Employer may make matching contributions equal to a discretionary percentage of a Participant's Elective Deferrals, to be determined by the Employer, of each tier, to be determined by the Employer. The tiers may be based on the rate of a Participant's Elective Deferrals or Years of Service. Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

c. [ ] **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Elective Deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate $ or %)	Matching Percentage
First ______	______%
Next ______	______%
Next ______	______%
Next ______	______%

d. [ ] **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's Elective Deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
______	______%
______	______%
______	______%

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. [ ] vesting purposes
2. [ ] eligibility purposes

In determining the Employer matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched (select all that apply; leave blank if not applicable):

3. [ ] ______% of a Participant's Compensation.
4. [ ] $______.

e. [ ] Other: ____ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.) Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

NOTE: If a.1., b., c., d., or e. above is selected, the Plan may violate the Code §401(a)(4) nondiscrimination requirements if the rate of matching contributions increases as a Participant's Elective Deferrals or Years (or Periods) of Service increase.

Maximum matching contribution. (leave blank if not applicable)

f. [X] The matching contribution made on behalf of any Participant for any Plan Year will not exceed (select 1. or 2.):
   1. [ ] $______.
   2. [X] 4 % of Compensation.

B. **Date of Elective Deferrals considered for matching contribution.** The Plan will disregard a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant unless otherwise elected below.

g. [ ] The Plan will include a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant.

C. **Computation period.** Any matching contribution other than a "Flexible Discretionary Match" will be applied on the following basis (and Elective Deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period. *Skip if the only Matching Contribution is a Flexible Discretionary Match.)*:

h. [X] the Plan Year (potential annual true-up required)
i. [ ] each payroll period (no true-up)
j. [ ] all payroll periods ending within each month (potential monthly true-up required)
k. [ ] all payroll periods ending within each Plan Year quarter (potential quarterly true-up required)
l. [ ] each payroll unit (e.g., hour) (no true-up)
m. [ ] Other (specify): ________________________________ The time period described must be definitely determinable under Treas. Reg. §1.401-1(b). This line may be used to apply different options to different matching contributions (e.g., Discretionary matching contributions will be allocated on a Plan Year period while fixed matching contributions will be allocated on each payroll period.) Such contribution period is subject to the Instructions and Notice requirement of Section 12.12.

D. **QMACs** (Plan Section 1.69). The matching contributions will NOT be Qualified Matching Contributions (QMACs) unless otherwise selected below (leave blank if not applicable).

n. [ ] The matching contributions will be QMACs (fully Vested and subject to restrictions on withdrawals as set forth in the Plan). Such contributions may be used in either the ADP or ACP test.

E. **Allocation conditions** (Plan Section 12.3). Select o. OR p. and all that apply of q. – w. (**Note:** If the "ACP test safe harbor" provisions are being used (Question 28.b.), option o. below (no conditions) must be selected, unless no HCEs are eligible to receive the matching contribution.)

o. [X] **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip p. – w.).

p. [ ] **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year.

1. [ ] Required Service During the Plan Year:
A Participant must complete at least ______ (not to exceed 1,000; if more than 501 is entered then the Plan could violate coverage requirements under Code §410(b)) Hours of Service if the actual hours/equivalency method is selected.
A Participant must complete at least ______ (not to exceed 6; if more than 3 is entered then the Plan could violate coverage requirements under Code §410(b)) months of service if the elapsed time method is selected.
2. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected). (could cause the Plan to violate coverage requirements under Code §410(b))
3. [ ] Participants will NOT share in the allocations, regardless of service. (could cause the Plan to violate coverage requirements under Code §410(b))
4. [ ] Participants will share in the allocations, regardless of service.
5. [ ] Other: ______________________ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).

Conditions for Participants employed on the last day of the Plan Year (options 7., 8. and 9. could cause the Plan to violate coverage requirements under Code §410(b))

6. [ ] No service requirement.
7. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. [ ] A Participant must complete at least ______ (not to exceed 1,000) Hours of Service during the Plan Year.
9. [ ] Other: ______________________ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If p.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

q. [ ] Death
r. [ ] Total and Permanent Disability
s. [ ] Termination of employment on or after Normal Retirement Age
  1. [ ] or Early Retirement Date

Code §410(b) fail-safe. If p.1., 2., 3., 5. and/or p.7., 8. or 9. is selected, the Code §410(b) ratio percentage fail-safe provisions (Plan Section 12.3(f)) will NOT apply unless selected below (leave blank if not applicable or fail-safe will not be used and the employer will utilize the corrective amendment procedure of 1.401(a)(4)-11(g) when necessary):

t. [ ] The Plan will use the Code §410(b) fail-safe provisions and must satisfy the "ratio percentage test" of Code §410(b).

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at p.8. above). (may not be selected with p.2. or p.7.)

u. [ ] The Plan Year quarter.
v. [ ] Payroll period.
w. [ ] Other: ________________________________ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve-month period)

F. **Additional matching contributions.** No additional matching contribution may be made unless otherwise selected below (leave blank if not applicable).

x. [ ] Additional matching contributions may be made (e.g., a matching contribution made on a periodic basis as well as a matching contribution based on the end of the Plan Year). Specify the additional matching contribution by attaching an addendum to the Adoption Agreement that duplicates this entire Question 29. If selected, the additional matching contribution applies to all Participants eligible to share in matching contributions except as otherwise specified in the addendum or below. Such contribution is subject to the Instructions and Notice requirement of Section 12.12 if the Employer chooses to retain discretion over any aspect of the allocation of such contribution.
  1. [ ] The additional matching contribution only applies to the following Participants: ______ (must be definitely determinable). (If the additional matching contribution is in lieu of the matching contribution set forth in 29A - E above then use Eligible Employee question to exclude these Participants from such matching contribution.)

30. EMPLOYER NONELECTIVE CONTRIBUTIONS (Plan Section 12.1(a)(3)) (includes Profit Sharing contributions, Money Purchase Pension Plan contributions and/or Prevailing Wage contributions) (skip Questions 30 and 31 if Employer Nonelective Contributions are NOT selected at Question 12.e.)

A. **Formula** (select one or more)

a. [X] **Discretionary.** Discretionary contribution, to be determined by the Employer. (may not be elected if this Plan is a Money Purchase Pension Plan)
  1. [X] **Discretionary based on business units or location.** The Employer may determine a separate discretionary contribution for Participants working in different business units or locations.

b. [ ] **Fixed.** (select one or more)
  1. [ ] **Fixed percentage.** Fixed contribution equal to ______% of Compensation of Participants eligible to share in allocations.
  2. [ ] **Fixed dollar amount.** $______ per Participant.
  3. [ ] **Fixed dollar amount/hour**. $______ per Hour of Service worked while an Eligible Employee.
  4. [ ] **Collectively Bargained Employees.** Contributions will be made pursuant to the terms of a collective bargaining agreement related to the Employees of the Employer and enumerated in this Adoption Agreement.
  5. [ ] **Fixed Integrated contribution**. Subject to the "overall permitted disparity limits," the Employer will contribute an amount equal to (complete a. and b.)
    a. ______% (base percentage) of each Participant's TOTAL Compensation, plus
    b. ______% (excess contribution percentage (see Note below)) of such Compensation in excess of the following:

    Integration level: (select one)
    c. [ ] the Taxable Wage Base.
    d. [ ] ______% (not to exceed 100%) of the Taxable Wage Base. (see Note below)
    e. [ ] 80% of the Taxable Wage Base plus $1.00.
    f. [ ] $______ (not greater than the Taxable Wage Base). (see Note below)

NOTE: The excess contribution percentage specified in b. above may not exceed the lesser of the following limits and shall be adjusted each year as appropriate: (1) the base percentage specified in a. above; (2) 5.7%; (3) 4.3% if d. or f. above is more than 20% and less than or equal to 80% of Taxable Wage Base; (4) 5.4% if e. is selected or if d. or f. above is more than 80% of Taxable Wage Base. However, in the case of any Participant who has exceeded the "cumulative permitted disparity limit," the Employer will contribute an amount equal to the base plus excess contribution percentages, multiplied by the Participant's total Compensation.

6. [ ] **Non-safe harbor contribution and allocation** (annual nondiscrimination testing under Code §401(a)(4) will be required). The Employer will contribute an amount equal to ______% (base percentage) of each Participant's total Compensation, plus (complete a. and b.):
   a. [ ] ______% of such Compensation
   b. [ ] in excess of $______.
7. [ ] **Other:** ____ (must be definitely determinable, nondiscriminatory, and not subject to Employer discretion)

c. [ ] **Prevailing wage contribution.** The Employer will make a "prevailing wage contribution" on behalf of each Participant who performs services subject to the Service Contract Act, Davis-Bacon Act or similar federal, state, or municipal prevailing wage statutes. The "prevailing wage contribution" will be an amount equal to the remaining balance of the prevailing wage defined bona-fide fringe benefit amount, based on the Participant's employment classification as designated on the appropriate prevailing wage determination, after the application of other prevailing wage defined bona-fide fringe payments. Specify the "prevailing wage contribution" by attaching an appendix to the Adoption Agreement that indicates the contribution rate(s) applicable to the prevailing wage employment/job classification(s). The "prevailing wage contribution" will not be subject to any age or service requirements set forth in Question 14, entry date provisions at Question 15, nor to any service or employment conditions set forth in Question 31 and will be 100% Vested.

Additional "prevailing wage contribution" provisions (select all that apply; leave blank if none apply)
1. [ ] **Offset.** The "prevailing wage contribution" made on behalf of a Participant for a Plan Year will reduce (offset) other Employer contributions allocated or contributed on behalf of such Participant for the Plan.
2. [ ] **Exclude Highly Compensated Employees.** Highly Compensated Employees will be excluded from receiving a "prevailing wage contribution."
3. [ ] **QNEC.** The "prevailing wage contribution" is considered a Qualified Nonelective Contribution (QNEC).
4. [ ] **Discretionary.** The prevailing wage contribution is discretionary and the Employer may contribute on behalf of each Participant up to the amount set forth in the Appendix (may not be elected if this Plan is a Money Purchase Pension Plan).

d. [ ] **Other:** ____ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

B. **Contribution allocations.** The Employer Nonelective Contribution for a Plan Year will be allocated as follows: (skip if the only selection above is c.) (select one or more):

e. [ ] **INCORPORATION OF CONTRIBUTION FORMULA.** In accordance with the contribution formula specified above (may not be selected if a., d., or b.7 are the only selections above; if both a fixed and discretionary contribution are selected above, then this option e. applies to the fixed contribution).

f. [X] **NON-INTEGRATED ALLOCATION**
1. [X] in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants
2. [ ] in the same dollar amount to all Participants (per capita)
3. [ ] in the same dollar amount per Hour of Service completed by each Participant
4. [ ] in the same proportion that each Participant's points bears to the total of such points of all Participants. A Participant's points with respect to any Plan Year will be computed as follows (select all that apply):
   a. [ ] ______ point(s) will be allocated for each Year of Service (or Period of Service). However, the maximum Years (or Periods if elapsed time method is selected) of Service taken into account will not exceed:
      1. [ ] ______ (leave blank if no limit on service applies).

      Year of Service (or Period of Service if applicable), means:
      2. [ ] service for eligibility purposes
      3. [ ] service for vesting purposes
   b. [ ] ______ point(s) will be allocated for each full $______ (may not exceed $200) of Compensation
   c. [ ] ______ point(s) will be allocated for each year of age as of the last day of the Plan Year

g. [ ] **INTEGRATED (PERMITTED DISPARITY) ALLOCATION**
In accordance with Plan Section 4.3(b)(2) based on a Participant's Compensation in excess of:
1. [ ] the Taxable Wage Base
2. [ ] ______% (not to exceed 100%) of the Taxable Wage Base (see Note below)

3. [ ] 80% of the Taxable Wage Base plus $1.00
4. [ ] $______ (not greater than the Taxable Wage Base) (see Note below)

NOTE: The integration percentage of 5.7% will be reduced to: (1) 4.3% if 2. or 4. above is more than 20% and less than or equal to 80% of the Taxable Wage Base; or (2) 5.4% if 3. is selected or if 2. or 4. above is more than 80% of the Taxable Wage Base.

h. [ ] **NON-SAFE HARBOR ALLOCATION METHODS** (may not be elected if this Plan is a Money Purchase Pension Plan). The language of any formula created in this Section 30.B.h. must require the Employer to notify the Trustee in writing of the amount of the Employer contribution being given to each group.

1. [ ] **Grouping method.** Pursuant to Plan Section 4.3(b)(3)(vi), the classifications are (select a. or b.):
   a. [ ] Each Participant constitutes a separate classification.
   b. [ ] Participants will be divided into the following classifications with the allocation methods indicated under each classification.

   Definition of classifications. Define each classification and specify the method of allocating the contribution among members of each classification. Classifications specified below must be clearly defined in a manner that will not violate the definitely determinable allocation requirement of Regulation §1.401-1(b)(1)(ii). The design of the groups cannot be such that the only NHCEs benefiting under the Plan are those with the lowest amount of Compensation and/or the shortest periods of service and who may represent the minimum number of these Employees necessary to satisfy coverage under Code §410(b).

   Classification A will consist of ______________________________
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Classification B will consist of ______________________________
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Classification C will consist of ______________________________
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Classification D will consist of ______________________________
   The allocation method will be: [ ] pro rata based on Compensation
   [ ] equal dollar amounts (per capita)

   Additional classifications: ____________________________ (specify the classifications and which of the above allocation methods (pro rata or per capita) will be used for each classification).

   NOTE: In the case of Self-Employed Individuals (i.e., sole proprietors or partners), the requirements or Regulation §1.401(k)-1(a)(6) continue to apply and the allocation method should not be such that a cash or deferred election is created for a Self-Employed Individual as a result of application of the allocation method.

   NOTE: If more than four (4) classifications, the additional classifications and allocation methods may be attached as an addendum to the Adoption Agreement or may be entered under Additional Classifications above.

   Determination of applicable group. If a Participant shifts from one classification to another during a Plan Year, then unless selected below, the Participant is in a classification based on the Participant's status as of the last day of the Plan Year, or if earlier, the date of termination of employment. If selected below, the Administrator will apportion the Participant's allocation during a Plan Year based on the following:

   1. [ ] Beginning of Plan Year. The classification will be based on the Participant's status as of the beginning of the Plan Year.
   2. [ ] Months in each classification. Pro rata based on the number of months the Participant spent in each classification.
   3. [ ] Days in each classification. Pro rata based on the number of days the Participant spent in each classification.
   4. [ ] One classification only. The Employer in a nondiscriminatory manner will direct the Administrator to place the Participant in only one classification for the entire Plan Year during which the shift occurs.

2. [ ] **Age-weighted method.** The Schedule of Age-Weighted Allocation Factors is set forth in attached Exhibit A (which is hereby incorporated by reference and made a part of the Plan) and will be based on the following interest rate (select one; if no selection is made, c. will be deemed to have been selected):
   a. [ ] 7.5% interest
   b. [ ] 8.0% interest
   c. [ ] 8.5% interest

i. [ ] **OTHER** ________________________________ **NOTE**: Under Question 30.B.i., the Employer will describe the allocation of Nonelective Contributions from the elections available under Question 30.B. and/or a combination thereof as to a Participant group or contribution type (e.g., pro rata allocation applies to Collective Bargaining Employees; contributions to other Employees will be allocated in accordance with the classifications allocation provisions of Plan Section 4.3(b)(3) with each Participant constituting a separate classification). (The following four parameters must be met to utilize this section: 1. The formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b)(1)(ii). 2. The groups cannot be designed in such a manner to where the only NHCEs participating are those NHCEs with the lowest amounts of compensation and/or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under IRC §410(b). 3. The language of the formula must require the employer to notify the trustee in writing of the amount of the employer contribution being given to each group. 4. In the case of self-employed individuals (i.e., sole proprietorships or partnerships), the requirements of Regs. §1.401(k)-1(a)(6) continue to apply and the allocation method should not be such that a cash or deferred election is created for a self-employed individual as a result of the application of the allocation method unless such election has been created for all eligible employees & the full 401(k) requirements have been provided. If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

NOTE: Multiple Employer Plan provisions for adopters other than the lead employer must be noted in the Participating Employer's Agreement. Only the lead Employer's provisions may be noted in this Question 30.B.i.

31. ALLOCATION CONDITIONS (Plan Section 12.3). Requirements to share in allocations of Employer Nonelective Contributions and QNECs (as permitted by Plan Section 12.1(a)(4)) (select a. OR b. and all that apply of c. – f.)

a. [ ] **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 32).

b. [X] **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year

1. [ ] Required Service During the Plan Year:
A Participant must complete at least __________ (not to exceed 1,000; if more than 501 is entered then the Plan could violate coverage requirements under Code §410(b)) Hours of Service if the actual hours/equivalency method is selected.
A Participant must complete at least __________ (not to exceed 6; if more than 3 is entered then the Plan could violate coverage requirements under Code §410(b)) months of service if the elapsed time method is selected.
2. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected). (could cause the Plan to violate coverage requirements under Code §410(b))
3. [ ] Participants will NOT share in the allocations, regardless of service. (could cause the Plan to violate coverage requirements under Code §410(b))
4. [ ] Participants will share in the allocations, regardless of service.
5. [X] Other: if a Participant who prior to December 31, 2017 became a "Transferred Employee" as defined in that certain Asset Purchase Agreement by and between Busey Bank (Seller) and MB Financial Bank, National Association (Buyer) dated as of August 25, 2017. All other Participants are required to be employed on the last day of the Plan Year in order to share in Nonelective Contributions (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). Allocation formulas that are not uniform may not be considered a design-based safe harbor under Code §401(a)(4). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).

Conditions for Participants employed on the last day of the Plan Year (options 7., 8. and 9. could cause the Plan to violate coverage requirements under Code §410(b))

6. [ ] No service requirement.
7. [ ] A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. [X] A Participant must complete at least 1,000 (not to exceed 1,000) Hours of Service during the Plan Year.
9. [ ] Other: ______________________________ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). Allocation formulas that are not uniform may not be considered a design-based safe harbor under Code §401(a)(4). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

c. [X] Death

d. [X] Total and Permanent Disability

e. [X] Termination of employment on or after Normal Retirement Age
   1. [ ] or Early Retirement Date

Code §410(b) fail-safe. If b.1., 2., 3., 5. and/or b.7., 8. or 9. is selected, the Code §410(b) ratio percentage fail-safe provisions will NOT apply (Plan Section 4.3(m)) unless selected below (leave blank if not applicable or fail-safe will not be used and the employer will utilize the corrective amendment procedure of 1.401(a)(4)-11(g) when necessary):

f. [X] The Plan will use the Code §410(b) fail-safe provisions and must satisfy the ratio percentage test of Code §410(b).

32. FORFEITURES (Plan Sections 1.37 and 4.3(e))

Timing of Forfeitures. Except as provided in Plan Section 1.37, a Forfeiture will occur:

a. [ ] N/A (may only be selected if all contributions are fully Vested (default provisions at Plan Section 4.3(e) apply))
b. [X] As of the earlier of (1) the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
c. [ ] As of the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service.

Use of Forfeitures. (skip if this is NOT a Money Purchase Pension Plan; for Profit Sharing Plans and 401(k) Plans, Forfeitures are disposed of in accordance with Employer direction that is consistent with Section 4.3(e)).
Forfeitures will be (select one):

d. [ ] added to the Employer contribution and allocated in the same manner
e. [ ] used to reduce any Employer contribution
f. [ ] allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
g. [ ] other: ______________________________ (describe the treatment of Forfeitures in a manner that is definitely determinable, that satisfies the nondiscrimination requirements of Regulation §1.401(a)(4)-4 and that is not subject to Employer discretion)

33. TOP-HEAVY MINIMUM ALLOCATION

The minimum allocation requirements for any Top-Heavy Plan Year will be applied only to Non-Key Employee Participants unless selected below:

a. [ ] The Top-Heavy minimum will be provided to both Key and Non-Key Employee Participants.

DISTRIBUTIONS

34. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply; must select at least one from a. - e. unless g. is selected below)

a. [X] lump-sums
b. [ ] substantially equal installments
c. [X] partial withdrawals, provided the minimum withdrawal is $ 100 (leave blank if no minimum)
d. [X] partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (leave blank if no exceptions):
   1. [ ] Only Participants (and not Beneficiaries) may elect partial withdrawals or installments
   2. [ ] Other: ______________________(e.g., partial withdrawals are not permitted for death benefits. Must be definitely determinable and not subject to Employer discretion.)
e. [ ] other: ______________________________ (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Annuities. Annuities are permitted if selected below (select f. or g. if this is a Profit Sharing Plan or a 401(k) Plan; if this is a Money Purchase Pension Plan then g. below must be selected; if this Plan includes transferred pension assets, then f.1. or g. below must be selected

f. [X] **Annuities are not allowed or are not the normal form of distribution** (except as indicated below). Plan Section 6.13(b) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 will not apply to the Plan.

   Special rules. An annuity form of distribution is available to certain Participants and/or with respect to only a portion of the Plan assets according to the following: (select all that apply)

   1. [X] **Pension assets.** Annuities are the normal form of distribution for assets that are transferred pension assets (Plan Section 6.13(a)).
   2. [ ] **Annuity selected by Participant.** Plan Section 6.13(c) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 will apply only if an annuity form of distribution is selected by a Participant.

However, the Participant may only select an annuity distribution according to the following (choose a. and/or b. if applicable):

a. [ ] ____

b. [ ] A Participant may elect a QLAC (as defined in Plan Section 6.8(e)(4)) or any alternative form of annuity permitted pursuant to a QLAC in which the Participant's account has been invested.

g. [ ] **Annuities are the normal form of distribution.** The qualified Joint and Survivor Annuity and Qualified Pre-Retirement Survivor Annuity provisions apply (Plan Section 6.13 will not apply and the joint and survivor rules of Code §§401(a)(11) and 417 will automatically apply).

The following limitations or provisions apply (choose 1. and/or 2. if applicable):

1. [ ] ____ (must comply with the joint and survivor rules of Code §§401(a)(11) and 417)
2. [ ] A Participant may elect a QLAC (as defined in Plan Section 6.8(e)(4)) or any alternative form of annuity permitted pursuant to a QLAC in which the Participant's Account has been invested.

Pre-Retirement Survivor Annuity

If the Plan permits an annuity form of payment under option f.1. or g. above, the Pre-Retirement Survivor Annuity (minimum Spouse's death benefit) will be equal to 50% of a Participant's interest in the Plan unless a different percentage is selected below (leave blank if default applies)

h. [ ] 100% of a Participant's interest in the Plan.

i. [ ] ______% (may not be less than 50%) of a Participant's interest in the Plan.

Cash or property. Distributions may be made in:

j. [X] cash only, except for (select all that apply; leave blank if none apply):
1. [ ] insurance Contracts
2. [ ] annuity Contracts
3. [ ] Participant loans
4. [ ] all investments in an open brokerage window or similar arrangement

k. [ ] cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
1. [ ] ____(e.g., Employer Securities or real property may not be a source of available funds. Must be definitely determinable, properly valued at fair market value and not subject to Employer discretion.)

35. CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT. Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. **Accounts in excess of $5,000**

a. [X] Distributions may be made as soon as administratively feasible following severance of employment.

b. [ ] Distributions may be made as soon as administratively feasible after the Participant has incurred ______ 1-Year Break(s) in Service (or Period(s) of Severance if the elapsed time method is selected).

c. [ ] Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.

d. [ ] Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.

e. [ ] Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.

f. [ ] Distributions may be made as soon as administratively feasible after ______ months have elapsed following severance of employment.

g. [ ] No distributions may be made until a Participant has reached Early or Normal Retirement Date.

h. [ ] Other: ______________________________(must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. **Accounts of $5,000 or less**

i. [X] Same as above

j. [ ] Distributions may be made as soon as administratively feasible following severance of employment.

k. [ ] Distributions may be made as soon as administratively feasible after the Participant has incurred ______ 1-Year Break(s) in Service (or Period(s) of Severance if the elapsed time method is selected).

l. [ ] Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.

m. [ ] Other: ______________________________(must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. **Timing after initial distributable event.** If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 35.g. and 35.i.):

n. [ ] Other: ___________________________________ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. **Participant consent (i.e., involuntary cash-outs).** Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of $5,000 or less do not require spousal consent and are only paid as lump-sums.

o. [ ] No, Participant consent is required for all distributions.
p. [X] Yes, Participant consent is required only if the distribution is over:
1. [X] $5,000
2. [ ] $1,000
3. [ ] $______ (less than $1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are $1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4. [ ] If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least $______ (e.g., $200).

E. **Rollovers in determination of $5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the $5,000 threshold for timing of distributions, form of distributions or consent rules.

q. [X] Exclude rollovers (rollover contributions will be **excluded** in determining the $5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is $1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

F. **Mandatory distribution at Normal Retirement Age.** Regardless of the above elections other than any mandatory distributions provided for in p. above, unless otherwise selected below, a Participant who has severed employment may elect to delay a distribution beyond the later of age 62 or the Participant's Normal Retirement Age (subject to Plan Section 6.8).

r. [ ] A Participant who has severed employment may not elect to delay a distribution beyond the later of age 62 or the Participant's Normal Retirement Age.

36. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

a. [ ] be made pursuant to the election of the Participant or "designated Beneficiary"
b. [ ] begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
c. [X] be made within 5 (or if lesser __1______) years of death for all Beneficiaries
d. [ ] be made within 5 (or if lesser ________) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

37. HARDSHIP DISTRIBUTIONS (Plan Sections 6.12 and/or 12.10) (may not be selected if this is a Money Purchase Pension Plan)

a. [ ] Hardship distributions are NOT permitted (skip to Question 38).
b. [X] Hardship distributions are permitted from the following Participant Accounts:
1. [ ] all Accounts
2. [X] only from the following Accounts (select one or more):
a. [X] Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)
b. [X] Roth Elective Deferral Account (may only be selected with 401(k) Plans)
c. [X] Account(s) attributable to Employer matching contributions (may only be selected with 401(k) Plans)
d. [X] Account attributable to Employer Nonelective Contributions
e. [ ] Rollover Account (if not available at any time under Question 43)
f. [ ] Transfer Account (other than amounts attributable to a money purchase pension plan)
g. [ ] Other: ___________________________ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

NOTE: Distributions from a Participant's Elective Deferral Account are limited to the portion of such Account attributable to such Participant's Elective Deferrals (and earnings attributable thereto up to December 31, 1988). Hardship distributions are NOT permitted from a Participant's Qualified Nonelective Contribution Account, Qualified Matching Contribution Account, Accounts attributable to "ADP test safe harbor contributions" or Transfer Account attributable to pension assets (e.g., from a money purchase pension plan).

Additional limitations. The following limitations apply to hardship distributions:

3. [ ] N/A (no additional limitations)
4. [X] Additional limitations (select one or more):
   a. [ ] The minimum amount of a distribution is $______ (may not exceed $1,000).
   b. [ ] No more than ______ distribution(s) may be made to a Participant during a Plan Year.
   c. [X] Distributions may only be made from Accounts which are fully Vested.
   d. [X] A Participant does not include a Former Employee at the time of the hardship distribution.
   e. [X] Hardship distributions from the Roth Elective Deferral Account may only be made if the distribution is a "qualified distribution." (may only be selected with 401(k) Plans)
   f. [ ] Hardship distributions may be made subject to the following provisions: ________________________________ (must be definitely determinable and not subject to Employer discretion).

Beneficiary Hardship. Hardship distributions for Beneficiary expenses are NOT allowed unless otherwise selected below.

5. [X] Hardship distributions for expenses of Beneficiaries are allowed
   Special effective date (may be left blank if effective date is same as the Plan or Restatement Effective Date; select a. and, if applicable, b.)
   a. [ ] effective as of ____________
   b. [ ] eliminated effective as of _______________.

Safe harbor hardship rules. Will the safe harbor hardship rules of Plan Section 12.10 apply to hardship distributions from all Accounts?

6. [X] Yes. The provisions of Plan Section 12.10 apply to all hardship distributions.
7. [ ] No. The provisions of Plan Section 6.12 apply to hardship distributions from all Accounts other than a Participant's Elective Deferral Account. (may only be selected with 401(k) Plans)
8. [ ] No. The provisions of Plan Section 6.12 apply to all hardship distributions.

38. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

a. [ ] In-service distributions are NOT permitted (except as otherwise selected for Hardship Distributions).

b. [X] In-service distributions may be made to a Participant who has not separated from service provided any of the following conditions have been satisfied (select one or more) (options 2. - 5. may only be selected with 401(k) or Profit Sharing Plans):

1. [X] Age
   a. [X] the Participant has attained age _59 1/2_ (See Note below)
   b. [ ] the Participant has reached Normal Retirement Age
2. [ ] the Participant has been a Participant in the Plan for at least ______ years (may not be less than five (5))
3. [ ] the amounts being distributed have accumulated in the Plan for at least 2 years
4. [ ] other: ________________________________ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; must be nondiscriminatory; and must be limited to a combination of items b.1. – b.3. or a Participant's disability)

More than one condition. If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5. [ ] A Participant must satisfy each condition

NOTE: Regardless of any elections above: (1) for 401(k) plans, in-service distributions from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and Accounts attributable to "ADP test safe harbor contributions" are subject to restrictions and generally may not be distributed prior to age 59 1/2 ; and (2) for Money Purchase Pension Plans and a Transfer Account attributable to a Money Purchase Pension Plan, in-service distributions are not permitted prior to age 62.

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

6. [X] all Accounts
7. [ ] only from the following Accounts (select one or more):
   a. [ ] Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)
   b. [ ] Roth Elective Deferral Account (may only be selected with 401(k) Plans)
   c. [ ] Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions") (may only be selected with 401(k) Plans)
   d. [ ] Account attributable to Employer Nonelective Contributions

e. [ ] Qualified Nonelective Contribution Account (for 401(k) plans, includes nonelective "ADP test safe harbor contributions")
f. [ ] Rollover Account (if not available at any time under Question 43)
g. [ ] Transfer Account attributable to (select one or both; may only be selected with 401(k) or Profit Sharing Plans):
1. [ ] non-pension assets
2. [ ] pension assets (e.g., from a money purchase pension plan)
h. [ ] Other: ________________________________ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:
8. [ ] N/A (no additional limitations)
9. [X] Additional limitations (select one or more):
a. [ ] The minimum amount of a distribution is $______ (may not exceed $1,000).
b. [ ] No more than ______ distribution(s) may be made to a Participant during a Plan Year.
c. [X] Distributions may only be made from Accounts which are fully Vested.
d. [X] Distributions from the Roth Elective Deferral Account (38.b.6. or 38.b.7.b. selected), may only be made if the distribution is a "qualified distribution." (may only be selected with 401(k) Plans)
e. [ ] In-service distributions may be made subject to the following provisions: ____ (must be definitely determinable and not subject to discretion)

39. IN-PLAN ROTH ROLLOVER CONTRIBUTIONS (Plan Section 12.11) (skip if Roth Elective Deferrals NOT selected at Question 12.b.1.)
a. [ ] In-Plan Roth rollover contributions are NOT permitted (skip to Question 40).
b. [X] In-Plan Roth rollover contributions are permitted according to the following provisions.
1. [X] **IRR** (in-Plan Roth rollover contribution). This provision is effective with regard to IRRs the later of September 28, 2010, or the Plan or Restatement Effective Date unless other date entered below.
a. [ ] ______________ (enter later effective date if applicable)
2 [X] **IRT** (in-Plan Roth rollover transfer). This provision is effective with regard to IRTs the later of January 1, 2013, or the Plan or Restatement Effective Date unless other date entered below.
a. [ ] ______________ (enter later effective date if applicable)

Limitations. The following restrictions apply to In-Plan Roth Rollovers (choose one or more of c. - h. below if applicable; also select one or both of columns 1. - 2. for each limitation selected at c. -g.)

		1. IRR	**2. IRT**
c. [X]	**In-Plan Roth Rollovers limited to In-Service only.** Only Participants who are Employees may elect to make an In-Plan Roth Rollover Contribution.	[X]	[X]
d. [X]	**Vested In-Plan Roth Rollovers**. In-Plan Roth Rollovers may only be made from accounts which are fully Vested.	[X]	[X]
e. [X]	**No transfer of loans**. Loans may not be distributed as part of an In-Plan Roth Rollover Contribution.	[X]	[X]
f. [ ]	**Minimum amount**. The minimum amount that may be rolled over is ______ (may not exceed $1,000).	[ ]	[ ]
g. [ ]	**Number of Transfers.** No more than _________ transfer(s) may be made during a Plan Year.	[ ]	[ ]
h. [ ]	**Describe transfer provisions.** Transfers may be made subject to the following provisions: ___________ (must be definitely determinable and not subject to Employer or Administrator discretion; specify different provisions for IRR and IRT if desired).		

	Source of In-Plan Roth Rollover Contributions (Select one of i. or j.):	**1.**	**2.**
i. [X]	**All Sources.** (select one or both of columns 1. - 2.)	[X]	[X]
j. [ ]	**Limited Sources.** The Plan permits an In-Plan Roth Rollover only from the following qualifying sources (select one or more of a. - h. below; also select one or both of columns 1. - 2. for each account selected at a. – g.):		
		1. IRR	**2. IRT**
	a. [ ] Pre-Tax Elective Deferral Account	[ ]	[ ]
	b. [ ] Account(s) attributable to Employer matching contributions (includes any matching "ADP test safe harbor contributions")	[ ]	[ ]
	c. [ ] Account attributable to Employer Nonelective Contributions	[ ]	[ ]

d. [ ]	Qualified Nonelective Contribution Account (includes any nonelective "ADP test safe harbor contributions")	[ ]	[ ]
e. [ ]	Rollover Account	[ ]	[ ]
f. [ ]	Transfer Account	[ ]	[ ]
g. [ ]	After-tax Account	[ ]	[ ]

h. [ ] Other: ____
(specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion; specify different sources for IRR and IRT if desired)

Limited in-service distribution provisions for IRRs (may only be selected if IRRs are selected at b.1. above) (leave blank if not applicable)

k [ ] The Plan permits IRRs and the Employer elects to permit in-service distributions as follows solely for purposes of making IRRs (select one or more):

1. [ ] the Participant has attained age _______
2. [ ] the Participant has _______ months of participation (specify minimum of 60 months)
3. [ ] the amounts being distributed have accumulated in the Plan for at least _______ years (at least 2)
4. [ ] other (describe): ____ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; must be nondiscriminatory; and must be limited to a combination of items k.1. – k.3. or a Participant's disability)

More than one condition. If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5. [ ] A Participant must satisfy each condition

NOTE: Regardless of any election above to the contrary, in-Plan Roth rollover contributions are not permitted from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and Accounts attributable to "ADP test safe harbor contributions" prior to age 59 1/2. Distributions from a Transfer Account attributable to a money purchase pension plan are not permitted prior to age 62.

NONDISCRIMINATION TESTING

40. HIGHLY COMPENSATED EMPLOYEE (Plan Section 1.41)

Top-Paid Group election and calendar year data election are not used unless selected below (the selections made for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended) (select all that apply; leave blank if none apply):

a. [ ] **Top-Paid Group election** will be used.
b. [ ] **Calendar year data election** will be used (only applicable to non-calendar year Plan Year).

41. ADP AND ACP TESTS (Plan Sections 12.4, 12.5, and 12.6)

NOTE: The selections made below for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended. Also, if the Employer uses the discretionary nonelective "ADP test safe harbor contribution" described in Plan Section 12.8(h) or if the Plan is amended during a Plan Year to eliminate an "ADP test safe harbor contribution then the current Plan Year method will be used.

ADP test. If applicable, the ADP ratio for NHCEs will be based on the current year ratio unless prior year testing method is selected below (leave blank if current year testing method is being used):

a. [ ] **Prior year testing method.** The prior year ratio will be used. If this selection is made for the first year the Code §401(k) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ADP of NHCEs for the preceding Plan Year will be the greater of 3% or the actual percentage for the initial Plan Year.

ACP test. If applicable, the ACP ratio for NHCEs will be based on the current year ratio unless prior year testing method is selected below (leave blank if current year testing method is being used):

b. [ ] **Prior year testing method.** The prior year ratio will be used. If this selection is made for the first year the Code §401(m) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ACP of NHCEs for the preceding Plan Year will be the greater of 3% or the actual percentage for the initial Plan Year.

Effective dates. (optional)

c. [ ] **Current year testing method.** If the current year testing method is currently being used, enter the date it was first effective (used for purposes of applying the five year restriction on amending to the prior year testing method):

1. [ ] ADP test: ________________________ (may not be selected with 41.a.)
2. [ ] ACP test: ________________________ (may not be selected with 41.b.)

ADP Corrective Contributions. If applicable, the Employer shall make the following corrective contribution for purposes of corrective contributions in Sections 12.5 (must select either d. or e.. If e. is selected, must select 1. or 2. and must complete 3. - 5. as applicable.)

d. [X] Flexible formula (recorded and transmitted in writing)
e. [ ] Fixed formula
 1. [ ] **A QNEC** contribution to NHCEs, allocated as follows: (select one)
  a. [ ] pro-rata on compensation
  b. [ ] using the bottom-up ("targeted") procedure
  c. [ ] per capita
 2. [ ] **A QMAC** contribution to NHCEs, allocated as follows: (select one)
  a. [ ] pro-rata on deferrals
  b. [ ] using the bottom-up ("targeted") procedure
  c. [ ] per capita

 AND such contributions will be allocated to: (select one)
 3. [ ] all NHCEs in the test
 4. [ ] those NHCEs employed on the last day of the plan year
 5. [ ] all NHCEs employed on the last day of the plan year, as well as terminated employees who have completed at least 501 hours of service

ACP Corrective Contributions. If applicable, the Employer shall make the following corrective contribution for purposes of corrective contributions in Sections 12.7 (must select either f. or g. If g. is selected, must select 1., 2., or 3. and 4.-6. as applicable.)

f. [X] Flexible formula (recorded and transmitted in writing)
g. [ ] Fixed formula
 1. [ ] **A QNEC** contribution to NHCEs, allocated as follows: (select one)
  a. [ ] pro-rata on compensation
  b. [ ] using the bottom-up ("targeted") procedure
  c. [ ] per capita
 2. [ ] **A QMAC** contribution to NHCEs, allocated as follows: (select one)
  a. [ ] pro-rata on deferrals
  b. [ ] using the bottom-up ("targeted") procedure
  c. [ ] per capita
 3. [ ] A "regular" (non-QMAC) matching contribution to NHCEs, allocated as follows: (select one)
  a. [ ] pro-rata on deferrals
  b. [ ] using the bottom-up ("targeted") procedure

 AND such contributions will be allocated to: (select one)
 4. [ ] all NHCEs in the test
 5. [ ] those NHCEs employed on the last day of the plan year
 6. [ ] all NHCEs employed on the last day of the plan year, as well as terminated employees who have completed at least 501 hours of service

 NOTE: For the flexible formula, a definitely determinable allocation formula must be written and communicated to the trustee for each plan year.

MISCELLANEOUS

42. LOANS TO PARTICIPANTS (Plan Section 7.4)
 a. [ ] New loans are NOT permitted.
 b. [X] New loans are permitted.

 NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers and/or plan-to-plan transfers, then the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers and/or plan-to-plan transfers of loans into this Plan.

43. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 12.f.)
 Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):
 a. [X] Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant
 b. [ ] Participants who are Former Employees

 Distributions. When may distributions be made from a Participant's Rollover Account?
 c. [X] At any time
 d. [ ] Only when the Participant is otherwise entitled to any distribution under the Plan

44. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if after-tax voluntary Employee contributions NOT selected at Question 12.g.)

Matching after-tax voluntary Employee contributions. There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

a. [ ] After-tax voluntary Employee contributions are aggregated with Elective Deferrals for purposes of applying any matching contributions under the Plan (may only be selected with 401(k) plans).

NOTE: After-tax voluntary contributions may be distributed at any time.

45. QUALIFIED RESERVIST DISTRIBUTIONS AND HEART ACT (Plan Section 4.12) (select one or more)

a. [ ] **HEART Act Continued benefit accruals.** Continued benefit accruals will apply.

b. [X] **Distributions for deemed severance of employment.** The Plan permits distributions for deemed severance of employment.

c. [X] **Qualified reservist distributions**. Qualified reservist distributions are permitted. (may only be selected for 401(k) plans)

Reliance on Provider Opinion Letter. The Provider has obtained from the IRS an Opinion Letter specifying the form of this document satisfies Code §401 as of the date of the Opinion Letter. An adopting Employer may rely on the Provider's IRS Opinion Letter *only* to the extent provided in Rev. Proc. 2017-41 or subsequent guidance. The Employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Opinion Letter and in Rev. Proc. 2017-41 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.

An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code §419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code §419A(d)(3), or an individual medical account, as defined in Code §415(l)(2)) in addition to this Plan may not rely on the Opinion Letter issued by the Internal Revenue Service with respect to the requirements of Code §§ 415 and 416.

This Adoption Agreement may be used only in conjunction with basic plan document #05. This Adoption Agreement and the basic Plan document will together be known as Ascensus LLC Defined Contribution Pre-Approved Plan #05-001.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

Execution for Page Substitution Amendment Only. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) ____________________ effective ____________________, by substitute Adoption Agreement page number(s) ____________________. The Employer should retain all Adoption Agreement Execution Pages and amended pages. (*Note: The Effective Date may be retroactive or may be prospective.*)

The Provider, Ascensus LLC, will notify all adopting Employers of any amendment to this Pre-approved Plan or of any abandonment or discontinuance by the Provider of its maintenance of this Pre-approved Plan. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and the Provider no longer has any obligations to the Employer that relate to the adoption of this Plan. For inquiries regarding the adoption of the Pre-approved Plan, the Provider's intended meaning of any Plan provisions or the effect of the Opinion Letter issued to the Provider, please contact the Provider or the Provider's representative:

Provider Name: Ascensus, LLC

Address: 200 Dryden Road

Dresher Pennsylvania 19025

Telephone Number: (215) 648-8000

Email address (optional): ____________________

The Employer, by executing below, hereby adopts this Plan (add additional signature lines as needed). NOTE: If more than one Plan type is adopted, the Plan Provider must provide multiple plan documents for Employer signature.

EMPLOYER: First Busey Corporation

By: /s/ Van Dukeman 3/3/2022 | 16:14:21 EST

DATE SIGNED

APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS

A. **Special effective dates/spin-offs/mergers** (the following elections are optional):

a. [ ] **Employer matching contributions.** The Employer matching contribution provisions under Question 28. are effective: ______________. (may only be selected with 401(k) plans)

b. [ ] **Employer Nonelective Contributions.** The Employer Nonelective Contribution provisions under Questions 30. and 31. are effective: ______________.

c. [ ] **Distribution elections.** The distribution elections under Questions ______ (Choose 34. – 39. as applicable) are effective: ______________.

d. [ ] **Other special effective date(s):** ______________. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law. (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)).

e. [ ] **Spin-off.** The Plan was a spin-off from the ______________ (enter name of plan), which was originally effective ______________ (enter effective date of original plan) (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)).

f. [ ] **Merged plans.** The following plan(s) are merged into this Plan (enter applicable information; attach addendum if more than 4 merged plans. (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance). Limited to those provisions which have been the subject of a prior determination letter, opinion letter, or advisory letter):

	Name of merged plan	Merger date	Original effective date of merged plan
1.			
2.			
3.			
4.			

B. **Other permitted elections** (the following elections are optional):

a. [ ] **No other permitted elections**

The following elections apply (select one or more):

b. [ ] **Deemed 125 compensation** (Plan Section 1.40). Deemed 125 compensation will be included in Compensation and 415 Compensation.

c. [X] **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will not apply for (select one or both):
1. [X] eligibility purposes
2. [X] vesting purposes

d. [ ] **The "one-year hold-out" rule** described in Plan Section 3.5(e) will apply to (select one or both):
1. [ ] determine eligibility (for all contributions types except Elective Deferrals)
2. [ ] determine vesting

e. [ ] **Normal form of annuity.** If the Plan permits an annuity form of payment (e.g., if 34.f.1., f.2. or g. is selected), instead of a joint and 50% survivor annuity, the normal form of the qualified Joint and Survivor Annuity will be:
1. [ ] joint and 100% survivor annuity
2. [ ] joint and 75% survivor annuity
3. [ ] joint and 66 2/3% survivor annuity

f. [ ] **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: ____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).

g. [ ] **"Section 411(d)(6) protected benefits"** (Plan Section 8.1(b)). The following are Code §411(d)(6) protected benefits that are preserved under this Plan: ____ (specify the protected benefits and the accrued benefits that are subject to the protected benefits. In addition, list additional information such as the source name and the former plan sponsor. The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)).

h. [ ] **Limitation Year** (Plan Section 1.50). The Limitation Year for Code §415 purposes will be ____________ (must be a consecutive twelve-month period) instead of the "determination period" for Compensation.

i. [ ] **415 Limits when 2 or more defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:

1. [ ] Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": ____.

j. [X] **Top-heavy duplications** (select one or more)

1. [ ] **Top-heavy duplications when 2 or more defined contribution plans are maintained** (Plan Section 4.3(f)). When a Non-Key Employee is a Participant in this Plan and another defined contribution plan maintained by the Employer that is subject to the top-heavy rules then the top-heavy minimum benefits in this Plan are reduced in accordance with Plan Section 4.3(f) unless otherwise elected below (select one):
   a. [ ] The full top-heavy minimum will be provided in each plan.
   b. [ ] A minimum, non-integrated contribution of 3% of each Non-Key Employee's 415 Compensation will be provided in the Money Purchase Plan (or other plan subject to Code §412).
   c. [ ] Specify the method under which the plans will provide top-heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions, including any adjustments required under Code §415: ________________________________.

   NOTE: If b. or c. is selected then (1) an Employer may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code §416, and (2), if the plans do not benefit the same Participants, the uniformity requirement of the Regulations under Code §401(a)(4) may be violated.

2. [X] **Top-heavy duplications when a defined benefit plan is maintained** (Plan Section 4.3(i)). When a Non-Key Employee is a Participant in this Plan for a Plan Year and also accrues a benefit for the same Plan Year in a defined benefit plan maintained by the Employer that is subject to the top-heavy rules, indicate which method will be utilized to avoid duplication of top-heavy minimum benefits: (select one of a. - d. AND complete e. or select f.)
   a. [ ] The full top-heavy minimum will be provided in each plan (if selected, Plan Section 4.3(i) will not apply).
   b. [X] 5% defined contribution minimum
   c. [ ] 2% defined benefit minimum will be made in the ________________________________ (enter the name of the other plan)
   d. [ ] Specify the method under which the plans will provide top-heavy minimum benefits for Non-Key Employees: ____(Must be nondiscriminatory, preclude Employer discretion, and avoid inadvertent omissions).

   NOTE: If b., c., or d. is selected then (1) an Employer may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code §416, and (2), if the plans do not benefit the same Participants, the uniformity requirement of the Regulations under Code §401(a)(4) may be violated.

   AND, the "present value" (Plan Section 9.2) for top-heavy purposes will be based on:
   e. [ ] Interest Rate: ____________
   Mortality Table: ____________
   f. [X] The interest rate and mortality table specified to determine "present value" for top-heavy purposes in the defined benefit plan.

   AND, a Participant must be employed on the last day of the Plan Year in order to receive the top-heavy minimum (Plan Section 4.3(h)) unless elected below.
   g. [ ] A Participant is not required to be employed by the Employer on the last day of the Plan Year.

3. [ ] If the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) and matching contributions with respect to which the requirements of Code §401(m)(11) apply), the Employer must specify the name of the other plan, the minimum benefit that will be provided under such other plan, and the Employees who will receive the minimum benefit under such other plan: ______________

k. [ ] **Recognition of Service with other employers** (Plan Sections 1.62 and 1.88). Service with the following employers (in addition to those specified at Question 16) will be recognized as follows (select one or more; if more than 6 employers, attach an addendum to the Adoption Agreement):

	Eligibility	Vesting	Contribution Allocation
1. [ ] Employer name: ______________	a. [ ]	b. [ ]	c. [ ]
2. [ ] Employer name: ______________	a. [ ]	b. [ ]	c. [ ]
3. [ ] Employer name: ______________	a. [ ]	b. [ ]	c. [ ]
4. [ ] Employer name: ______________	a. [ ]	b. [ ]	c. [ ]
5. [ ] Employer name: ______________	a. [ ]	b. [ ]	c. [ ]
6. [ ] Employer name: ______________	a. [ ]	b. [ ]	c. [ ]
Limitations			
7. [ ] The following provisions or limitations apply with respect to the recognition of service: ______________ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)	a. [ ]	b. [ ]	c. [ ]

l. [ ] **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):

1. [ ] **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: ______________ (must be definitely determinable, non-discriminatory under Code §401(a)(4) and otherwise satisfy the parameters set forth in Questions 18 and 19 and Plan Section 6.4.; e.g., rather than the schedule specified at Question 18, the 5-year graded schedule applies to amounts merged into the Plan from the XYZ Plan.)
2. [ ] **Pre-amendment vesting schedule.** (Plan Section 6.4). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 18 applies to any Participants, then the following provisions apply (must select one of a. - d.):

   Applicable Participants. The vesting schedules in Question 18 only apply to:
   a. [ ] Participants who are Employees as of ______________ (enter date).
   b. [ ] Participants in the Plan who have an Hour of Service on or after ______________ (enter date).
   c. [ ] Participants (even if not an Employee) in the Plan on or after ______________ (enter date).
   d. [ ] Other: ______________ (e.g., Participants in division A)

m. [ ] **Top-heavy vesting schedule** (Plan Section 6.4(c)).

Instead of any other vesting schedules set forth in the Plan, if this Plan becomes a Top-Heavy Plan, the following vesting schedule, based on number of Years of Service (or Periods of Service if the elapsed time method is selected) will apply:

1. [ ] 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
2. [ ] 3 Year Cliff: 0-2 years-0%; 3 years-100%
3. [ ] Other - Must be at least as liberal as either 1. or 2. above in each year without switching between the two schedules. (if a different top-heavy schedule applies to different contribution sources, attach an addendum specifying the schedule that applies to each source):

Years (or Periods) of Service	Percentage
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%
______	______%

NOTE: This Section does not apply to the Account balance of any Participant who does not have an Hour of Service after the Plan has initially become top-heavy. Such Participant's Vested Account balance will be determined without regard to this Section.

n. [ ] **Leased Employees** (Plan Section 1.49)
  1. [ ] **Offset of contributions to leasing organization plan.** The Employer will reduce allocations to this Plan for any Leased Employee to the extent that the leasing organization contributes to or provides benefits under a leasing organization plan to or for the Leased Employee and which are attributable to the Leased Employee's services for the Employer.
  2. [ ] **Disregard one year requirement.** The definition of Leased Employee shall be applied by disregarding the requirement of performing services for at least one year, for the following contributions (select a. or all that apply of b.1. - b.3.) (Elective Deferrals include Roth Elective Deferrals, "ADP test safe harbor contributions" (including those made pursuant to a QACA) and SIMPLE 401(k) contributions, after-tax voluntary Employee contributions, and rollover contributions; Matching includes QMACs; and Nonelective Contributions include QNECs):
    a. [ ] All contributions
    b. [ ] The following contributions (select all that apply)
      1. [ ] Elective Deferrals
      2. [ ] Matching contributions
      3. [ ] Nonelective Contributions

o. [ ] **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

  NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

  The "required beginning date" for a Participant who is not a "five percent (5%) owner" is:
  1. [ ] April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
  2. [ ] April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
    a. [ ] A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of ______________________________ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
      1. [ ] N/A (annuity distributions are not permitted)
      2. [ ] Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
      3. [ ] Upon the recommencement of distributions, a new Annuity Starting Date is created.
    b. [ ] A Participant who had not begun receiving required minimum distributions as of ______________________________ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
      1. [ ] The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

p. [X] **Other spousal provisions** (select one or more)
  1. [X] **One-year marriage rule.** For purposes of the Plan, other than for purposes of determining eligible hardship distribution expenses, an individual is treated as Spouse only if such individual was married throughout the one year period ending on the earlier of the Annuity Starting Date or the date of the Participant's death.
  2. [ ] **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: ______________________________. (Note: This definition shall apply for all Plan purposes OTHER than those mandated by Code §401(a) such as the required minimum distribution provides and qualified joint and survivor annuity provisions. For example, the selected definition will apply to the determination of default beneficiary provisions.)
  3. [ ] **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
  4. [ ] **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.

q. [ ] **Applicable law.** Instead of using the applicable laws set forth in Plan Section 10.4(a), the Plan will be governed by the laws of: ____

r. [ ] **Total and Permanent Disability.** Instead of the definition at Plan Section 1.83, Total and Permanent Disability means: ____ (must be definitely determinable).

s. [ ] **Inclusion of Reclassified Employees** (1.28(a)). The Employer does not exclude Reclassified Employees subject to the following provisions: (leave blank if not applicable): ______________________________

t. [ ] **Age 62 In-Service Distributions For Transferred Money Purchase Assets** (Plan Section 6.11)
In-service distributions will be allowed for Participants at age 62. (applies only for Transfer Accounts from a money purchase pension plan) (skip this question if the Plan is a Money Purchase Pension Plan or if in-service distributions are already permitted for Transferred Accounts at Question 38)

Limitations. The following limitations apply to these in-service distributions:
1. [ ] The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
2. [ ] N/A (no limitations)
3. [ ] The following elections apply to in-service distributions at age 62 (select one or more):
   a. [ ] The minimum amount of a distribution is $______ (may not exceed $1,000).
   b. [ ] No more than _______ distribution(s) may be made to a Participant during a Plan Year.
   c. [ ] Distributions may only be made from Accounts which are fully Vested.
   d. [ ] In-service distributions may be made subject to the following provisions: ______________________________ (must be definitely determinable and not subject to discretion).

u. [ ] **Other provisions for matching contributions** (select one or more; may only be selected for 401(k) plans)
1. [ ] **Match applied to elective deferrals to Code §403(b) arrangement.** In applying any matching contributions in this Plan, elective deferrals to a Code §403(b) arrangement maintained by the Employer will be aggregated with Elective Deferrals to this Plan.
2. [ ] **Match applied to contributions made to Code §457(b) plan.** In applying any matching contributions in this Plan, contributions to a Code §457(b) plan maintained by the Employer will be aggregated with Elective Deferrals to this Plan.
3. [ ] **Matching contributions not used to satisfy top-heavy contribution** (Plan Section 4.3(j)). Employer matching contributions will NOT be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan.

v. [ ] **QACA safe harbor contributions vesting options.** The vesting options selected at Question 19 on the Adoption Agreement also apply to the Participant's Qualified Automatic Contribution Safe Harbor Account unless otherwise selected below (select all that apply):
Excluded service prior to initial Effective Date of Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
1. [ ] applies
2. [ ] does not apply

Excluded service prior to the computation period in which an Employee has attained age 18
3. [ ] applies
4. [ ] does not apply

Full vesting upon death
5. [ ] applies
6. [ ] does not apply

Full vesting upon Total and Permanent Disability
7. [ ] applies
8. [ ] does not apply

w. [ ] **Investment Fiduciary**
1. [ ] Administrator (use Administrator address and telephone number)
2. [ ] The Employer or a Committee appointed by the Employer (use Employer address and telephone number)

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. **Loan limitations. Note:** the separate loan program required by the DOL will override any inconsistent selections made below. (complete only if loans to Participants are permitted)
   a. [X] Limitations (select one or more; leave blank if none apply):
      1. [X] Loans will be treated as Participant directed investments.
      2. [ ] Loans will only be made for hardship or financial necessity as defined below (select a. or b.)
         a. [ ] hardship reasons specified in Plan Section 12.10
         b. [ ] other: ______ (specify financial necessity)
      3. [X] The minimum loan will be $ 1,000 (may not exceed $1,000).
      4. [X] A Participant may only have one (1) (e.g., one (1)) loan(s) outstanding at any time.
      5. [X] All outstanding loan balances will become due and payable in their entirety upon severance of employment unless directly rolled over (if otherwise permitted) to another employer's plan.
      6 [ ] The home loan term will be _______ years. (if not selected, the Administrator establishes the term for repayment of a home loan)
      7. [X] **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
         a. [ ] Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)
         b. [ ] Roth Elective Deferral Account (may only be selected with 401(k) Plans)
         c. [ ] Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions") (may only be selected with 401(k) Plans)
         d. [ ] Account attributable to Employer Nonelective Contributions
         e. [ ] Qualified Nonelective Contribution Account (for 401(k) plans, includes nonelective "ADP test safe harbor contributions")
         f. [ ] Rollover Account
         g. [ ] Transfer Account attributable to (select one or both; may only be selected with 401(k) or Profit Sharing Plans):
            1. [ ] non-pension assets
            2. [ ] pension assets (e.g., from a money purchase pension plan)
         h. [ ] Voluntary Contribution Account
         i. [X] Other: All accounts except no loan may be taken from the Employer Nonelective (profit sharing) account or from the Roth Contribution source

         AND, if loans are restricted to certain Accounts, the limitations of Code §72(p) and the adequate security requirement of the DOL Regulations will be applied:
         j. [ ] by determining the limits by only considering the restricted Accounts.
         k. [X] by determining the limits taking into account a Participant's entire interest in the Plan.

   Additional loan provisions (select all that apply; leave blank if none apply)
   b. [X] **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll; e.g., partner who only has a draw):
      1. [X] payroll deduction
      2. [X] ACH (Automated Clearing House)
      3. [X] check
         a. [X] Only for prepayment
   c. [X] **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
      1. [ ] ______ percentage points over the prime interest rate
      2. [ ] ______%
      3. [X] the Administrator establishes the rate in a nondiscriminatory manner
   d. [X] **Refinancing.** Loan refinancing is allowed.

B. **Life insurance.** (Plan Section 7.5)
   a. [X] Life insurance may not be purchased.
   b. [ ] Life insurance may be purchased...
      1. [ ] at the option of the Administrator
      2. [ ] at the option of the Participant

      Limitations
      3. [ ] N/A (no limitations)
      4. [ ] The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
         a. [ ] Each initial Contract will have a minimum face amount of $______.
         b. [ ] Each additional Contract will have a minimum face amount of $______.
         c. [ ] The Participant has completed ______ Years (or Periods) of Service.

d. [ ] The Participant has completed ______ Years (or Periods) of Service while a Participant in the Plan.
e. [ ] The Participant is under age ______ on the Contract issue date.
f. [ ] The maximum amount of all Contracts on behalf of a Participant may not exceed $______.
g. [ ] The maximum face amount of any life insurance Contract will be $______.

C. **Plan expenses and Forfeitures**

Plan expenses. Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

a. [ ] No
b. [X] Yes

Use of Forfeitures (skip if this is NOT a Profit Sharing Plan or a 401(k) Plan; for a Money Purchase Pension Plan, see 32.d.-g. on the Adoption Agreement)

Other than Employer matching contributions. Forfeitures of amounts attributable to Employer contributions other than Employer matching contributions will be:

c. [ ] added to any Employer discretionary contribution (for 401(k) plans, matching or profit sharing) and allocated in the same manner
d. [X] used to reduce any Employer contribution
e. [ ] added to any Employer matching contribution and allocated as an additional matching contribution (may only be selected with 401(k) Plans)
f. [ ] allocated to all Participants eligible to share in the allocations of profit sharing contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
g. [ ] other: ____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

Matching contributions. Forfeitures of amounts attributable to Employer matching contributions will be: (skip if this is NOT a 401(k) Plan)

h. [X] N/A (same as above or no Employer matching contributions)
i. [ ] used to reduce the Employer matching contribution
j. [ ] added to any Employer matching contribution and allocated as an additional matching contribution
k. [ ] added to any Employer discretionary profit sharing contribution
l. [ ] used to reduce any Employer contribution
m. [ ] other: ____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

NOTE: The reallocation of Forfeitures could affect the Plan's top-heavy exemption (see Plan Section 12.8(f)). One approach to avoid this result is to provide for a discretionary matching contribution that satisfies the "ACP test safe harbor" provisions (i.e., select Question 28A.b and select a discretionary matching contribution at Question 29) and then allocate Forfeitures as a matching contribution.

D. **Directed investments** (Plan Section 4.10)

a. [ ] Participant directed investments are NOT permitted.
b. [X] Participant directed investments are permitted from the following Participant Accounts:
   1. [X] all Accounts
   2. [ ] only from the following Accounts (select one or more):
      a. [ ] Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)
      b. [ ] Roth Elective Deferral Account (may only be selected with 401(k) Plans)
      c. [ ] Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions") (may only be selected with 401(k) Plans)
      d. [ ] Account attributable to Employer Nonelective Contributions
      e. [ ] Qualified Nonelective Contribution Account (for 401(k) plans, includes nonelective "ADP test safe harbor contributions")
      f. [ ] Rollover Account
      g. [ ] Transfer Account
      h. [ ] Voluntary Contribution Account
      i. [ ] Other: ______________________________ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

Directed investment options (If directed investments are permitted, select all that apply; leave blank if none apply)

c. [X] **ERISA Section 404(c).** It is intended that the Plan comply with ERISA Section 404(c) with respect to the Accounts subject to Participant investment directions.
d. [X] **QDIA.** Plan will include a qualified default investment alternative.

E. **Rollover limitations.** Will the Plan specify which sources of rollovers will be accepted? (skip if rollover contributions are NOT selected at 12.f.)
   a. [ ] No, Administrator determines in operation which sources will be accepted.
   b. [X] Yes
      Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)
      1. [X] **Direct rollovers.** Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
         a. [X] a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
         b. [ ] a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
         c. [X] a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
         d. [ ] a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
         e. [X] a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
         f. [ ] a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
         g. [X] a governmental plan described in Code §457(b) (eligible deferred compensation plan)
         h. [X] if this Plan permits Roth Elective Deferrals, a Roth Elective Deferral Account from (select one or more) (may only be selected with 401(k) Plans):
            1. [X] a qualified plan described in Code §401(a)
            2. [X] a plan described in Code §403(b) (a tax-sheltered annuity)

         Direct rollovers of Participant loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)
         i. [ ] The Plan will accept a direct rollover of a Participant loan
            1. [ ] only in the following situation(s): ________________________ (e.g., only from Participants who were employees of an acquired organization; leave blank if not applicable).

      2. [X] **Participant rollover contributions from other plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
         a. [X] a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
         b. [X] a plan described in Code §403(a) (an annuity plan)
         c. [X] a plan described in Code §403(b) (a tax-sheltered annuity)
         d. [X] a governmental plan described in Code §457(b) (eligible deferred compensation plan)

      3. [X] **Participant rollover contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

F. **Elective Deferral procedures** (may only be selected with 401(k) Plans)
   Optional date. Participants may commence Elective Deferrals on the effective date of participation. Participants may also commence making Elective Deferrals on (leave blank if not applicable):
   a. [ ] _________ (must be at least once each calendar year)

   Elective Deferral modifications. Participants may modify Elective Deferral elections:
   b. [ ] as of each payroll period
   c. [ ] on the first day of each month
   d. [ ] on the first day of each Plan Year quarter
   e. [ ] on the first day of the Plan Year or the first day of the 7th month of the Plan Year
   f. [X] other: pursuant to Plan Administrator procedures (must be at least once each calendar year)

   Escalation (leave blank if not applicable)
   g. [ ] Include option for Participants to elect to automatically escalate an Affirmative Election in accordance with the following:
      Escalation amount. A Participant's Affirmative Election will increase by:
      1. [ ] ______% of Compensation
         a. [ ] up to a maximum of ______% of Compensation (leave blank if no limit)
      2. [ ] other: ____

Timing of escalation. The escalation will apply as of:
3. [ ] first day of each Plan Year
4. [ ] anniversary of date of participation
5. [ ] other: ____

First period of application. Unless selected below, the escalation provision above will apply as of the second period specified above that begins after the period in which the Participant first has contributions made pursuant to a default election.
6. [ ] The escalation provision will apply as of the first period after the Participant first has contributions made pursuant to a default election.

Suspended Elective Deferrals. If a Participant's Elective Deferrals must be suspended pursuant to a provision of the Plan, then a Participant is deemed to have made as of the date the suspension period begins, an Affirmative Election to have no Elective Deferrals made to the Plan unless otherwise selected below.
h. [ ] the Participant's Affirmative Election will resume after the suspension period.
i. [ ] the Participant is deemed to have no Affirmative Election after the suspension period (e.g., for purposes of applying any Automatic Deferral provisions).

Re-enrollment of existing Affirmative Elections. Affirmative Elections will remain in effect until revoked or modified by a Participant unless selected below.
j. [ ] Affirmative Elections lapse at the end of each Plan Year.
k. [ ] Affirmative Elections lapse: ____

Application to Automatic Deferral provisions to rehired Employees. Unless this Plan is a QACA, or with respect to withdrawal rights for EACAs, then rehired Employees are treated as new hires pursuant to the following (leave blank if not applicable):
l. [ ] A rehired Employee is only treated as a new hire for purposes of the Automatic Deferral provisions (except as otherwise provided in the Basic Plan Document) if the rehired Employee has separated from service for at least _______ (enter a period; e.g., 3 months)

G. **Trustee(s) or Insurer(s)**. Information regarding Trustee(s)/Insurer(s) (required for the Summary Plan Description and, if requested, the Trust Agreement)
(NOTE: Select a. if not using provided trust. MUST select b and following questions as applicable):
a. [ ] Do not produce the trust agreement
b. [X] Complete the following UNLESS not selecting supporting forms:

Trustee/Insurer *(select c. OR one or more of d. - e.)*
c. [ ] **Insurer.** This Plan is funded exclusively with Contracts (select one or more of 1. - 4. skip to q.)
Name of Insurer(s)/Address
1. [ ] ________________________________
2. [ ] ________________________________
3. [ ] Use Employer address/telephone number/email
4. [ ] Use following address/telephone number/email
a. Street: ________________________
b. City: ________________________
c. State: ________________________
d. Zip: ________________________
e. Telephone: ____________________
f. Email: ________________________

d. [ ] Individual Trustee(s)
e. [X] Corporate Trustee

Name of Trust
f. Specify name of Trust (required for FIS trust): First Busey Corporation Profit Sharing Plan and Trust

Individual Trustees (if d. selected above, complete g. – j.)
Directed/Discretionary Trustees. The individual Trustee(s) executing this Adoption Agreement are (select g. or h.)
g. [ ] Select for each individual Trustee (skip to next question)
h. [ ] The following selections apply to all individual Trustee(s) (select 1. - 4. as applicable)
1. [ ] A discretionary Trustee over all plan assets (may not be selected with 2. - 4.)
2. [ ] A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 1., 3. or 4.)
3. [ ] The individual Trustee(s) will serve as a discretionary Trustee over the following assets: _________ (may not be selected with 1. or 2.)

4. [ ] The individual Trustee(s) will serve as a nondiscretionary (directed) Trustee over the following assets: _________ (may not be selected with 1. or 2.)

Individual Trustee(s)

i. [ ] Individual Trustee(s) are (select one or more of a. - j.; enter address at j. below)

a. **Name** ________________________

Title/Email:

1. Title ______________________
2. Email _____________________ (optional)

Trustee is: (complete if g. selected above; select 3. - 6. as applicable)

3. [ ] Discretionary Trustee over all plan assets (may not be selected with 4. - 6.)
4. [ ] A discretionary Trustee over the following plan assets: _________ (may not be selected with 3. or 5.)
5. [ ] Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
6. [ ] A nondiscretionary (directed) Trustee or Custodian over the following plan assets: _________(may not be selected with 3. or 5.)

j. [ ] **Individual Trustee Address** (complete if d. selected above)

1. [ ] Use Employer address/telephone number/email
2. [ ] Use following address/telephone number/email
   a. Street: ________________________
   b. City: ________________________
   c. State: ________________________
   d. Zip: ________________________
   e. Telephone: ____________________
   f. Email: ________________________

Corporate Trustee Name/Type/Address (complete if e. selected above)

k. [X] **Name** Busey Bank

Address/telephone number/email

1. [ ] Use Employer address/telephone number/email
2. [X] Use following address/telephone number/email
   a. Street: 201 W. Main St.
   b. City: Urbana
   c. State: Illinois
   d. Zip: 61801
   e. Telephone: (217) 365-4874
   f. Email: ________________________

Directed/Discretionary. The Corporate Trustee is (select 3. - 6. as applicable)

3. [X] A discretionary Trustee over all plan assets (may not be selected with 4. – 6.)
4. [ ] A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 3., 5. or 6.)
5. [ ] A discretionary Trustee over the following assets:_________ (may not be selected with 3. – 4.)
6. [ ] A nondiscretionary (directed) Trustee over the following plan assets _________ (may not be selected with 3. – 4.)

Signee (optional)**:**

7. [ ] Name of person signing on behalf of the corporate Trustee ____________________________________
8. [ ] Email address of person signing on behalf of the corporate Trustee ____________________________

Special Trustee for collection of contributions. The Employer appoints the following Special Trustee with the responsibility to collect delinquent contributions *(optional)*

l. [X] **Name** Amy Randolph

Title:

1. Special Trustee

Address/telephone number/email

2. [X] Use Employer address/telephone number/email
3. [ ] Use following address/telephone number/email
   a. Street: ________________________________
   b. City: ________________________________
   c. State: ________________________________

d. Zip: ______________________________
e. Telephone: ______________________________
f. Email: ______________________________

Custodian(s) Name/Address . The Custodian(s) are *(optional)*
m. [ ] **Name(s)** ______________________

Address/telephone number/email
1. [ ] Use Employer address/telephone number/email
2. [ ] Use following address/telephone number/email
   a. Street: ______________________________
   b. City: ______________________________
   c. State: ______________________________
   d. Zip: ______________________________
   e. Telephone: ______________________________
   f. Email: ______________________________

Investment in common, collective or pooled trust funds. The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds), may invest in any of the following trust funds: *(optional)*
n. [ ] ____________ (Specify the names of one or more trust funds in which the Plan can invest)

Choice of law
o. [X] This trust will be governed by the laws of the state of:
1. [ ] State in which the Employer's principal office is located
2. [X] State in which the corporate trustee or insurer is located
3. [ ] Other ____

ASCENSUS LLC NON-STANDARDIZED MODIFICATIONS

FIRST BUSEY CORPORATION PROFIT SHARING PLAN AND TRUST

The enclosed Plan is being submitted for expedited review as a Non-Standardized Plan.

No modifications from the approved specimen plan have been made to this Plan.

EXHIBIT 21.1

Subsidiaries of First Busey Corporation

DIRECT Subsidiary	**State of Incorporation or Organization**
Busey Bank	Illinois
First Busey Risk Management, Inc.	Nevada
Deed of Trust Services Corporation	Missouri
First Busey Statutory Trust II	Delaware
First Busey Statutory Trust III	Delaware
First Busey Statutory Trust IV	Delaware
Pulaski Financial Statutory Trust I	Connecticut
Pulaski Financial Statutory Trust II	Delaware

INDIRECT Subsidiary	**State of Incorporation or Organization**
Busey Capital Management, Inc.	Illinois
Echo Holdings I, LLC	Florida
Echo Holdings II, LLC	Florida
Echo Holdings III, LLC	Florida
Echo Properties I, LLC	Florida
Echo Properties II, LLC	Florida
Echo Properties III, LLC	Florida
Echo Properties IV, LLC	Florida
Echo Properties V, LLC	Florida
Echo Properties VI, LLC	Florida
Echo Properties VII, LLC	Florida
Echo Properties VIII, LLC	Florida
Echo Properties IX, LLC	Florida
Echo Properties X, LLC	Florida
Echo Properties XI, LLC	Florida
Echo Properties XII, LLC	Florida
Echo Properties XIII, LLC	Florida
Echo Resources LLC	Illinois
First Community OREO LLC	Illinois
First Community OREO LLC III	Illinois
Goshen Millstone Condo I LLC	Missouri
Goshen Millstone Condo II LLC	Missouri
Goshen Millstone Land LLC	Missouri
Goshen Real Estate LLC	Illinois
Goshen Real Estate LLC, I	Illinois
Goshen Real Estate LLC, II	Illinois
Goshen Real Estate LLC, III	Illinois
Goshen Real Estate LLC, IV	Illinois
Goshen Real Estate LLC, V	Illinois
Goshen Real Estate of Illinois, LLC	Missouri

INDIRECT Subsidiary	State of Incorporation or Organization
FirsTech, Inc.	Illinois
Pillar Properties I, LLC	Illinois
Pillar Properties II, LLC	Illinois
Pillar Properties III, LLC	Illinois
Pillar Properties IV, LLC	Illinois
Pillar Properties V, LLC	Illinois
Pillar Properties VI, LLC	Illinois
Pillar Properties VII, LLC	Illinois
Pillar Properties VIII, LLC	Illinois
Pillar Properties IX, LLC	Illinois
Pillar Properties X, LLC	Illinois
Pillar Properties XI, LLC	Illinois
Pillar Properties XII, LLC	Illinois
Pillar Properties XIII, LLC	Illinois
Pillar Properties XIV, LLC	Illinois
Pillar Properties XV, LLC	Illinois
Pillar Properties XVI, LLC	Illinois
Pillar Properties XVII, LLC	Illinois
Pillar Properties XVIII, LLC	Illinois
Pillar Properties XIX, LLC	Illinois
Pillar Properties XX, LLC	Illinois
Priority Property Holdings, LLC	Missouri
Pulaski Service Corporation	Missouri

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Nos. 333-238782 and 333-256365) on Form S-8 and the Registration Statement (No. 333-249028) on Form S-3 of First Busey Corporation of our reports dated February 23, 2023, relating to the consolidated financial statements and the effectiveness of internal control over financial reporting of First Busey Corporation, appearing in this Annual Report on Form 10-K of First Busey Corporation for the year ended December 31, 2022.

/s/ RSM US LLP
Champaign, Illinois
February 23, 2023

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Van A. Dukeman, Chairman, President and Chief Executive Officer of First Busey Corporation, certify that:

1) I have reviewed this Annual Report on Form 10-K of First Busey Corporation;

2) Based on my knowledge, this Annual Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Annual Report;

3) Based on my knowledge, the Financial Statements, and other financial information included in this Annual Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Annual Report;

4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Annual Report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of Financial Statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual Report based on such evaluation; and

   d) disclosed in this Annual Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ VAN A. DUKEMAN

Van A. Dukeman
Chairman, President and Chief Executive Officer

Date: February 23, 2023

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Jeffrey D. Jones, Chief Financial Officer of First Busey Corporation, certify that:

1) I have reviewed this Annual Report on Form 10-K of First Busey Corporation;

2) Based on my knowledge, this Annual Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Annual Report;

3) Based on my knowledge, the Financial Statements, and other financial information included in this Annual Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Annual Report;

4) The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Annual Report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this Annual Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Annual Report based on such evaluation; and

   d) disclosed in this Annual Report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5) The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

/s/ JEFFREY D. JONES

Jeffrey D. Jones
Chief Financial Officer

Date: February 23, 2023

EXHIBIT 32.1

The following certification is provided by the undersigned Chief Executive Officer of First Busey Corporation on the basis of such officer's knowledge and belief for the sole purpose of complying with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

CERTIFICATION

I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the accompanying Annual Report of First Busey Corporation on Form 10-K for the year ended December 31, 2022, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Annual Report fairly presents, in all material respects, the financial condition and results of operations of First Busey Corporation as of and for the periods covered by the Annual Report.

/s/ VAN A. DUKEMAN

Van A. Dukeman
Chairman, President and Chief Executive Officer

Date: February 23, 2023

EXHIBIT 32.2

The following certification is provided by the undersigned Chief Financial Officer of First Busey Corporation on the basis of such officer's knowledge and belief for the sole purpose of complying with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

CERTIFICATION

I hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the accompanying Annual Report of First Busey Corporation on Form 10-K for the year ended December 31, 2022, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Annual Report fairly presents, in all material respects, the financial condition and results of operations of First Busey Corporation as of and for the periods covered by the Annual Report.

/s/ JEFFREY D. JONES

Jeffrey D. Jones
Chief Financial Officer

Date: February 23, 2023