

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K

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

For the Fiscal Year Ended December 31, 2020

OR

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

For the transition period from _____ to _____

Commission File No. 1-31566

PROVIDENT FINANCIAL SERVICES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

239 Washington Street

(Address of Principal Executive Offices)

Jersey City

(City)

New Jersey

(State)

(732) 590-9200

(Registrant's Telephone Number)

42-1547151

(I.R.S. Employer Identification No.)

07302

(Zip Code)

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol Symbol(s)	Name of each exchange on which registered
Common	PFS	New York Stock Exchange

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

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

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 twelve 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 No

Indicate by check mark whether the registrant has submitted electronically and every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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 definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated Filer

Non-Accelerated Filer

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.

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

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

As of February 1, 2021, there were 83,209,012 issued and 77,789,018 outstanding shares of the Registrant's Common Stock, including 171,301 shares held by the First Savings Bank Directors' Deferred Fee Plan not otherwise considered outstanding under accounting principles generally accepted in the United States of America. The aggregate value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the Common Stock as of June 30, 2020, as quoted by the NYSE, was approximately \$1.06 billion.

DOCUMENTS INCORPORATED BY REFERENCE

1. Proxy Statement for the 2021 Annual Meeting of Stockholders of the Registrant (Part III).

PROVIDENT FINANCIAL SERVICES, INC.

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Forward Looking Statements

Certain statements contained herein are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements may be identified by reference to a future period or periods, or by the use of forward-looking terminology, such as “may,” “will,” “believe,” “expect,” “estimate,” “project,” “intend,” “anticipate,” “continue,” or similar terms or variations on those terms, or the negative of those terms. Forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, those set forth in Item 1A of the Company's Annual Report on Form 10-K, as supplemented by its Quarterly Reports on Form 10-Q, and those related to the economic environment, particularly in the market areas in which the Company operates, competitive products and pricing, fiscal and monetary policies of the U.S. Government, changes in accounting policies and practices that may be adopted by the regulatory agencies and the accounting standards setters, changes in government regulations affecting financial institutions, including regulatory fees and capital requirements, changes in prevailing interest rates, acquisitions and the integration of acquired businesses, credit risk management, asset-liability management, the financial and securities markets and the availability of and costs associated with sources of liquidity.

In addition, the COVID-19 pandemic is having an adverse impact on the Company, its customers and the communities it serves. Given its ongoing and dynamic nature, it is difficult to predict the full impact of COVID-19 on the Company's business, financial condition or results of operations. The extent of such impact will depend on future developments, which are highly uncertain, including when the coronavirus can be controlled and abated, and the extent to which the economy can remain open. As the result of the COVID-19 pandemic and the related adverse local and national economic consequences, the Company could be subject to any of the following risks, any of which could have a material, adverse effect on our business, financial condition, liquidity, and results of operations: the demand for our products and services may decline, making it difficult to grow assets and income; if the economy is unable to remain substantially open, and high levels of unemployment continue for an extended period of time, loan delinquencies, problem assets, and foreclosures may increase, resulting in increased expenses and reduced income; collateral for loans, especially real estate, may decline in value, which could cause loan losses to increase; our allowance for loan losses may increase if borrowers experience financial difficulties, which will adversely affect our net income; the net worth and liquidity of loan guarantors may decline, impairing their ability to honor commitments to us; as the result of the decline in the Federal Reserve Board's target federal funds rate to near 0%, the yield on our assets may decline to a greater extent than the decline in our cost of interest-bearing liabilities, reducing our net interest margin and spread and reducing net income; our wealth management revenues may decline with continuing market turmoil; we may face the risk of a goodwill write-down due to stock price decline; and our cyber security risks are increased as the result of an increase in the number of employees working remotely.

The Company cautions readers not to place undue reliance on any such forward-looking statements which speak only as of the date made. The Company advises readers that the factors listed above could affect the Company's financial performance and could cause the Company's actual results for future periods to differ materially from any opinions or statements expressed with respect to future periods in any current statements. The Company does not have any obligation to update any forward-looking statements to reflect events or circumstances after the date of this statement.

PART I

Item 1. Business

Provident Financial Services, Inc.

The Company is a Delaware corporation which became the holding company for Provident Bank (the “Bank”) on January 15, 2003, following the completion of the Bank's conversion to a New Jersey-chartered capital stock savings bank. On January 15, 2003, the Company issued an aggregate of 59,618,300 shares of its common stock, par value \$0.01 per share in a subscription offering, and contributed \$4.8 million in cash and 1,920,000 shares of its common stock to The Provident Bank Foundation, a charitable foundation established by the Bank. As a result of the conversion and related stock offering, the Company raised \$567.2 million in net proceeds, of which \$293.2 million was utilized to acquire all of the outstanding common stock of the Bank. The Company owns all of the outstanding common stock of the Bank, and as such, is a bank holding company subject to regulation by the Federal Reserve Board.

On July 31, 2020, the Company completed its acquisition of SB One Bancorp (“SB One”), which added \$2.20 billion to total assets, \$1.77 billion to total loans, which included purchased credit deteriorated “PCD” loans totaling \$294.2 million, and \$1.76 billion to total deposits, and added 18 full-service banking offices in New Jersey and New York. As part of the acquisition, the addition of SB One Insurance Agency, Inc. allows the Company to expand its products offerings to its customers to include an array of commercial and personal lines of insurance.

Under the merger agreement, each share of outstanding SB One common stock was exchanged for 1.357 shares of the Company's common stock. The Company issued 12.8 million shares of common stock from treasury stock, plus cash in lieu of fractional shares in the acquisition of SB One. The total consideration paid for the acquisition of SB One was \$180.8 million. In connection with the acquisition, SB One Bank, a wholly owned subsidiary of SB One, was merged with and into Provident Bank.

The acquisition was accounted for under the acquisition method of accounting. Under this method of accounting, the respective assets acquired and liabilities assumed were recorded at their estimated fair value. The excess of consideration paid over the estimated fair value of the net assets acquired totaled \$22.4 million and was recorded as goodwill.

Capital Management. The Company paid cash dividends totaling \$65.8 million and repurchased 1.3 million shares of its common stock at an average cost of \$16.59, which totaled \$22.1 million in 2020. At December 31, 2020, 262,927 shares remained eligible for repurchase under the board approved stock repurchase program. The Company's Board of Directors authorized the Company's ninth stock repurchase program to commence upon completion of the existing authorization. Under the new authorization, the Company may repurchase up to 5% of the number of shares of common stock currently outstanding, or approximately 3.9 million shares. Completion of the repurchase program will not be limited to a specific time period. The Company and the Bank were "well capitalized" at December 31, 2020 under current regulatory standards.

Available Information. The Company is a public company, and files interim, quarterly and annual reports with the Securities and Exchange Commission ("SEC"). The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including the Company. All SEC reports and amendments to these reports are available on the SEC's website and are made available as soon as practical after they have been filed or furnished to the SEC and are available on the Bank's website, www.provident.bank, at the "Investor Relations" page, without charge from the Company. Information on our website should not be considered a part of this Annual Report on Form 10-K.

Provident Bank

Established in 1839, the Bank is a New Jersey-chartered capital stock savings bank operating full-service branch offices throughout northern and central New Jersey, as well as Bucks, Lehigh and Northampton counties in Pennsylvania and Queens County, New York. As a community- and customer-oriented institution, the Bank emphasizes personal service and customer convenience in serving the financial needs of the individuals, families and businesses residing in its primary market areas. The Bank attracts deposits from the general public and businesses primarily in the areas surrounding its banking offices and uses those funds, together with funds generated from operations and borrowings, to originate commercial real estate loans, commercial business loans, residential mortgage loans, and consumer loans. The Bank invests in mortgage-backed securities and other permissible investments. Also, the Bank provides fiduciary and wealth management services through its wholly owned subsidiary, Beacon Trust Company and insurance brokerage services through its wholly owned subsidiary, SB One Insurance Agency, Inc.

The following are highlights of Provident Bank's operations:

Diversified Loan Portfolio. To improve asset yields and reduce its exposure to interest rate risk, the Bank continues to emphasize the origination of commercial real estate loans, multi-family loans and commercial business loans. These loans generally have adjustable rates or shorter fixed terms and interest rates that are higher than the rates applicable to one-to four-family residential mortgage loans. However, these loans generally have a higher risk of loss than one-to four-family residential mortgage loans.

Asset Quality. As of December 31, 2020, non-performing assets were \$91.6 million or 0.71% of total assets, compared to \$42.9 million or 0.44% of total assets at December 31, 2019. The increase in non-performing loans in 2020 reflects the effects of the protracted duration of the pandemic and related government response, and the attendant increased uncertainty of affected borrowers' ability to repay all contractually due principal and interest. The Bank continues to focus on conservative underwriting criteria and on active and timely collection efforts.

Emphasis on Relationship Banking and Core Deposits. The Bank emphasizes the acquisition and retention of core deposit accounts, consisting of savings and demand deposit accounts, and expanding customer relationships. Core deposit accounts totaled \$8.74 billion at December 31, 2020, representing 88.9% of total deposits, compared with \$6.37 billion, or 89.7% of total deposits at December 31, 2019. The Bank also focuses on increasing the number of households and businesses served and the number of banking products per customer.

Non-Interest Income. The Bank's focus on transaction accounts and expanded products and services has enabled the Bank to generate increased non-interest income. Fees derived from core deposit accounts are a primary source of non-interest

income. The Bank also offers investment, insurance, wealth and asset management services through its subsidiaries to generate non-interest income. Total non-interest income was \$72.4 million for the year ended December 31, 2020, compared with \$63.8 million for the year ended December 31, 2019, of which fee income and wealth management income were \$23.8 million and \$25.7 million, respectively, for the year ended December 31, 2020, compared with \$28.3 million and \$22.5 million, respectively, for the year ended December 31, 2019.

Managing Interest Rate Risk. The Bank manages its exposure to interest rate risk through the origination and retention of adjustable rate and shorter-term loans, and its investments in securities. In addition, the Bank uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable amounts from a counterparty in exchange for the Bank making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount. These interest rate swaps are used to hedge the variable cash outflows associated with Federal Home Loan Bank of New York ("FHLBNY") borrowings. At December 31, 2020, 63.49% of the Bank's loan portfolio had a term to maturity of one year or less, or had adjustable interest rates. At December 31, 2020, the Bank's securities portfolio totaled \$1.62 billion and had an expected average life of 3.93 years.

MARKET AREA

The Company and the Bank are headquartered in Jersey City, which is located in Hudson County, New Jersey. At December 31, 2020, the Bank operated a network of 99 full-service banking offices throughout fourteen counties in northern and central New Jersey, as well as three counties in Pennsylvania and one county in New York. The Bank maintains its administrative offices in Iselin, New Jersey and satellite loan production offices in Convent Station, Flemington, Paramus and Sea Girt, New Jersey, as well as in Bethlehem, Newtown and Wayne, Pennsylvania and Queens, New York. The Bank's lending activities, though concentrated in the communities surrounding its offices, extend predominantly throughout New Jersey, eastern Pennsylvania and Queens County, New York.

The Bank's primary market area includes a mix of urban and suburban communities, and has a diversified mix of industries including pharmaceutical, manufacturing companies, network communications, insurance and financial services, healthcare, and retail. According to the U.S. Census Bureau's most recent population data, the Bank's New Jersey market area has a population of approximately 7.1 million, which was 79.6% of the state's total population. The Bank's Pennsylvania market area has a population of approximately 1.3 million, which was 10.2% of that state's total population. The Bank's New York market area has a population of approximately 2.2 million, which was 11.5% of the state's total population. Because of the diversity of industries within the Bank's market area and, to a lesser extent, its proximity to the New York City financial markets, the area's economy can be significantly affected by changes in national and international economies. According to the U.S. Bureau of Labor Statistics, the unemployment rate in New Jersey was 7.6% at December 31, 2020, an increase from 3.5% at December 31, 2019. The unemployment rate in Pennsylvania was 6.7% for December 31, 2020, an increase from 4.5% at December 31, 2019. The unemployment rate in New York was 8.2% for December 31, 2020, an increase from 3.9% at December 31, 2019.

Within its primary market areas in New Jersey, Pennsylvania and New York, the Bank had an approximate 2.55%, 0.70% and 0.18% share of bank deposits as of June 30, 2020, respectively, the latest date for which statistics are available. These figures include SB One Bank market areas.

COMPETITION

The Bank faces significant competition in originating and retaining loans and attracting deposits as its market areas have a high concentration of financial institutions, including large money center and regional banks, community banks, credit unions, investment brokerage firms and insurance companies. The Bank faces direct competition for loans from each of these institutions as well as from mortgage companies, on-line lenders and other loan origination firms operating in its market area. The Bank's most direct competition for deposits comes from several commercial banks and savings banks in its market area. Certain of these banks have substantially greater financial resources than the Bank. The Bank also faces significant competition for deposits from the mutual fund and investment advisory industries and from investors' direct purchases of short-term money market securities and other corporate and government securities.

The Bank competes in this environment by maintaining a diversified product line, including mutual funds, annuities and other investment services made available through its investment subsidiaries. Relationships with customers are built and maintained through the Bank's branch network, its deployment of branch ATMs, and its mobile, digital and telephone services.

LENDING ACTIVITIES

The Bank originates commercial real estate loans, commercial business loans, fixed-rate and adjustable-rate mortgage loans collateralized by one- to four-family residential real estate and other consumer loans, for borrowers generally located within its primary market area.

Residential mortgage loans are primarily underwritten to standards that allow the sale of the loans to the secondary markets, primarily to the Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”), the Federal National Mortgage Association (“FNMA” or “Fannie Mae”) and the FHLBNY. To manage interest rate risk, the Bank generally sells fixed-rate residential mortgages that it originates with terms greater than 15 years. The Bank commonly retains biweekly payment fixed-rate residential mortgage loans with a maturity of 30 years or less and a majority of the originated adjustable-rate mortgages for its portfolio.

The Bank originates commercial real estate loans that are secured by income-producing properties such as multi-family apartment buildings, office buildings, and retail and industrial properties. Generally, these loans have maturities of either 5 or 10 years. For loans greater than \$15.0 million originated with maturities in excess of 7 years, the Bank generally requires loan-level interest rate swaps for qualified borrowers.

The Bank has historically provided construction loans for both single family and condominium projects intended for sale and commercial projects, including residential rental projects, that will be retained as investments by the borrower. The Bank underwrites most construction loans for a term of three years or less. The majority of these loans are underwritten on a floating rate basis. The Bank recognizes that there is higher risk in construction lending than permanent lending. As such, the Bank takes certain precautions to mitigate this risk, including the retention of an outside engineering firm to perform plan and cost reviews, and to review all construction advances made against work in place, and a limitation on how and when loan proceeds are advanced. In most cases, for the single family and condominium projects, the Bank limits its exposure against houses or units that are not under contract. Similarly, commercial construction loans usually have commitments for significant pre-leasing, or funds are held back until the leases are finalized. Funding requirements and loan structure for residential rental projects vary depending on whether such projects are vertical or horizontal construction.

Commercial loans are made to businesses of varying size and type within the Bank’s market. The Bank lends to established businesses, and the loans are generally secured by business assets such as equipment, receivables, inventory, real estate or marketable securities. On a limited basis, the Bank makes unsecured commercial loans. Most commercial lines of credit are made on a floating interest rate basis and most term loans are made on a fixed interest rate basis, usually with terms of five years or less.

The Bank originates consumer loans that are secured, in most cases, by a borrower’s assets. Home equity loans and home equity lines of credit that are secured by a first or second mortgage lien on the borrower’s residence comprise the largest category of the Bank’s consumer loan portfolio.

Loan Portfolio Composition. Set forth below is selected information concerning the composition of the loan portfolio by type (after deductions for deferred fees and costs, unearned discounts and premiums and allowances for credit losses) at the dates indicated. The allowance for credit losses for 2020 was based upon the adoption of the current expected credit loss ("CECL") guidance, while the prior year credit losses were based upon the incurred loss methodology:

	At December 31,									
	2020		2019		2018		2017		2016	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
(Dollars in thousands)										
Residential mortgage loans	\$ 1,294,702	13.32 %	\$ 1,078,227	14.82 %	\$ 1,100,009	15.29 %	\$ 1,142,914	15.73 %	\$ 1,212,255	17.46 %
Commercial mortgage loans	3,458,666	35.58	2,578,477	35.43	2,299,417	31.96	2,171,174	29.88	1,978,700	28.50
Multi-family mortgage loans	1,484,515	15.27	1,225,675	16.84	1,339,800	18.62	1,404,005	19.32	1,402,169	20.20
Construction loans	541,939	5.57	429,812	5.91	388,999	5.41	392,580	5.40	264,814	3.81
Total mortgage loans	6,779,822	69.74	5,312,191	73.00	5,128,225	71.28	5,110,673	70.33	4,857,938	69.97
Commercial loans	2,567,470	26.41	1,634,759	22.46	1,695,148	23.56	1,745,301	24.02	1,630,887	23.49
Consumer loans	492,566	5.07	391,360	5.38	431,428	6.00	473,958	6.52	516,755	7.44
Total gross loans	9,839,858	101.22	7,338,310	100.84	7,254,801	100.84	7,329,932	100.87	7,005,580	100.90
Premiums on purchased loans	1,566	0.02	2,474	0.02	3,243	0.04	4,029	0.06	4,968	0.07
Unearned discounts	(12)	—	(26)	—	(33)	—	(36)	—	(39)	—
Net deferred fees	(18,522)	(0.20)	(7,873)	(0.10)	(7,423)	(0.11)	(8,207)	(0.10)	(7,023)	(0.08)
Total loans	9,822,890	101.04	7,332,885	100.76	7,250,588	100.77	7,325,718	100.83	7,003,486	100.89
Allowance for credit losses	(101,466)	(1.04)	(55,525)	(0.76)	(55,562)	(0.77)	(60,195)	(0.83)	(61,883)	(0.89)
Total loans, net	\$ 9,721,424	100.00 %	\$ 7,277,360	100.00 %	\$ 7,195,026	100.00 %	\$ 7,265,523	100.00 %	\$ 6,941,603	100.00 %

The Company participated in the Paycheck Protection Program ("PPP") through the United States Department of the Treasury and Small Business Administration. As of December 31, 2020, the Company secured 1,287 PPP loans for its customers totaling \$473.2 million.

Loan Maturity Schedule. The following table sets forth certain information as of December 31, 2020, regarding the maturities of loans in the loan portfolio. Demand loans having no stated schedule of repayment and no stated maturity, and overdrafts are reported as due within one year.

	Within One Year	One Through Three Years	Three Through Five Years	Five Through Ten Years	Ten Through Twenty Years	Beyond Twenty Years	Total
	(In thousands)						
Residential mortgage loans	\$ 8,429	\$ 4,444	\$ 15,338	\$ 123,191	\$ 462,378	\$ 680,922	\$ 1,294,702
Commercial mortgage loans	335,577	496,147	546,759	1,485,909	299,924	294,350	3,458,666
Multi-family mortgage loans	72,974	156,876	269,278	783,591	46,988	154,808	1,484,515
Construction loans	279,389	232,421	10,877	7,635	11,347	270	541,939
Total mortgage loans	696,369	889,888	842,252	2,400,326	820,637	1,130,350	6,779,822
Commercial loans	468,008	738,783	279,980	619,478	246,701	214,520	2,567,470
Consumer loans	20,334	11,330	15,067	106,298	196,071	143,466	492,566
Total gross loans	\$ 1,184,711	\$ 1,640,001	\$ 1,137,299	\$ 3,126,102	\$ 1,263,409	\$ 1,488,336	\$ 9,839,858

Fixed- and Adjustable-Rate Loan Schedule. The following table sets forth as of December 31, 2020 the amount of all fixed-rate and adjustable-rate loans due after December 31, 2021.

	Due After December 31, 2021		
	Fixed	Adjustable	Total
	(In thousands)		
Residential mortgage loans	\$ 1,029,487	\$ 256,786	\$ 1,286,273
Commercial mortgage loans	1,041,551	2,081,538	3,123,089
Multi-family mortgage loans	329,347	1,082,194	1,411,541
Construction loans	6,982	255,568	262,550
Total mortgage loans	2,407,367	3,676,086	6,083,453
Commercial loans	1,017,236	1,082,226	2,099,462
Consumer loans	232,503	239,729	472,232
Total loans	<u>\$ 3,657,106</u>	<u>\$ 4,998,041</u>	<u>\$ 8,655,147</u>

Residential Mortgage Loans. The Bank originates residential mortgage loans secured by first mortgages on one- to four-family residences, generally located in the states of New Jersey, New York and the eastern part of Pennsylvania. The Bank originates residential mortgages primarily through commissioned mortgage representatives. The Bank originates both fixed-rate and adjustable-rate mortgages. As of December 31, 2020, \$1.29 billion or 13.3% of the total loan portfolio consisted of residential real estate loans. Of the one- to four-family loans at that date, 80.2% were fixed-rate and 19.8% were adjustable-rate loans.

The Bank originates fixed-rate fully amortizing residential mortgage loans with the principal and interest payments due each month, that typically have maturities ranging from 10 to 30 years. The Bank also originates fixed-rate residential mortgage loans with maturities of 10, 15, 20 and 30 years that require the payment of principal and interest on a biweekly basis. Fixed-rate jumbo residential mortgage loans (loans over the maximum that one of the government-sponsored agencies will purchase) are originated with maturities of up to 30 years. The Bank currently offers adjustable-rate mortgage loans with a fixed-rate period of 5, 7 or 10 years prior to the first annual interest rate adjustment. The standard adjustment formula is the one-year constant maturity Treasury rate plus 2.75%, adjusting annually after its first re-set period, with a 2% maximum annual adjustment and a 6% maximum adjustment over the life of the loan.

Residential mortgage loans are primarily underwritten to Freddie Mac and Fannie Mae standards. The Bank's standard maximum loan to value ratio is 80%. However, working through mortgage insurance companies, the Bank underwrites loans for sale to Freddie Mac programs that will finance up to 97% of the value of the residence. Generally all fixed-rate loans with terms of 20 years or more are sold into the secondary market with servicing rights retained. Fixed-rate residential mortgage loans retained in the Bank's portfolio generally include loans with a term of 15 years or less and biweekly payment residential mortgage loans with a term of 30 years or less. The Bank retains the majority of the originated adjustable-rate mortgages for its portfolio.

Loans are sold without recourse, generally with servicing rights retained by the Bank. The percentage of loans sold into the secondary market will vary depending upon interest rates and the Bank's strategies for reducing exposure to interest rate risk. In 2020, \$21.4 million or 7.54% of residential real estate loans originated were sold into the secondary market. All of the loans sold in 2020 were long-term, fixed-rate mortgages.

The retention of adjustable-rate mortgages, as opposed to longer-term, fixed-rate residential mortgage loans, helps reduce the Bank's exposure to interest rate risk. However, adjustable-rate mortgages generally pose credit risks different from the credit risks inherent in fixed-rate loans primarily because as interest rates rise, the underlying debt service payments of the borrowers rise, thereby increasing the potential for default. The Bank believes that these credit risks, which have not had a material adverse effect on the Bank to date, generally are less onerous than the interest rate risk associated with holding 20- and 30-year fixed-rate loans in its loan portfolio.

For many years, the Bank has offered discounted rates on residential mortgage loans to low- to moderate-income individuals. Loans originated in this category over the last five years have totaled \$16.1 million. The Bank also offers a special rate program for first-time homebuyers under which originations have totaled over \$55.3 million for the past five years. The Bank does not originate or purchase sub-prime or option ARM loans.

Commercial Real Estate Loans. The Bank originates loans secured by mortgages on various commercial income producing properties, including office buildings and retail and industrial properties. Commercial real estate loans were 35.6% of

the total loan portfolio at December 31, 2020. A substantial majority of the Bank's commercial real estate loans are secured by properties located in the State of New Jersey.

The Bank originates commercial real estate loans with adjustable rates and with fixed interest rates for a period that is generally five to ten years or less, which may adjust after the initial period. Typically these loans are written for maturities of ten years or less and generally have an amortization schedule of 20 or 25 years. As a result, the typical amortization schedule will result in a substantial principal payment upon maturity. The Bank generally underwrites commercial real estate loans to a maximum 75% advance against either the appraised value of the property, or its purchase price (for loans to fund the acquisition of real estate), whichever is less. The Bank generally requires minimum debt service coverage of 1.20 times. There is a potential risk that the borrower may be unable to pay off or refinance the outstanding balance at the loan maturity date. The Bank typically lends to experienced owners or developers who have knowledge and expertise in the commercial real estate market.

Among the reasons for the Bank's continued emphasis on commercial real estate lending is the desire to invest in assets bearing interest rates that are generally higher than interest rates on residential mortgage loans and more sensitive to changes in market interest rates. Commercial real estate loans, however, entail significant additional credit risk as compared to one- to four-family residential mortgage loans, as they typically involve larger loan balances concentrated with single borrowers or groups of related borrowers. In addition, the payment experience on commercial real estate loans secured by income-producing properties is typically dependent on the successful operation of the related real estate project, and thus may be more significantly impacted by adverse conditions in the real estate market or in the economy generally.

The Bank performs more extensive due diligence in underwriting commercial real estate loans than loans secured by owner-occupied one- to four-family residential properties due to the larger loan amounts and the riskier nature of such loans. The Bank assesses and mitigates the risk in several ways, including inspection of all such properties and the review of the overall financial condition of the borrower and guarantors, which may include, for example, the review of the rent rolls and the verification of income. If applicable, a tenant analysis and market analysis are part of the underwriting. Generally, for commercial real estate secured loans in excess of \$1.0 million and for all other commercial real estate loans where it is deemed appropriate, the Bank requires environmental professionals to inspect the property and ascertain any potential environmental risks.

In accordance with regulatory guidelines, the Bank requires a full independent appraisal for commercial real estate properties. The appraiser must be selected from the Bank's approved list, or otherwise approved by the Chief Credit Officer in instances such as an out-of-state or special use property. The Bank also employs an independent review appraiser to ensure that the appraisal meets the Bank's standards. Financial statements are also required annually for review. The Bank's policy also requires that a property inspection of commercial mortgages over \$2.5 million be completed at least every 18 months, or more frequently when warranted.

The Bank's largest commercial mortgage loan as of December 31, 2020 was a \$38.2 million loan secured by a first mortgage lien on fifteen mixed-use retail, residential and office buildings located in Hoboken, NJ. This was for an acquisition and refinance of fifteen Bank mortgaged properties by a large publicly traded, investment grade REIT with extensive experience and a successful track record. The loan has a risk rating of "3" (loans rated 1-4 are deemed to be "acceptable quality"—see discussion of the Bank's nine-point risk rating system for loans under "Allowance for Credit Losses" in the "Asset Quality" section) and was performing in accordance with its terms and conditions as of December 31, 2020. (For the Bank's largest group borrower exposure —see discussion on "Loans to One Borrower")

Multi-family Loans. The Bank underwrites loans secured by apartment buildings that have five or more units. The Bank considers multi-family lending a component of the commercial real estate lending portfolio. Multi-family loans were 15.3% of the total loan portfolio at December 31, 2020. The underwriting standards and procedures that are used to underwrite commercial real estate loans are used to underwrite multi-family loans, except the loan-to-value ratio generally should not exceed 80% of the appraised value of the property, the debt-service coverage should be a minimum of 1.15 times and an amortization period of up to 30 years may be used.

The Bank's largest multi-family loan as of December 31, 2020 was a \$40.6 million loan secured by a first leasehold mortgage lien on a 129-unit, six-story class A luxury rental apartment building with 12,000 square feet of office/retail space located in Morristown, New Jersey. The project sponsor is one of the largest privately-held real estate owner/developers in the United States, and has extensive experience and a successful track record in the development and management of multi-family projects. The loan has a risk rating of "3" (loans rated 1-4 are deemed to be "acceptable quality"—see discussion of the Bank's nine-point risk rating system for loans under "Allowance for Credit Losses" in the "Asset Quality" section) and was performing in accordance with its terms and conditions as of December 31, 2020. (For the Bank's largest group borrower exposure —see discussion on "Loans to One Borrower")

Construction Loans. The Bank originates commercial construction loans. Commercial construction lending includes both new construction of residential and commercial real estate projects and the rehabilitation of existing structures.

The Bank's commercial construction financing includes projects constructed for investment purposes (rental property), projects for sale (single family/condominiums) and to a lesser extent, owner-occupied business properties. To mitigate the speculative nature of construction loans, the Bank generally requires significant pre-leasing on rental properties; requires that a percentage of the for-sale single-family residences or condominiums be under contract to support construction loan advances; and requires other covenants on residential for rental projects depending on whether the project is vertical or horizontal construction.

The Bank generally underwrites construction loans for a term of three years or less. The majority of the Bank's construction loans are floating-rate loans with a maximum 75% loan-to-value ratio for the completed project. The Bank employs professional engineering firms to assist in the review of construction cost estimates and make site inspections to determine if the work has been completed prior to the advance of funds for the project.

Construction lending generally involves a greater degree of risk than commercial real estate or multi-family lending. Repayment of a construction loan is, to a great degree, dependent upon the successful and timely completion of the construction of the subject project and the successful marketing of the sale or lease of the project. Construction delays, slower than anticipated absorption or the financial impairment of the builder may negatively affect the borrower's ability to repay the loan.

For all construction loans, the Bank requires an independent appraisal, which includes information on market rents and/or comparable sales for competing projects. The Bank also obtains personal guarantees, where appropriate, and conducts environmental due diligence as appropriate.

The Bank also employs other means to mitigate the risk of the construction lending process. On commercial construction projects that the developer maintains for rental, the Bank typically holds back funds for tenant improvements until a lease is executed. For single family and condominium financing, the Bank generally requires payment for the release of a unit that exceeds the amount of the loan advance attributable to such unit.

The Bank's largest construction loan at December 31, 2020 was a \$34.5 million commitment secured by a first mortgage lien on property and improvements related to the construction of a 189,889 square foot industrial building on 13.9 acres located in Logan Township, NJ. The loan had an outstanding balance of \$19.3 million at December 31, 2020. This loan closed in 2020 with construction completion expected by the end of 2021. This project is 100% pre-leased. The project sponsor is an experienced and long standing real estate owner and developer with a successful track record in the development and management of commercial real estate. The loan has a risk rating of "4" (loans rated 1-4 are deemed "acceptable quality" – see discussion of the Bank's nine-point risk rating system for loans under "Allowance for Credit Losses" in the "Asset Quality" section) and was performing in accordance with its terms and conditions as of December 31, 2020.

Commercial Loans. The Bank underwrites commercial loans to corporations, partnerships and other businesses. Commercial loans represented 26.4% of the total loan portfolio at December 31, 2020. The majority of the Bank's commercial loan customers are local businesses with revenues of less than \$50.0 million. The Bank primarily offers commercial loans for equipment purchases, lines of credit for working capital purposes, letters of credit and real estate loans where the borrower is the primary occupant of the property. Most commercial loans are originated on a floating-rate basis and the majority of fixed-rate commercial term loans are fully amortized over a five-year period. Owner-occupied commercial real estate loans are generally underwritten to terms consistent with those utilized for commercial real estate; however, the maximum loan-to-value ratio for owner-occupied commercial real estate loans is generally 80%.

The Bank also underwrites Small Business Administration ("SBA") guaranteed loans and guaranteed or assisted loans through various state, county and municipal programs. These governmental guarantees are typically used in cases where the borrower requires additional credit support. The Bank has "Preferred Lender" status with the SBA, allowing a more streamlined application and approval process.

The Company participated in the Paycheck Protection Program ("PPP") through the United States Department of the Treasury and Small Business Administration. At December 31, 2020, the Company had 1,287 PPP loans, which totaled \$473.2 million. The PPP loans are fully guaranteed by the Small Business Administration and may be eligible for forgiveness by the SBA to the extent that the proceeds are used to cover eligible payroll costs, interest costs, rent, and utility costs over a period of up to 24 weeks after the loan was made as long as certain conditions are met regarding employee retention and compensation levels. PPP loans deemed eligible for forgiveness by the SBA will be repaid by the SBA to the Company.

The underwriting of a commercial loan is based upon a review of the financial statements of the prospective borrower and guarantors. In most cases, the Bank obtains a general lien on accounts receivable and inventory, along with the specific collateral such as real estate or equipment, as appropriate.

Commercial loans generally bear higher interest rates than mortgage loans, but they also involve a higher risk of default and a higher loss given default since their repayment is generally dependent on the cash flow of the borrower's business. As a result, the availability of funds for the repayment of commercial loans may be substantially dependent on the success of the business itself and the general economic environment.

The Bank's largest commercial loan as of December 31, 2020 was a \$30.0 million working capital and bonding line of credit to a large and long standing general contractor specializing in heavy bridge and highway construction. The loan, which is annually renewable at the Bank's option, is unsecured and primarily used for working capital and bonding purposes. The loan has a risk rating of "5" (loans rated 1-4 are deemed "acceptable quality", while loans rated 5 are deemed "pass/watch" – see discussion of the Bank's nine-point risk rating system for loans under "allowance for credit losses" in the "Asset Quality" section). At December 31, 2020, there was an \$800,000 outstanding balance under the line. (For the Bank's largest group borrower exposure —see discussion on "Loans to One Borrower")

Consumer Loans. The Bank offers a variety of consumer loans on a direct basis to individuals. Consumer loans represented 5.1% of the total loan portfolio at December 31, 2020. Home equity loans and home equity lines of credit constituted 96.5% of the consumer loan portfolio and indirect marine loans constituted 0.8% of the consumer loan portfolio as of December 31, 2020. The remaining 2.7% of the consumer loan portfolio includes personal loans and unsecured lines of credit, direct auto loans and recreational vehicle loans. The Bank no longer purchases or originates indirect auto, marine or recreational vehicle loans.

Interest rates on home equity loans are fixed for a term not to exceed 20 years and the maximum loan amount is \$650,000. A portion of the home equity loan portfolio includes "first-lien product loans," under which the Bank has offered special rates to borrowers who refinance first mortgage loans on the home equity (first-lien) basis. At December 31, 2020, first-lien home equity loans outstanding totaled \$301.3 million. The Bank's home equity lines of credit are made at floating interest rates and the Bank provides lines of credit of up to \$500,000. The approved home equity lines and utilization amounts as of December 31, 2020 were \$371.2 million and \$126.2 million, respectively, representing utilization of 34.0%.

Consumer loans generally entail greater credit risk than residential mortgage loans, particularly in the case of home equity loans and lines of credit secured by second lien positions, consumer loans that are unsecured or that are secured by assets that tend to depreciate, such as automobiles, boats and recreational vehicles. Collateral repossessed by the Bank from a defaulted consumer loan may not provide an adequate source of repayment of the outstanding loan balance, and the remaining deficiency may warrant further substantial collection efforts against the borrower. In addition, consumer loan collections are dependent upon the borrower's continued financial stability, which is more likely to be adversely affected by job loss, divorce, illness or personal bankruptcy. Furthermore, the application of various federal and state laws, including bankruptcy and insolvency laws, may limit the amount the Bank can recover on such loans.

Loan Originations, Purchases, and Repayments. The following table sets forth the Bank's loan origination, purchase and repayment activities for the periods indicated.

	Year Ended December 31,		
	2020	2019	2018
	(In thousands)		
Originations:			
Residential mortgage	\$ 284,207	\$ 155,211	\$ 108,406
Commercial mortgage	720,416	577,603	448,137
Multi-family mortgage	233,944	154,235	126,159
Construction	391,268	381,775	360,413
Commercial	1,764,099	1,445,345	1,992,972
Consumer	101,596	114,230	120,369
Subtotal of loans originated	3,495,530	2,828,399	3,156,456
Loans purchased	—	—	1,344
Total loans originated and purchased	\$ 3,495,530	2,828,399	3,157,800
Loans acquired at fair value in acquisition	\$ 1,766,115	—	—
Loans sold	87,413	16,212	36,043
Repayments:			
Residential mortgage	290,908	176,112	149,326
Commercial mortgage	57,358	361,832	348,055
Multi-family mortgage	484,404	283,085	204,781
Construction	108,873	246,852	296,450
Commercial	1,447,267	1,492,822	2,006,342
Consumer	214,248	154,122	162,597
Total repayments	\$ 2,603,058	2,714,825	3,167,551
Total reductions	2,690,471	2,731,037	3,203,594
Other items, net ⁽¹⁾	(81,169)	(15,065)	(29,336)
Net increase (decrease)	\$ 2,490,005	\$ 82,297	\$ (75,130)

Other items, net include charge-offs, deferred fees and expenses, discounts and premiums.

Loan Approval Procedures and Authority. The Bank's Board of Directors approves the Lending Policy on at least an annual basis and on an interim basis as modifications are warranted. The Lending Policy sets the Bank's lending authority for each type of loan. The Bank's lending officers are assigned dollar authority limits based upon their experience and expertise. All commercial loan approvals require dual signature authority.

The largest individual lending authority is \$10.0 million, which is only available to the Chief Executive Officer, the Chief Operating Officer, the Chief Lending Officer, the Lending Chief of Staff and the Chief Credit Officer. The authority of the Chief Lending Officer and Chief Credit Officer may be increased to \$15.0 million for permanent commercial real estate loans acting jointly. Loans in excess of these limits, or which when combined with existing credits of the borrower or related borrowers exceed these limits, are presented to the management Credit Committee for approval. The Credit Committee currently consists of eleven senior officers including the Chief Executive Officer, the Chief Operating Officer, the Chief Lending Officer, the Chief Financial Officer, the Chief Credit Officer, the Chief Administrative Officer, the Credit Risk Manager and the Lending Chief of Staff, and requires a majority vote for credit approval.

While the Bank discourages loan policy exceptions, based upon reasonable business considerations exceptions to the policy may be warranted. The business reason and mitigants for the exception must be noted on the loan approval document. The policy exception requires the approval of the Chief Lending Officer, Chief of Staff or the Department Manager of the lending department responsible for the underlying loan, if it is within his or her approval authority limit. All other policy exceptions must be approved by the Credit Committee. The Credit Administration Department reports the type and frequency of loan policy exceptions to the Board of Directors on a quarterly basis, or more frequently if necessary.

The Bank has adopted a risk rating system as part of the credit risk assessment of its loan portfolio. The Bank's commercial real estate and commercial lending officers are required to maintain an appropriate risk rating for each loan in their portfolio. When the lender learns of important financial developments, the risk rating is reviewed accordingly. Risk ratings are subject to review by the Credit Department during the underwriting, lending review and loan review processes. Loan review examinations are performed by an independent third party which validates the risk ratings on a sample basis. In addition, a risk rating can be adjusted at the weekly Credit Committee meeting and quarterly at management's Credit Risk Management Committee, which meets to review all loans rated a "Pass/Watch" ("5") or worse. The Bank requires an annual review be performed for commercial and commercial real estate loans above certain dollar thresholds, depending on loan type, to help determine the appropriate risk ratings. The risk ratings play an important role in the establishment of the loan loss provision and to confirm the adequacy of the allowance for credit losses.

Loans to One Borrower. The regulatory limit on total loans to any borrower or attributed to any one borrower is 15% of the Bank's unimpaired capital and surplus. As of December 31, 2020, the regulatory lending limit was \$177.0 million. The Bank's current internal policy limit on total loans to a borrower or related borrowers that constitute a group exposure is up to \$100.0 million for loans with a risk rating of "2" or better, up to \$90.0 million for loans with a risk rating of "3", and up to \$65.0 million for loans with a risk rating of "4". For a select group of the most credit-worthy and diversified borrowers, the maximum group exposure limit is up to \$130.0 million. Maximum group exposure limits may be lower depending on the type of loans involved. The Bank reviews these group exposures on a quarterly basis. The Bank also sets additional limits on size of loans by loan type.

At December 31, 2020, the Bank's largest group exposure with an individual borrower and its related entities was \$119.2 million, consisting of seven commercial real estate loans totaling \$97.6 million, secured by five retail properties and two office buildings located in New Jersey and Pennsylvania, one construction loan totaling \$5.3 million, secured by a retail and office building project located in Pennsylvania, an \$8.4 million land loan secured by 31 acres in New Jersey, a \$6.0 million unsecured line of credit, \$500,000 under letters of credit, \$400,000 under ACH facilities and \$1.0 million in interest rate swap exposure. The loans have an average risk rating of "4". The borrower, headquartered in New Jersey, is an experienced real estate owner and developer in the states of New Jersey and Pennsylvania. As of December 31, 2020, all of the loans in this lending relationship were performing in accordance with their respective terms and conditions.

As of December 31, 2020, the Bank had \$1.79 billion in loans outstanding to its 50 largest borrowers and their related entities.

ASSET QUALITY

General. One of the Bank's key objectives has been and continues to be to maintain a high level of asset quality. In addition to maintaining sound credit standards for new loan originations, the Bank employs proactive collection and workout processes in dealing with delinquent or problem loans. The Bank actively markets properties that it acquires through foreclosure or otherwise in the loan collection process.

Collection Procedures. In the case of residential mortgage and consumer loans, collection activities begin on the sixteenth day of delinquency. Collection efforts include automated notices of delinquency, telephone calls, letters and other notices to delinquent borrowers. Foreclosure proceedings and other appropriate collection activities such as repossession of collateral are commenced within at least 90 to 120 days after a loan is delinquent provided a plan of repayment to cure the delinquency or other loss mitigation arrangement cannot be reached with the borrower. Periodic inspections of real estate and other collateral are conducted throughout the collection process. The Bank's collection procedures for Federal Housing Association ("FHA") and Veteran's Administration ("VA") one- to four-family mortgage loans follow the collection and loss mitigation guidelines outlined by those agencies.

Real estate and other assets acquired through foreclosure or in connection with a loan workout are held as foreclosed assets. The Bank carries other real estate owned and other foreclosed assets at the lower of their cost or their fair value less estimated selling costs. The Bank attempts to sell the property at foreclosure sale or as soon as practical after the foreclosure sale through a proactive marketing effort.

The collection procedures for commercial real estate and commercial loans include sending periodic late notices and letters to a borrower once a loan is past due. The Bank attempts to make direct contact with a borrower once a loan is 16 days past due, usually by telephone. The Chief Lending Officer and Chief Credit Officer review all commercial real estate and commercial loan delinquencies on a weekly basis. Generally, delinquent commercial real estate and commercial loans are transferred to the Asset Recovery Department for further action if the delinquency is not cured within a reasonable period of time, typically 90 days. The Chief Lending Officer and Chief Credit Officer have the authority to transfer performing commercial real estate or commercial loans to the Asset Recovery Department if, in their opinion, a credit problem exists or is likely to occur.

Loans deemed uncollectible are proposed for charge-off on a monthly basis. Any charge-off recommendation of \$500,000 or greater is submitted to executive management.

Delinquent Loans and Non-performing Loans and Assets. Bank policy requires that the Chief Credit Officer to continuously monitor the status of the loan portfolios and report to the Board of Directors on at least a quarterly basis. These reports include information on impaired loans, delinquent loans, criticized and classified assets, and foreclosed assets. An impaired loan is defined as a non-homogeneous loan greater than \$1.0 million for which it is probable, based on current information, that the Bank will not collect all amounts due under the contractual terms of the loan agreement. Impaired loans also include all loans modified as troubled debt restructurings (“TDRs”). A loan is deemed to be a TDR when a modification resulting in a concession is made by the Bank in an effort to mitigate potential loss arising from a borrower’s financial difficulty. Smaller balance homogeneous loans including residential mortgages and other consumer loans are evaluated collectively for impairment and are excluded from the definition of impaired loans, except for TDRs. Impaired loans are individually identified and reviewed to determine that each loan’s carrying value is not in excess of the fair value of the related collateral or the present value of the expected future cash flows.

The Company implemented various consumer and commercial loan modification programs to provide its borrowers relief from the economic impacts of COVID-19. In accordance with the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the Company elected to not apply troubled debt restructuring classification to any COVID-19 related loan modifications that occurred after March 1, 2020 to borrowers who were current as of December 31, 2019. Accordingly, these modifications are exempt from troubled debt restructuring classification under U.S. generally accepted accounting principles (“U.S. GAAP”) and were not classified as troubled debt restructurings (“TDRs”). In addition, for loans modified in response to the COVID-19 pandemic that did not meet the above criteria (e.g., current payment status at December 31, 2019), the Company applied the guidance included in an interagency statement issued by the bank regulatory agencies. This guidance states that loan modifications performed in light of the COVID-19 pandemic, including loan payment deferrals that are up to six months in duration, that were granted to borrowers who were current as of the implementation date of a loan modification program or modifications granted under government mandated modification programs, are not TDRs. For loan modifications that include a payment deferral and are not TDRs, the borrower’s past due and non-accrual status have not been impacted during the deferral period. The majority of our deferrals initially consisted of 90-day principal and interest deferrals with additional deferral periods granted on a case by case basis at the Bank’s option. Interest income has continued to be recognized over the contractual life of the loan.

As of December 31, 2020, there were 169 impaired loans totaling \$86.0 million, of which 135 loans totaling \$39.6 million were TDRs. Included in this total were 112 TDRs related to 110 borrowers totaling \$23.1 million that were performing in accordance with their restructured terms and which continued to accrue interest at December 31, 2020.

Interest income stops accruing on loans when interest or principal payments are 90 days in arrears or earlier when the timely collectability of such interest or principal is doubtful. When the accrual of interest on a loan is stopped, the loan is designated as a non-accrual loan and the outstanding unpaid interest previously credited is reversed. A non-accrual loan is returned to accrual status when factors indicating doubtful collection no longer exist, the loan has been brought current and the borrower demonstrates some period (generally six months) of timely contractual payments.

Federal and state regulations as well as the Bank’s policy require the Bank to utilize an internal risk rating system as a means of reporting problem and potential problem assets. Under this system, the Bank classifies problem and potential problem assets as “substandard,” “doubtful” or “loss” assets. An asset is considered “substandard” if it is inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. “Substandard” assets include those characterized by the “distinct possibility” that the Bank will sustain “some loss” if the deficiencies are not corrected. Assets classified as “doubtful” have all of the weaknesses inherent in those classified “substandard” with the added characteristic that the weaknesses present make “collection or liquidation in full,” on the basis of currently existing facts, conditions, and values, “highly questionable and improbable.” Assets classified as “loss” are those considered “uncollectible” and of such little value that their continuance as assets without the establishment of a specific loss reserve is not warranted. Assets which do not currently expose the Bank to sufficient risk to warrant classification in one of the aforementioned categories, but possess potential weaknesses, are designated “special mention.” When the Bank classifies one or more assets, or portions thereof, as “loss,” the Bank is required either to establish a specific allowance for losses equal to 100% of the amount of the asset so classified or to charge-off such amount.

Management performs a quarterly evaluation of the adequacy of the allowance for credit losses. The analysis of the allowance for credit losses has two elements: loans collectively evaluated for impairment and loans individually evaluated for impairment. As part of its evaluation of the adequacy of the allowance for credit losses, each quarter management prepares an analysis that segments the entire loan portfolio by loan type into groups of loans that share common attributes and risk characteristics. The allowance for credit losses collectively evaluated for impairment consists of a quantitative loss factor and a

qualitative adjustment component. Management estimates the quantitative component by segmenting the loan portfolio and employing a discounted cash flow ("DCF") model framework to estimate the allowance for credit losses on the loan portfolio. The CECL estimate incorporates life-of-loan aspects through this DCF approach. For each segment, this approach compares each loan's amortized cost to the present value of its contractual cash flows adjusted for projected credit losses, prepayments and curtailments to determine the appropriate reserve for that loan. Quantitative loss factors will be evaluated at least annually. Management completed its initial development and evaluation of its quantitative loss factors in the first quarter of 2020. Qualitative adjustments give consideration to other qualitative factors such as trends in industry conditions, effects of changes in credit concentrations, changes in the Company's loan review process, changes in the Company's loan policies and procedures, economic forecast uncertainty and model imprecision. Qualitative adjustments reflect risks in the loan portfolio not captured by the quantitative loss factors. Qualitative adjustments are recalibrated at least annually and evaluated quarterly. The reserves resulting from the application of both of these sets of loss factors are combined to arrive at the allowance for credit losses on loans collectively evaluated for impairment.

Management's determination as to the classification of assets and the amount of the valuation allowances is subject to review by the FDIC and the New Jersey Department of Banking and Insurance, each of which can require the establishment of additional general or specific loss allowances. The FDIC, in conjunction with the other federal banking agencies, issued an interagency policy statement on the allowance for credit losses. The policy statement provides guidance for financial institutions on both the responsibilities of the board of directors and management for the maintenance of adequate allowances, and guidance for banking agency examiners to use in determining the adequacy of the allowances. Generally, the policy statement reaffirms that institutions should have effective loan review systems and controls to identify, monitor and address asset quality problems; that loans deemed uncollectible are promptly charged off; and that the institution's process for determining an adequate level for its valuation allowance is based on a comprehensive, adequately documented, and consistently applied analysis of the institution's loan and lease portfolio. While management believes that on the basis of information currently available to it, the allowance for credit losses is adequate as of December 31, 2020, actual losses are dependent upon future events and, as such, further additions to the level of allowances for credit losses may become necessary.

Loans are classified in accordance with the risk rating system described previously. At December 31, 2020, \$265.3 million of loans were classified as "substandard," which consisted of \$127.1 million in commercial loans, \$99.9 million in commercial and multi-family mortgage loans, \$26.7 million in residential loans and \$6.7 million in consumer loans. Within the substandard classification, \$36.1 million were PCD loans. At that same date, there were \$52,000 in loans classified as "doubtful." Also, there were no loans classified as "loss" at December 31, 2020. As of December 31, 2020, \$340.6 million of loans were designated "special mention." Within the special mention classification, \$27.8 million were PCD loans.

The following table sets forth delinquencies in the loan portfolio as of the dates indicated.

	At December 31, 2020				At December 31, 2019				At December 31, 2018			
	60-89 Days		90 Days or More		60-89 Days		90 Days or More		60-89 Days		90 Days or More	
	Number of Loans	Principal Balance of Loans	Number of Loans	Principal Balance of Loans	Number of Loans	Principal Balance of Loans	Number of Loans	Principal Balance of Loans	Number of Loans	Principal Balance of Loans	Number of Loans	Principal Balance of Loans
	(Dollars in thousands)											
Residential mortgage loans	39	\$ 8,853	44	\$ 10,232	15	\$ 2,579	36	\$ 8,543	24	\$ 5,557	31	\$ 5,853
Commercial mortgage loans	1	113	13	11,097	—	—	6	5,270	—	—	12	3,180
Multi-family mortgage loans	2	585	—	—	—	—	—	—	—	—	—	—
Construction loans	—	—	2	1,392	—	—	—	—	—	—	—	—
Total mortgage loans	42	9,551	59	22,721	15	2,579	42	13,813	24	5,557	43	9,033
Commercial loans	1	1,179	44	27,782	2	95	24	12,137	2	13565	19	4,309
Consumer loans	13	4,518	27	2,175	12	337	18	1,148	15	610	21	1,266
Total loans	56	\$ 15,248	130	\$ 52,678	29	\$ 3,011	84	\$ 27,098	41	\$ 19,732	83	\$ 14,608

Non-Accrual Loans and Non-Performing Assets. The following table sets forth information regarding non-accrual loans and other non-performing assets. At December 31, 2020, there were 23 TDRs totaling \$16.5 million that were classified as non-accrual, compared to 14 non-accrual TDRs which totaled \$5.6 million at December 31, 2019. Loans are generally placed on non-accrual status when they become 90 days or more past due or if they have been identified as presenting uncertainty with respect to the collectability of interest or principal.

	At December 31,				
	2020	2019	2018	2017	2016
	(Dollars in thousands)				
Non-accruing loans:					
Residential mortgage loans	\$ 9,315	\$ 8,543	\$ 5,853	\$ 8,105	\$ 12,021
Commercial mortgage loans	31,982	5,270	3,180	7,090	7,493
Multi-family mortgage loans	—	—	—	—	553
Construction loans	1,392	—	—	—	2,517
Commercial loans	42,118	25,160	15,391	17,243	16,787
Consumer loans	2,283	1,221	1,266	2,491	3,030
Total non-accruing loans	\$ 87,090	40,194	25,690	34,929	42,401
Accruing loans - 90 days or more delinquent	—	—	—	—	—
Total non-performing loans	\$ 87,090	40,194	25,690	34,929	42,401
Foreclosed assets	4,475	2,715	1,565	6,864	7,991
Total non-performing assets	\$ 91,565	\$ 42,909	\$ 27,255	\$ 41,793	\$ 50,392
Total non-performing assets as a percentage of total assets	0.71 %	0.44 %	0.28 %	0.42 %	0.53 %
Total non-performing loans to total loans	0.89 %	0.55 %	0.35 %	0.48 %	0.61 %

Non-performing commercial mortgage loans increased \$26.7 million to \$32.0 million at December 31, 2020, from \$5.3 million at December 31, 2019. Non-performing commercial mortgage loans consisted of 20 loans at December 31, 2020. Of these 20 loans, 11 loans totaling \$11.3 million were PCD loans. The largest non-performing commercial mortgage loan was an \$11.5 million loan secured by a first mortgage on a property located in Hasbrouck Heights, New Jersey. This loan is currently paying in accordance with its restructured terms.

Non-performing commercial loans increased \$17.0 million, to \$42.1 million at December 31, 2020, from \$25.2 million at December 31, 2019. Non-performing commercial loans at December 31, 2020 consisted of 69 loans, of which 24 loans were under 90 days accruing. Of these non-performing commercial loans, 16 were PCD loans totaling \$5.5 million. The largest non-performing commercial loan relationship was a Shared National Credit ("SNC") relationship, which consisted of three loans to a restaurant group with total outstanding balances of \$10.4 million at December 31, 2020. All of these loans are unsecured/non-real estate secured. These loans are currently not paying in accordance with their restructured terms. A new modification/forbearance agreement is currently being negotiated.

Non-performing construction loans totaled \$1.4 million at December 31, 2020. Non-performing construction loans at December 31, 2020 consisted of two PCD loans. There were no non-performing construction loans at 2019.

At December 31, 2020, the Company held \$4.5 million of foreclosed assets, compared with \$2.7 million at December 31, 2019. Foreclosed assets at December 31, 2020 are carried at fair value based on recent appraisals and valuation estimates, less estimated selling costs. During the year ended December 31, 2020, there were three additions to foreclosed assets with an aggregate carrying value of \$2.6 million and 12 properties sold with an aggregate carrying value of \$2.5 million and valuation charges of \$693,000. Foreclosed assets acquired from SB One totaled \$2.4 million.

Non-performing assets totaled \$91.6 million, or 0.71% of total assets at December 31, 2020, compared to \$42.9 million, or 0.44% of total assets at December 31, 2019. Within total non-performing assets, \$20.8 million were PCD loans over 90 days past due. If the non-accrual loans had performed in accordance with their original terms, interest income would have increased by \$3.2 million during the year ended December 31, 2020. The amount of cash basis interest income that was recognized on impaired loans during the year ended December 31, 2020 was not material.

Allowance for Credit Losses. On January 1, 2020, the Company adopted ASU 2016-13, "Measurement of Credit Losses on Financial Instruments," which replaces the incurred loss methodology with an expected loss methodology that is referred to as the current expected credit loss ("CECL") methodology. It also applies to off-balance sheet credit exposures, including loan

commitments and lines of credit. The adoption of the new standard resulted in the Company recording a \$7.9 million increase to the allowance for credit losses and a \$3.2 million liability for off-balance sheet credit exposures. The adoption of the standard did not result in a change to the Company's results of operations upon adoption as it was recorded as an \$8.3 million cumulative effect adjustment, net of income taxes, to retained earnings.

The allowance for credit losses is a valuation account that reflects management's evaluation of the current expected credit losses in the loan portfolio. The Company maintains the allowance for credit losses through provisions for credit losses that are charged to income. Charge-offs against the allowance for credit losses are taken on loans where management determines that the collection of loan principal and interest is unlikely. Recoveries made on loans that have been charged-off are credited to the allowance for credit losses.

The calculation of the allowance for credit losses is a critical accounting policy of the Company. Management estimates the allowance balance using relevant available information, from internal and external sources, related to past events, current conditions, and a reasonable and supportable forecast. Historical credit loss experience for both the Company and peers provides the basis for the estimation of expected credit losses, where observed credit losses are converted to probability of default rate ("PDR") curves through the use of segment-specific loss given default ("LGD") risk factors that convert default rates to loss severity based on industry-level, observed relationships between the two variables for each segment, primarily due to the nature of the underlying collateral. These risk factors were assessed for reasonableness against the Company's own loss experience and adjusted in certain cases when the relationship between the Company's historical default and loss severity deviate from that of the wider industry. The historical PDR curves, together with corresponding economic conditions, establish a quantitative relationship between economic conditions and loan performance through an economic cycle.

Using the historical relationship between economic conditions and loan performance, management's expectation of future loan performance is incorporated using an externally developed economic forecast. This forecast is applied over a period that management has determined to be reasonable and supportable. Beyond the period over which management can develop or source a reasonable and supportable forecast, the model will revert to long-term average economic conditions using a straight-line, time-based methodology. The Company's current forecast period is six quarters, with a four quarter reversion period to historical average macroeconomic factors. The Company's economic forecast is approved by the Company's Asset-Liability Committee.

The allowance for credit losses is measured on a collective (pool) basis, with both a quantitative and qualitative analysis that is applied on a quarterly basis, when similar risk characteristics exist. The respective quantitative allowance for each segment is measured using an econometric, discounted PD/LGD modeling methodology in which distinct, segment-specific multi-variate regression models are applied to an external economic forecast. Under the discounted cash flows methodology, expected credit losses are estimated over the effective life of the loans by measuring the difference between the net present value of modeled cash flows and amortized cost basis. Contractual cash flows over the contractual life of the loans are the basis for modeled cash flows, adjusted for modeled defaults and expected prepayments and discounted at the loan-level effective interest rate. The contractual term excludes expected extensions, renewals, and modifications unless either of the following applies: management has a reasonable expectation at the reporting date that a troubled debt restructuring ("TDR") will be executed with an individual borrower or the extension or renewal options are included in the original or modified contract at the reporting date and are not unconditionally cancellable by the Company.

After quantitative considerations, management applies additional qualitative adjustments so that the allowance for credit loss is reflective of the estimate of lifetime losses that exist in the loan portfolio at the balance sheet date. Qualitative considerations include limitations inherent in the quantitative model; portfolio concentrations that may affect loss experience across one or more components of the portfolio; changes in industry conditions; changes in the Company's loan review process; changes in the Company's loan policies and procedures, economic forecast uncertainty and model imprecision.

Portfolio segment is defined as the level at which an entity develops and documents a systematic methodology to determine its allowance for credit losses. Management developed segments for estimating loss based on type of borrower and collateral which is generally based upon federal call report segmentation and have been combined or sub-segmented as needed to ensure loans of similar risk profiles are appropriately pooled. As of December 31, 2020, the portfolio and class segments for the Company's loan portfolio were:

- Mortgage Loans – Residential, Commercial Real Estate, Multi-Family and Construction
- Commercial Loans – Commercial Owner Occupied and Commercial Non-Owner Occupied
- Consumer Loans – First Lien Home Equity and Other Consumer

The allowance for credit losses on loans individually evaluated for impairment is based upon loans that have been identified through the Company's normal loan monitoring process. This process includes the review of delinquent and problem

loans at the Company's Delinquency, Credit, Credit Risk Management and Allowance Committees; or which may be identified through the Company's loan review process. Generally, the Company only evaluates loans individually for impairment if the loan is non-accrual, non-homogeneous and the balance is at least \$1.0 million, or if the loan was modified in a Troubled Debt Restructuring ("TDR"). When management determines that foreclosure is probable, expected credit losses are based on the fair value of the collateral at the reporting date, adjusted for selling costs as appropriate. If the loan is not collateral dependent, the allowance for credit losses related to individually assessed loans is based on discounted expected cash flows using the loan's initial effective interest rate.

A loan for which the terms have been modified resulting in a concession by the Company, and for which the borrower is experiencing financial difficulties is considered to be a TDR. The allowance for credit losses on a TDR is measured using the same method as all other impaired loans, except that the original interest rate is used to discount the expected cash flows, not the rate specified within the restructuring.

As previously noted, in accordance with the CARES Act, the Company elected to not apply troubled debt restructuring classification to any COVID-19 related loan modifications that occurred after March 1, 2020 to borrowers who were current as of December 31, 2019. Accordingly, these modifications were not classified as TDRs. In addition, for loans modified in response to the COVID-19 pandemic that did not meet the above criteria (e.g., current payment status at December 31, 2019), the Company applied the guidance included in an interagency statement issued by the bank regulatory agencies. This guidance states that loan modifications performed in light of the COVID-19 pandemic, including loan payment deferrals that are up to six months in duration, that were granted to borrowers who were current as of the implementation date of a loan modification program or modifications granted under government mandated modification programs, are not TDRs.

Loans that have been or are expected to be granted COVID-19 related deferrals or modifications decreased from a peak level of \$1.31 billion, or 16.8% of loans, to \$207.4 million, or 2.1% of loans. This \$207.4 million of loans consists of \$9.1 million in a first 90-day deferral period, \$51.3 million in a second 90-day deferral period, \$121.2 million that required additional payment relief and \$25.8 million that have completed their initial deferral periods, but are expected to require ongoing assistance. Included in the \$207.4 million of loans, \$49.2 million are secured by hotels, \$35.9 million are secured by retail properties, \$30.4 million are secured by multi-family properties, of which \$21.1 million are student housing related, \$29.7 million are secured by residential mortgages and \$4.9 million are secured by restaurants, with the balance comprised of diverse commercial loans.

For loans acquired that have experienced more-than-insignificant deterioration in credit quality since origination are considered PCD loans. The Company evaluates acquired loans for deterioration in credit quality based on any of, but not limited to, the following: (1) non-accrual status; (2) troubled debt restructured designation; (3) risk ratings of special mention, substandard or doubtful; (4) watchlist credits; and (5) delinquency status, including loans that are current on acquisition date, but had been previously delinquent. At the acquisition date, an estimate of expected credit losses is made for groups of PCD loans with similar risk characteristics and individual PCD loans without similar risk characteristics. Subsequent to the acquisition date, the initial allowance for credit losses on PCD loans will increase or decrease based on future evaluations, with changes recognized in the provision for credit losses.

Management believes the primary risks inherent in the portfolio are a general decline in the economy, a decline in real estate market values, rising unemployment or a protracted period of elevated unemployment, increasing vacancy rates in commercial investment properties and possible increases in interest rates in the absence of economic improvement. As the impact of the COVID-19 pandemic continues to unfold, the effectiveness of medical advances, government programs, and the resulting impact on consumer behavior and employment conditions will have a material bearing on future credit conditions. Any one or a combination of these events may adversely affect borrowers' ability to repay the loans, resulting in increased delinquencies, credit losses and higher levels of provisions. Management considers it important to maintain the ratio of the allowance for credit losses to total loans at an acceptable level given current and forecasted economic conditions, interest rates and the composition of the portfolio.

Although management believes that the Company has established and maintained the allowance for credit losses at appropriate levels, additions may be necessary if future economic and other conditions differ substantially from the current operating environment and economic forecast. Management evaluates its estimates and assumptions on an ongoing basis giving consideration to forecasted economic factors, historical loss experience and other factors. Such estimates and assumptions are adjusted when facts and circumstances dictate. In addition to the ongoing impact of the COVID-19 pandemic, illiquid credit markets, volatile securities markets, and declines in the housing and commercial real estate markets and the economy in general may increase the uncertainty inherent in such estimates and assumptions. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods. In addition, various regulatory agencies periodically review the adequacy of the Company's allowance for credit losses as an integral part of their examination process. Such agencies may require the Company to recognize additions to the allowance or

additional write-downs based on their judgments about information available to them at the time of their examination. Although management uses the best information available, the level of the allowance for credit losses remains an estimate that is subject to significant judgment and short-term change.

Going forward, the impact of utilizing the CECL approach to calculate the allowance for credit losses on loans will be significantly influenced by the composition, characteristics and quality of the Company's loan portfolio, as well as the prevailing economic conditions and forecast utilized. Material changes to these and other relevant factors may result in greater volatility to the allowance for credit losses, and therefore, greater volatility to the Company's reported earnings. For the year ended, December 31, 2020, changing economic forecasts attributable to the COVID-19 pandemic and projected economic recovery led to provisions for credit losses and off-balance sheet credit exposures. See Note 7 to the Consolidated Financial Statements and the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") for more information on the allowance for credit losses on loans.

Analysis of the Allowance for Credit Losses on Loans. The following table sets forth the analysis of the allowance for credit losses for the periods indicated.

	Years Ended December 31,				
	2020	2019	2018	2017	2016
	(Dollars in thousands)				
Balance at beginning of period	\$ 55,525	\$ 55,562	\$ 60,195	\$ 61,883	\$ 61,424
Initial allowance due to the adoption of CECL	7,920	—	—	—	—
Charge offs:					
Residential mortgage loans	69	44	277	421	1,033
Commercial mortgage loans	2,647	222	—	72	35
Multi-family mortgage loans	—	—	—	2	—
Construction loans	—	—	—	6	—
Commercial loans	4,763	14,023	28,986	7,187	4,862
Consumer loans	434	743	755	1,253	1,020
Total	7,913	15,032	30,018	8,941	6,950
Recoveries:					
Residential mortgage loans	109	46	58	1	57
Commercial mortgage loans	177	376	431	59	504
Multi-family mortgage loans	—	—	—	—	67
Construction loans	110	—	—	6	—
Commercial loans	1776	665	428	800	570
Consumer loans	465	808	768	787	811
Total	2,637	1,895	1,685	1,653	2,009
Net charge-offs	5,276	13,137	28,333	7,288	4,941
Provision for loan losses	29,711	13,100	23,700	5,600	5,400
Initial allowance related to PCD loans	13,586	—	—	—	—
Balance at end of period	\$ 101,466	\$ 55,525	\$ 55,562	\$ 60,195	\$ 61,883
Ratio of net charge-offs to average loans outstanding during the period	0.06 %	0.18 %	0.39 %	0.10 %	0.07 %
Allowance for credit losses to total loans	1.03 %	0.76 %	0.77 %	0.82 %	0.88 %
Allowance for credit losses to non-performing loans	116.51 %	138.14 %	216.28 %	172.34 %	145.95 %

Allowance for Credit Losses on Loans by Loan Category. The following table sets forth the allowance for credit losses by loan category for the periods indicated. The allowance for credit losses for 2020 was based upon the adoption of the current expected credit loss ("CECL") guidance, while the prior year credit losses were based upon the incurred loss methodology. This is based on management's assessment as of a given point in time. This is neither indicative of the specific amounts or the loan categories in which future charge-offs may be taken, nor is it an indicator of future loss trends. The allowance to each category does not restrict the use of the allowance to absorb losses in any category.

At December 31,										
2020		2019		2018		2017		2016		
Amount of Allowance for Loan Losses	Percent of Loans in Each Category to Total Loans	Amount of Allowance for Loan Losses	Percent of Loans in Each Category to Total Loans	Amount of Allowance for Loan Losses	Percent of Loans in Each Category to Total Loans	Amount of Allowance for Loan Losses	Percent of Loans in Each Category to Total Loans	Amount of Allowance for Loan Losses	Percent of Loans in Each Category to Total Loans	
(Dollars in thousands)										
Residential mortgage loans	\$ 7,142	13.16 %	\$ 3,414	14.69 %	\$ 3,971	15.16 %	\$ 4,328	15.59 %	\$ 5,540	17.30 %
Commercial mortgage loans	42,014	35.15	12,831	35.14	12,639	31.70	13,136	29.62	12,234	28.24
Multi-family mortgage loans	15,262	15.09	3,374	16.70	4,745	18.46	4,919	19.15	7,481	20.02
Construction loans	3,890	5.51	5,892	5.86	6,323	5.36	5,669	5.35	4,371	3.77
Commercial loans	27,083	26.08	28,263	22.28	25,693	23.37	29,814	23.81	29,143	23.28
Consumer loans	6,075	5.01	1,751	5.33	2,191	5.95	2,329	6.48	3,114	7.39
Total	\$ 101,466	100.00 %	\$ 55,525	100.00 %	\$ 55,562	100.00 %	\$ 60,195	100.00 %	\$ 61,883	100.00 %

INVESTMENT ACTIVITIES

General. The Board of Directors annually approves the Investment Policy for the Bank and the Company. The Chief Financial Officer and the Treasurer are authorized by the Board to implement the Investment Policy and establish investment strategies. Each of the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Treasurer and Assistant Treasurer is authorized to make investment decisions consistent with the Investment Policy. Investment transactions for the Bank are reported to the Board of Directors of the Bank on a monthly basis.

The Investment Policy is designed to generate a favorable rate of return, consistent with established guidelines for liquidity, safety, duration and diversification, and to complement the lending activities of the Bank. Investment decisions are made in accordance with the policy and are based on credit quality, interest rate risk, balance sheet composition, market expectations, liquidity, income and collateral needs.

The Investment Policy does not currently permit the purchase of any securities that are below investment grade.

The investment strategy is to maximize the return on the investment portfolio consistent with the Investment Policy. The investment strategy considers the Bank's and the Company's interest rate risk position as well as liquidity, loan demand and other factors. Acceptable investment securities include U.S. Treasury and Agency obligations, collateralized mortgage obligations ("CMOs"), corporate debt obligations, municipal bonds, mortgage-backed securities, commercial paper, mutual funds, bankers' acceptances and Federal funds.

Securities in the investment portfolio are classified as held to maturity debt securities, available for sale debt securities, equity securities, or held for trading. Securities that are classified as held to maturity debt securities are securities that the Bank or the Company has the intent and ability to hold until their contractual maturity date and are reported at cost. Securities that are classified as available for sale debt securities are reported at fair value. Available for sale debt securities include U.S. Treasury and Agency obligations, U.S. Agency and privately-issued CMOs, corporate debt obligations. Sales of securities may occur from time to time in response to changes in market rates and liquidity needs and to facilitate balance sheet reallocation to effectively manage interest rate risk. Equity securities are traded in active markets with readily accessible quoted market prices, carried at fair value. At the present time, there are no securities that are classified as held for trading.

On January 1, 2020, the Company adopted CECL which replaces the incurred loss methodology with an expected loss methodology. Management measures expected credit losses on held to maturity debt securities on a collective basis by security type. Management classifies the held to maturity debt securities portfolio into the following security types:

- Agency obligations;
- Mortgage-backed securities;
- State and municipal obligations; and
- Corporate obligations.

All of the agency obligations held by the Bank are issued by U.S. government entities and agencies. These securities are either explicitly or implicitly guaranteed by the U.S. government, are highly rated by major rating agencies and have a long history of no credit losses. The majority of the state and municipal, and corporate obligations carry no lower than "A" ratings from the rating agencies at December 31, 2020 and the Bank had one security rated with a triple-B by Moody's Investors Service.

CMOs are a type of debt security issued by a special-purpose entity that aggregates pools of mortgages and mortgage-related securities and creates different classes of CMO securities with varying maturities and amortization schedules as well as a residual interest with each class possessing different risk characteristics. In contrast to pass-through mortgage-backed securities from which cash flow is received (and prepayment risk is shared) pro rata by all securities holders, the cash flow from the mortgages or mortgage-related securities underlying CMOs is paid in accordance with predetermined priority to investors holding various tranches of such securities or obligations. A particular tranche of CMOs may therefore carry prepayment risk that differs from that of both the underlying collateral and other tranches. Accordingly, CMOs attempt to moderate risks associated with conventional mortgage-related securities resulting from unexpected prepayment activity. In declining interest rate environments, the Bank attempts to purchase CMOs with principal lock-out periods, reducing prepayment risk in the investment portfolio. During rising interest rate periods, the Bank's strategy is to purchase CMOs that are receiving principal payments that can be reinvested at higher current yields. Investments in CMOs involve a risk that actual prepayments will differ from those estimated in pricing the security, which may result in adjustments to the net yield on such securities. Additionally, the fair value of such securities may be adversely affected by changes in market interest rates. Management believes these securities may represent attractive alternatives relative to other investments due to the wide variety of maturity, repayment and interest rate options available.

At December 31, 2020, the Bank held \$16,000 in privately-issued CMOs in the investment portfolio. The Bank and the Company do not invest in collateralized debt obligations, mortgage-related securities secured by sub-prime loans, or any preferred equity securities.

Amortized Cost and Fair Value of Securities. The following table sets forth certain information regarding the amortized cost and fair values of the Company's securities as of the dates indicated.

	At December 31,					
	2020		2019		2018	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value	Amortized Cost	Fair Value
(Dollars in thousands)						
Held to Maturity Debt Securities:						
Mortgage-backed securities	\$ 62	\$ 64	\$ 118	\$ 122	\$ 187	\$ 190
FHLB obligations	1,000	1,000	1,800	1,806	1,396	1,374
FHLMC obligations	3,600	3,599	1,900	1,897	2,195	2,162
FNMA obligations	1,000	1,001	900	898	899	869
FFCB obligations	2,000	2,001	1,999	2,000	499	491
State and municipal obligations	433,655	454,973	437,074	451,353	463,801	464,363
Corporate obligations	9,726	9,813	9,838	9,890	10,448	10,291
Total held-to-maturity debt securities ⁽²⁾	<u>\$ 451,043</u>	<u>\$ 472,451</u>	<u>\$ 453,629</u>	<u>\$ 467,966</u>	<u>\$ 479,425</u>	<u>\$ 479,740</u>
Available for Sale Debt Securities:						
Mortgage-backed securities	910,393	938,413	936,196	947,430	1,048,415	1,034,969
SBA pools	1,001	1,009	—	—	—	—
Asset-backed securities	52,295	53,830	—	—	—	—
State and municipal obligations	69,687	71,258	3,907	4,079	2,828	2,912
Corporate obligations	40,194	40,979	25,032	25,410	25,039	25,198
Total available for sale debt securities	<u>\$ 1,073,570</u>	<u>\$ 1,105,489</u>	<u>\$ 965,135</u>	<u>\$ 976,919</u>	<u>\$ 1,076,282</u>	<u>\$ 1,063,079</u>
Equity securities	<u>\$ 971</u>	<u>\$ 971</u>	<u>\$ 825</u>	<u>\$ 825</u>	<u>\$ 635</u>	<u>\$ 635</u>

Average expected life of securities⁽¹⁾

3.93 years

3.41 years

4.72 years

(1) Average expected life is based on prepayment assumptions utilizing prevailing interest rates as of the reporting dates and excludes equity securities.

(2) At December 31, 2020, excludes \$78,000 allowance for credit losses on held to maturity debt securities.

The aggregate carrying values and fair values of securities by issuer, where the aggregate book value of such securities exceeds ten percent of stockholders' equity are as follows (in thousands):

	Amortized Cost	Fair Value
At December 31, 2020:		
FNMA	\$ 361,110	\$ 369,353
FHLMC	318,807	327,533
GNMA	155,368	156,965

The following table sets forth certain information regarding the carrying value, weighted average yields and contractual maturities of the Company's debt securities portfolio as of December 31, 2020. No tax equivalent adjustments were made to the weighted average yields. Amounts are shown at amortized cost for held to maturity debt securities and at fair value for available for sale debt securities.

At December 31, 2020										
One Year or Less		More Than One Year to Five Years		More Than Five Years to Ten Years		After Ten Years		Total		
Carrying Value	Weighted Average Yield ⁽¹⁾	Carrying Value	Weighted Average Yield ⁽¹⁾	Carrying Value	Weighted Average Yield ⁽¹⁾	Carrying Value	Weighted Average Yield ⁽¹⁾	Carrying Value	Weighted Average Yield ⁽¹⁾	
(Dollars in thousands)										
Held to Maturity Debt Securities:										
Mortgage-backed securities	\$ —	— %	\$ 62	5.23 %	\$ —	— %	\$ —	— %	\$ 62	5.23 %
Agency obligations	—	—	7,600	69.00	—	—	—	—	7,600	—
Corporate obligations	3,009	3.80	6,717	2.54	—	—	—	—	9,726	2.93
State and municipal obligations	18,614	1.95	119,553	2.52	216,670	2.58	78,818	2.55	433,655	2.53
Total held to maturity debt securities ⁽²⁾	<u>\$ 21,623</u>	<u>2.21 %</u>	<u>\$ 133,932</u>	<u>2.42 %</u>	<u>\$ 216,670</u>	<u>2.58 %</u>	<u>\$ 78,818</u>	<u>2.55 %</u>	<u>\$ 451,043</u>	<u>2.51 %</u>
Available for Sale Debt Securities:										
Asset-backed securities	\$ —	— %	\$ —	— %	\$ —	— %	\$ 53,830	1.27 %	\$ 53,830	— %
State and municipal obligations	—	—	684	2.50	4,939	2.98	65,635	2.02	71,258	2.09
Mortgage-backed securities	9,063	2.06	30,572	2.56	181,066	2.34	717,712	2.09	938,413	2.15
Agency obligations	—	—	—	—	1,009	1.68	—	—	1,009	—
Corporate obligations	—	—	5,107	3.56	33,841	4.42	2,031	5.93	40,979	4.39
Total available for sale debt securities ⁽³⁾	<u>\$ 9,063</u>	<u>2.06 %</u>	<u>\$ 36,363</u>	<u>2.70 %</u>	<u>\$ 220,855</u>	<u>2.67 %</u>	<u>\$ 839,208</u>	<u>2.04 %</u>	<u>\$ 1,105,489</u>	<u>2.13 %</u>

(1) Yields are not tax equivalent.

(2) At December 31, 2020, excludes \$78,000 allowance for credit losses on held to maturity debt securities.

(3) Totals exclude \$971,000 equity securities at fair value.

SOURCES OF FUNDS

General. Primary sources of funds consist of principal and interest cash flows received from loans and mortgage-backed securities, contractual maturities on investments, deposits, FHLBNY advances and proceeds from sales of loans and investments. These sources of funds are used for lending, investing and general corporate purposes, including acquisitions and common stock repurchases.

Deposits. The Bank offers a variety of deposits for retail and business accounts. Deposit products include savings accounts, checking accounts, interest-bearing checking accounts, money market deposit accounts and certificate of deposit accounts at varying interest rates and terms. The Bank also offers investment, insurance and IRA products. Business customers are offered several checking account and savings plans, cash management services, remote deposit capture services, payroll origination services, escrow account management and business credit cards. The Bank focuses on relationship banking for retail and business customers to enhance the customer experience. Deposit activity is influenced by state and local economic conditions, changes in interest rates, internal pricing decisions and competition. Deposits are primarily obtained from the areas surrounding the Bank's branch locations. To attract and retain deposits, the Bank offers competitive rates, quality customer service and a wide variety of products and services that meet customers' needs, including online and mobile banking.

Deposit pricing strategy is monitored monthly by the management Asset/Liability Committee and Pricing Committee. Deposit pricing is set weekly by the Bank's Treasury Department. When setting deposit pricing, the Bank considers competitive market rates, FHLBNY advance rates and rates on other sources of funds. Core deposits, defined as savings accounts, interest and non-interest bearing checking accounts and money market deposit accounts, represented 88.9% of total deposits at December 31, 2020 and 89.7% of total deposits at December 31, 2019. As of December 31, 2020 and 2019, time deposits maturing in less than one year amounted to \$886.0 million and \$606.9 million, respectively.

The following table indicates the amount of certificates of deposit by time remaining until maturity at December 31, 2020.

	Maturity				Total
	3 Months or Less	Over 3 to 6 Months	Over 6 to 12 Months	Over 12 Months	
	(In thousands)				
Certificates of deposit of \$100,000 or more	\$ 252,381	\$ 151,962	\$ 201,628	\$ 111,245	\$ 717,216
Certificates of deposit less than \$100,000	86,667	80,207	113,174	96,910	376,958
Total certificates of deposit	\$ 339,048	\$ 232,169	\$ 314,802	\$ 208,155	\$ 1,094,174

Certificates of Deposit Maturities. The following table sets forth certain information regarding certificates of deposit.

Rate:	Period to Maturity from December 31, 2020						At December 31,		
	Less Than One Year	One to Two Years	Two to Three Years	Three to Four Years	Four to Five Years	Five Years or More	2020	2019	2018
	(In thousands)								
0.00 to 0.99%	\$ 539,004	\$ 35,872	\$ 8,308	\$ 522	\$ 8834	\$ 86	\$ 592,626	\$ 78,699	\$ 190,118
1.00 to 2.00%	324,997	74,625	15,405	9,536	20,280	412	445,255	415,341	297,284
2.01 to 3.00%	21,411	8,392	10,511	15,179	193	—	55,686	239,737	263,090
3.01 to 4.00%	607	—	—	—	—	—	607	250	—
Total	\$ 886,019	\$ 118,889	\$ 34,224	\$ 25,237	\$ 29,307	\$ 498	\$ 1,094,174	\$ 734,027	\$ 750,492

Borrowed Funds. At December 31, 2020, the Bank had \$1.18 billion of borrowed funds. Borrowed funds consist primarily of FHLBNY advances and repurchase agreements. Repurchase agreements are contracts for the sale of securities owned or borrowed by the Bank, with an agreement to repurchase those securities at an agreed-upon price and date. The Bank uses wholesale repurchase agreements, as well as retail repurchase agreements as an investment vehicle for its commercial sweep checking product. Bank policies limit the use of repurchase agreements to collateral consisting of U.S. Treasury obligations, U.S. government agency obligations or mortgage-related securities.

As a member of the FHLBNY, the Bank is eligible to obtain advances upon the security of the FHLBNY common stock owned and certain residential mortgage loans, provided certain standards related to credit-worthiness have been met. FHLBNY advances are available pursuant to several credit programs, each of which has its own interest rate and range of maturities.

The following table sets forth the maximum month-end balance and average balance of FHLBNY advances and securities sold under agreements to repurchase for the periods indicated.

	Years Ended December 31,		
	2020	2019	2018
	(Dollars in thousands)		
Maximum Balance:			
FHLBNY advances	\$ 1,177,083	\$ 1,190,006	\$ 1,256,525
FHLBNY line of credit	422,000	451,000	487,000
Securities sold under agreements to repurchase	115,233	96,914	153,715
Average Balance:			
FHLBNY advances	1,045,282	939,916	1,136,988
FHLBNY line of credit	97,853	325,481	259,197
Securities sold under agreements to repurchase	86,194	71,234	139,729
Weighted Average Interest Rate:			
FHLBNY advances	1.49 %	2.11 %	1.90 %
FHLBNY line of credit	1.09	2.40	2.09
Securities sold under agreements to repurchase	0.28	0.49	1.04

The following table sets forth certain information as to borrowings at the dates indicated.

	At December 31,		
	2020	2019	2018
	(Dollars in thousands)		
FHLBNY advances	\$ 1,051,036	\$ 766,409	\$ 1,037,960
FHLBNY line of credit	25,000	298,000	283,000
Securities sold under repurchase agreements	99,936	60,737	121,322
Total borrowed funds	<u>\$ 1,175,972</u>	<u>\$ 1,125,146</u>	<u>\$ 1,442,282</u>
Weighted average interest rate of FHLBNY advances	0.96 %	2.14 %	2.08 %
Weighted average interest rate of FHLBNY line of credit	0.34 %	1.84 %	2.60 %
Weighted average interest rate of securities sold under agreements to repurchase	0.26 %	0.53 %	0.85 %

Subordinated Debentures. As part of the July 31, 2020 acquisition of SB One, the Company assumed subordinated debentures with a total outstanding balance of \$27.9 million and a net fair value of \$25.1 million. The outstanding balance consisted of \$12.9 million of subordinated deferrable interest debentures sold by the former SB One Bancorp to Sussex Capital Trust II (the "Trust") and \$15 million of private placement of fixed to-floating rate subordinated notes to an institutional investor.

Sussex Capital Trust II, a non-consolidated subsidiary of the Company acquired as part of the SB One acquisition and a Delaware statutory business trust established on June 28, 2007, issued \$12.5 million of variable rate capital trust pass-through securities to investors. Concurrently, the Trust purchased \$12.9 million of variable rate subordinated deferrable interest debentures from the former SB One Bancorp and issued \$387,000 of Common Securities in consideration for payment of the assets of the Trust in the same amount. The subordinated debentures are the sole asset of the Trust and their terms are the same as the terms of the capital securities. The Company has also fully and unconditionally guaranteed the obligations of the Trust under the capital securities. The interest rate is based on the three-month LIBOR plus 144 basis points and adjusts quarterly. The rate at December 31, 2020 was 1.66%. The capital trust pass-through securities are currently redeemable by the Company at par in whole or in part. These capital trust pass-through securities must be redeemed upon final maturity on September 15, 2037. The proceeds of these trust preferred securities, which have been contributed to the Bank, are included in the Bank's capital ratio calculations and treated as Tier I capital.

In accordance with FASB ASC 810, Consolidation, Sussex Capital Trust II, is not included in our consolidated financial statements. For regulatory reporting purposes, capital trust pass-through securities qualify as Tier I capital subject to specified limitations.

As part of the acquisition of SB One, the Company assumed a \$15.0 million private placement of fixed to-floating rate subordinated notes to an institutional investor on December 22, 2016. The subordinated notes have a maturity date of December 22, 2026 and bear interest at the rate of 5.75% per annum, payable quarterly, for the first five years of the term, and then at a variable rate that will reset quarterly to a level equal to the then current 3-month LIBOR plus 350 basis points over the remainder of the term.

WEALTH MANAGEMENT SERVICES

As part of the Company's strategy to increase fee related income, the Bank's wholly owned subsidiary, Beacon Trust Company and its registered investment advisor subsidiary, Beacon Investment Advisory Services, Inc., ("Beacon") are engaged in providing wealth management services. Those services include investment management, trust and estate administration, financial planning, tax compliance and planning, and private banking. These services may be introduced to existing customers through the Bank's extensive branch and lending network.

Beacon focuses on delivering personalized solutions based on the needs and objectives for each client. The majority of the fee income generated by Beacon is based on assets under management.

On April 1, 2019, Beacon Trust Company ("Beacon") completed its acquisition of certain assets of Tirschwell & Loewy, Inc. ("T&L"), a New York City-based registered investment adviser. Beacon is a wholly owned subsidiary of Provident Bank which, in turn, is wholly owned by the Company. This acquisition expanded the Company's wealth management business by \$822.4 million of assets under management at the time of acquisition.

SUBSIDIARY ACTIVITIES

PFS Insurance Services, Inc., formerly Provident Investment Services, Inc., is a wholly owned subsidiary of the Bank, and a New Jersey licensed insurance producer that sells insurance and investment products, including annuities to customers through a third-party networking arrangement.

Dudley Investment Corporation is a wholly owned subsidiary of the Bank which operates as a New Jersey Investment Company. Dudley Investment Corporation owns all of the outstanding common stock of Gregory Investment Corporation.

Gregory Investment Corporation is a wholly owned subsidiary of Dudley Investment Corporation. Gregory Investment Corporation operates as a Delaware Investment Company. Gregory Investment Corporation owns all of the outstanding common stock of PSB Funding Corporation.

PSB Funding Corporation is a majority owned subsidiary of Gregory Investment Corporation. It was established as a New Jersey corporation to engage in the business of a real estate investment trust for the purpose of acquiring mortgage loans and other real estate related assets from the Bank.

Bergen Avenue Realty, LLC, a New Jersey limited liability company is a wholly owned subsidiary of the Bank formed to manage and sell real estate acquired through foreclosure.

Bergen Avenue Realty PA, LLC, a Pennsylvania limited liability company is a wholly owned subsidiary of the Bank formed to manage and sell real estate acquired through foreclosure in Pennsylvania.

Beacon Trust Company, a New Jersey limited purpose trust company, is a wholly owned subsidiary of the Bank.

Beacon Investment Advisory Services, Inc. is a wholly owned subsidiary of Beacon Trust Company, incorporated under Delaware law and is a registered investment advisor.

SB One Insurance Company Inc., a full service insurance agency offering both commercial and personal lines of insurance, is a wholly owned subsidiary of the Bank.

Sussex Capital Trust II is a Delaware statutory business trust and a non-consolidated subsidiary of the Company.

Human Capital Resources

As of December 31, 2020, the Company had 1,155 full-time and 45 part-time employees. None of the Company's employees are represented by a collective bargaining group.

The Company provides a number of programs and benefits designed to enhance the employee experience. In addition to access to health insurance coverage for employees and their dependents, we offer a Discover Wellness program that promotes healthy activities and educational programs that allow participating employees to earn a reduction toward the cost of the medical programs they elect.

We provide a tuition reimbursement program for both undergraduate and business graduate degrees, as well as a student loan pay down option with Company loan payment contributions of \$100.00 a month for up to 60 months to help qualifying employees reduce their student loan exposures. Employees also share in our financial success while preparing for retirement through the Employee Stock Ownership Plan, or ESOP. The ESOP gives employees an opportunity to accumulate shares of our common stock and is 100% funded by the Company. To further assist our employees with retirement planning, our 401(k) plan has a 25% Company match on the first 6% of eligible compensation deferred.

Consistent with our commitment to assisting the communities we serve through monetary assistance provided by the Bank and The Provident Bank Foundation, we encourage our employees to engage in community service. We offer our employees paid time off to assist in their chosen charitable and community-based endeavors.

Our Company is committed to fostering a safe working environment, that promotes diversity, and is free from harassment or discrimination of any kind. We are proud of our diverse workforce, including women holding 62% of managerial positions. We sponsor and support programs like ProvidentWomen which advances personal and professional growth of women in business through education, networking events and volunteer opportunities.

Overall, the Company is committed to creating a working environment that promotes talent acquisition and retention, and the Company believes its working relationship with its employees is good.

REGULATION AND SUPERVISION

General

As a bank holding company controlling the Bank, the Company is subject to the Bank Holding Company Act of 1956 (“BHCA”), as amended, and the rules and regulations of the Federal Reserve Board under the BHCA. The Company is also subject to the provisions of the New Jersey Banking Act of 1948 (the “New Jersey Banking Act”) and the accompanying regulations of the Commissioner of the New Jersey Department of Banking and Insurance (“Commissioner”) applicable to bank holding companies. The Company and the Bank are required to file reports with, and otherwise comply with, the rules and regulations of the Federal Reserve Board and the Commissioner. The Federal Reserve Board and the Commissioner conduct periodic examinations to assess the Company’s compliance with various regulatory requirements. Additionally, the Company files certain reports with, and otherwise complies with, the rules and regulations of the Securities and Exchange Commission (“SEC”) under the federal securities laws and the listing requirements of the New York Stock Exchange.

The Bank is a New Jersey chartered savings bank, and its deposit accounts are insured up to applicable limits by the Federal Deposit Insurance Corporation (“FDIC”). The Bank is subject to extensive regulation, examination and supervision by the Commissioner as the issuer of its charter and by the FDIC as its deposit insurer. The Bank files reports with the Commissioner and the FDIC concerning its activities and financial condition, and it must obtain regulatory approval prior to entering into certain transactions, such as mergers with, or acquisitions of, other depository institutions and opening or acquiring branch offices. The Commissioner and the FDIC conduct periodic examinations to assess the Bank’s compliance with various regulatory requirements. This regulation and supervision establishes a comprehensive framework of activities in which a savings bank can engage and is intended primarily for the protection of the deposit insurance fund and depositors. This framework also gives the regulatory authorities extensive discretion in connection with their supervisory and enforcement authority, including the ability to set policies with respect to the classification of assets and the establishment of adequate credit loss reserves for regulatory purposes.

As of December 31, 2020, the Bank had consolidated assets of \$12.92 billion. The Company exceeded \$10 billion in total consolidated assets in 2020, which subjects the Company to increased supervision and regulation. In particular, the Company is now subject to the direct supervision of the Consumer Financial Protection Bureau (“CFPB”). Additionally, under existing federal laws and regulations, the Company now (1) receives less debit card fee income; (2) is subject to more stringent compliance requirements under the “Volcker Rule,” (i.e., a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) which prohibits banking entities from engaging in proprietary trading or investing in or sponsoring hedge funds or private equity funds); and (3) generally is subject to higher FDIC assessment rates. Certain enhanced prudential standards also now become applicable such as additional risk management requirements, both from a framework and corporate governance perspective. These and other supervisory and regulatory implications of crossing the \$10 billion threshold have and will likely continue to result in increased regulatory costs, though the Company has incurred increased regulatory costs in connection with its preparations over the last several years for exceeding the \$10 billion asset threshold.

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (“Economic Growth Act”) was enacted, which repealed or modified several important provisions of the Dodd-Frank Act that have impacted the Company. Key aspects of the Economic Growth Act that have the potential to affect the Company’s business and results of operations include:

- Raising the total asset threshold from \$10 billion to \$250 billion at which bank holding companies are required to conduct annual company-run stress tests mandated by the Dodd-Frank Act; and
- Raising the total asset threshold from \$10 billion to \$50 billion at which publicly traded bank holding companies are required to establish risk committees for the oversight of the enterprise-wide risk management practices of the institution.

Now that the Company has exceeded \$10 billion in assets, the Company no longer qualifies for certain regulatory relief provided under the Economic Growth Act, but the Company has and expects to continue to benefit from the above amendments which raised the above asset thresholds for conducting annual company-run stress tests. However, notwithstanding this regulatory relief, the Company intends to continue to employ stress testing protocols commensurate with the risk of the institution as part of its enterprise risk management framework. The Company currently has, and will continue to maintain, a risk committee of its board of directors.

The material laws and regulations applicable to the Company and the Bank are summarized below and elsewhere in this Annual Report on Form 10-K.

Legislative and Regulatory Responses to the COVID-19 Pandemic

The COVID-19 pandemic has and continues to create disruptions to the global economy, businesses, and to the lives of individuals throughout the world. There have been a number of regulatory actions intended to help mitigate the adverse economic impact of COVID-19 on individuals, including several mandates from the federal bank regulatory agencies, requiring financial institutions to work constructively with borrowers affected by COVID-19. In addition, the governors of many states in which we do business or in which our borrowers and loan collateral are located have issued temporary bans on evictions and foreclosures. In New Jersey, Governor Philip Murphy has, barring rare circumstances, suspended evictions and foreclosures throughout the state at least until April 19, 2021. Similar provisions have been enacted by the New York General Assembly and signed into law by Governor Cuomo through May 1, 2021. Also, the New Jersey Department of Banking and Insurance issued a bulletin encouraging entities regulated by the Department to work with and assist customers who have been adversely affected by COVID-19-related issues. There continues to be mounting pressure on governors and localities to take further relief action.

On March 27, 2020, the CARES Act was signed into law. The CARES Act is a \$2.2 trillion economic stimulus bill that was intended to provide relief in the wake of the COVID-19 pandemic. Several provisions within the CARES Act led to action from the bank regulatory agencies and there were also separate provisions within the legislation that directly impacts financial institutions. Section 4022 of the CARES Act allows, until the earlier of December 31, 2020, or the date the national emergency declared by the President terminates, borrowers with federally-backed one-to-four family mortgage loans experiencing a financial hardship due to COVID-19 to request forbearance, regardless of delinquency status, for up to 360 days. Section 4022 also prohibited servicers of federally-backed mortgage loans from initiating foreclosures during the 60-day period beginning March 18, 2020. Further, on December 21, 2020, the Federal Housing Finance Agency (“FHFA”) announced that Fannie Mae and Freddie Mac would extend their single-family moratorium on foreclosures and evictions through February 28, 2021. The FHA also extended through February 28, 2021, the deadline for single family borrowers with FHA-insured mortgages to request an initial COVID-19 forbearance from their mortgage servicer to defer or reduce their mortgage payments for up to six months, which can be extended for an additional six months. In addition, President Biden requested that the federal agencies discussed above continue to extend the moratorium on foreclosures on federally-guaranteed mortgages until at least March 31, 2021. In addition, under Section 4023 of the CARES Act, until the earlier of December 31, 2020 and the date the national emergency declared by the President terminates, borrowers with federally-backed multi-family mortgage loans whose payments were current as of February 1, 2020, but who have since experienced financial hardship due to COVID-19, may request a forbearance for up to 90 days. Borrowers receiving such forbearance may not evict or charge late fees to tenants for its duration. On December 23, 2020, the FHFA announced an extension of forbearance programs for qualifying multifamily properties through March 31, 2021. These regulatory and legislative actions may be expanded, extended and amended as the pandemic and its economic impact continues and the new administration has recently announced extensions of the foreclosure moratorium through at least June 30, 2021.

The bank regulatory agencies have ensured that adequate flexibility will be given to financial institutions who work with borrowers affected by COVID-19, and have indicated that they will not criticize institutions who do so in a safe and sound manner. Further, the federal bank regulatory agencies have encouraged financial institutions to report accurate information to credit bureaus regarding relief provided to borrowers and have urged the importance of financial institutions to continue to assist those borrowers impacted by COVID-19. On April 2, 2020, the bank regulatory agencies issued a joint policy statement to facilitate mortgage servicers’ ability to place consumers in short-term payment forbearance programs. This policy statement was followed by a final rule, on June 23, 2020, that makes it easier for consumers to transition out of financial hardship caused by COVID-19. The rule makes it clear that servicers do not violate Regulation X (which places restrictions and requirements upon lenders, mortgage brokers, or servicers of home loans related to consumers when they apply and receive mortgage loans) by offering certain COVID-19-related loss mitigation options based on an evaluation of limited application information collected from the borrower. Also, in an attempt to allow individuals and businesses to more quickly access real estate equity, on September 29, 2020, the bank regulatory agencies issued a rule that deferred appraisal and evaluation requirements after the closing of certain residential and commercial real estate transactions through December 31, 2020. On January 20, 2021, upon the inauguration of President Biden, the incoming Administration issued an Executive Order extending the federal eviction moratorium issued through the Centers for Disease Control and Prevention, which was recently extended by Congress through January 31, 2021, through March 31, 2021. Separately, as part of the COVID-19 relief package proposed by the Administration, this eviction moratorium would be further extended through September 30, 2021 if adopted as proposed. Further additional actions by the Administration may be taken in the future.

Further, on December 27, 2020, the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 was signed into law, which also contains provisions that could directly impact financial institutions. The Act directs financial regulators to support community development financial institutions and minority depository institutions and directs Congress to re-appropriate \$429 billion in unobligated CARES Act funds.

The Paycheck Protection Program (“PPP”), originally established under the CARES Act and extended under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021, authorizes financial institutions to make federally-guaranteed loans to qualifying small businesses and non-profit organizations. These loans carry an interest rate of 1% per annum and a maturity of 2 years for loans originated prior to June 5, 2020 and 5 years for loans originated on or after June 5th. The PPP provides that such loans may be forgiven if the borrowers meet certain requirements with respect to maintaining employee headcount and payroll and the use of the loan proceeds after the loan is originated. The initial phase of the PPP, after being extended multiple times by Congress, expired on August 8, 2020. However, on January 11, 2021, the SBA reopened the PPP for First Draw PPP loans to small business and non-profit organizations that did not receive a loan through the initial PPP phase. Further, on January 13, 2021, the SBA reopened the PPP for Second Draw loans to small businesses and non-profit organizations that did receive a loan through the initial PPP phase. At least \$25 billion has been set aside for Second Draw PPP loans to eligible borrowers with a maximum of 10 employees or for loans of \$250,000 or less to eligible borrowers in low or moderate income neighborhoods. Generally speaking, business with more than 300 employees and/or less than a 25 percent reduction in gross receipts between comparable quarters in 2019 and 2020 are not eligible for Second Draw loans. Further, maximum loan amounts have been increased for accommodation and food service businesses.

Further, the federal bank regulatory agencies issued several interim final rules throughout the course of 2020 to neutralize the regulatory capital and liquidity effects for banks that participate in the Federal Reserve liquidity facilities. The interim final rule issued on April 9, 2020, clarifies that a zero percent risk weight applies to loans covered by the PPP for capital purposes and the interim final rule issued on May 15, 2020, permits depository institutions to choose to exclude U.S. Treasury securities and deposits at Federal Reserve Banks from the calculation of the supplementary leverage ratio. These interim final rules were finalized on September 29, 2020.

New Jersey Banking Regulation

Activity Powers. The Bank derives its lending, investment and other activity powers primarily from the applicable provisions of the New Jersey Banking Act and its related regulations. Under these laws and regulations, savings banks, including the Bank, generally may, subject to certain limits, invest in:

- (1) Real estate mortgages;
- (2) Consumer and commercial loans;
- (3) Specific types of debt securities, including certain corporate debt securities and obligations of federal, state and local governments and agencies;
- (4) Certain types of corporate equity securities; and
- (5) Certain other assets.

A savings bank may also invest pursuant to a “leeway” power that permits investments not otherwise permitted by the New Jersey Banking Act, subject to certain restrictions imposed by the FDIC. “Leeway” investments must comply with a number of limitations on the individual and aggregate amounts of such investments. A savings bank may also exercise trust powers upon the approval of the Commissioner. New Jersey savings banks may exercise those powers, rights, benefits or privileges authorized for national banks or out-of-state banks or for federal or out-of-state savings banks or savings associations, provided that before exercising any such power, right, benefit or privilege, prior approval by the Commissioner by regulation or by specific authorization is required. The exercise of these lending, investment and activity powers is limited by federal law and the related regulations. See “Federal Banking Regulation” below.

Loans-to-One-Borrower Limitations. With certain specified exceptions, a New Jersey chartered savings bank may not make loans or extend credit to a single borrower and to entities related to the borrower in an aggregate amount that would exceed 15% of the bank’s capital funds. A New Jersey chartered savings bank may lend an additional 10% of the bank’s capital funds if secured by collateral meeting the requirements of the New Jersey Banking Act. The Bank currently complies with applicable loans-to-one-borrower limitations.

Dividends. Under the New Jersey Banking Act, a stock savings bank may declare and pay a dividend on its capital stock only to the extent that the payment of the dividend would not impair the capital stock of the savings bank. In addition, a stock savings bank may not pay a dividend unless the savings bank would, after the payment of the dividend, have a surplus of not less than 50% of its capital stock, or the payment of the dividend would not reduce the surplus. Federal law may also limit the amount of dividends that may be paid by the Bank.

Minimum Capital Requirements. Regulations of the Commissioner impose on New Jersey chartered depository institutions, including the Bank, minimum capital requirements similar to those imposed by the FDIC on insured state banks. At December 31, 2020, the Bank was considered “well capitalized” under FDIC guidelines.

Loans to a Bank's Insiders. Provisions of the New Jersey Banking Act also impose conditions and limitations on the liabilities owed to a savings bank by its directors and executive officers and by corporations and partnerships controlled by such persons that are comparable in many respects to the conditions and limitations imposed on the loans and extensions of credit to insiders and their related interests under Regulation O, as discussed below. The New Jersey Banking Act also provides that a savings bank that is in compliance with Regulation O is deemed to be in compliance with such provisions of the New Jersey Banking Act.

Examination and Enforcement. The New Jersey Department of Banking and Insurance may examine the Company and the Bank whenever it deems an examination advisable. The Department examines the Bank at least every two years. The Commissioner may order any savings bank to discontinue any violation of law or unsafe or unsound business practice and may direct any director, officer, attorney or employee of a savings bank engaged in an objectionable activity, after the Commissioner has ordered the activity to be terminated, to show cause at a hearing before the Commissioner why such person should not be removed.

Federal Banking Regulation

Capital Requirements. Federal regulations require federally insured depository institutions to meet several minimum capital standards: a common equity Tier 1 capital to risk-based assets ratio of 4.5%, a Tier 1 capital to risk-based assets ratio of 6.0%, a total capital to risk-based assets of 8.0%, and a 4.0% Tier 1 capital to total assets leverage ratio.

In determining the amount of risk-weighted assets for purposes of calculating risk-based capital ratios, all assets, including certain off-balance sheet assets (e.g., recourse obligations, direct credit substitutes, residual interests) are multiplied by a risk weight factor assigned by the regulations based on the risks believed inherent in the type of asset. Higher levels of capital are required for asset categories believed to present greater risk. Common equity Tier 1 capital is generally defined as common stockholders' equity and retained earnings. Tier 1 capital is generally defined as common equity Tier 1 and additional Tier 1 capital. Additional Tier 1 capital includes certain noncumulative perpetual preferred stock and related surplus and minority interests in equity accounts of consolidated subsidiaries. Total capital includes Tier 1 capital (common equity Tier 1 capital plus additional Tier 1 capital) and Tier 2 capital. Tier 2 capital is comprised of capital instruments and related surplus, meeting specified requirements, and may include cumulative preferred stock and long-term perpetual preferred stock, mandatory convertible securities, intermediate preferred stock and subordinated debt. Also included in Tier 2 capital is the allowance for credit losses limited to a maximum of 1.25% of risk-weighted assets and, for institutions that have exercised an opt-out election regarding the treatment of Accumulated Other Comprehensive Income, up to 45% of net unrealized gains on available-for-sale equity securities with readily determinable fair market values. Calculation of all types of regulatory capital is subject to deductions and adjustments specified in the regulations. In assessing an institution's capital adequacy, the FDIC takes into consideration, not only these numeric factors, but qualitative factors as well, and has the authority to establish higher capital requirements for individual institutions where deemed necessary.

In addition to establishing the minimum regulatory capital requirements, federal regulations limit capital distributions and certain discretionary bonus payments to management if the institution does not hold a "capital conservation buffer" consisting of 2.5% of common equity Tier 1 capital to risk-weighted asset above the amount necessary to meet its minimum risk-based capital requirements.

On July 15, 2019, the federal banking agencies adopted a final rule simplifying certain aspects of the capital rules, the key elements of which apply solely to banking organizations that are not subject to the advanced approaches capital rule (i.e., banks with \$250 billion or more in total assets or \$10 billion or more in total foreign exposures). Under the rule, non-advanced approaches banking organizations such as the Bank will apply a simpler regulatory capital treatment for mortgage servicing assets ("MSAs"); certain deferred tax assets ("DTAs") arising from temporary differences; investments in the capital of unconsolidated financial institutions other than those currently applied; and capital issued by a consolidated subsidiary of a banking organization and held by third parties (often referred to as minority interest) that is includable in regulatory capital. Specifically, the rule eliminates: (i) the capital rule's 10 percent common equity tier 1 capital deduction threshold that applies individually to MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock; (ii) the aggregate 15 percent common equity tier 1 capital deduction threshold that subsequently applies on a collective basis across such items; (iii) the 10 percent common equity tier 1 capital deduction threshold for non-significant investments in the capital of unconsolidated financial institutions; and (iv) the deduction treatment for significant investments in the capital of unconsolidated financial institutions not in the form of common stock. The capital rule no longer has distinct treatments for significant and non-significant investments in the capital of unconsolidated financial institutions, but instead require that non-advanced approaches banking organizations deduct from common equity tier 1 capital any amount of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that individually exceeds 25 percent of common equity tier 1 capital.

Additionally, in December 2019, the federal banking agencies issued a final rule on the capital treatment of High Volatility Commercial Real Estate ("HVCRE") exposures which brought the regulatory definition of HVCRE exposure in line with the statutory definition of HVCRE ADC in the Economic Growth Act. The final rule also clarifies the capital treatment for loans that finance the development of land under the revised HVCRE exposure definition and establishes the requirements for certain exclusions from HVCRE exposure capital treatment.

In the first quarter of 2020, U.S. federal regulatory authorities issued an interim final rule providing banking institutions that adopt CECL during the 2020 calendar year with the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay (i.e., a five year transition in total). In connection with its adoption of CECL on January 1, 2020, the Company elected to utilize the five-year CECL transition.

The following table shows the Bank's Tier 1 leverage ratio, common equity Tier 1 risk-based capital ratio, Tier 1 risk-based capital ratio, and total risk-based capital ratio, at December 31, 2020:

	As of December 31, 2020				
	Capital	Percent of Assets ⁽¹⁾	Capital Requirements ⁽¹⁾		Capital Requirements with Capital Conservation Buffer ⁽¹⁾
	(Dollars in thousands)				
Tier 1 leverage capital	\$ 1,086,589	8.75 %	4.00 %		4.00 %
Common equity Tier 1 risk-based capital	1,086,589	9.96	4.50		7.00
Tier 1 risk-based capital	1,086,589	9.96	6.00		8.50
Total risk-based capital	1,223,469	11.21	8.00		10.50

(1) For purposes of calculating regulatory Tier 1 leverage capital, assets are based on adjusted total leverage assets. In calculating common equity Tier 1 risk-based capital, Tier 1 risk-based capital and total risk-based capital, assets are based on total risk-weighted assets.

As of December 31, 2020, the Bank was considered "well capitalized" under FDIC guidelines.

The Volcker Rule. A provision of the Dodd-Frank Act (known as the "Volcker Rule") prohibits insured depository institutions and their holding companies from engaging in proprietary trading except in limited circumstances, and it prohibits them from owning equity interests in excess of three percent of Tier 1 Capital in private equity and hedge funds. On December 10, 2013, five U.S. financial regulators, including the Federal Reserve and the OCC, adopted regulations implementing the Volcker Rule. Those regulations prohibit banking entities from (1) engaging in short-term proprietary trading for their own accounts, and (2) having certain ownership interests in and relationships with hedge funds or private equity funds, which are referred to as "covered funds." The regulations also require each regulated entity to establish an internal compliance program that is consistent with the extent to which it engages in activities covered by the Volcker Rule. Historically, this meant that reporting requirements were tied to a bank's total assets, where banks with assets at or below \$10 billion had less stringent reporting requirements and banks with more than \$10 billion had increasingly more stringent requirements as the size of the bank increased.

However, in November 2019, five federal banking agencies issued a final rule revising certain aspects of the Volcker Rule. The final rule simplifies and streamlines compliance requirements for firms that do not have significant trading activities and enhances requirements for firms that do. Under the new rule, compliance requirements are based on the amount of assets and liabilities that a bank trades. Firms with significant trading activities (i.e., those with \$20 billion or more in trading assets and liabilities), have heightened compliance obligations. The new rule became effective on January 1, 2020, but banking entities were not be required to comply with the new rules until January 1, 2021.

Further, on June 25, 2020, the five U.S. financial regulators issued a final rule that modifies the rule's prohibition on banking entities investing in or sponsoring "covered funds." The new rule (1) streamlines the covered funds portion of the rule; (2) addresses the extraterritorial treatment of certain foreign funds; and (3) permits banking entities to offer financial services and engage in other activities that do not raise concerns that the Volcker rule was intended to address. Although we will benefit from significantly reduced compliance obligations due to the level of our trading assets being below the \$20 billion threshold, we will remain subject to the modified rules and requirements related to covered funds. Accordingly, we expect that the revised rule will reduce some of our compliance costs, but in the short term we may experience some costs in developing and implementing changes in conformance with the new rule.

Current Expected Credit Loss ("CECL") Treatment. In June 2016, the Financial Accounting Standards Board ("FASB") issued an accounting standard update, "Financial Instruments-Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments," which replaces the current "incurred loss" model for recognizing credit losses with an "expected loss" model referred to as the CECL model. Under the CECL model, we are required to present certain financial assets carried at amortized cost, such as loans and leases held for investment and held-to-maturity debt securities, at the net amount expected to be collected. The measurement of expected credit losses is based on information about past events, including historical experience, current conditions, and a reasonable and supportable forecast that affect the collectability of the reported amount. On December 21, 2018, the federal banking agencies approved a final rule modifying their regulatory capital rules and providing an option to phase in over a period of three years the day-one regulatory capital effects of the CECL model. The final rule also revises the agencies' other rules to reflect the update to the accounting standards. The final rule took effect April 1, 2019.

The Company adopted CECL on January 1, 2020 using the modified retrospective method for all financial assets measured at amortized cost and off-balance sheet ("OBS") credit exposures. Results for reporting periods beginning after January 1, 2020 are presented under ASC 326 while prior period amounts continue to be recorded with previously applicable GAAP. The Company recorded a \$7.9 million increase to the allowance for credit losses and a \$3.2 million liability for off-balance sheet credit exposures, which resulted in an \$8.3 million cumulative effect adjustment decrease, net of tax, to retained earnings. With regard to regulatory capital, the Company has elected to utilize the five-year CECL transition, which gives the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay.

Further information regarding the impact of CECL can be found in Note 5 "Held to Maturity Debt Securities", Note 7 "Loans Receivable and Allowance for Credit Losses", and Note 17 "Allowance for Credit Losses on Off-Balance Sheet Credit Exposures".

On May 8, 2020, four federal banking agencies issued an interagency policy statement on the new CECL methodology. The policy statement seeks to harmonize the agencies' policies on allowance for credit losses with the FASB's new accounting standards. Specifically, the statement (1) updates concepts and practices from prior policy statements issued in December 2006 and July 2001 and specifies which prior guidance documents are no longer relevant; (2) describes the appropriate CECL methodology, in light of Topic 326, for determining an allowance for credit loss ("ACL") on financial assets measured at amortized cost, net investments in leases, and certain off-balance sheet credit exposures; and (3) describes how to estimate an ACL for an impaired available-for-sale debt security in line with Topic 326. The proposed policy statement becomes effective at the time that each institution adopts the new standards required by the FASB.

Activity Restrictions on State-Chartered Banks. Federal law and FDIC regulations generally limit the activities and investments of state-chartered FDIC insured banks and their subsidiaries to those permissible for national banks and their subsidiaries, unless such activities and investments are specifically exempted by law or consented to by the FDIC.

Before making a new investment or engaging in a new activity that is not permissible for a national bank or otherwise permissible under federal law or FDIC regulations, an insured bank must seek approval from the FDIC to make such investment or engage in such activity. The FDIC will not approve the activity unless the bank meets its minimum capital requirements and the FDIC determines that the activity does not present a significant risk to the FDIC insurance fund. Certain activities of subsidiaries that are engaged in activities permitted for national banks only through a "financial subsidiary" are subject to additional restrictions.

Federal law permits a state-chartered savings bank to engage, through financial subsidiaries, in any activity in which a national bank may engage through a financial subsidiary and on substantially the same terms and conditions. In general, the law permits a national bank that is well-capitalized and well-managed to conduct, through a financial subsidiary, any activity permitted for a financial holding company other than insurance underwriting, insurance investments, real estate investment or development or merchant banking. The total assets of all such financial subsidiaries may not exceed the lesser of 45% of the bank's total assets or \$50 billion. The bank must have policies and procedures to assess the financial subsidiary's risk and protect the bank from such risk and potential liability, must not consolidate the financial subsidiary's assets with the bank's and must exclude from its own assets and equity all equity investments, including retained earnings, in the financial subsidiary. The Bank currently meets all conditions necessary to establish and engage in permitted activities through financial subsidiaries.

Federal Home Loan Bank System. The Bank is a member of the FHLB system which consists of eleven regional FHLBs, each subject to supervision and regulation by the FHFA. The FHLB provides a central credit facility primarily for member institutions. As a member of the FHLB of New York, the Bank is required to purchase and hold shares of capital stock in that FHLB in an amount as required by that FHLB's capital plan and minimum capital requirements. The Bank is in compliance with these requirements. The Bank has received dividends on its FHLB NY stock, although no assurance can be

given that these dividends will continue to be paid. For the year ended December 31, 2020, dividends paid by the FHLBNY to the Bank totaled \$3.7 million.

Deposit Insurance. As a member institution of the FDIC, deposit accounts at the Bank are generally insured by the FDIC's Deposit Insurance Fund ("DIF") up to a maximum of \$250,000 for each separately insured depositor.

Under the FDIC's risk-based assessment system, insured institutions were originally assigned a risk category based on supervisory evaluations, regulatory capital levels and certain other factors. An institution's assessment rate depended upon the category to which it was assigned, and certain adjustments specified by FDIC regulations. Institutions deemed less risky paid lower assessments. No institution may pay a dividend if it is in default of its federal deposit insurance assessment.

The Dodd-Frank Act required the FDIC to revise its procedures to base its assessments upon each insured institution's total assets less tangible equity instead of deposits. The FDIC finalized a rule, effective April 1, 2011, that set the assessment range (inclusive of possible adjustments) at 2.5 to 45 basis points of total assets less tangible equity. However, as described below, there have been changes to both the FDIC's assessment range and its risk-based assessment procedures.

The FDIC established a long range target size for the DIF of 2% of insured deposits. The FDIC's regulations also provided for a lower assessment rate schedule when the DIF reached 1.15% of total insured deposits. The 1.15% ratio was achieved as of June 30, 2016. As a result, effective July 1, 2016, the assessment range (inclusive of possible adjustments) was lowered to 1.5 to 30 basis points for banks of less than \$10 billion in consolidated assets. The Dodd-Frank Act required banks with greater than \$10 billion in assets to pay to increase the DIF reserve ratio from 1.15% to 1.35%. Consequently, also effective July 1, 2016, banks of greater than \$10 billion assets paid a surcharge of 4.5 basis points on assets above \$10 billion. In November 2018, the FDIC indicated that the 1.35% ratio had been achieved, that surcharges on banks with more than \$10 billion in assets would cease and that institutions below that size would receive credits for the portion of their assessment that contributed to the reserve ratio between 1.15% and 1.35%, effective when the ratio reaches 1.38%. Also on July 1, 2016, the FDIC eliminated the risk categories. The FDIC indicated that those credits were completely remitted as of September 30, 2020.

Most institutions are now assessed based on financial ratios derived from statistical models that estimate the probability of a bank's failure within three years. Banks of greater than \$10 billion are assessed based on a rate derived from a scorecard which assesses certain factors such as examination ratings and financial measures related to the bank's ability to withstand stress and measures of loss severity to the DIF if the bank should fail. When the Bank exceeds \$10 billion in assets for four consecutive calendar quarters, which will occur in the first quarter of 2021, it will be classified as a large institution for deposit insurance assessment purposes, which is likely to result in a higher FDIC insurance premium.

On December 15, 2020, the FDIC issued a final rule on brokered deposits. The rule aims to clarify and modernize the FDIC's existing regulatory framework for brokered deposits. Notable aspects of the rule include (1) the establishment of bright-line standards for determining whether an entity meets the statutory definition of "deposit broker"; (2) the identification of a number of business relationships ("designated exceptions") to which the "primary purpose" exception is automatically applicable; (3) the establishment of a "transparent" application process for entities that seek a "primary purpose" exception, but do not qualify as a "designated exception"; and (4) the clarification that third parties that have an exclusive deposit-placement arrangement with only one IDI is not considered a "deposit broker." We are currently evaluating the impact of this change in the FDIC's regulatory framework with respect to brokered deposits, which could result in a change in our DIF assessment rate.

Enforcement. The FDIC has extensive enforcement authority over insured savings banks, including the Bank. This enforcement authority includes, among other things, the ability to assess civil money penalties, issue cease and desist orders and remove directors and officers. In general, these enforcement actions may be initiated in response to violations of law and to unsafe or unsound practices.

Transactions with Affiliates. Transactions between an insured bank, such as the Bank, and any of its affiliates are governed by Sections 23A and 23B of the Federal Reserve Act and its implementing regulations. An affiliate of a bank is any company or entity that controls, is controlled by or is under common control with the bank. A subsidiary of a bank that is not also a depository institution, financial subsidiary or other entity defined by the regulation generally is not treated as an affiliate of the bank for purposes of Sections 23A and 23B.

Section 23A:

- Limits the extent to which a bank or its subsidiaries may engage in "covered transactions" with any one affiliate to an amount equal to 10% of such bank's capital stock and retained earnings, and limits all such transactions with all affiliates to an amount equal to 20% of such capital stock and retained earnings; and
- Requires that all such transactions be on terms that are consistent with safe and sound banking practices.

The term “covered transaction” includes the making of loans, purchase of assets, issuance of guarantees and other similar types of transactions. Further, most loans by a bank to any of its affiliates must be secured by collateral in amounts ranging from 100 to 130 percent of the loan amounts. In addition, any covered transaction by a bank with an affiliate and any purchase of assets or services by a bank from an affiliate must be on terms that are substantially the same, or at least as favorable to the bank, as those that would be provided to a non-affiliate.

Prohibitions Against Tying Arrangements. Banks are subject to statutory prohibitions on certain tying arrangements. A depository institution is prohibited, subject to certain exceptions, from extending credit to or offering any other service, or fixing or varying the consideration for such extension of credit or service, on the condition that the customer obtain some additional service from the institution or its affiliates or that the customer not obtain services of a competitor of the institution.

Privacy and Data Security Standards. Applicable regulations require the Bank to disclose its privacy policies, including identifying with whom it shares “non-public personal information” to customers at the time of establishing the customer relationship and annually thereafter.

The FDIC regulations also require the Company and the Bank to provide their customers with initial and annual notices that accurately reflect their privacy policies and practices. In addition, the Company and the Bank are required to provide customers with the ability to “opt-out” of having the Company and the Bank share their non-public personal information with unaffiliated third parties before they can disclose such information, subject to certain exceptions.

Federal banking agencies, including the FDIC, have adopted guidelines for establishing information security standards and cybersecurity programs for implementing safeguards under the supervision of the board of directors. These guidelines, along with related regulatory materials, increasingly focus on risk management and processes related to information technology and the use of third parties in the provision of financial services.

In many jurisdictions, including every state of the United States, consumers must be notified in the event of a data breach. The changing privacy laws in the United States, Europe and elsewhere, including the California Consumer Privacy Act, which became effective in January 2020, create new individual privacy rights and impose increased obligations on companies handling personal data. In addition, multiple states, Congress and regulators outside the United States are considering similar laws or regulations which could create new individual privacy rights and impose increased obligations on companies handling personal data. For example, on December 18, 2020, the federal financial regulatory agencies announced a proposal that would require supervised banking organizations to promptly notify their primary federal regulator in the event of a computer security incident. If adopted without substantial change, the proposed rule would require banking organizations to notify their primary federal regulator promptly, and not later than 36 hours after, the discovery of such incidents, termed “computer-security incidents” that are “notification incidents.”

Community Reinvestment Act and Fair Lending Laws. All FDIC insured institutions have a responsibility under the Community Reinvestment Act and related regulations to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods and borrowers (i.e. assessment(s)). In connection with its examination of a state chartered savings bank, the FDIC is required to assess the institution’s record of compliance with the Community Reinvestment Act (“CRA”). Among other things, the current CRA regulations rate an institution based upon its actual performance in meeting community needs. In particular, the current examination and evaluation process focuses on three tests:

- A lending test, to evaluate the institution’s record of making home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s), with consideration given towards, amongst other factors, borrower characteristics and geographic distribution;
- An investment test, to evaluate the institution’s record of helping to meet the credit needs of its assessment area(s) through qualified investments characterized as a lawful investment, deposit, membership share, or grant that has as its primary purpose community development; and
- A service test, to evaluate the institution’s systems for delivering retail banking services through its branches, ATMs and other offices and access facilities, including the distribution of its branches, ATMs and other offices/access facilities, and the institution’s record of opening and closing branches.

An institution’s failure to comply with the provisions of the CRA could, at a minimum, result in regulatory restrictions on its activities, including, but not limited to, engaging in acquisitions and mergers. The Bank received a “Satisfactory” CRA rating in its most recently completed federal examination, which was conducted by the FDIC as of July 2018.

In December 2019, the OCC and FDIC released a notice of proposed rulemaking seeking to revise the federal interagency CRA regulations, which had not been substantively updated in nearly 25 years. On June 5, 2020, the OCC issued a final rule that is generally consistent with the proposed rule. The FDIC, however, did not join in the final rule and has indicated it is not

ready to adopt a final rule at this time, particularly in light of the ongoing pandemic. Specifically, the rule (1) clarifies which activities qualify for CRA credit and (2) requires banks to identify an additional assessment area based on where they receive a significant portion of their domestic retail deposits, thus creating two assessment areas: a deposit-based assessment area and a facility-based assessment area. Members of Congress and community groups have expressed hostility to the new rule, and have raised the possibility of repealing it through legislative action. In light of this uncertainty, and the fact that the FDIC has not yet taken action on new rule, it is not possible to predict the substance and timing of a revised CRA rule.

In addition, the Equal Credit Opportunity Act and the Fair Housing Act prohibit lenders from discriminating in their lending practices on the basis of the borrower's characteristics as specified in those statutes. An institution's failure to comply with the Equal Credit Opportunity Act and/or the Fair Housing Act could result in enforcement actions by the FDIC, and CFPB, as well as other federal regulatory agencies and the Department of Justice.

Safety and Soundness Standards. Each federal banking agency, including the FDIC, has adopted guidelines establishing general standards relating to internal controls, information and internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth, asset quality, earnings, compensation, fees and benefits. In general, the guidelines require, among other things, appropriate systems and practices to identify and manage the risks and exposures specified in the guidelines. The guidelines prohibit excessive compensation as an unsafe and unsound practice and describe compensation as excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal stockholder.

In addition, FDIC regulations require a bank that is given notice by the FDIC that it is not satisfying any of such safety and soundness standards to submit a compliance plan to the FDIC. If, after being so notified, a bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted compliance plan, the FDIC may issue an order directing corrective and other actions of the types to which a significantly undercapitalized institution is subject under the "prompt corrective action" provisions discussed below. If a bank fails to comply with such an order, the FDIC may seek to enforce such an order in judicial proceedings and to impose civil monetary penalties.

Prompt Corrective Action. Federal law requires the FDIC and the other federal banking regulators to promptly resolve the problems of undercapitalized institutions. Federal law also establishes five categories, consisting of "well capitalized," "adequately capitalized," "undercapitalized," "significantly undercapitalized" and "critically undercapitalized." The FDIC's regulations define the five capital categories as follows:

An institution will be treated as "well capitalized" if:

- Its ratio of total capital to risk-weighted assets is at least 10%;
- Its ratio of Tier 1 capital to risk-weighted assets is at least 8%;
- Its ratio of common equity Tier 1 capital to risk-weighted assets is at least 6.5%; and
- Its ratio of Tier 1 capital to total assets is at least 5%, and it is not subject to any order or directive by the FDIC to meet a specific capital level.

An institution will be treated as "adequately capitalized" if:

- Its ratio of total capital to risk-weighted assets is at least 8%; or
- Its ratio of Tier 1 capital to risk-weighted assets is at least 6%;
- Its ratio of common equity Tier 1 capital to risk-weighted assets is at least 4.5%; and
- Its ratio of Tier 1 capital to total assets is at least 4% and it is not a well-capitalized institution.

An institution will be treated as "undercapitalized" if:

- Its total risk-based capital is less than 8%; or
- Its Tier 1 risk-based-capital is less than 6%;
- Its ratio of common equity Tier 1 capital to risk-weighted assets is less than 4.5%; or
- Its leverage ratio is less than 4%

An institution will be treated as "significantly undercapitalized" if:

- Its total risk-based capital is less than 6%;

- Its Tier 1 capital is less than 4%;
- Its ratio of common equity to risk-weighted assets is less than 3%; or
- Its leverage ratio is less than 3%.

An institution that has a tangible capital to total assets ratio equal to or less than 2% would be deemed “critically undercapitalized.” The FDIC is required, with some exceptions, to appoint a receiver or conservator for an insured state bank if that bank is critically undercapitalized. The FDIC may also appoint a conservator or receiver for an insured state bank on the basis of the institution’s financial condition or upon the occurrence of certain events, including:

- Insolvency, or when the assets of the bank are less than its liabilities to depositors and others;
- Substantial dissipation of assets or earnings through violations of law or unsafe or unsound practices;
- Existence of an unsafe or unsound condition to transact business;
- Likelihood that the bank will be unable to meet the demands of its depositors or to pay its obligations in the normal course of business; and
- Insufficient capital, or the incurring or likely incurring of losses that will substantially deplete all of the institution’s capital with no reasonable prospect of replenishment of capital without federal assistance.

Consumer Financial Protection. Bank regulatory agencies are increasingly focusing attention on consumer protection laws and regulations. To promote fairness and transparency for mortgages, credit cards, and other consumer financial products and services, the Dodd-Frank Act established the CFPB. This agency is responsible for interpreting and enforcing federal consumer financial laws, as defined by the Dodd-Frank Act, that, among other things, govern the provision of deposit accounts along with mortgage origination and servicing. Some federal consumer financial laws enforced by the CFPB include the Equal Credit Opportunity Act, TILA, the Truth in Savings Act, the Home Mortgage Disclosure Act, Real Estate Settlement Procedures Act (“RESPA”), the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act. The CFPB is also authorized to prevent any institution under its authority from engaging in an unfair, deceptive, or abusive act or practice in connection with consumer financial products and services. As a residential mortgage lender, the Company and its bank subsidiaries are subject to multiple federal consumer protection statutes and regulations, including, but not limited to, TILA, the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, RESPA, the Fair Credit Reporting Act, the Fair Debt Collection Act and the Flood Disaster Protection Act. Failure to comply with these and similar statutes and regulations can result in the Corporation and its bank subsidiaries becoming subject to formal or informal enforcement actions, the imposition of civil money penalties and consumer litigation.

Under TILA, as implemented by Regulation Z, mortgage lenders are required to make a reasonable and good faith determination, based on verified and documented information, that a consumer applying for a mortgage loan has a reasonable ability to repay the loan according to its terms. Alternatively, the mortgage lender can originate “qualified mortgages,” which are entitled to a presumption that the creditor making the loan satisfied the ability-to-repay requirements. In general, a qualified mortgage (“QM”) is a mortgage loan without negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years. In addition, to be a QM the points and fees paid by a consumer cannot exceed 3% of the total loan amount.

The CFPB has exclusive examination and primary enforcement authority with respect to compliance with federal consumer financial protection laws and regulations by institutions under its supervision and is authorized, individually or jointly with the federal bank regulatory agencies, to conduct investigations to determine whether any person is, or has, engaged in conduct that violates such laws or regulations. The CFPB may bring an administrative enforcement proceeding or civil action in Federal district court. In addition, in accordance with a memorandum of understanding entered into between the CFPB and the Department of Justice (DOJ), the two agencies have agreed to coordinate efforts related to enforcing the fair lending laws, which includes information sharing and conducting joint investigations. Now that the Company has exceeded \$10 billion in assets in 2020, it is subject to the supervisory and enforcement authority of the CFPB.

The Dodd-Frank Act also permits states to adopt stricter consumer protection laws and state attorneys general to enforce consumer protection rules issued by the CFPB. As a result of these aspects of the Dodd-Frank Act, the Bank is operating in a stringent consumer compliance environment and is incurring additional costs related to consumer protection compliance, including but not limited to potential costs associated with CFPB examinations, regulatory and enforcement actions and consumer-oriented litigation, which is likely to increase as a result of the consumer protection provisions of the Dodd-Frank Act. The CFPB, other financial regulatory agencies, as well as the Department of Justice have recently pursued a number of enforcement actions against depository institutions with respect to compliance with fair lending laws.

Anti-Money Laundering. The Bank must comply with the anti-money laundering (“AML”) provisions of the Bank Secrecy Act (“BSA”) as amended by the USA PATRIOT Act and implementing regulations issued by the FDIC and the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury.

The USA PATRIOT Act gives the federal government powers to address terrorist threats through enhanced domestic security measures, expanded surveillance powers, increased information sharing, and broadened anti-money laundering requirements. By way of amendments to the BSA, Title III of the USA PATRIOT Act included measures intended to encourage information sharing among bank regulatory agencies and law enforcement bodies. Further, certain provisions of Title III imposed affirmative obligations on a broad range of financial institutions, including banks, thrifts, brokers, dealers, credit unions, money transfer agents and parties registered under the Commodity Exchange Act.

The bank regulatory agencies have increased the regulatory scrutiny of the BSA and AML programs maintained by financial institutions. Significant penalties and fines, as well as other supervisory orders may be imposed on a financial institution for non-compliance with these requirements. In addition, the federal bank regulatory agencies must consider the effectiveness of financial institutions engaging in a merger transaction in combating money laundering activities. The Bank has adopted policies and procedures which are in compliance with these requirements.

In December 2019, three federal banking agencies and FinCEN issued a joint statement clarifying the compliance procedures and reporting requirements that banks must follow for customers engaged in the growth or cultivation of hemp, including a clear statement that banks need not file a Suspicious Activity Report (“SAR”) on customers engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations. This statement does not apply to cannabis-related business; therefore, the statement pertains only to customers who are unlawfully growing or cultivating hemp and are not otherwise engaged in unlawful or suspicious activity.

On January 1, 2021, Congress passed the National Defense Authorization Act, which enacted the most significant overhaul of the BSA and related AML laws since the Patriot Act. Notable amendments include (1) significant changes to the collection of beneficial ownership and the establishment of a beneficial ownership registry, which requires corporate entities (generally, any corporation, LLC, or other similar entity with 20 or fewer employees and annual gross income of \$5 million or less) to report beneficial ownership information to FinCEN (which will be maintained by FinCEN and made available upon request to financial institutions); (2) enhanced whistleblower provisions, which provide that one or more whistleblowers who voluntarily provide original information leading to the successful enforcement of violations of the AML laws in any judicial or administrative action brought by the Secretary of the Treasury or the Attorney General resulting in monetary sanctions exceeding \$1 million (including disgorgement and interest but excluding forfeiture, restitution, or compensation to victims) will receive not more than 30 percent of the monetary sanctions collected and will receive increased protections; (3) increased penalties for violations of the BSA; (4) improvements to existing information sharing provisions that permit financial institutions to share information relating to SARs with foreign branches, subsidiaries, and affiliates (except those located in China, Russia, or certain other jurisdictions) for the purpose of combating illicit finance risks; and (5) expanded duties and powers of FinCEN. Many of the amendments, including those with respect to beneficial ownership, require the Department of Treasury and FinCEN to promulgate rules.

Loans to a Bank’s Insiders. A bank’s loans to its executive officers, directors, any owner of 10% or more of its stock (each, an insider) and any of certain entities affiliated with any such person (an insider’s related interest) are subject to the conditions and limitations imposed by Section 22(h) of the Federal Reserve Act and the Federal Reserve Board’s Regulation O. Under these restrictions, the aggregate amount of the loans to any insider and the insider’s related interests may not exceed the loans-to-one-borrower limit applicable to national banks, which is comparable to the loans-to-one-borrower limit applicable to loans by the Bank. All loans by a bank to all insiders and insiders’ related interests in the aggregate may not exceed the bank’s unimpaired capital and unimpaired surplus. With certain exceptions, loans to an executive officer, other than loans for the education of the officer’s children and certain loans secured by the officer’s residence may not exceed at any one time the higher of 2.5% of the bank’s unimpaired capital and unimpaired surplus or \$25,000, but in no event more than \$100,000. Regulation O also requires that any proposed loan to an insider or a related interest of that insider be approved in advance by a majority of the board of directors of the bank, with any interested directors not participating in the voting, if such loan, when aggregated with any existing loans to that insider and the insider’s related interests, would exceed either (1) \$500,000; or (2) the greater of \$25,000 or 5% of the bank’s unimpaired capital and surplus.

Generally, loans to insiders must be made on substantially the same terms as, and follow credit underwriting procedures that are not less stringent than, those prevailing at the time for, comparable transactions with other persons, and not involve more than the normal risk of payment or present other unfavorable features. An exception may be made for extensions of credit made pursuant to a benefit or compensation plan of a bank that is widely available to employees of the bank and that does not give any preference to insiders of the bank over other employees of the bank.

In addition, federal law prohibits extensions of credit to a bank's insiders and their related interests by any other institution that has a correspondent banking relationship with the bank, unless such extension of credit is on substantially the same terms as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

The Bank does not, as a matter of policy, make loans to its directors or to their immediate family members and related interests.

Federal Reserve System

Under Federal Reserve Board regulations, the Bank is required to maintain non-interest earning reserves against its transaction accounts. For 2020, the Federal Reserve Board regulations generally required that reserves of 3% be maintained against aggregate transaction accounts over \$16.9 million and up to \$127.5 million, and 10% against that portion of total transaction accounts in excess of up to \$127.5 million. The first \$16.9 million of otherwise reservable balances were exempted from the reserve requirements. The Bank was in compliance with these requirements. Effective March 26, 2020, the Federal Reserve Board reduced reserve requirement ratios to zero. That step was taken due to a change in the FRB's approach to monetary policy. The Federal Reserve indicated that it has no plans to reimpose reserve requirements, but could do so if conditions warrant. The Bank is authorized to borrow from the Federal Reserve Bank discount window.

Income on Interchange Fees

Now that the Company exceeded \$10 billion in assets in 2020, the Company is subject to the interchange fee cap mandated by the Dodd-Frank Act. As such, the fees the Company may receive for an electronic debit transaction are capped at the statutory limit. Historically, the Company had been exempt from the interchange fee cap under the "small issuer" exemption, which applies to any debit card issuer with total worldwide assets (including those of its affiliates) of less than \$10 billion as of the end of the previous calendar year. Pursuant to FRB regulations mandated by the Dodd-Frank Act, interchange fees on debit card transactions are limited to a maximum of \$0.21 per transaction plus 5 basis points of the transaction amount. A debit card issuer may recover an additional one cent per transaction for fraud prevention purposes if the issuer complies with certain fraud-related requirements prescribed by the FRB.

Digital Banking

Technological developments continue to significantly alter the ways in which financial institutions and their customers conduct their business. The growth of the Internet has caused banks to adopt and refine alternative distribution and marketing systems. The federal bank regulatory agencies have targeted various aspects of Internet banking, including the security and systems. There can be no assurance that the bank regulatory agencies will not adopt new regulations that will materially affect the Bank's Internet operations or restrict any such further operations.

Holding Company Regulation

Federal Regulation. The Company is regulated as a bank holding company, and as such, is subject to examination, regulation and periodic reporting under the Bank Holding Company Act, as administered by the Federal Reserve Board.

The Federal Reserve Board has adopted capital adequacy guidelines for bank holding companies on a consolidated basis. The Dodd-Frank Act directed the Federal Reserve Board to issue consolidated capital requirements for depository institution holding companies that are not less stringent, both quantitatively and in terms of components of capital, than those applicable to institutions themselves. The previously discussed final rule regarding regulatory capital requirements implemented the Dodd-Frank Act as to bank holding company capital standards. Consolidated regulatory capital requirements identical to those applicable to the subsidiary banks applied to bank holding companies (with greater than \$1 billion of assets) as of January 1, 2015. The rule limits a banking organization's capital distributions and certain discretionary bonus payments if the banking organization does not hold a "capital conservation buffer," of 2.5% in addition to the amount necessary to meet its minimum risk-based capital requirements.

In the first quarter of 2020, U.S. federal regulatory authorities issued an interim final rule providing banking institutions that adopt CECL during the 2020 calendar year with the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay (i.e., a five year transition in total). In connection with its adoption of CECL on January 1, 2020, the Company elected to utilize the five-year CECL transition.

The following table shows the Company's Tier 1 leverage capital ratio, common equity Tier 1 risk-based capital ratio, Tier 1 risk-based capital ratio and the total risk-based capital ratio as of December 31, 2020.

As of December 31, 2020

Capital	Percent of Assets ⁽¹⁾	Capital Requirements ⁽¹⁾	Capital Requirements with Capital Conservation Buffer ⁽¹⁾
(Dollars in thousands)			
Tier 1 leverage capital	\$ 1,157,505	9.30 %	4.00 %
Common Equity Tier 1 risk-based capital	1,144,618	10.46	7.00
Tier 1 risk-based capital	1,157,505	10.58	8.50
Total risk-based capital	1,306,494	11.94	10.50

(1) For purposes of calculating regulatory Tier 1 leverage capital, assets are based on adjusted total leverage assets. In calculating common equity Tier 1 capital, Tier 1 risk-based capital and total risk-based capital, assets are based on total risk-weighted assets.

As of December 31, 2020, the Company was “well capitalized” under Federal Reserve Board guidelines.

Regulations of the Federal Reserve Board provide that a bank holding company must serve as a source of strength to any of its subsidiary banks and must not conduct its activities in an unsafe or unsound manner. Federal Reserve Board policies generally provide that bank holding companies should pay dividends only out of current earnings and only if the prospective rate of earnings retention in the holding company appears consistent with the organization’s capital needs, asset quality and overall financial condition. Federal Reserve Board guidance sets forth the supervisory expectation that bank holding companies will inform and consult with Federal Reserve Board staff in advance of issuing a dividend that exceeds earnings for the quarter and should inform the Federal Reserve Board and should eliminate, defer or significantly reduce dividends if: (i) 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) prospective rate of earnings retention is not consistent with the bank holding company’s capital needs and overall current and prospective financial condition; or (iii) the bank holding company will not meet, or is in danger of not meeting, its minimum regulatory capital adequacy ratios. Under the prompt corrective action provisions discussed above, a bank holding company parent of an undercapitalized subsidiary bank would be directed to guarantee, within limitations, the capital restoration plan that is required of such an undercapitalized bank. If the undercapitalized bank fails to file an acceptable capital restoration plan or fails to implement an accepted plan, the Federal Reserve Board may prohibit the bank holding company parent of the undercapitalized bank from paying any dividends or making any other form of capital distribution without the prior approval of the Federal Reserve Board.

As a bank holding company, the Company is required to obtain the prior approval of the Federal Reserve Board to acquire all, or substantially all, of the assets of any bank or bank holding company. Prior Federal Reserve Board approval will be required for the Company to acquire direct or indirect ownership or control of any voting securities of any bank or bank holding company if, after giving effect to such acquisition, it would, directly or indirectly, own or control more than 5% of any class of voting shares of such bank or bank holding company.

Federal Reserve Board regulations require a bank holding company to give the Federal Reserve Board prior written notice of any purchase or redemption of its outstanding equity securities if the gross consideration for the purchase or redemption, when combined with the net consideration paid for all such purchases or redemptions during the preceding 12 months will be equal to 10% or more of the company’s consolidated net worth. The Federal Reserve Board may disapprove such a purchase or redemption if it determines that the proposal would constitute an unsafe and unsound practice, or would violate any law, regulation, Federal Reserve Board order or directive, or any condition imposed by, or written agreement with, the Federal Reserve Board. The regulations provide that such notice and approval is not required for a bank holding company that would be treated as “well capitalized” under applicable regulations of the Federal Reserve Board, is well-managed, and that is not the subject of any unresolved supervisory issues. Notwithstanding the aforementioned regulations, Federal Reserve Board guidance indicates that bank holding companies should inform Federal Reserve staff of certain proposed repurchases of common stock, sufficiently in advance to allow for supervisory review and possible objection.

In addition, a bank holding company which does not opt to become a financial holding company under applicable federal law is generally prohibited from engaging in, or acquiring direct or indirect control of any company engaged in non-banking activities. One of the principal exceptions to this prohibition is for activities found by the Federal Reserve Board to be so closely related to banking or managing or controlling banks as to be permissible. Some of the principal activities that the Federal Reserve Board has determined by regulation to be so closely related to banking as to be permissible are:

- Making or servicing loans;

- Performing certain data processing services;
- Providing discount brokerage services, or acting as fiduciary, investment or financial advisor;
- Leasing personal or real property;
- Making investments in corporations or projects designed primarily to promote community welfare; and
- Acquiring a savings and loan association.

Bank holding companies that qualify and opt to become a financial holding company may engage in activities that are financial in nature or incident to activities which are financial in nature. Financial holding companies may engage in a broader array of activities including insurance and investment banking.

Bank holding companies may qualify to become a financial holding company if at the time of the election and on a continuing basis:

- Each of its depository institution subsidiaries is “well capitalized”;
- Each of its depository institution subsidiaries is “well managed”; and
- Each of its depository institution subsidiaries has at least a “Satisfactory” Community Reinvestment Act rating at its most recent examination.

The Company filed an election to qualify as a financial holding company under federal regulations on January 31, 2014 which was deemed effective by the Federal Reserve Board on March 5, 2015.

Under federal law, depository institutions are liable to the FDIC for losses suffered or anticipated by the FDIC in connection with the default of a commonly controlled depository institution or any assistance provided by the FDIC to such an institution in danger of default. This law would potentially be applicable to the Company if it ever acquired as a separate subsidiary, a depository institution in addition to the Bank.

New Jersey Regulation. Under the New Jersey Banking Act, a company owning or controlling a savings bank is regulated as a bank holding company. The New Jersey Banking Act defines the terms “company” and “bank holding company” as such terms are defined under the BHCA. Each bank holding company controlling a New Jersey chartered bank or savings bank must file certain reports with the Commissioner and is subject to examination by the Commissioner.

Acquisition of Control. Under federal law and under the New Jersey Banking Act, no person may acquire control of the Company or the Bank without first obtaining approval of such acquisition of control from the Federal Reserve Board and the Commissioner.

On January 30, 2020, the Federal Reserve finalized a rule to codify and simplify its interpretations and opinions regarding regulatory presumptions of control. The rule’s original effective date, April 1, 2020, was delayed on March 31, 2020, and became effective September 30, 2020. The rule has and will likely continue to have a meaningful impact on control determinations related to investments in banks and bank holding companies and investments by bank holding companies in nonbank companies.

Federal Securities Laws. The Company’s common stock is registered with the SEC under the Securities Exchange Act of 1934, as amended. The Company is subject to the information, proxy solicitation, insider trading restrictions and other requirements under the Securities Exchange Act of 1934.

Investment Adviser Regulation

Beacon Investment Advisory Services, Inc. is an investment adviser registered with the SEC. As such, it is required to make certain filings with and is subject to periodic examination by, the SEC.

Delaware Corporate Law

The Company is incorporated under the laws of the State of Delaware. As a result, the rights of its stockholders are governed by the Delaware General Corporate Law and the Company’s Certificate of Incorporation and Bylaws.

TAXATION

Federal Taxation

General. The Company is subject to federal income taxation in the same general manner as other corporations, with some exceptions discussed below. The following discussion of federal taxation is intended only to summarize certain pertinent federal income tax matters and is not a comprehensive description of the tax rules applicable to the Company.

On December 22, 2017, the Tax Cuts and Jobs Act ("Tax Act") was enacted. Included as part of the law, was a permanent reduction in the federal corporate income tax rate from 35% to 21% effective January 1, 2018. Based upon the change in the tax rate, the Company revalued its net deferred tax asset at December 31, 2017 to reflect the reduced rate that will apply in future periods when these deferred taxes are settled or realized.

On March 27, 2020 in response to COVID-19 and its detrimental impact to the global economy, President Trump signed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") into law, which provides stimulus to the US economy in the form of various individual and business assistance programs as well as temporary changes to existing law. The CARES Act of 2020 includes tax provision that temporarily modified the taxable income limitations for NOL usage to offset future taxable income, NOL carryback provisions and other related income and non-income based laws. ASC740 requires the tax effects of changes in tax law or rates to be recorded in the period of enactment. The Corporation has evaluated such provisions and determined that the impact of the CARES Act of 2020 on the income tax provision and deferred tax assets as of 12/31/2020 was not material.

Method of Accounting. For federal income tax purposes, the Company currently reports its income and expenses on the accrual method of accounting and uses a tax year ending December 31 for filing its consolidated federal income tax returns.

Bad Debt Reserves. Prior to the Small Business Protection Act of 1996 (the "1996 Act"), the Bank was permitted to establish a reserve for bad debts and to make annual additions to the reserve. These additions could, within specified formula limits, be deducted in arriving at taxable income. The Bank was required to use the direct charge-off method to compute its bad debt deduction beginning with its 1996 federal income tax return. Savings institutions were required to recapture any excess reserves over those established as of December 31, 1987 (base year reserve).

Taxable Distributions and Recapture. Prior to the 1996 Act, bad debt reserves created prior to January 1, 1988 were subject to recapture into taxable income should the Bank fail to meet certain asset and definitional tests. Federal legislation has eliminated these recapture rules. Retained earnings at December 31, 2020 included approximately \$51.8 million for which no provisions for income tax had been made. This amount represents an allocation of income to bad debt deductions for tax purposes only. Events that would result in taxation of these reserves include failure to qualify as a bank for tax purposes, distributions in complete or partial liquidation, stock redemptions and excess distributions to shareholders. At December 31, 2020, the Bank had an unrecognized tax liability of \$13.4 million with respect to this reserve.

Corporate Alternative Minimum Tax. The Internal Revenue Code of 1986, as amended (the "Code"), imposed an alternative minimum tax (AMT) at a rate of 20% on a base of regular taxable income plus certain tax preferences (alternative minimum taxable income or AMTI). The AMT was payable to the extent such AMTI was in excess of an exemption amount and the AMT exceeded the regular income tax. Net operating losses could offset no more than 90% of AMTI. Certain payments of alternative minimum tax could be used as credits against regular tax liabilities in future years. The Company was not subject to the alternative minimum tax and has no such amounts available as credits for carryover. The Tax Act repealed the corporate AMT effective for tax years beginning after December 31, 2017.

Net Operating Loss Carryovers. Under the general rule, for tax periods ending December 31, 2017 and prior a financial institution may carry back net operating losses to the preceding two taxable years and forward to the succeeding 20 taxable years. At December 31, 2018, the Company had approximately \$1.7 million of Federal Net Operating Losses ("NOLs"). These NOLs were generated by entities the Company acquired in previous years and are subject to an annual Code Section 382 limitation. The Tax Act limits the NOL deduction for a given year to 80% of taxable income, effective with respect to losses arising in tax years beginning after December 31, 2017. It also repealed the pre-enactment carryback provision for NOLs and provides for the indefinite carryforward of NOLs arising in tax years ending after December 31, 2017.

Corporate Dividends-Received Deduction. The Company may exclude from its income 100% of dividends received from the Bank as a member of the same affiliated group of corporations.

State Taxation

New Jersey State Taxation. The Company and the Bank file New Jersey Corporation Business Tax returns. Generally, the income of financial institutions in New Jersey, which is calculated based on federal taxable income subject to certain

adjustments, is subject to New Jersey tax. The Company and the Bank are subject to the corporation business tax at 9% of apportioned taxable income. As a result of legislation that New Jersey enacted on July 1, 2018 and an extension passed on September 29, 2020, the Company and the Bank are subject to an additional temporary surtax effective for tax years 2018 through 2023, and are required to file combined tax returns beginning 2019.

Prior to the new legislation, New Jersey tax law did not allow a taxpayer to file a tax return on a combined or consolidated basis with another member of the affiliated group where there is common ownership for tax periods prior to December 31, 2018.

Pennsylvania State Taxation. The Bank is subject to Pennsylvania Mutual Thrift Institutions Tax. Mutual thrift institutions tax is imposed at the rate of 11.5% on net taxable income of mutual thrift institutions in Pennsylvania, including savings banks without capital stock, building and loan associations, savings and loan associations, and savings institutions having capital stock.

New York State Taxation. In 2014, New York State enacted significant and comprehensive reforms to its corporate tax system that went into effect January 1, 2015. The legislation resulted in significant changes to the method of calculating income taxes for banks, including changes to future period tax rates, rules relating to the sourcing of income, and the elimination of the banking corporation tax so that banking corporations are taxed under New York State's corporate franchise tax. The corporate franchise tax is based on the combined entire net income of the Company and its affiliates allocable and apportionable to New York State and taxed at a rate of 6.5%. The amount of revenues that are sourced to New York State under the new legislation can be expected to fluctuate over time. In addition, the Company and its affiliates are subject to the Metropolitan Transportation Authority ("MTA") Surcharge allocable to business activities carried on in the Metropolitan Commuter Transportation District. The MTA surcharge for 2020 is 29.4% of a recomputed New York State franchise tax, calculated using a 6.5% tax rate on allocated and apportioned net income. The examination of the Company's 2016 and 2015 New York State tax returns was completed in the first quarter of 2019, and did not have a material impact on the Company's effective income tax rate. The Company's 2017 and 2018 New York State returns are currently under audit.

Item 1A. Risk Factors.

In the ordinary course of operating our business, we are exposed to a variety of risks inherent to the financial services industry. The following discusses the significant risk factors that could affect our business and operations. If any of the following conditions or events actually occur, our business, financial condition or results of operations could be negatively affected, the market price of your investment in the Company's common stock could decline, and you could lose all or a part of your investment in the Company's common stock.

Risks Related to the Economy, Financial Markets, and Interest Rates

Changes to the underlying drivers of our net interest income could adversely affect our results of operations and financial condition.

Our financial condition and results of operations are significantly affected by changes in market interest rates, and the degree to which these changes disparately impact short-term and long-term interest rates and influence the behavior of our customer base. Our results of operations substantially depend on our net interest income, which is the difference between the interest income we earn on our interest earning assets and the interest expense we pay on our interest-bearing liabilities. A flattening yield curve, or one that inverts, could negatively impact our net interest margin and earnings.

Our interest-bearing liabilities may be subject to repricing or maturing more quickly than our interest-earning assets. If short-term rates increase rapidly, we may have to increase the rates we pay on our deposits and borrowed funds more quickly than we can increase the interest rates we earn on our loans and investments, resulting in a negative effect on interest spreads and net interest income. In addition, the effect of rising rates could be compounded if deposit customers move funds into higher yielding accounts or are lost to competitors offering higher rates on their deposit products. In the event of a 300 basis point increase in interest rates, whereby rates ramp up evenly over a twelve-month period, and assuming management took no actions to mitigate the effect of such change, we are projecting that our net interest income for such period would increase 2.6% or \$8.8 million. Conversely, should market interest rates fall below current levels, our net interest income could also be negatively affected if competitive pressures prevented us from reducing rates on our deposits, while the yields on our assets decrease through loan prepayments and interest rate adjustments.

Changes in interest rates also affect the value of our interest-earning assets and in particular our securities portfolio. Generally, the value of securities fluctuates inversely with changes in interest rates. At December 31, 2020, our available for sale debt securities portfolio totaled \$1.11 billion. Unrealized gains and losses on securities available for sale are reported as a separate component of stockholders' equity. Decreases in the fair value of securities available for sale resulting from increases in interest rates therefore could have a temporary adverse effect on stockholders' equity.

If our allowance for credit losses is not sufficient to cover actual loan losses, our earnings could decrease.

We make various assumptions and judgments about the collectability of our loan portfolio, including the creditworthiness of our borrowers and the value of the real estate and other assets serving as collateral for the repayment of many of our loans. In determining the amount of the allowance for credit losses, we rely on our loan monitoring program, our loan quality reviews, our credit risk rating process, loan portfolio trends, our experience, our evaluation of economic conditions and our selection of a reasonable and supportable forecast, among other factors. Furthermore, on January 1, 2020 the Company adopted CECL which requires us to measure projected credit losses over the estimated life of the asset by applying quantitative and qualitative loss factors we derive using a macroeconomic forecast that we deem most likely to occur. This new standard may increase not only the amount of allowance for credit losses, but also the volatility of our provisions for credit losses. If our assumptions prove to be incorrect, or if delinquencies or non-accrual and non-performing loans increase, the allowance for credit losses may not be sufficient to cover losses inherent in our loan portfolio, resulting in additions to our allowance. Material additions to the allowance would materially decrease our net income. In addition, bank regulators periodically review our allowance for credit losses and may require us to increase our provision for loan losses or recognize further loan charge-offs.

Commercial real estate, commercial & industrial and construction loans expose us to increased risk and earnings volatility.

We consider our commercial real estate loans, commercial and industrial loans and construction loans to be higher risk categories in our loan portfolio. These loans are particularly sensitive to economic conditions. At December 31, 2020, our portfolio of commercial real estate loans, including multi-family loans, totaled \$4.94 billion, or 50.8% of total loans, our commercial & industrial loans totaled \$2.57 billion, or 26.4% of portfolio loans, and our construction loans totaled \$541.9 million, or 5.6% of total loans. We plan to continue to emphasize the origination of these types of loans.

Commercial real estate loans generally involve a higher degree of credit risk because they typically have larger balances and are more affected by adverse conditions in the economy. Payments on loans secured by commercial real estate also often depend on the successful operation and management of the businesses that occupy these properties or the financial stability of tenants occupying the properties. Furthermore, these loans may be affected by factors outside the borrower's control, such as adverse conditions in the real estate market or the economy or changes in government regulation. In the case of commercial and industrial loans, although we strive to maintain high credit standards and limit exposure to any one borrower, the collateral for these loans often consists of accounts receivable, inventory and equipment. This type of collateral typically does not yield substantial recovery in the event we need to foreclose on it and may rapidly deteriorate, disappear, or be misdirected in advance of foreclosure. This adds to the potential that our charge-offs will be more volatile than we have experienced in the past, which could significantly negatively affect our earnings in any quarter. In addition, some of our construction loans pose higher risk levels than the levels expected at origination, as projects may stall, absorption may be slower than projected or sell at prices lower than expected. In addition, many of our borrowers also have more than one commercial real estate or construction loan outstanding with us. Consequently, an adverse development with respect to one loan or one credit relationship may expose us to significantly greater risk of loss.

Risks Related to Regulatory, Compliance, Environmental and Legal Matters

We operate in a highly regulated environment and may be adversely affected by changes in laws and regulations.

We are subject to the extensive regulation, supervision and examination of various regulatory authorities, but primarily by the New Jersey Department of Banking and Insurance, our chartering authority, and by the FDIC, as insurer of our deposits. As a bank holding company, we are subject to regulation and oversight by the Federal Reserve Board. Such regulation and supervision govern the activities in which a bank and its holding company may engage and are intended primarily for the protection of the insurance fund and depositors. These regulatory authorities have extensive discretion in connection with their supervisory and enforcement activities, including the requirement for additional capital, the imposition of restrictions on our operations, the classification of our assets, the adequacy of our allowance for credit losses, and our management of risks posed by our reliance on third party vendors. Any change in such regulation and oversight, whether in the form of regulatory policy, regulations, or legislation, could have a material impact on our operations.

The potential exists for additional federal or state laws and regulations regarding capital requirements, lending and funding practices, liquidity standards, and bank regulatory agencies are expected to remain active in responding to concerns and trends that may be identified in our examinations, which may include the potential for the issuance of formal enforcement orders. Further, actions taken to date, as well as potential actions, may not provide the level of beneficial effects necessary to offset their cost to us. In addition, new laws, regulations, and other regulatory changes could further increase our costs of regulatory compliance and of doing business, and otherwise affect our operations. New laws, regulations, and other regulatory changes, may also significantly affect the markets in which we do business, the markets for and value of our loans and investments, and our ongoing operations, costs and profitability.

Further, with a new Congress taking office in January 2021, Democrats have retained control of the U.S. House of Representatives, and have gained control of the U.S. Senate. With unified control of the Executive Branch and both chambers of Congress, one party now has complete control of the legislative and executive agendas. We expect that Democratic-led Congressional committees will pursue greater oversight and will also pay increased attention to the banking sector's role in providing COVID-19-related assistance. The prospects for the enactment of major banking reform legislation under the new Congress are unclear. Also, the new Administration has and will likely continue to change leadership and senior staff positions at the federal regulatory agencies, the CFPB, the SEC and the Treasury Department. Also, the Board of Governors of the Federal Reserve and the FDIC Board of Directors may experience significant turnover within the next several years. These changes will likely impact the rulemaking supervision, examination and enforcement priorities and policies of the agencies.

As a financial institution with assets greater than \$10 Billion, we are subject to additional regulation and increased supervision, including by the CFPB.

Provident's total assets were \$12.92 billion at December 31, 2020. Banks with assets in excess of \$10 billion are subject to requirements imposed by the Dodd-Frank Act and its implementing regulations including being subject to the examination authority of the Consumer Financial Protection Bureau to assess our compliance with federal consumer financial laws, imposition of higher FDIC premiums, reduced debit card interchange fees, and enhanced risk management frameworks, all of which increase operating costs and reduce earnings.

We may be required to invest more significant management attention and resources to make further changes necessary to comply with enhanced regulatory expectations. While we cannot predict what effect any presently contemplated or future changes in the laws or regulations or their interpretations would have on us, these changes could be material.

We face regulatory scrutiny based on our commercial real estate lending.

The FDIC, the OCC and the FRB (collectively, the "Agencies") have issued joint guidance entitled "Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices" (the "CRE Guidance"). Although the CRE Guidance did not establish specific lending limits, it provides that a bank's commercial real estate lending exposure may receive increased supervisory scrutiny where total non-owner occupied commercial real estate loans, including loans secured by apartment buildings, investor commercial real estate and construction and land loans ("CRE Loans"), represent 300% or more of an institution's total risk-based capital and the outstanding balance of the CRE Loan portfolio has increased by 50% or more during the preceding 36 months. While our level of CRE Loans equaled 457.3% of total risk-based capital at December 31, 2020, our CRE Loan portfolio has not increased by 50% or more during the preceding 36 months.

In December 2015, the Agencies released a new statement on prudent risk management for commercial real estate lending (the "2015 Statement"). In the 2015 Statement, the Agencies express concerns about easing commercial real estate underwriting standards, direct financial institutions to maintain underwriting discipline and exercise risk management practices to identify, measure and monitor lending risks, and indicate that the Agencies will continue "to pay special attention" to commercial real estate lending activities and concentrations going forward. If our regulators were to impose restrictions on the amount of commercial real estate loans we can hold in our loan portfolio, or require higher capital ratios as a result of the level of commercial real estate loans held, our earnings or our ability to engage in certain merger and acquisition activity could be adversely affected.

Future acquisitions may be delayed, impeded, or prohibited due to regulatory issues.

Future acquisitions by the Company, particularly those of financial institutions, are subject to approval by a variety of federal and state regulatory agencies (collectively, "regulatory approvals"). Regulatory approvals could be delayed, impeded, restrictively conditioned or denied due to existing or new issues the Company has, or may have, with regulatory agencies, including, without limitation, issues related to BSA/AML compliance, CRA compliance, fair lending laws, fair housing laws, consumer protection laws, unfair, deceptive, or abusive acts or practices regulations, and other similar laws and regulations. We may fail to pursue or complete strategic and competitively significant acquisition opportunities as a result of our inability, or perceived or anticipated inability, to obtain regulatory approvals in a timely manner, under reasonable conditions or at all. The regulatory approvals may contain conditions on the completion of the merger which would adversely affect our business following the closing, or which were not anticipated or cannot be met. Difficulties associated with potential acquisitions that may result from these factors could have a material adverse impact on our business, and, in turn, our financial condition and results of operations.

We may experience impairments of goodwill or other intangible assets in the future.

As of December 31, 2020, our consolidated balance sheet included goodwill of \$443.0 million and other intangible assets of \$23.2 million. Our business acquisitions typically result in goodwill and other intangible assets, which affect the amount of future period amortization expense and possible impairment expense. We make estimates and assumptions in valuing such

intangible assets that affect our consolidated financial statements. In accordance with GAAP, our goodwill and indefinite-lived intangible assets are not amortized, but are tested for impairment annually in the fourth quarter, or more frequently if events or changes in circumstances indicate that an asset might be impaired. Impairment testing incorporates the current market price of our common stock, the estimated fair value of our assets and liabilities, and certain information of similar companies. Impairment testing may be based on valuation models that estimate fair value. In preparing the valuation models, we consider a number of factors, including operating results, business plans, economic conditions, future cash flows, and transactions and market data. There are inherent uncertainties related to these factors and our judgment in applying them to the impairment analyses. It is possible that future impairment testing could result in a decline in fair value of our goodwill or other intangible assets, which may be less than the carrying value, and, as a result may adversely affect our financial condition. If we determine that impairment exists at a given point in time, our earnings and the book value of goodwill or other related intangible asset will be reduced by the amount of the impairment. If we record an impairment loss related to our goodwill or other intangible assets, it could have a material adverse effect on our business, financial condition, results of operations, cash flows and the trading price of our securities. Notwithstanding the foregoing, the results of impairment testing on our goodwill or other intangible assets have no impact on our tangible book value or regulatory capital levels.

The establishment of a State Bank in New Jersey could be disruptive to our overall strategies and potentially reduce the level of public funds held on deposit with us.

We maintain a large and relatively stable level of deposits from local government entities, primarily through relationships we have cultivated with New Jersey municipalities. These deposits are a relatively low-cost source used to fund our loans and investments and we also provide related ancillary services. The State of New Jersey is exploring a State Bank, whose purpose would be to promote small businesses, fair educational lending, housing, infrastructure improvements, community development, economic development, commerce and industry in the State. As currently proposed, it intends to permit State funds, including funds from State institutions and any State public source, to be held by the State Bank. There can be no assurance that legislation to further the establishment of a State Bank will occur as currently proposed.

Given the degree of our funding reliance on many New Jersey-based public entities and the potential scope of the proposed State Bank's lending activities, we are uncertain of the impact this proposal may have on us. If we are unable to retain the current level of public funds on deposit, we may need to increase the costs associated with our funding needs, which could have a negative impact on our net income.

Climate change and related governmental action may materially affect the Company's business and results of operations.

The effects of climate change continue to create a level of concern for the state of the global environment. As a result, the global community has increased its political and social awareness surrounding the issue and have entered into international agreements in an effort to reduce global temperatures such as the Paris Agreement, which the United States re-joined as of February 19, 2021. Further, the U.S. Congress, state legislatures and federal and state regulatory agencies continue to propose numerous initiatives to supplement the global effort to combat climate change. Similar and even more expansive initiatives are expected under the current administration, including potentially increasing supervisory expectations with respect to banks' risk management practices, accounting for the effects of climate change in stress testing scenarios and systemic risk assessments, revising expectations for credit portfolio concentrations based on climate-related factors, and encouraging investment by banks in climate-related initiatives and lending to communities disproportionately impacted by the effects of climate change. The lack of empirical data surrounding the credit and other financial risks posed by climate change render it impossible to predict specifically how climate change may impact the financial condition and operations of the Company; however, the physical effects of climate change may also directly impact the Company. Specifically, unpredictable and more frequent weather disasters may adversely impact the value of real property securing certain loans in our portfolios. Further, the effects of climate change may negatively impact regional and local economic activity, which could lead to an adverse effect on our customers and impact our ability to raise and invest capital in potentially impacted communities. Overall, climate change, its effects, and the resulting, unknown impact could have a material adverse impact on our financial condition and results of operations.

Risk Related to Business Environment and Operations.

The economic impact of the COVID-19 outbreak has adversely affected, and is likely to continue to adversely affect, the Company's business and results of operations.

The COVID-19 pandemic has caused significant economic dislocation which has resulted in prolonged stress on economic activity and a related increase in unemployment. Certain industries have been particularly hard-hit, including the travel and hospitality industry, the restaurant industry and the retail industry. While portions of the national economy have reopened, significant uncertainty remains concerning the breadth and duration of business disruptions related to the COVID-19 pandemic, as well as their impact on the U.S. economy. Moreover, although multiple COVID-19 vaccines have received regulatory approval and are being distributed to certain population groups, it is too early to know how quickly these vaccines

can be distributed to the general population and how effective they will be in mitigating the adverse social and economic effects of the COVID-19 pandemic. Finally, the spread of COVID-19 has caused the Company to modify its business practices, including employee travel, employee work locations, and cancellation of physical participation in meetings, events and conferences. The Company continues to have many employees working remotely.

The extent to which the COVID-19 pandemic impacts our business, results of operations, and financial condition, as well as our regulatory capital and liquidity ratios, will depend on future developments, which remain highly uncertain and cannot be predicted, including the level of infections, efficacy and availability of therapeutics, the speed, strength and extent of an economic recovery, and any adverse economic impact from future actions that may be taken by governmental authorities and other third parties in response to the pandemic.

Given the ongoing and dynamic nature of the circumstances, it is difficult to predict the full impact of the COVID-19 pandemic on the Company's business. The extent of such impact will depend on future developments, which are highly uncertain, including when the outbreak can be controlled and abated and when and how the economy may be reopened. As the result of the COVID-19 pandemic and the related adverse local and national economic consequences, the Company could be subject to any of the following risks, any of which could have a material adverse effect on our respective business, financial condition, liquidity, and results of operations:

- demand for our products and services may decline, making it difficult to grow assets and income;
- if the economy is unable to substantially reopen, and high levels of unemployment continue for an extended period of time, loan delinquencies, problem assets, and foreclosures may increase, resulting in increased charge-offs and reduced loan repayments impacting cash flows and liquidity;
- collateral for loans, especially real estate, may decline in value, which could cause credit losses to increase;
- our allowance for credit losses may have to be increased if borrowers experience financial difficulties beyond forbearance periods, which will adversely affect our net income;
- the net worth and liquidity of loan guarantors may decline, impairing their ability to honor commitments to us;
- as a result of the decline in the Federal Reserve Board's target federal funds rate to near 0%, the yield on the Company's assets may decline to a greater extent than the decline in the cost of interest-bearing liabilities, reducing net interest margin and spread and reducing net income;
- a material decrease in net income or a net loss over several quarters could result in a decrease in the rate of our quarterly cash dividend;
- the Company's investment portfolio may suffer a substantial decrease in value;
- the Company's wealth management revenues may decline with continuing market turmoil;
- the Company's cyber security risks are increased as the result of an increase in the number of employees working remotely; and
- the Company's reliance on third party vendors for certain services and the unavailability of a critical service due to the pandemic could have an adverse effect on the Company.

These factors, among others, together or in combination with other events or occurrences not yet known or anticipated, could adversely affect the operations of the Company.

Governmental and regulatory actions to mitigate the impact of the COVID-19 pandemic could result in a material decline in our earnings.

There have been several regulatory and legislative actions intended to help mitigate the adverse economic impact of COVID-19 on individuals, including mandates requiring financial institutions to work constructively with borrowers affected by COVID-19 and mandatory loan forbearances. In addition, the governors of many states in which we do business or in which our borrowers and loan collateral are located have issued temporary bans on evictions and foreclosures. Due to the unforeseen nature of the pandemic, future regulatory action is highly uncertain and cannot be predicted. Further, there have been several other bank regulatory actions and legislative changes intended to help mitigate the adverse impact of COVID-19. There continues to be mounting pressure on federal and state officials to take further action. These regulatory and legislative actions may be expanded, extended and amended as the pandemic and its economic impact continue. Please see the Company's discussion on the CARES Act on page 26 in the Regulation and Supervision section.

The Company has offered, and may continue to offer, payment deferrals, forbearances, and other forms of assistance to commercial, small business and consumer customers that have been impacted by the COVID-19 pandemic. If these customers are unable to repay their loans in a timely manner when payment deferrals, forbearances or other forms of assistance end, delinquency levels may increase, the Company may be required to reverse the accrual of interest during the deferral or forbearance period, and the Corporation may need to provide additional reserves for credit losses.

Our continuing concentration of business in a relatively confined region may increase our risk.

Our success is significantly affected by general economic conditions in our market area. Unlike some larger banks that are more geographically diversified, we provide banking, financial, and wealth management services to customers mostly located in our primary markets. Consequently, a downturn in economic conditions in our local markets would have a significant impact on our loan portfolios, the ability of borrowers to meet their loan payment obligations and the value of the collateral securing our loans. Adverse local economic conditions caused by inflation, recession, unemployment, state or local government action, or other factors beyond our control would impact these local economic conditions and could negatively affect the financial results of our business.

We have a significant amount of real estate loans. Depressed real estate values and real estate sales could have a negative effect on the ability of many of our borrowers to make timely repayments of their loans, which would have an adverse impact on our earnings and overall financial condition. These changes have a disproportionate effect on taxpayers in states with high residential home prices and high state and local taxes, like New Jersey. If home ownership becomes less attractive, demand for mortgage loans could decrease. The value of the properties securing loans in our loan portfolio may be adversely impacted as a result of the changing economics of home ownership, which could require an increase in our provision for loan losses, which would reduce our profitability and could materially adversely affect our business, financial condition and results of operations.

Additionally, we target our business development and marketing strategy for loans to serve primarily the banking and financial services needs of small- to medium-sized businesses in our market area. These businesses generally have fewer financial resources in terms of capital or borrowing capacity than larger entities. If general economic conditions negatively impact these businesses, our results of operations and financial condition may be adversely affected.

Uncertainty about the future of LIBOR may adversely affect our business.

The London Interbank Offered Rate (“LIBOR”) is a global financial benchmark and reference rate that we use to set interest rates for a significant portion of our commercial loan portfolio. At December 31, 2020, loans utilizing the LIBOR rate totaled \$2.27 billion. The marketplace that sets the LIBOR rate has announced that it will no longer support LIBOR after 2021.

Provident has not yet determined which alternative rate is most applicable, and there can be no assurances on which benchmark rate(s) may replace LIBOR or how LIBOR will be determined for purposes of financial instruments that are currently referencing LIBOR if and when it ceases to exist. If LIBOR is discontinued after 2021 as expected, there may be uncertainty or differences in the calculation of the applicable interest rate or payment amount depending on the terms of the governing instruments, and such discontinuation may increase operational and other risks to the Company and the industry.

Acts of terrorism, severe weather, natural disasters, public health issues and other external events could impact our ability to conduct business.

Our business is subject to risk from external events that could affect the stability of our deposit base, impair the ability of borrowers to repay outstanding loans, impair the value of collateral securing loans, cause significant property damage, result in loss of revenue, and/or cause us to incur additional expenses. For example, financial institutions have been, and continue to be, targets of terrorist threats aimed at compromising their operating and communication systems. The metropolitan New York and Philadelphia areas remain central targets for potential acts of terrorism, including cyber terrorism, which could affect not only our operations but those of our customers. Additionally, there could be sudden increases in customer transaction volume, electrical, telecommunications or other major physical infrastructure outages, natural disasters, events arising from local or larger scale political or social matters, including terrorist acts, and cyber attacks. The emergence of widespread health emergencies or pandemics, such as the spread of COVID-19, could lead to regional quarantines, business shutdowns, labor shortages, disruptions to supply chains, and overall economic instability. Events such as these may become more common in the future and could cause significant damage such as disrupt power and communication services, impact the stability of our facilities and result in additional expenses, impair the ability of our borrowers to repay their loans, reduce the value of collateral securing the repayment of our loans, which could result in the loss of revenue. While we have established and regularly test disaster recovery procedures, the occurrence of any such event could have a material adverse effect on our business, operations and financial condition.

A general economic slowdown or uncertainty that produces either reduced returns or excessive market volatility could adversely impact our overall profitability, including our wealth management fee income.

A general economic slowdown could affect our core banking business. Headwinds facing the U.S. economy continued during 2020, even as the economy recovered from the COVID-19 induced recession, noting in particular the unemployment rate remains well above its pre-pandemic level. The projected forecast has the economy continuing its recovery from the recession brought about by the pandemic, largely due to unprecedented fiscal support and monetary stimulus. Adverse changes in the economy could negatively affect the ability of our borrowers to repay their loans or force us to offer lower interest rates to encourage new borrowing activity.

Furthermore, uncertainty and market volatility regardless of overall market conditions could affect the value of the assets under management in our wealth management business resulting in lower fee income. Conditions that produce extended market volatility could affect our ability to provide our clients with an adequate return, thereby impacting our ability to attract new clients or causing existing clients to seek more stable investment opportunities with alternative wealth advisors.

We may not be able to detect money laundering and other illegal or improper activities fully or on a timely basis, which could expose us to additional liability and could have a material adverse effect on us.

We are required to comply with anti-money laundering, anti-terrorism and other laws and regulations in the United States. These laws and regulations require us, among other things, to adopt and enforce “know-your-customer” policies and procedures and to report suspicious and large transactions to applicable regulatory authorities. These laws and regulations have become increasingly complex and detailed, require improved systems and sophisticated monitoring and compliance personnel and have become the subject of enhanced government supervision.

While we have adopted policies and procedures aimed at detecting and preventing the use of our banking network for money laundering and related activities, those policies and procedures may not completely eliminate instances in which we may be used by customers to engage in money laundering and other illegal or improper activities. To the extent we fail to fully comply with applicable laws and regulations, the FDIC, along with other banking agencies, has the authority to impose fines and other penalties and sanctions on us. In addition, our business and reputation could suffer if customers use our banking network for money laundering or illegal or improper purposes.

We are subject to liquidity risk.

Liquidity risk is the potential that we will be unable to meet our obligations as they become due, capitalize on growth opportunities as they arise because of an inability to liquidate assets or obtain adequate funding on a timely basis at a reasonable cost, or meet regulatory-imposed expectations for liquidity levels. Liquidity is required to fund various obligations, including loan originations and commitments, withdrawals by depositors, repayments of borrowings, operating expenses and capital expenditures. Liquidity is derived primarily from deposit growth and retention; principal and interest payments, sales, maturities, and prepayments of loans and investment securities; net cash provided from operations; and access to other funding sources.

Our access to funding sources in amounts adequate to finance our activities could be impaired by factors specific to us or the financial services industry in general. Factors detrimental to our access to liquidity sources include a decrease in the level of our business activity due to a market downturn, lack of competitiveness, or adverse regulatory action against us. Our ability to borrow could also be impaired by factors that are not specific to us, such as a severe disruption of the financial markets or negative views and expectations about the prospects for the financial services industry.

As a participating lender in the SBA Paycheck Protection Program (“PPP”), we are subject to additional risks of litigation from our customers or other parties regarding our processing of loans for the PPP which could have a significant adverse impact on our business, financial position, results of operations, and prospects.

The PPP authorizes financial institutions to make federally-guaranteed loans to qualifying small businesses and non-profits organizations. These loans carry an interest rate of 1% per annum and a maturity of two years if originated before June 5, 2020 and five years if originated on or after June 5, 2020. The PPP provides that such loans may be forgiven if the borrowers meet certain requirements with respect to maintaining employee headcount and payroll and the use of the loan proceeds after the loan is originated. If not forgiven, these loans will be guaranteed by the SBA under the SBA’s section 7(a) program. The initial phase of PPP, after being extended multiple times by Congress, expired on August 8, 2020. However, on January 11, 2021, the PPP was reopened for First Draw PPP loans to small business and non-profit organizations that did not receive a loan through the initial PPP phase. Further, on January 13, 2021, the SBA reopened the PPP for Second Draw loans to small businesses and non-profit organizations that did not receive a loan through the initial PPP phase. We had approximately \$473.2 million of PPP outstanding as of December 31, 2020.

Since the initiation of the PPP, several banks have been subject to litigation or threatened litigation regarding the process and procedures that such banks used in processing applications for the PPP. We may be exposed to the risk of litigation, from both clients and non-clients that approached us regarding PPP loans. If any such litigation is filed or threatened against us and is not resolved in a manner favorable to us, it may result in significant cost or adversely affect our reputation. Any financial liability, litigation costs or reputational damage caused by PPP-related litigation could have a material adverse impact on our business, financial position, results of operations and prospects.

Strong competition within our market area may limit our growth and profitability.

Competition in the banking and financial services industry is intense and expanding with entrants into our market providing new and innovative technology-driven financial solutions. Our profitability depends upon our continued ability to successfully compete in our market area. We compete with commercial banks, savings institutions, mortgage banking firms, credit unions, finance companies, investment advisers, wealth managers, mutual funds, insurance companies, online lenders, large non-bank participants, and brokerage and investment banking firms operating both locally and elsewhere.

In particular, over the past decade, our local markets have experienced the effects of substantial banking consolidation, and large out-of-state competitors have grown significantly. Many of these competitors have substantially greater resources and lending limits than we do, and may offer certain deposit and loan pricing, services or credit criteria that we do not or cannot provide. There are also a number of strong locally-based competitors with large capital positions in our market who may deploy aggressive strategies to drive growth, take our customers and win market share.

Furthermore, key components of the financial services value chain have been replicated by digital innovation, commonly referred to as Fintech. As customer preferences and expectations continue to evolve, technology has lowered barriers to entry and made it possible for nonbanks to offer products and services traditionally provided by banks, such as automatic transfer and automatic payment systems. In addition, some of the largest technology firms are engaging in joint ventures with the largest banks to provide and or expand financial service offerings with a technological sophistication and breadth of marketing that smaller institutions do not have. Many of our competitors have fewer regulatory constraints and may have lower cost structures. Additionally, due to their size, many competitors may be able to achieve economies of scale and, as a result, may offer a broader range of products and services as well as better pricing for those products and services than we can. The adoption of these Fintech solutions within our market area may cause greater and faster disruption to our business model if we are unable to keep pace with, or invest wisely in, these enabling technologies. In July 2018, the OCC announced that it will begin accepting applications from Fintechs to become special purpose national banks. Although the OCC's authority to issue special purpose bank charters to nonbank Fintechs continues to be subject to ongoing litigation, similar developments are likely to result in even greater competition within all areas of our operations.

Risks Related to Technology & Security

A cyber-attack, data breach, or a technology failure of ours could adversely affect our ability to conduct our business or manage our exposure to risk, result in the disclosure or misuse of confidential or proprietary information, increase our costs to maintain and update our operational and security systems and infrastructure, and adversely impact our results of operations, liquidity and financial condition, as well as cause reputational harm.

Our business is highly dependent on the security and efficacy of our infrastructure, computer and data management systems. Cyber security risks for financial institutions have significantly increased in recent years in part because of the proliferation of new technologies, the use of the Internet and telecommunications technologies to conduct financial transactions, and the increased sophistication and activities of organized crime, hackers, terrorists and other external parties, including foreign state actors. Our operations rely on the secure processing, transmission, storage and retrieval of confidential, proprietary and other information in our computer and data management systems and networks. We rely on digital technologies, computer, database and email systems, software, and networks to conduct our operations.

Financial institutions have been subject to, and are likely to continue to be the target of, cyber-attacks, including computer viruses, malicious or destructive code, phishing attacks, denial of service or other security breaches that could result in the unauthorized release, gathering, monitoring, misuse, loss or destruction of confidential, proprietary and other information of the institution, its employees, customers or third parties, or otherwise materially disrupt network access or business operations. For example, denial of service attacks have been launched against a number of large financial institutions and several large retailers have disclosed substantial cyber security breaches affecting debit and credit card accounts of their customers. We have experienced cyber security incidents in the past, although not material, and we anticipate that, as a larger bank, we could experience further incidents. There can be no assurance that we will not suffer material losses or other material adverse consequences relating to technology failure, cyber-attacks or other information or security breaches.

In addition, there have been instances where financial institutions have been victims of fraudulent activity in which criminals pose as customers to initiate wire and automated clearinghouse transactions from customer accounts. Although the Bank has policies and procedures in place to verify the authenticity of its customers, the Bank cannot assure that such policies and procedures will prevent all fraudulent transfers. Such activity could result in financial liability and harm to our reputation.

Misconduct of our technology by our employees could also result in fraudulent, improper or unauthorized activities on behalf of customers or improper use of confidential information. The Bank may not be able to prevent employee errors or misconduct, and the precautions the Bank takes to detect these types of activity might not be effective in all cases. Employee errors or misconduct could subject the Bank to civil claims for negligence or regulatory enforcement actions, including fines and restrictions on our business.

As cyber threats and other fraudulent activity continues to evolve, we may be required to expend significant additional resources to continue to modify and enhance our protective measures, or to investigate and remediate any information security vulnerabilities or incidents. Any of these matters could result in our loss of customers and business opportunities, significant disruption to our operations and business, misappropriation or destruction of our confidential information and/or that of our customers, or damage to our customers' computers or systems, and could result in a violation of applicable privacy laws and other laws, litigation exposure, regulatory fines, penalties or intervention, loss of confidence in our security measures, reputational damage, reimbursement or other compensatory costs, and additional compliance costs. In addition, any of the matters described above could adversely impact our results of operations and financial condition.

We rely on third-party providers and other suppliers for a number of services that are important to our business. A breach, failure, interruption, cessation of an important service by any third-party could have a material adverse effect on our business, as well as cause reputational harm.

We are dependent for the majority of our technology, including our core operating system, on third-party providers. The Bank collects, processes and stores sensitive consumer data by utilizing computer systems and telecommunications networks operated by third-party service providers, which are integral to our business. We handle a substantial volume of customer and other financial transactions every day. Our financial, accounting, data processing, check processing, electronic funds transfer, loan processing, online and mobile banking, automated teller machines, or ATMs, backup or other operating or security systems and infrastructure may fail to operate properly or become disabled or damaged as a result of a number of factors including events that are wholly or partially beyond our control.

We have taken measures to implement backup systems and other safeguards to support our operations, but our ability to conduct business may be adversely affected by any significant disruptions to third-parties with whom we interact. In addition, our ability to implement backup systems and other safeguards with respect to third-party systems is more limited than with our own systems. If these third-parties were to discontinue providing services to us, we may experience significant disruption to our business. In addition, each of these third parties faces the risk of cyber-attack, information breach or loss, or technology failure. If any of our third-party service providers experience such difficulties, or if there is any other disruption in our relationships with them, we may be required to find alternative sources of such services. We are dependent on these third-party providers securing their information systems, over which we have limited control, and a breach of their information systems could adversely affect our ability to process transactions, service our clients or manage our exposure to risk and could result in the disclosure of sensitive, personal customer information, which could have a material adverse impact on our business through damage to our reputation, loss of business, remedial costs, additional regulatory scrutiny or exposure to civil litigation and possible financial liability. Assurance cannot be provided that we could negotiate terms with alternative service sources that are as favorable or could obtain services with similar functionality as found in existing systems without the need to expend substantial resources, if at all, thereby resulting in a material adverse impact on our business and results of operations.

We continuously update these systems to support our operations and growth. This updating entails significant costs and creates risks associated with implementing new systems and integrating them with existing ones. Operational risk exposures could adversely impact our results of operations, liquidity and financial condition, and cause reputational harm. Insurance coverage may not be available for such losses, or where available, such losses may exceed insurance limits. This risk of loss also includes the potential legal actions that could arise as a result 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. While we maintain a risk management program that is designed to minimize risk, we could suffer losses, face regulatory action, and suffer damage to our reputation as a result of our failure to properly anticipate and manage these risks.

Failure to keep pace with technological changes could adversely affect our business.

The financial services industry is continually undergoing rapid technological change with frequent introductions of new technology-driven products and services. The effective use of technology increases efficiency and enables financial institutions to better serve customers and to reduce costs. Our future success depends, in part, upon our ability to address the needs of our customers by using technology to provide products and services that will satisfy customer demands, as well as to create additional efficiencies in our operations. Many of our competitors have substantially greater resources to invest in technological improvements. We may not be able to effectively implement new technology-driven products and services or be successful in marketing these products and services to our customers. Failure to successfully keep pace with technological change affecting the financial services industry could have a material adverse impact on our business and, in turn, our financial condition and results of operations.

Item 1B. Unresolved Staff Comments

There are no unresolved comments from the staff of the SEC to report.

Item 2. Properties

Property

At December 31, 2020, the Bank conducted business through 99 full-service branch offices located throughout northern and central New Jersey, as well as Bucks, Lehigh and Northampton counties in Pennsylvania and Queens County, New York. The Bank maintains satellite loan production offices in Convent Station, Flemington, Paramus, and Sea Girt, New Jersey, as well as in Bethlehem, Newtown and Wayne, Pennsylvania and Queens, New York. The aggregate net book value of premises and equipment was \$75.9 million at December 31, 2020.

The Company's executive offices are located in a leased facility at 239 Washington Street, Jersey City, New Jersey, which is also the Bank's Main Office. The Bank's administrative offices are located in a leased facility at 100 Wood Avenue South, Iselin, New Jersey.

Item 3. Legal Proceedings

The Company is involved in various legal actions and claims arising in the normal course of its business. In the opinion of management, these legal actions and claims are not expected to have a material adverse impact on the Company's financial condition and results of operations.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

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

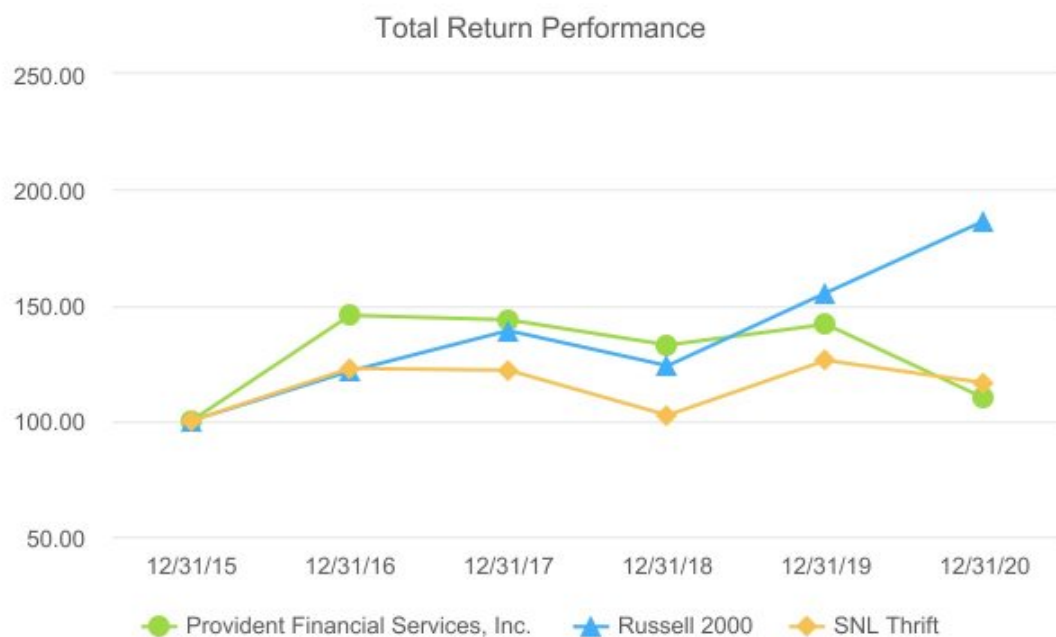
The Company's common stock trades on the New York Stock Exchange ("NYSE") under the symbol "PFS." Trading in the Company's common stock commenced on January 16, 2003.

As of February 1, 2021, there were 83,209,012 shares of the Company's common stock issued and 77,789,018 shares outstanding, and approximately 4,859 stockholders of record.

On January 29, 2021, the Board of Directors declared a quarterly cash dividend of \$0.23 per common share which was paid on February 26, 2021, to common stockholders of record as of the close of business on February 12, 2020. The Company's Board of Directors intends to review the payment of dividends quarterly and plans to continue to maintain a regular quarterly cash dividend in the future, subject to financial condition, results of operations, tax considerations, industry standards, economic conditions, regulatory restrictions that affect the payment of dividends by the Bank to the Company, and other relevant factors.

Stock Performance Graph

Set forth below is a stock performance graph comparing (a) the cumulative total return on the Company's common stock for the period December 31, 2015 through December 31, 2020, (b) the cumulative total return on stocks included in the Russell 2000 Index over such period, and (c) the cumulative total return of the SNL Thrift Index over such period. The SNL Thrift Index, produced by SNL Financial LC, contains all thrift institutions traded on the NYSE and NASDAQ stock exchange. Cumulative return assumes the reinvestment of dividends and is expressed in dollars based on an assumed investment of \$100 on December 31, 2015.



Index	Period Ending					
	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020
Provident Financial Services, Inc.	100.00	145.39	143.64	132.69	141.64	109.82
Russell 2000	100.00	121.31	139.08	123.76	155.35	186.36
SNL Thrift	100.00	122.49	121.60	102.42	126.10	116.21

The following table reports information regarding purchases of the Company's common stock during the fourth quarter of 2020 under the stock repurchase plan approved by the Company's Board of Directors:

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Programs ⁽¹⁾	(d) Maximum Number of Shares that May Yet Be Purchased Under the Programs ⁽¹⁾
October 1, 2020 through October 31, 2020	—	\$ —	—	1,139,388
November 1, 2020 through November 30, 2020	517,215	14.86	517,215	622,173
December 1, 2020 through December 31, 2020	359,246	17.24	359,246	262,927
Total	876,461	\$ 15.84	876,461	

The Company repurchased 876,461 shares of its common stock at a cost of \$13.9 million during the fourth quarter of 2020 under the stock repurchase program approved by the Company's Board of Directors. The Company repurchased 1.3 million shares of its common stock at a cost of \$22.1 million in 2020. At December 31, 2020, 262,927 shares were eligible for repurchase under the board approved stock repurchase program.

(1) On December 20, 2012, the Company's Board of Directors approved the purchase of up to 3,017,770 shares of its common stock under an eighth general repurchase program which commenced upon completion of the seventh repurchase program. The repurchase program has no expiration date. On December 28, 2020, the Company's Board of Directors approved the purchase of up to 3,900,000 shares of its common stock under a ninth general repurchase program to commence upon completion of the eighth repurchase program. The repurchase program has no expiration date.

Item 6. Selected Financial Data

The summary information presented below at or for each of the periods presented is derived in part from and should be read in conjunction with the consolidated financial statements of the Company presented in Item 8.

	At December 31,				
	2020	2019	2018	2017	2016
	(In thousands)				
Selected Financial Condition Data:					
Total assets	\$ 12,919,741	\$ 9,808,578	\$ 9,725,769	\$ 9,845,274	\$ 9,500,465
Loans, net ⁽¹⁾	9,721,424	7,277,360	7,195,026	7,265,523	6,941,603
Held to maturity debt securities	450,965	453,629	479,425	477,652	488,183
Available for sale debt securities	1,105,489	976,919	1,063,079	1,037,154	1,039,837
Deposits	9,837,829	7,102,609	6,830,122	6,714,166	6,553,629
Borrowed funds	1,175,972	1,125,146	1,442,282	1,742,514	1,612,745
Stockholders' equity	1,619,797	1,413,840	1,358,980	1,298,661	1,251,781

(1) Loans are shown net of allowance for credit losses, deferred fees and unearned discount.

	For the Years Ended December 31,				
	2020	2019	2018	2017	2016
(In thousands, except per share data)					
Selected Operations Data:					
Interest income	\$ 363,309	\$ 371,470	\$ 359,829	\$ 323,846	\$ 302,315
Interest expense	50,739	73,497	59,153	45,644	43,748
Net interest income	312,570	297,973	300,676	278,202	258,567
Provision for loan losses	29,719	13,100	23,700	5,600	5,400
Net interest income after provision for loan losses	282,851	284,873	276,976	272,602	253,167
Non-interest income	72,431	63,794	58,676	55,697	55,393
Non-interest expense	227,728	201,579	191,735	187,822	183,778
Income before income tax expense	127,554	147,088	143,917	140,477	124,782
Income tax expense	30,603	34,455	25,530	46,528	36,980
Net income	\$ 96,951	\$ 112,633	\$ 118,387	\$ 93,949	\$ 87,802
Earnings per share:					
Basic earnings per share	\$ 1.39	\$ 1.74	\$ 1.82	\$ 1.46	\$ 1.38
Diluted earnings per share	\$ 1.39	\$ 1.74	\$ 1.82	\$ 1.45	\$ 1.38

	At or For the Years Ended December 31,				
	2020	2019	2018	2017	2016
Selected Financial and Other Data⁽¹⁾					
Performance Ratios:					
Return on average assets	0.86 %	1.15 %	1.22 %	0.99 %	0.95 %
Return on average equity	6.49	8.07	8.93	7.28	7.12
Average net interest rate spread	2.92	3.10	3.20	3.07	2.98
Net interest margin ⁽²⁾	3.09	3.35	3.39	3.21	3.11
Average interest-earning assets to average interest-bearing liabilities	1.33	1.31	1.29	1.27	1.25
Non-interest income to average total assets	0.64	0.65	0.60	0.58	0.60
Non-interest expenses to average total assets	2.01	2.05	1.97	1.97	1.99
Efficiency ratio ⁽³⁾	59.15	55.72	53.36	56.25	58.54
Asset Quality Ratios:					
Non-performing loans to total loans	0.89 %	0.55 %	0.35 %	0.48 %	0.61 %
Non-performing assets to total assets	0.71	0.44	0.28	0.42	0.53
Allowance for credit losses to non-performing loans	116.51	138.14	216.28	172.34	145.95
Allowance for credit losses to total loans	1.03	0.76	0.77	0.82	0.88
Capital Ratios:					
Leverage capital ⁽⁴⁾	9.30 %	10.34 %	10.24 %	9.65 %	9.25 %
Total risk based capital ⁽⁴⁾	11.94	13.47	13.27	12.67	12.50
Average equity to average assets	13.18	14.20	13.61	13.53	13.38
Other Data:					
Number of full-service offices	99	83	84	84	87
Full time equivalent employees	1,178	992	1,002	1,006	1,001

(1) Averages presented are daily averages.

(2) Net interest income divided by average interest earning assets.

(3) Represents the ratio of non-interest expense divided by the sum of net interest income and non-interest income.

(4) Leverage capital ratios are presented as a percentage of quarterly average tangible assets. Risk-based capital ratios are presented as a percentage of risk-weighted assets.

Efficiency Ratio Calculation:	At December 31,				
	2020	2019	2018	2017	2016
	(In thousands)				
Net interest income	\$ 312,570	\$ 297,973	\$ 300,676	\$ 278,202	\$ 258,567
Non-interest income	72,431	63,794	58,676	55,697	55,393
Total income	<u>\$ 385,001</u>	<u>\$ 361,767</u>	<u>\$ 359,352</u>	<u>\$ 333,899</u>	<u>\$ 313,960</u>
Non-interest expense	<u>\$ 227,728</u>	<u>\$ 201,579</u>	<u>\$ 191,735</u>	<u>\$ 187,822</u>	<u>\$ 183,778</u>
Expense/income	<u>59.15 %</u>	<u>55.72 %</u>	<u>53.36 %</u>	<u>56.25 %</u>	<u>58.54 %</u>

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

General

On January 15, 2003, the Company became the holding company for the Bank, following the completion of the conversion of the Bank to a New Jersey-chartered capital stock savings bank. The Company issued an aggregate of 59,618,300 shares of its common stock in a subscription offering to eligible depositors. Concurrent with the conversion, the Company contributed an additional 1,920,000 shares of its common stock and \$4.8 million in cash to The Provident Bank Foundation, a charitable foundation established by the Bank.

The Company conducts business through its subsidiary, the Bank, a community- and customer-oriented bank currently operating full-service branches and loan production offices throughout northern and central New Jersey, as well as Bucks, Lehigh and Northampton counties in Pennsylvania.

Strategy

Established in 1839, the Bank is the oldest New Jersey-chartered bank in the state. The Bank offers a full range of commercial and retail loan and deposit products, and emphasizes personal service and convenience.

The Bank's strategy is to grow profitably through a commitment to credit quality and expanding market share by acquiring, retaining and expanding customer relationships, while carefully managing interest rate risk.

The Bank continues to maintain a diversified loan portfolio with an emphasis on commercial mortgage, multi-family, construction and commercial loans in its efforts to reduce interest rate risk. These types of loans generally have adjustable rates that initially are higher than residential mortgage loans and generally have a higher rate of credit risk. The Bank's lending policy focuses on quality underwriting standards and close monitoring of the loan portfolio. At December 31, 2020, these commercial loan types accounted for 81.8% of the loan portfolio and retail loans accounted for 18.2%. The Company intends to continue to focus on commercial mortgage, multi-family, construction and commercial lending relationships.

The Company's relationship banking strategy focuses on increasing core accounts and expanding relationships through its branch network, mobile banking, online banking and other digital services. The Company continues to evaluate opportunities to increase market share by expanding within existing and contiguous markets. Core deposits, consisting of savings and demand deposit accounts, are generally a stable, relatively inexpensive source of funds. At December 31, 2020, core deposits were 88.9% of total deposits.

The Company's results of operations are primarily dependent upon net interest income, the difference between interest earned on interest-earning assets and the interest paid on interest-bearing liabilities. Changes in interest rates could have an adverse effect on net interest income to the extent the Company's interest-bearing assets and interest-bearing liabilities reprice or mature at different times or relative interest rates. The Company believes based upon its current balance sheet mix that assets may reprice more quickly than liabilities. Therefore, due to the current historically low interest environment, and with deposit rates at or near zero, a decrease in interest rates may result in a decrease in the Company's average interest rate spread and net income, which could have a negative effect on profitability. The Company generates non-interest income such as income from retail and business account fees, loan servicing fees, loan origination fees, loan level swap fees, appreciation in the cash surrender value of Bank-owned life insurance, income from loan or securities sales, fees from wealth management services, investment product sales, insurance brokerage fees and other fees. The Company's operating expenses consist primarily of compensation and benefits expense, occupancy and equipment expense, data processing expense, the amortization of intangible assets, marketing and advertising expense and other general and administrative expenses. The Company's results of operations are also affected by general economic conditions, changes in market interest rates, changes in asset quality, changes in asset values, actions of regulatory agencies and government policies.

Acquisitions

SB One Bancorp

On July 31, 2020, the Company completed its acquisition of SB One Bancorp ("SB One"), which added \$2.20 billion to total assets, \$1.77 billion to total loans, which included PCD loans totaling \$294.2 million, and \$1.76 billion to total deposits, and added 18 full-service banking offices in New Jersey and New York. As part of the acquisition, the addition of SB One Insurance Agency, Inc. allows the Company to expand its products offerings to its customers to include an array of commercial and personal insurance products.

Under the merger agreement, each share of SB One common stock was exchanged for 1.357 shares of the Company's common stock. The Company issued 12.8 million shares of common stock from treasury stock, plus cash in lieu of fractional shares in the acquisition of SB One. The total consideration paid in the acquisition of SB One was \$180.8 million. In connection with the acquisition, SB One Bank, a wholly owned subsidiary of SB One, was merged with and into Provident Bank, a wholly owned subsidiary of the Company.

The acquisition was accounted for under the acquisition method of accounting. Under this method of accounting, the respective assets acquired and liabilities assumed were recorded at their estimated fair value. The excess of consideration paid over the estimated fair value of the net assets acquired totaled \$22.4 million and was recorded as goodwill.

Acquisition of Tirschwell & Loewy, Inc.

On April 1, 2019, Beacon Trust Company ("Beacon") completed its acquisition of certain assets of Tirschwell & Loewy, Inc. ("T&L"), a New York City-based independent registered investment adviser. Beacon is a wholly owned subsidiary of Provident Bank. This acquisition expanded the Company's wealth management business by \$822.4 million of assets under management at the time of acquisition.

The acquisition was accounted for under the acquisition method of accounting. The Company recorded goodwill of \$8.2 million, a customer relationship intangible of \$12.6 million and \$800,000 of other identifiable intangibles related to the acquisition. In addition, the Company recorded a contingent consideration liability at its fair value of \$6.6 million. The contingent consideration arrangement requires the Company to pay additional cash consideration to T&L's former stakeholders over a three-year period after the closing date of the acquisition if certain financial and business retention targets are met. The acquisition agreement limits the total additional payment to a maximum of \$11.0 million, to be determined based on actual future results. Total cost of the acquisition was \$21.6 million, which included cash consideration of \$15.0 million and contingent consideration with a fair value of \$6.6 million. Tangible assets acquired in the transaction were nominal. No liabilities were assumed in the acquisition. The goodwill recorded in the transaction is deductible for tax purposes.

In the fourth quarter of 2019, the Company recognized a \$2.8 million increase in the estimated fair value of the contingent consideration liability. While performance of the acquired business has been adversely impacted at December 31, 2020 due to worsening economic conditions and declining asset valuations attributable to the COVID-19 pandemic, asset valuations improved in the fourth quarter of 2020 and management has not identified a reduction in assets under management due to a declining customer base. As a result, the \$9.4 million fair value of the contingent liability was unchanged at December 31, 2020, from December 31, 2019, with maximum potential future payments totaling \$11.0 million.

Critical Accounting Policies

The Company considers certain accounting policies to be critically important to the fair presentation of its financial condition and results of operations. These policies require management to make complex judgments on matters which by their nature have elements of uncertainty. The sensitivity of the Company's consolidated financial statements to these critical accounting policies, and the assumptions and estimates applied, could have a significant impact on its financial condition and results of operations. These assumptions, estimates and judgments made by management can be influenced by a number of factors, including the general economic environment. The Company has identified the following as critical accounting policies:

- Adequacy of the allowance for credit losses on loans
- Valuation of deferred tax assets

On January 1, 2020, the Company adopted ASU 2016-13, "Measurement of Credit Losses on Financial Instruments," which replaces the incurred loss methodology with an expected loss methodology that is referred to as the current expected credit loss ("CECL") methodology. It also applies to off-balance sheet credit exposures, including loan commitments and lines of credit. The adoption of the new standard resulted in the Company recording a \$7.9 million increase to the allowance for credit losses and a \$3.2 million liability for off-balance sheet credit exposures. The adoption of the standard did not result in a change to the Company's results of operations upon adoption as it was recorded as an \$8.3 million cumulative effect

adjustment, net of income taxes, to retained earnings.

The allowance for credit losses is a valuation account that reflects management's evaluation of the current expected credit losses in the loan portfolio. The Company maintains the allowance for credit losses through provisions for credit losses that are charged to income. Charge-offs against the allowance for credit losses are taken on loans where management determines that the collection of loan principal and interest is unlikely. Recoveries made on loans that have been charged-off are credited to the allowance for credit losses.

The calculation of the allowance for credit losses is a critical accounting policy of the Company. Management estimates the allowance balance using relevant available information, from internal and external sources, related to past events, current conditions, and a reasonable and supportable forecast. Historical credit loss experience for both the Company and peers provides the basis for the estimation of expected credit losses, where observed credit losses are converted to probability of default rate ("PDR") curves through the use of segment-specific loss given default ("LGD") risk factors that convert default rates to loss severity based on industry-level, observed relationships between the two variables for each segment, primarily due to the nature of the underlying collateral. These risk factors were assessed for reasonableness against the Company's own loss experience and adjusted in certain cases when the relationship between the Company's historical default and loss severity deviate from that of the wider industry. The historical PDR curves, together with corresponding economic conditions, establish a quantitative relationship between economic conditions and loan performance through an economic cycle.

Using the historical relationship between economic conditions and loan performance, management's expectation of future loan performance is incorporated using an externally developed economic forecast. This forecast is applied over a period that management has determined to be reasonable and supportable. Beyond the period over which management can develop or source a reasonable and supportable forecast, the model will revert to long-term average economic conditions using a straight-line, time-based methodology. The Company's current forecast period is six quarters, with a four quarter reversion period to historical average macroeconomic factors. The Company's economic forecast is approved by the Company's Asset-Liability Committee.

The allowance for credit losses is measured on a collective (pool) basis, with both a quantitative and qualitative analysis that is applied on a quarterly basis, when similar risk characteristics exist. The respective quantitative allowance for each segment is measured using an econometric, discounted PD/LGD modeling methodology in which distinct, segment-specific multi-variate regression models are applied to an external economic forecast. Under the discounted cash flows methodology, expected credit losses are estimated over the effective life of the loans by measuring the difference between the net present value of modeled cash flows and amortized cost basis. Contractual cash flows over the contractual life of the loans are the basis for modeled cash flows, adjusted for modeled defaults and expected prepayments and discounted at the loan-level effective interest rate. The contractual term excludes expected extensions, renewals, and modifications unless either of the following applies: management has a reasonable expectation at the reporting date that a troubled debt restructuring ("TDR") will be executed with an individual borrower or the extension or renewal options are included in the original or modified contract at the reporting date and are not unconditionally cancellable by the Company.

After quantitative considerations, management applies additional qualitative adjustments so that the allowance for credit loss is reflective of the estimate of lifetime losses that exist in the loan portfolio at the balance sheet date. Qualitative considerations include limitations inherent in the quantitative model; portfolio concentrations that may affect loss experience across one or more components of the portfolio; changes in industry conditions; changes in the Company's loan review process; changes in the Company's loan policies and procedures, economic forecast uncertainty and model imprecision.

Portfolio segment is defined as the level at which an entity develops and documents a systematic methodology to determine its allowance for credit losses. Management developed segments for estimating loss based on type of borrower and collateral which is generally based upon federal call report segmentation and have been combined or sub-segmented as needed to ensure loans of similar risk profiles are appropriately pooled. As of December 31, 2020, the portfolio and class segments for the Company's loan portfolio were:

- Mortgage Loans – Residential, Commercial Real Estate, Multi-Family and Construction
- Commercial Loans – Commercial Owner Occupied and Commercial Non-Owner Occupied
- Consumer Loans – First Lien Home Equity and Other Consumer

The allowance for credit losses on loans individually evaluated for impairment is based upon loans that have been identified through the Company's normal loan monitoring process. This process includes the review of delinquent and problem loans at the Company's Delinquency, Credit, Credit Risk Management and Allowance Committees; or which may be identified through the Company's loan review process. Generally, the Company only evaluates loans individually for impairment if the loan is non-accrual, non-homogeneous and the balance is at least \$1.0 million, or if the loan was modified in a TDR. When management determines that foreclosure is probable, expected credit losses are based on the fair value of the collateral at the

reporting date, adjusted for selling costs as appropriate. If the loan is not collateral dependent, the allowance for credit losses related to individually assessed loans is based on discounted expected cash flows using the loan's initial effective interest rate.

A loan for which the terms have been modified resulting in a concession by the Company, and for which the borrower is experiencing financial difficulties is considered to be a TDR. The allowance for credit losses on a TDR is measured using the same method as all other impaired loans, except that the original interest rate is used to discount the expected cash flows, not the rate specified within the restructuring.

As previously noted, in accordance with the CARES Act, the Company elected to not apply troubled debt restructuring classification to any COVID-19 related loan modifications that occurred after March 1, 2020 to borrowers who were current as of December 31, 2019. Accordingly, these modifications were not classified as TDRs. In addition, for loans modified in response to the COVID-19 pandemic that did not meet the above criteria (e.g., current payment status at December 31, 2019), the Company applied the guidance included in an interagency statement issued by the bank regulatory agencies. This guidance states that loan modifications performed in light of the COVID-19 pandemic, including loan payment deferrals that are up to six months in duration, that were granted to borrowers who were current as of the implementation date of a loan modification program or modifications granted under government mandated modification programs, are not TDRs.

Loans that have been or are expected to be granted COVID-19 related deferrals or modifications decreased from a peak level of \$1.31 billion, or 16.8% of loans, to \$207.4 million, or 2.1% of loans. This \$207.4 million of loans consists of \$9.1 million in a first 90-day deferral period, \$51.3 million in a second 90-day deferral period, \$121.2 million that required additional payment relief and \$25.8 million that have completed their initial deferral periods, but are expected to require ongoing assistance. Included in the \$207.4 million of loans, \$49.2 million are secured by hotels, \$35.9 million are secured by retail properties, \$30.4 million are secured by multi-family properties, of which \$21.1 million are student housing related, \$29.7 million are secured by residential mortgages and \$4.9 million are secured by restaurants, with the balance comprised of diverse commercial loans.

For loans acquired that have experienced more-than-insignificant deterioration in credit quality since origination are considered PCD loans. The Company evaluates acquired loans for deterioration in credit quality based on any of, but not limited to, the following: (1) non-accrual status; (2) troubled debt restructured designation; (3) risk ratings of special mention, substandard or doubtful; (4) watchlist credits; and (5) delinquency status, including loans that are current on acquisition date, but had been previously delinquent. At the acquisition date, an estimate of expected credit losses is made for groups of PCD loans with similar risk characteristics and individual PCD loans without similar risk characteristics. Subsequent to the acquisition date, the initial allowance for credit losses on PCD loans will increase or decrease based on future evaluations, with changes recognized in the provision for credit losses.

Management believes the primary risks inherent in the portfolio are a general decline in the economy, a decline in real estate market values, rising unemployment or a protracted period of elevated unemployment, increasing vacancy rates in commercial investment properties and possible increases in interest rates in the absence of economic improvement. As the impact of the COVID-19 pandemic continues to unfold, the effectiveness of medical advances, government programs, and the resulting impact on consumer behavior and employment conditions will have a material bearing on future credit conditions. Any one or a combination of these events may adversely affect borrowers' ability to repay the loans, resulting in increased delinquencies, credit losses and higher levels of provisions. Management considers it important to maintain the ratio of the allowance for credit losses to total loans at an acceptable level given current and forecasted economic conditions, interest rates and the composition of the portfolio.

Although management believes that the Company has established and maintained the allowance for credit losses at appropriate levels, additions may be necessary if future economic and other conditions differ substantially from the current operating environment and economic forecast. Management evaluates its estimates and assumptions on an ongoing basis giving consideration to forecasted economic factors, historical loss experience and other factors. Such estimates and assumptions are adjusted when facts and circumstances dictate. In addition to the ongoing impact of the COVID-19 pandemic, illiquid credit markets, volatile securities markets, and declines in the housing and commercial real estate markets and the economy in general may increase the uncertainty inherent in such estimates and assumptions. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods. In addition, various regulatory agencies periodically review the adequacy of the Company's allowance for credit losses as an integral part of their examination process. Such agencies may require the Company to recognize additions to the allowance or additional write-downs based on their judgments about information available to them at the time of their examination. Although management uses the best information available, the level of the allowance for credit losses remains an estimate that is subject to significant judgment and short-term change.

Going forward, the impact of utilizing the CECL approach to calculate the allowance for credit losses on loans will be significantly influenced by the composition, characteristics and quality of the Company's loan portfolio, as well as the prevailing economic conditions and forecast utilized. Material changes to these and other relevant factors may result in greater volatility to the allowance for credit losses, and therefore, greater volatility to the Company's reported earnings. For the year ended, December 31, 2020, changing economic forecasts attributable to the COVID-19 pandemic and projected economic recovery led to provisions for credit losses and off-balance sheet credit exposures. See Note 7 to the Consolidated Financial Statements and the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") for more information on the allowance for credit losses on loans.

The determination of whether deferred tax assets will be realizable is predicated on the reversal of existing deferred tax liabilities and estimates of future taxable income. Such estimates are subject to management's judgment. A valuation allowance is established when management is unable to conclude that it is more likely than not that it will realize deferred tax assets based on the nature and timing of these items. The Company did not require a valuation allowance at December 31, 2020 and 2019.

Accounting Pronouncements Adopted in 2020

In May 2019, the Financial Accounting Standards Board ("FASB") issued ASU No. 2019-05, "Financial Instruments - Credit Losses (Topic 326); Targeted Transition Relief." This ASU allows entities to irrevocably elect, upon adoption of ASU 2016-13, the fair value option on financial instruments that (1) were previously recorded at amortized cost and (2) are within the scope of ASC 326-20 if the instruments are eligible for the fair value option under ASC 825-10. The fair value option election does not apply to held-to-maturity debt securities. Entities are required to make this election on an instrument-by-instrument basis. ASU 2019-05 had the same effective date as ASU 2016-13 (i.e., the first quarter of 2020). The adoption of this guidance had no impact on the Company's consolidated financial statements.

In April 2019, the FASB issued ASU No. 2019-04, "Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments" which clarifies and improves areas of guidance related to the recently issued standards on credit losses, hedging, recognition and measurement. The most significant provisions of this ASU relate to how companies will estimate expected credit losses under Topic 326 by incorporating (1) expected recoveries of financial assets, including recoveries of amounts expected to be written off and those previously written off, and (2) clarifying that contractual extensions or renewal options that are not unconditionally cancellable by the lender are considered when determining the contractual term over which expected credit losses are measured. ASU No. 2019-04 is effective for reporting periods beginning January 1, 2020. The adoption of this guidance had no impact related to Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments on the Company's consolidated financial statements. At January 1, 2020, a \$1.3 million allowance for credit losses for off-balance sheet credit exposures was recorded related to extensions on construction loans and is reflected below in the ASU 2016-13 calculation.

In August 2018, the FASB issued ASU No. 2018-13, "Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement." This ASU eliminates, adds and modifies certain disclosure requirements for fair value measurements. Among the changes, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, but will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. ASU No. 2018-13 was effective for interim and annual reporting periods beginning after December 15, 2019; early adoption was permitted. Entities are also allowed to elect early adoption of the eliminated or modified disclosure requirements and delay adoption of the new disclosure requirements until their effective date. The adoption of this guidance had no impact on the Company's consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, "Measurement of Credit Losses on Financial Instruments." The main objective of this ASU is to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments by a reporting entity at each reporting date. The amendments in this ASU require financial assets measured at amortized cost to be presented at the net amount expected to be collected. The allowance for credit losses would represent a valuation account that would be deducted from the amortized cost basis of the financial asset(s) to present the net carrying value at the amount expected to be collected on the financial asset. The income statement would reflect the measurement of credit losses for newly recognized financial assets, as well as the expected increases or decreases of expected credit losses that have taken place during the period. The measurement of expected credit losses would be based on relevant information about past events, including historical experience, current conditions, and a reasonable and supportable forecast that affect the collectability of the reported amount. An entity will be required to use judgment in determining the relevant information and estimation methods that are appropriate in its circumstances. Furthermore, ASU 2016-13 will necessitate establishing an allowance for expected credit losses on held to maturity debt securities. This also applies to off-balance sheet credit exposures, which includes loan commitments, unused lines of credit and other similar instruments. The amendments in ASU 2016-13 are effective for fiscal years, including interim periods, beginning after December 15, 2019. Early adoption of

this ASU was permitted for fiscal years beginning after December 15, 2018. The adoption of ASU 2016-13 involves changing from an "incurred loss" model, which encompasses allowances for current known and inherent losses within the portfolio, to an "expected loss" model ("CECL"), which encompasses allowances for losses expected to be incurred over the life of the portfolio. The Company adopted CECL on January 1, 2020 using the modified retrospective method for all financial assets measured at amortized cost and off-balance sheet ("OBS") credit exposures. Results for reporting periods beginning after January 1, 2020 are presented under ASC 326 while prior period amounts continue to be recorded with previously applicable GAAP. The Company recorded a \$7.9 million increase to the allowance for credit losses and a \$3.2 million liability for off-balance sheet credit exposures, which resulted in an \$8.3 million cumulative effect adjustment decrease, net of tax, to retained earnings. With regard to regulatory capital, the Company has elected to utilize the five-year CECL transition, which gives the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay.

Accounting Pronouncements Not Yet Adopted

ASU 2020-04, "Reference Rate Reform (Topic 848)" ("ASU 2020-04") provides optional expedients and exceptions for applying GAAP to loan and lease agreements, derivative contracts, and other transactions affected by the anticipated transition away from LIBOR toward new interest rate benchmarks. For transactions that are modified because of reference rate reform and that meet certain scope guidance: (i) modifications of loan agreements should be accounted for by prospectively adjusting the effective interest rate and the modification will be considered "minor" so that any existing unamortized origination fees/costs would carry forward and continue to be amortized; and (ii) modifications of lease agreements should be accounted for as a continuation of the existing agreement with no reassessments of the lease classification and the discount rate or re-measurements of lease payments that otherwise would be required for modifications not accounted for as separate contracts. ASU 2020-04 also provides numerous optional expedients for derivative accounting. ASU 2020-04 is effective March 12, 2020 through December 31, 2022. An entity may elect to apply ASU 2020-04 for contract modifications as of January 1, 2020, or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. Once elected for a Topic or an Industry Subtopic within the Codification, the amendments in this ASU must be applied prospectively for all eligible contract modifications for that Topic or Industry Subtopic. The Company anticipates this ASU will simplify any modifications we execute between the selected start date (yet to be determined) and December 31, 2022 that are directly related to LIBOR transition by allowing prospective recognition of the continuation of the contract, rather than the extinguishment of the old contract resulting in writing off unamortized fees/costs. In addition, in January 2021 the FASB issued ASU No. 2021-01 "Reference Rate Reform — Scope," which clarified the scope of ASC 848 relating to contract modifications. The Company is evaluating the impacts of this guidance and has not determined whether LIBOR transition and this guidance will have material effects on the Company's business operations and consolidated financial statements.

Analysis of Net Interest Income

Net interest income represents the difference between income on interest-earning assets and expense on interest-bearing liabilities. Net interest income depends on the relative amounts of interest-earning assets and interest-bearing liabilities and the rates of interest earned on such assets and paid on such liabilities.

Average Balance Sheet. The following table sets forth certain information for the years ended December 31, 2020, 2019 and 2018. For the periods indicated, the total dollar amount of interest income from average interest-earning assets and the resultant yields, as well as the interest expense on average interest-bearing liabilities is expressed both in dollars and rates. No tax equivalent adjustments were made. Average balances are daily averages.

For the Years Ended December 31,

	2020			2019			2018		
	Average Outstanding Balance	Interest Earned/ Paid	Average Yield/ Cost	Average Outstanding Balance	Interest Earned/ Paid	Average Yield/ Cost	Average Outstanding Balance	Interest Earned/ Paid	Average Yield/ Cost
(Dollars in thousands)									
Interest-earning assets:									
Deposits	\$ 74,802	\$ 478	0.64 %	\$ 36,592	\$ 854	2.32 %	\$ 13,867	\$ 269	1.91 %
Federal funds sold and short-term investments	124,979	1,920	1.54	61,032	1,870	3.07	50,351	1,465	2.92
Held to maturity debt securities	446,666	11,461	2.57	467,711	12,424	2.66	472,690	12,606	2.67
Available for sale debt securities	1,043,799	21,736	2.08	1,072,106	27,455	2.56	1,046,701	26,074	2.49
Equity Securities, At Fair Value	822	—	—	724	—	—	683	—	—
Federal Home Loan Bank NY Stock	61,824	3,710	6.00	66,285	4,387	6.62	72,364	4,907	6.78
Net loans ⁽²⁾	8,367,663	324,004	3.87	7,190,113	324,480	4.51	7,208,420	314,508	4.36
Total interest-earning assets	10,120,555	363,309	3.59	8,894,563	371,470	4.18	8,865,076	359,829	4.06
Non-interest earning assets	1,216,585			926,269			871,373		
Total assets	\$ 11,337,140			\$ 9,820,832			\$ 9,736,449		
Interest-bearing liabilities:									
Savings deposits	\$ 1,143,381	\$ 1,689	0.15 %	\$ 1,015,547	\$ 1,681	1.17 %	\$ 1,070,868	\$ 1,923	0.18 %
Demand deposits	4,364,257	22,763	0.52	3,625,989	29,542	0.81	3,575,306	20,450	0.57
Time deposits	868,161	9,137	1.05	801,374	14,271	1.78	671,671	8,320	1.24
Borrowed funds	1,227,894	16,638	1.36	1,336,631	28,003	2.10	1,535,906	28,460	1.85
Subordinated debentures	10,439	512	4.90	—	—	—	—	—	—
Total interest-bearing liabilities	7,614,132	50,739	0.67	6,779,541	73,497	1.08	6,853,751	59,153	0.86
Non-interest bearing liabilities:									
Non-interest bearing deposits	1,984,420			1,502,672			1,463,662		
Other Non-interest bearing liabilities	244,025			143,760			93,825		
Total Non-Interest Bearing Liabilities	2,228,445			1,646,432			1,557,487		
Total liabilities	9,842,577			8,425,973			8,411,238		
Stockholders' equity	1,494,563			1,394,859			1,325,211		
Total liabilities and equity	\$ 11,337,140			\$ 9,820,832			\$ 9,736,449		
Net interest income		\$ 312,570			\$ 297,973			\$ 300,676	
Net interest rate spread			2.92 %			3.10 %			3.20 %
Net interest earning assets	\$ 2,506,423			\$ 2,115,022			\$ 2,011,325		
Net interest margin ⁽³⁾			3.09 %			3.35 %			3.39 %
Ratio of interest-earning assets to total interest-bearing liabilities	1.33x			1.31x			1.29x		

(1) Average outstanding balance amounts are at amortized cost.

(2) Average outstanding balances are net of the allowance for credit losses, deferred loan fees and expenses, and loan premiums and discounts and include non-accrual loans.

(3) Net interest income divided by average interest-earning assets.

Rate/Volume Analysis. The following table presents the extent to which changes in interest rates and changes in the volume of interest-earning assets and interest-bearing liabilities have affected interest income and interest expense during the periods indicated. Information is provided in each category with respect to: (i) changes attributable to changes in volume (changes in volume multiplied by prior rate); (ii) changes attributable to changes in rate (changes in rate multiplied by prior volume); and (iii) the net change. The changes attributable to the combined impact of volume and rate have been allocated proportionately to the changes due to volume and the changes due to rate.

	Years Ended December 31,					
	2020 vs. 2019			2019 vs. 2018		
	Increase/(Decrease) Due to		Total Increase/ (Decrease)	Increase/(Decrease) Due to		Total Increase/ (Decrease)
	Volume	Rate		Volume	Rate	
(In thousands)						
Interest-earning assets:						
Deposits, Federal funds sold and short-term investments	\$ 7,785	\$ (8,110)	\$ (325)	\$ 930	\$ 59	\$ 989
Investment securities	(968)	5	(963)	(133)	(50)	(183)
Securities available for sale	(623)	(5,096)	(5,719)	641	739	1,380
Federal Home Loan Bank Stock	(284)	(393)	(677)	(404)	(114)	(518)
Loans	49,100	(49,576)	(476)	(800)	10,773	9,973
Total interest-earning assets	55,010	(63,170)	(8,160)	234	11,407	11,641
Interest-bearing liabilities:						
Savings deposits	2,606	(2,597)	9	(614)	371	(243)
Demand deposits	5,235	(12,014)	(6,779)	174	8,919	9,093
Time deposits	1,107	(6,241)	(5,134)	126	5,825	5,951
Borrowed funds	(2,128)	(9,237)	(11,365)	(3,933)	3,476	(457)
Subordinated debentures	512	—	512	—	—	—
Total interest-bearing liabilities	7,332	(30,089)	(22,757)	(4,247)	18,591	14,344
Net interest income	\$ 47,678	\$ (33,081)	\$ 14,597	\$ 4,481	\$ (7,184)	\$ (2,703)

Comparison of Financial Condition at December 31, 2020 and December 31, 2019

Total assets at December 31, 2020 were \$12.92 billion, a \$3.11 billion increase from December 31, 2019. The increase in total assets was primarily due to \$2.20 billion of assets acquired from SB One, which includes \$22.4 million of goodwill and \$10.0 million of other intangible assets, as well as an increase of \$473.2 million related to commercial loans made under the Paycheck Protection Program ("PPP").

The Company's loan portfolio increased \$2.49 billion to \$9.82 billion at December 31, 2020, from \$7.33 billion at December 31, 2019, which included \$1.77 billion of loans acquired from SB One and \$473.2 million of PPP loans. For the year ended December 31, 2020, loan originations, including advances on lines of credit, totaled \$3.50 billion, compared with \$2.83 billion for 2019. The loan portfolio had net increases of \$932.7 million in commercial loans, \$880.2 million in commercial mortgage loans, \$258.8 million in multi-family mortgage loans, \$216.5 million in residential mortgage loans and \$112.1 million in construction loans.

Commercial loans, consisting of commercial real estate, multi-family, construction and commercial loans, totaled \$8.05 billion, accounting for 81.8% of the loan portfolio at December 31, 2020, compared to \$5.87 billion, or 80.0% of the loan portfolio at December 31, 2019. The Company intends to continue to focus on the origination of commercially-oriented loans. Retail loans, which consist of one- to four-family residential mortgage and consumer loans, such as fixed-rate home equity loans and lines of credit, totaled \$1.79 billion and accounted for 18.2% of the loan portfolio at December 31, 2020, compared to \$1.47 billion, or 20.0%, of the loan portfolio at December 31, 2019.

The Company participates in loans originated by other banks, including participations designated as Shared National Credits ("SNC"). The Company's gross commitments and outstanding balances as a participant in SNCs were \$225.4 million and \$110.6 million, respectively, at December 31, 2020. At December 31, 2020, one SNC relationship was classified as

substandard. Our share of the gross commitments and outstanding balances for this substandard SNC relationship totaled \$10.4 million.

The Company had outstanding junior lien mortgages totaling \$174.0 million at December 31, 2020. Of this total, 17 loans totaling \$1.2 million were 90 days or more delinquent, and were allocated total loss reserves of \$22,590.

At December 31, 2020, the allowance for credit losses on loans was \$101.5 million, representing 1.03% of total loans, or 1.09% of total loans excluding PPP, compared to \$55.5 million, or 0.76% of total loans, prior to the adoption of CECL at December 31, 2019. The allowance for credit losses on loans increased \$45.9 million for the year ended December 31, 2020. The increase in the allowance for credit losses was attributable to elevated provisions for credit losses primarily due to the current weak economic forecast attributable to the COVID-19 pandemic and the adoption of CECL, along with \$15.5 million and \$13.6 million additions to the allowance for credit losses for loans and PCD loans, respectively, related to the acquisition of the SB One loan portfolio. The Company incurred net charge-offs of \$5.3 million, compared to net-charge-offs of \$13.1 million for the prior year.

Total non-performing loans at December 31, 2020 were \$87.1 million, or 0.89% of total loans, compared with \$40.2 million, or 0.55% of total loans at December 31, 2019. The increase in non-performing loans in 2020 reflects the effects of the protracted duration of the pandemic and related government response, and the attendant increased uncertainty of affected borrowers' ability to repay all contractually due principal and interest. At December 31, 2020, impaired loans totaled \$86.0 million with related specific reserves of \$9.0 million, compared with impaired loans totaling \$70.6 million with related specific reserves of \$5.1 million at December 31, 2019. Within total impaired loans, there were \$43.7 million of loans for which the present value of expected future cash flows or current collateral valuations exceeded the carrying amounts of the loans and for which no specific reserves were required in accordance with GAAP.

Non-performing commercial mortgage loans increased \$26.7 million to \$32.0 million at December 31, 2020, from \$5.3 million at December 31, 2019. At December 31, 2020, non-performing commercial mortgage loans consisted of 20 loans at December 31, 2020. Of these 20 loans, 11 loans totaling \$11.3 million were PCD loans. The largest non-performing commercial mortgage loan was an \$11.5 million loan secured by a first mortgage on a property located in Hasbrouck Heights, New Jersey. This loan is currently paying in accordance with its restructured terms.

Non-performing commercial loans increased \$17.0 million to \$42.1 million at December 31, 2020, from \$25.2 million at December 31, 2019. Non-performing commercial loans at December 31, 2020 consisted of 69 loans, of which 24 loans were under 90 days past due and still accruing. Of these non-performing commercial loans, 16 were PCD loans totaling \$5.5 million. The largest non-performing commercial loan relationship was a Shared National Credit ("SNC") relationship, which consisted of three loans to a restaurant group with our share totaling outstanding balances of \$10.4 million at December 31, 2020. All of these loans are unsecured/non-real estate secured. These loans are currently not paying in accordance with their restructured terms. A new modification/forbearance agreement is currently being negotiated.

Non-performing construction loans totaled \$1.4 million at December 31, 2020. Non-performing construction loans at December 31, 2020 consisted of two PCD loans.

At December 31, 2020, the Company held \$4.5 million of foreclosed assets, compared with \$2.7 million at December 31, 2019. Foreclosed assets are carried at the lower of the outstanding loan balance at the time of foreclosure or fair value, less estimated costs to sell. During the year ended December 31, 2020, there were three additions to foreclosed assets with an aggregate carrying value of \$2.6 million and 12 properties sold with an aggregate carrying value of \$2.5 million and valuation charges of \$693,000. Foreclosed assets acquired from SB One totaled \$2.4 million.

Non-performing assets totaled \$91.6 million, or 0.71% of total assets at December 31, 2020, compared to \$42.9 million, or 0.44% of total assets at December 31, 2019. If the non-accrual loans had performed in accordance with their original terms, interest income would have increased by \$3.2 million during the year ended December 31, 2020. The amount of cash basis interest income that was recognized on impaired loans during the year ended December 31, 2020 was not material.

Total deposits increased \$2.74 billion for the year ended December 31, 2020 to \$9.84 billion. The increase in total deposits consisted of \$1.76 billion of deposits acquired from SB One and additional net deposit growth of \$977.4 million. Total core deposits, consisting of savings and demand deposit accounts, increased \$2.38 billion to \$8.74 billion at December 31, 2020, while total time deposits increased \$360.1 million to \$1.09 billion at December 31, 2020. The increase in core deposits for the year ended December 31, 2020 was comprised of a \$787.2 million increase in non-interest bearing demand deposits, a \$716.2 million increase in interest bearing demand deposits, a \$507.2 million increase in money market deposits and a \$364.4 million increase in savings deposits. In addition to the deposit relationships acquired from SB One, core deposit growth benefited from the deposit of PPP loan proceeds and government stimulus payments. The increase in time deposits was largely

the result of \$577.3 million acquired from SB One, partially offset by the outflow of time deposits totaling \$217.2 million. Core deposits represented 88.9% of total deposits at December 31, 2020, compared to 89.7% at December 31, 2019.

Borrowed funds increased \$50.8 million for the year ended December 31, 2020, to \$1.18 billion. The increase for the period was primarily due to \$201.6 million of borrowings acquired from SB One, partially offset by the replacement of wholesale funding with deposits. Borrowed funds represented 9.1% of total assets at December 31, 2020, a decrease from 11.5% at December 31, 2019.

Stockholders' equity increased \$206.0 million during the year ended December 31, 2020 to \$1.62 billion, primarily due to the issuance of 12,788,370 shares of common stock related to the acquisition of SB One, net income earned for the period and an increase in unrealized gains on available for sale debt securities, partially offset by dividends paid to stockholders, the charge to equity of \$8.3 million, net of tax, related to the adoption of CECL effective January 1, 2020 to establish initial allowances against credit losses on loans and off-balance sheet credit exposures, and common stock repurchases. For the year ended December 31, 2020, common stock repurchases totaled 1.3 million shares at an average cost of \$16.59, of which 49,461 shares, at an average cost of \$19.69, were made in connection with withholding to cover income taxes on the vesting of stock-based compensation. At December 31, 2020, 262,927 shares remained eligible for repurchase under the current authorization. Following completion of the current authorization, a new authorization will commence for the repurchase of up to 5% of the outstanding shares of the Company's common stock, or approximately 3.9 million shares.

Comparison of Operating Results for the Years Ended December 31, 2020 and December 31, 2019

General. Net income for the year ended December 31, 2020 was \$97.0 million, compared to \$112.6 million for the year ended December 31, 2019. Basic and diluted earnings per share were \$1.39 for the year ended December 31, 2020, compared to basic and diluted earnings per share of \$1.74 for 2019.

The Company's earnings for the year ended December 31, 2020 were aided by the July 31, 2020 acquisition of SB One which added \$2.20 billion to total assets, \$1.77 billion to loans, and \$1.76 billion to deposits. Earnings for the year were also affected by the January 1, 2020 adoption of a new accounting standard requiring the current recognition of allowances for losses expected to be incurred over the life of covered assets ("CECL"). The acquisition of SB One and changing economic forecasts attributable to the COVID-19 pandemic and projected economic recovery significantly impacted provisions for credit losses and off-balance sheet credit exposures and resulted in year-over-year fluctuations. For the year ended December 31, 2020, provisions for credit losses on loans were \$29.7 million and provisions for credit losses on off-balance sheet credit exposures were \$1.8 million, reflecting the acquisition of SB One and the economic challenges presented by the COVID-19 pandemic.

The results of operations for the year ended December 31, 2020 included pre-tax non-recurring charges related to the acquisition and integration of SB One totaling \$6.3 million and direct COVID-19 related costs such as supplemental pay for branch employees and personal protective equipment totaling \$1.4 million.

Net Interest Income. Net interest income increased \$14.6 million to \$312.6 million for 2020, from \$298.0 million for 2019. The interest rate spread decreased 18 basis points to 2.92% for 2020, from 3.10% for 2019. The net interest margin decreased 26 basis points to 3.09% for 2020, compared to 3.35% for 2019. For the year ended December 31, 2020, the net interest margin was favorably impacted by the net assets acquired from SB One, partially offset by year-over-year compression in the net interest margin as the decrease in the yield on interest-earning assets outpaced the decline in the Company's cost of interest-bearing liabilities. The degree of net interest margin compression was tempered by growth in both average loans outstanding and lower-costing average interest-bearing and non-interest bearing core deposits, which mitigated the Company's need to utilize higher-cost sources to fund average interest-earning assets. In the year ended December 31, 2019, the Company recognized the accelerated accretion of \$2.2 million in interest income upon the prepayment of loans which had been non-accruing.

Interest income decreased \$8.2 million to \$363.3 million for 2020, compared to \$371.5 million for 2019. The decrease in interest income was attributable to the downward repricing of certain adjustable rate assets and lower rates on newly originated loans, partially offset by interest income from the SB One loan portfolio. Average interest-earning assets increased \$1.23 billion to \$10.12 billion for 2020, compared to \$8.89 billion for 2019. The increase in average earning assets was largely due to a \$1.18 billion increase in average outstanding loan balances to \$8.37 billion for 2020, attributable to the loan portfolios acquired from SB One and PPP loan originations. The yield on interest-earning assets decreased 59 basis points to 3.59% for 2020, from 4.18% for 2019. The weighted average yield on total loans decreased 64 basis points to 3.87% for 2020 and the weighted average yield on available for sale debt securities decreased 48 basis points to 2.08% for 2020, from 2.56% for 2019. The weighted average yield on FHLBNY stock decreased to 6.00% for 2020, compared to 6.62% for 2019.

Interest expense decreased \$22.8 million to \$50.7 million for 2020, from \$73.5 million for 2019. The decrease in interest expense was primarily attributable to a decrease in the cost of interest-bearing liabilities, partially offset by an increase in average interest-bearing deposits. The average rate paid on interest-bearing liabilities decreased 41 basis points to 0.67% for 2020, compared to 2019. The average rate paid on interest-bearing deposits decreased 31 basis points to 0.53% for 2020, from 0.84% for 2019. The average rate paid on borrowings decreased 74 basis points to 1.36% for 2020, from 2.10% for 2019. The average rate paid on subordinated debentures assumed in the SB One acquisition was 4.90% for 2020. Average interest-bearing deposits increased \$932.9 million to \$6.38 billion for 2020, from \$5.44 billion for 2019. The average balance of interest-bearing liabilities increased \$834.6 million to \$7.61 billion for 2020, compared to \$6.78 billion for 2019. Within average interest-bearing deposits, average interest-bearing core deposits increased \$866.1 million to \$4.64 billion for 2020, compared with 2019, while average time deposits increased \$66.8 million for 2020, compared with 2019. Average non-interest bearing demand deposits increased \$481.7 million to \$1.98 billion for 2020, from \$1.50 billion for 2019. Average outstanding borrowings decreased \$108.7 million to \$1.23 billion for 2020, compared to 2019. Average outstanding subordinated debentures for 2020 was \$10.4 million.

Provision for Credit Losses. Provisions for credit losses are charged to operations in order to maintain the allowance for credit losses at a level management considers necessary to absorb projected credit losses that may arise over the expected term of each loan in the portfolio. In determining the level of the allowance for credit losses, management estimates the allowance balance using relevant available information from internal and external sources relating to past events, current conditions and a reasonable and supportable forecast. The amount of the allowance is based on estimates, and the ultimate losses may vary from such estimates as more information becomes available or later events change. Management assesses the adequacy of the allowance for credit losses on a quarterly basis and makes provisions for credit losses, if necessary, in order to maintain the valuation of the allowance.

The provision for loan losses was \$29.7 million in 2020, compared to \$13.1 million in 2019. Net charge-offs for 2020 were \$5.3 million, compared to \$13.1 million for 2019. Total charge-offs for the year ended December 31, 2020 were \$7.9 million, compared to \$15.0 million for the year ended December 31, 2019. Recoveries for the year ended December 31, 2020, were \$2.6 million, compared to \$1.9 million for the year ended December 31, 2019. The increase in the provision for credit losses for the year ended December 31, 2020 compared to the same period in 2019 was related to the January 1, 2020 adoption of CECL, the current weak economic forecast attributable to the COVID-19 pandemic and a \$15.5 million provision for credit losses related to the acquisition of the SB One loan portfolio. Future credit loss provisions are subject to significant uncertainty given the undetermined nature of prospective changes in economic conditions, as the impact of the COVID-19 pandemic continues to unfold. The effectiveness of medical advances, government programs, and the resulting impact on consumer behavior and employment conditions will have a material bearing on future credit conditions and reserve requirements.

Non-Interest Income. For the year ended December 31, 2020, non-interest income totaled \$72.4 million, an increase of \$8.6 million, compared to the same period in 2019. Other income increased \$6.2 million to \$12.8 million for the year ended December 31, 2020, primarily due to a \$4.3 million increase in net fees on loan-level interest rate swap transactions, a \$931,000 increase in net gains on the sale of fixed assets, a \$723,000 increase in net gains on the sale of foreclosed real estate and a \$451,000 increase in net gains from the sale of loans. Insurance agency income totaled \$3.5 million following the July 31, 2020 acquisition of SB One. Wealth management income increased \$3.2 million to \$25.7 million for the year ended December 31, 2020, compared to \$22.5 million for the same period in 2019, primarily due to growth in assets under management from the April 2019 T&L acquisition, combined with an increase in the market value of assets under management. Partially offsetting these increases, fee income decreased \$4.5 million to \$23.8 million, compared to the same period in 2019, largely due to a \$2.6 million decrease in deposit related fee income, a \$1.7 million decrease in prepayment fees on commercial loans and a \$400,000 decrease in other loan-related fee income, all largely due to the effects of COVID-19 on consumer and business activities.

Non-Interest Expense. Non-interest expense for the year ended December 31, 2020 was \$227.7 million, an increase of \$26.1 million from 2019. Non-interest expense for the year ended December 31, 2020, included \$6.3 million of non-recurring costs related to the acquisition and integration of SB One and \$1.4 million of COVID-19 related expenses. Compensation and benefits expense increased \$14.0 million to \$130.9 million for the year ended December 31, 2020, compared to \$116.8 million for the year ended December 31, 2019. This increase was primarily due to an increase in salary expense associated with the addition of former SB One and T&L employees, an increase in severance expense, an increase in the accrual for incentive compensation, and COVID-19 supplemental pay for branch employees, partially offset by the increased deferral of salary expense related to PPP loan originations and a decrease in stock-based compensation. For the year ended December 31, 2020, data processing costs increased \$3.9 million to \$20.8 million, compared with 2019, primarily due to non-recurring core system conversion costs related to the SB One acquisition and increases in software subscription service expense and online banking costs. Other operating expenses increased \$2.4 million to \$36.2 million for the year ended December 31, 2020, compared to \$33.8 million for the year ended December 31, 2019. This increase was largely due to increases in consulting and legal expenses primarily related to the SB One acquisition, an increase in debit card maintenance expense and a market valuation

adjustment on foreclosed real estate, partially offset by a \$2.8 million prior year estimated fair value adjustment of the contingent consideration related to the T&L acquisition. FDIC insurance expense increased \$1.8 million to \$3.1 million for year ended December 31, 2020, compared to \$1.3 million for the same period in 2019, largely due to the receipt of the small bank assessment credit in the prior year, the addition of SB One and increases in both the insurance assessment rate and total assets subject to assessment. For the year ended December 31, 2020, credit loss expense for off-balance sheet credit exposures totaled \$1.8 million based upon the January 1, 2020 adoption of CECL and the subsequent changes in loss factors due to changes in the economic forecast, the pipeline of loans approved awaiting closing and the availability on committed lines of credit. Additionally, net occupancy costs increased \$1.2 million to \$27.1 million for the year ended December 31, 2020, compared to 2019, primarily due to an increase in rent expense, a portion of which was related to the addition of SB One facilities, and a full year of the T&L acquisition, while the amortization of intangibles increased \$685,000 for the year ended December 31, 2020, compared with 2019, mainly due to an increase in the customer relationship intangible amortization attributable to the acquisition of SB One Insurance Agency, partially offset by scheduled reductions in amortization.

Income Tax Expense. For the year ended December 31, 2020, the Company's income tax expense was \$30.6 million, compared with \$34.5 million, for the same period in 2019. The Company's effective tax rate was 24.0% for the year ended December 31, 2020, compared with 23.4% for the year ended December 31, 2019. The decrease in tax expense and the higher effective tax rate for the year ended December 31, 2020 was largely the result of corresponding changes in taxable income, while the changes in the effective tax rates for the year ended December 31, 2020 compared with the same period in 2019 were primarily due to the proportion of income derived from tax exempt sources to total pre-tax income.

Comparison of Operating Results for the Years Ended December 31, 2019 and December 31, 2018

General. Net income for the year ended December 31, 2019 was \$112.6 million, compared to \$118.4 million for the year ended December 31, 2018. Basic and diluted earnings per share were both \$1.74 for the year ended December 31, 2019, compared to basic and diluted earnings per share of \$1.82 for 2018.

For the year ended December 31, 2019, the Company's earnings were adversely impacted by a \$2.0 million, or \$0.03 per basic and diluted share, net of tax expense, increase in the estimated fair value of the contingent consideration related to the April 1, 2019 acquisition of T&L. The earn-out of this contingent consideration is based upon T&L achieving certain revenue growth and retention targets over a three-year period from the date of acquisition. Based upon recent performance and improved projections for the remaining measurement period, an increase to the fair value of the contingent liability was warranted. At December 31, 2019, the contingent liability was \$9.4 million, with maximum potential future payments totaling \$11.0 million. For the year ended December 31, 2018, a non-recurring \$1.9 million tax benefit was recorded stemming from the Company's completion of a cost segregation study that assigned shorter taxable lives to certain fixed assets. This benefit contributed \$0.03 per basic and diluted share for the year ended December 31, 2018. In addition, the Company realized a \$1.6 million, or \$0.02 per share, net of tax gain on the sale of Visa Class B common shares in the fourth quarter of 2018.

Net Interest Income. Net interest income decreased \$2.7 million to \$298.0 million for 2019, from \$300.7 million for 2018. The interest rate spread decreased 10 basis points to 3.10% for 2019, from 3.20% for 2018. The net interest margin decreased four basis points to 3.35% for 2019, compared to 3.39% for 2018. For the year ended December 31, 2019, the decrease in net interest income was primarily due to compression in the net interest margin as the increase in the cost of the Company's average interest-bearing deposits and borrowings outpaced the improvement in the yield on average total loans. Net interest income for the year ended December 31, 2019 was aided by the recognition of \$2.2 million in interest income, in the second quarter of 2019, upon the prepayment of loans which had previously been non-accruing.

Interest income increased \$11.6 million to \$371.5 million for 2019, compared to \$359.8 million for 2018. The increase in interest income was attributable to an increase in average earning asset balances and an increase in the yield on average interest-earning assets. Average interest-earning assets increased \$29.4 million to \$8.89 billion for 2019, compared to \$8.87 billion for 2018. The increase in average earning assets was largely attributable to a \$47.8 million increase in the average balance of the total investment portfolio. This was partially offset by an \$18.3 million decrease in average outstanding loan balances to \$7.19 billion for 2019 from \$7.21 billion for 2018. The yield on interest-earning assets increased 12 basis points to 4.18% for 2019, from 4.06% for 2018, mainly due to increases in the weighted average yields on total loans and the available for sale debt securities portfolio, partially offset by a decrease in FHLB NY stock yield. The weighted average yield on total loans increased 15 basis points to 4.51% for 2019 and the weighted average yield on available for sale debt securities increased seven basis points to 2.56% for 2019, from 2.49% for 2018. The weighted average yield on FHLB NY stock decreased to 6.62% for 2019, compared to 6.78% for 2018.

Interest expense increased \$14.3 million to \$73.5 million for 2019, from \$59.2 million for 2018. The increase in interest expense was primarily attributable to an increase in the cost of interest-bearing liabilities and an increase in average interest-bearing deposits, partially offset by a decline in average borrowings. The average rate paid on interest-bearing liabilities

increased 22 basis points to 1.08% for 2019, compared to 2018. The average rate paid on interest-bearing deposits increased 26 basis points to 0.84% for 2019, from 0.58% for 2018. The average rate paid on borrowings increased 25 basis points to 2.10% for 2019, from 1.85% for 2018. Average interest-bearing deposits increased \$125.1 million to \$5.44 billion for 2019, from \$5.32 billion for 2018. The average balance of interest-bearing liabilities decreased \$74.2 million to \$6.78 billion for 2019, compared to \$6.85 billion for 2018. Within average interest-bearing deposits, average time deposits increased \$129.7 million for 2019, compared with 2018, while average interest-bearing core deposits decreased \$4.6 million to \$4.64 billion for 2019, compared with 2018. Average non-interest bearing demand deposits increased \$39.0 million to \$1.50 billion for 2019, from \$1.46 billion for 2018. Average outstanding borrowings decreased \$199.3 million to \$1.34 billion for 2019, compared to 2018.

Provision for Loan Losses. The provision for loan losses was \$13.1 million in 2019, compared to \$23.7 million in 2018. The decrease in the provision for loan losses was primarily attributable to a \$14.9 million loss related to a commercial borrower that filed a Chapter 7 petition in bankruptcy on March 27, 2018 for a liquidation of assets. Net charge-offs for 2019 were \$13.1 million, compared to \$28.3 million for 2018. Total charge-offs for the year ended December 31, 2019 were \$15.0 million, compared to \$30.0 million for the year ended December 31, 2018. Recoveries for the year ended December 31, 2019, were \$1.9 million, compared to \$1.7 million for the year ended December 31, 2018. The allowance for loan losses at December 31, 2019 was \$55.5 million, or 0.76% of total loans, compared to \$55.6 million, or 0.77% of total loans, at December 31, 2018. At December 31, 2019, non-performing loans as a percentage of total loans were 0.55%, compared to 0.35% at December 31, 2018. Non-performing assets as a percentage of total assets were 0.44% at December 31, 2019, compared to 0.28% at December 31, 2018. At December 31, 2019, non-performing loans were \$40.2 million, compared to \$25.7 million at December 31, 2018, and non-performing assets were \$42.9 million at December 31, 2019, compared to \$27.3 million at December 31, 2018.

Non-Interest Income. For the year ended December 31, 2019, non-interest income totaled \$63.8 million, an increase of \$5.1 million, compared to the same period in 2018. Wealth management income increased \$4.5 million to \$22.5 million for the year ended December 31, 2019, compared to \$18.0 million for the same period in 2018, primarily due to fees earned from assets under management acquired in the T&L transaction, partially offset by a decrease in managed mutual fund fees. Other income increased \$1.7 million to \$6.6 million for the year ended December 31, 2019, primarily due to a \$2.6 million increase in net fees on loan-level interest rate swap transactions, partially offset by decreases of \$659,000 and \$353,000 in net gains on the sale of foreclosed real estate and net gains on the sale of loans, respectively. Income from BOLI increased \$783,000 to \$6.3 million for the year ended December 31, 2019, compared to the same period in 2018, due to an increase in benefit claims and greater equity valuations, while fee income increased \$237,000 to \$28.3 million, compared to the same period in 2018, largely due to a \$1.0 million increase in prepayment fees on commercial loans, partially offset by a \$264,000 decrease in debit card revenue, a \$144,000 decrease in income from non-deposit investment products and a \$125,000 decrease in deposit related fee income. Partially offsetting increases in other income, net gains on securities transactions decreased \$2.1 million for the year ended December 31, 2019, due to the sale of Visa Class B common shares in 2018.

Non-Interest Expense. Non-interest expense for the year ended December 31, 2019 was \$201.6 million, an increase of \$9.8 million from 2018. Compensation and benefits expense increased \$5.4 million to \$116.8 million for the year ended December 31, 2019, compared to \$111.5 million for the year ended December 31, 2018. This increase was due to additional compensation expense arising from the T&L acquisition, increased salary expense related to annual merit increases and additions of risk management and compliance professionals, along with increases in the accrual for incentive compensation and stock-based compensation. Other operating expenses increased \$2.8 million for the year ended December 31, 2019, compared to \$31.1 million for the year ended December 31, 2018. This increase was primarily due to a \$2.8 million increase in the estimated fair value of the contingent consideration related to the T&L purchase transaction. Data processing costs increased \$2.2 million to \$16.8 million for the year ended December 31, 2019, compared with 2018, primarily due to increases in software subscription service expense and implementation costs. Additionally, net occupancy costs increased \$839,000, to \$25.9 million for the year ended December 31, 2019, compared to 2018, primarily due to an increase in rent expense, a portion of which was related to the T&L acquisition, while the amortization of intangibles increased \$613,000 for the year ended December 31, 2019, compared with 2018, largely due to an increase in the customer relationship intangible amortization attributable to the acquisition of T&L. Partially offsetting these increases in non-interest expense, FDIC insurance expense decreased \$2.2 million to \$1.3 million for year ended December 31, 2019, compared to \$3.5 million for the same period in 2018, largely due to the receipt of the small bank assessment credit for the second and third quarters of 2019 and the discontinuance of the FICO assessment.

Income Tax Expense. For the year ended December 31, 2019, the Company's income tax expense was \$34.5 million, compared with \$25.5 million, for the same period in 2018. The Company's effective tax rate was 23.4% for the year ended December 31, 2019, compared with 17.7% for the year ended December 31, 2018. The increase in tax expense and the higher effective tax rates for the year ended December 31, 2019 were primarily attributable to the effects of a technical bulletin issued by the New Jersey Division of Taxation in the second quarter of 2019 that specified treatment of real estate investment trusts in connection with combined reporting for New Jersey corporate business tax purposes. For the year ended December 31, 2018,

tax expense and the effective tax rate were favorably impacted by a non-recurring \$1.9 million tax benefit related to the Company's completion of a cost segregation study that assigned shorter taxable lives to select fixed assets.

Liquidity and Capital Resources

Liquidity refers to the Company's ability to generate adequate amounts of cash to meet financial obligations to its depositors, to fund loans and securities purchases, deposit outflows and operating expenses. Sources of funds include scheduled amortization of loans, loan prepayments, scheduled maturities of investments, cash flows from mortgage-backed securities and the ability to borrow funds from the FHLBNY and approved broker-dealers.

Cash flows from loan payments and maturing investment securities are fairly predictable sources of funds. Changes in interest rates, local economic conditions, the COVID-19 pandemic and related government response and the competitive marketplace can influence loan prepayments, prepayments on mortgage-backed securities and deposit flows. For each of the years ended December 31, 2020 and 2019, loan repayments totaled \$2.60 billion and \$2.71 billion, respectively.

In response to the COVID-19 pandemic, the Company has escalated the monitoring of deposit behavior, utilization of credit lines, and borrowing capacity with the FHLBNY and FRBNY, and is enhancing its collateral position with these funding sources.

Commercial real estate loans, multi-family loans, commercial loans, one- to four-family residential loans and consumer loans are the primary investments of the Company. Purchasing securities for the investment portfolio is a secondary use of funds and the investment portfolio is structured to complement and facilitate the Company's lending activities and ensure adequate liquidity. Loan originations and purchases totaled \$3.50 billion for the year ended December 31, 2020, compared to \$2.83 billion for the year ended December 31, 2019. Purchases for the investment portfolio totaled \$298.1 million for the year ended December 31, 2020, compared to \$137.3 million for the year ended December 31, 2019. At December 31, 2020, the Bank had outstanding loan commitments to borrowers of \$1.99 billion, including undisbursed home equity lines and personal credit lines of \$212.4 million.

Total deposits increased \$2.74 billion for the year ended December 31, 2020. Deposit activity is affected by changes in interest rates, competitive pricing and product offerings in the marketplace, local economic conditions, customer confidence and other factors such as stock market volatility. Certificate of deposit accounts that are scheduled to mature within one year totaled \$886.0 million at December 31, 2020. Based on its current pricing strategy and customer retention experience, the Bank expects to retain a significant share of these accounts. The Bank manages liquidity on a daily basis and expects to have sufficient cash to meet all of its funding requirements.

As of December 31, 2020, the Bank exceeded all minimum regulatory capital requirements. At December 31, 2020, the Bank's leverage (Tier 1) capital ratio was 8.75%. FDIC regulations require banks to maintain a minimum leverage ratio of Tier 1 capital to adjusted total assets of 4.00%. At December 31, 2020, the Bank's total risk-based capital ratio was 11.21%. Under current regulations, the minimum required ratio of total capital to risk-weighted assets is 10.50%. A bank is considered to be well-capitalized if it has a leverage (Tier 1) capital ratio of at least 5.00% and a total risk-based capital ratio of at least 10.00%.

Off-Balance Sheet and Contractual Obligations

Off-balance sheet and contractual obligations as of December 31, 2020, are summarized below:

	Payments Due by Period				
	(In thousands)				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Off-Balance Sheet:					
Long-term commitments	\$ 1,959,425	\$ 868,907	\$ 665,900	\$ 151,161	\$ 273,457
Letters of credit	32,471	30,830	1,191	25	425
Total off-balance sheet	1,991,896	899,737	667,091	151,186	273,882
Contractual Obligations:					
Certificate of deposits	1,094,174	886,019	153,113	54,544	498
Total contractual obligations	1,094,174	886,019	153,113	54,544	498
Total	<u>\$ 3,086,070</u>	<u>\$ 1,785,756</u>	<u>\$ 820,204</u>	<u>\$ 205,730</u>	<u>\$ 274,380</u>

Off-balance sheet commitments consist of unused commitments to borrowers for term loans, unused lines of credit and outstanding letters of credit. Total off-balance sheet obligations were \$1.99 billion at December 31, 2020, an increase of \$519.0 million, or 35.2%, from \$1.47 billion at December 31, 2019, largely due to the SB One acquisition.

Contractual obligations consist of certificate of deposit liabilities. Total certificate of deposits at December 31, 2020 were \$1.09 billion, an increase of \$360.1 million, compared to \$734.0 million at December 31, 2019. There was one security purchase of \$1.0 million in 2020 which settled in January 2021, while for 2019, there was one security purchase for \$500,000 which settled in 2020.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Qualitative Analysis. Interest rate risk is the exposure of a bank's current and future earnings and capital arising from adverse movements in interest rates. The guidelines of the Company's interest rate risk policy seek to limit the exposure to changes in interest rates that affect the underlying economic value of assets and liabilities, earnings and capital. To minimize interest rate risk, the Company generally sells all 20- and 30-year fixed-rate residential mortgage loans at origination. The Company retains residential fixed rate mortgages with terms of 15 years or less and biweekly payment residential mortgages with a term of 30 years or less. Commercial real estate loans generally have interest rates that reset in five years, and other commercial loans such as construction loans and commercial lines of credit reset with changes in the Prime rate, the Federal Funds rate or LIBOR. Investment securities purchases generally have maturities of five years or less, and mortgage-backed securities have weighted average lives between three and five years.

The Asset/Liability Committee meets on at least a monthly basis to review the impact of interest rate changes on net interest income, net interest margin, net income and the economic value of equity. The Asset/Liability Committee reviews a variety of strategies that project changes in asset or liability mix and the impact of those changes on projected net interest income and net income.

The Company's strategy for liabilities has been to maintain a stable core-funding base by focusing on core deposit account acquisition and increasing products and services per household. Certificate of deposit accounts as a percentage of total deposits were 11.1% at December 31, 2020, compared to 10.3% at December 31, 2019. Certificate of deposit accounts are generally short-term. As of December 31, 2020, 81.0% of all certificates of deposit had maturities of one year or less compared to 82.7% at December 31, 2019. The Company's ability to retain maturing time deposit accounts is the result of its strategy to remain competitively priced within its marketplace. The Company's pricing strategy may vary depending upon current funding needs and the ability of the Company to fund operations through alternative sources, primarily by accessing short-term lines of credit with the FHLBNY during periods of pricing dislocation.

Quantitative Analysis. Current and future sensitivity to changes in interest rates are measured through the use of balance sheet and income simulation models. The analysis captures changes in net interest income using flat rates as a base, a most likely rate forecast and rising and declining interest rate forecasts. Changes in net interest income and net income for the forecast period, generally twelve to twenty-four months, are measured and compared to policy limits for acceptable change. The Company periodically reviews historical deposit re-pricing activity and makes modifications to certain assumptions used in its income simulation model regarding the interest rate sensitivity of deposits without maturity dates. These modifications are made to more closely reflect the most likely results under the various interest rate change scenarios. Since it is inherently difficult to predict the sensitivity of interest bearing deposits to changes in interest rates, the changes in net interest income due to changes in interest rates cannot be precisely predicted. There are a variety of reasons that may cause actual results to vary considerably from the predictions presented below which include, but are not limited to, the timing, magnitude, and frequency of changes in interest rates, interest rate spreads, prepayments, and actions taken in response to such changes. Specific assumptions used in the simulation model include:

- Parallel yield curve shifts for market rates;
- Current asset and liability spreads to market interest rates are fixed;
- Traditional savings and interest bearing demand accounts move at 10% of the rate ramp in either direction;
- Retail Money Market and Business Money Market accounts move at 25% and 75% of the rate ramp in either direction, respectively; and
- Higher-balance demand deposit tiers and promotional demand accounts move at 50% to 75% of the rate ramp in either direction.

The following table sets forth the results of the twelve month projected net interest income model as of December 31, 2020.

Change in Interest Rates in Basis Points (Rate Ramp)	Net Interest Income		
	Amount	Change	Percent Change
	(Dollars in thousands)		
-100	\$ 327,641	\$ (9,514)	(2.8)%
Static	337,155	—	—
100	339,812	2,657	0.8
200	342,848	5,693	1.7
300	345,963	8,808	2.6

The above table indicates that as of December 31, 2020, in the event of a 300 basis point increase in interest rates, whereby rates ramp up evenly over a twelve-month period, the Company would experience a 2.6%, or \$8.8 million increase in net interest income. In the event of a 100 basis point decrease in interest rates, whereby rates ramp down evenly over a twelve-month period, the Company would experience a 2.8%, or \$9.5 million decrease in net interest income.

Another measure of interest rate sensitivity is to model changes in economic value of equity through the use of immediate and sustained interest rate shocks. The following table illustrates the economic value of equity model results as of December 31, 2020.

Change in Interest Rates in Basis Points	Present Value of Equity			Present Value of Equity as Percent of Present Value of Assets		
	Amount	Change	Percent Change	Present Value Ratio		Percent Change
	(Dollars in thousands)					
-100	\$ 1,198,562	\$ (203,796)	(14.5)%	8.9	%	(16.2)%
Flat	1,402,358	—	— %	10.6	%	— %
100	1,470,471	68,113	4.9 %	11.4	%	7.0 %
200	1,519,475	117,117	8.4 %	12.0	%	12.9 %
300	1,554,020	151,662	10.8 %	12.6	%	17.9 %

The preceding table indicates that as of December 31, 2020, in the event of an immediate and sustained 300 basis point increase in interest rates, the Company would experience a 10.8%, or \$151.7 million increase in the present value of equity. If rates were to decrease 100 basis points, the Company would experience a 14.5%, or \$203.8 million decrease in the present value of equity.

Certain shortcomings are inherent in the methodologies used in the above interest rate risk measurements. Modeling changes in net interest income requires the use of certain assumptions regarding prepayment and deposit decay rates, which may or may not reflect the manner in which actual yields and costs respond to changes in market interest rates. While management believes such assumptions are reasonable, there can be no assurance that assumed prepayment rates and decay rates will approximate actual future loan prepayment and deposit withdrawal activity. Moreover, the net interest income table presented assumes that the composition of interest sensitive assets and liabilities existing at the beginning of a period remains constant over the period being measured and also assumes that a particular change in interest rates is reflected uniformly across the yield curve regardless of the duration to maturity or repricing of specific assets and liabilities. Accordingly, although the net interest income table provides an indication of the Company's interest rate risk exposure at a particular point in time, such measurement is not intended to and does not provide a precise forecast of the effect of changes in market interest rates on the Company's net interest income and will differ from actual results.

Item 8. Financial Statements and Supplementary Data

The following are included in this item:

- A. Report of Independent Registered Public Accounting Firm
- B. Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting
- C. Consolidated Financial Statements:
 - (1) Consolidated Statements of Financial Condition as of December 31, 2020 and 2019
 - (2) Consolidated Statements of Income for the years ended December 31, 2020, 2019 and 2018
 - (3) Consolidated Statements of Comprehensive Income for the years ended December 31, 2020, 2019 and 2018
 - (4) Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2020, 2019 and 2018
 - (5) Consolidated Statements of Cash Flows for the years ended December 31, 2020, 2019 and 2018
 - (6) Notes to Consolidated Financial Statements
- D. Provident Financial Services, Inc., Condensed Financial Statements:
 - (1) Condensed Statement of Financial Condition as of December 31, 2020 and 2019
 - (2) Condensed Statement of Income for the years ended December 31, 2020, 2019 and 2018
 - (3) Condensed Statement of Cash Flows for the years ended December 31, 2020, 2019 and 2018

The supplementary data required by this Item is provided in Note 18 of the Notes to Consolidated Financial Statements.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Provident Financial Services, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated statements of financial condition of Provident Financial Services, Inc. and subsidiary (the Company) as of December 31, 2020 and 2019, the related consolidated statements of income, comprehensive income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

We also have 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, 2020, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 1, 2021 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Change in Accounting Principle

As discussed in Note 1 to the consolidated financial statements, the Company has changed its method of accounting for the recognition and measurement of credit losses as of January 1, 2020 due to the adoption of Accounting Standards Codification Topic 326, Financial Instruments – Credit Losses.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated 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 the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated 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 consolidated 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 consolidated 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 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

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

Allowance for credit losses - Loans evaluated on a collective basis

As discussed in Notes 1 and 7 to the consolidated financial statements, the Company's allowance for credit losses on loans (excluding purchase credit deteriorated (PCD) loans) evaluated on a collective basis (the collective ACL on loans) was \$79.4 million of a total allowance for credit losses of \$101.5 million as of December 31, 2020. The collective ACL on loans includes the measure of expected credit losses on a collective (pooled) basis for class segments of loans that share similar risk characteristics. The Company estimated the collective ACL on loans using relevant available information, from internal and external sources, related to past events, current conditions, and reasonable and supportable forecasts. The Company uses a discounted cash flow methodology where the respective quantitative allowance for each segment is measured by comparing the

present value of expected principal and interest cash flows projected using an econometric, probability of default (PD) and loss given default (LGD) modeling methodology to the amortized cost. The Company uses regression models to develop the PD and LGD assumptions, which are derived from historical credit loss experience for both the Company and class segment-specific selected peers and incorporate an external economic forecast over a reasonable and supportable forecast period. After the reasonable and supportable forecast period, the Company reverts to long-term average economic factors over a reversion period on a straight-line basis. Contractual cash flows over the contractual life of the loans are the basis for modeled cash flows, adjusted for modeled defaults and expected prepayments and discounted at the loan-level stated interest rate. After quantitative considerations, the Company applies additional qualitative adjustments, which include limitations inherent in the quantitative model, so that the collective ACL is reflective of the estimate of lifetime losses that exist in the loan portfolio at the balance sheet date.

We identified the assessment of the collective ACL on loans as a critical audit matter. A high degree of audit effort, including specialized skills and knowledge, and subjective and complex auditor judgment was involved in the assessment of the collective ACL on loans due to significant measurement uncertainty. Specifically, the assessment encompassed the evaluation of the collective ACL on loans methodology, including the methods and models used to estimate (1) the PD and LGD and their significant assumptions, including portfolio segmentation, the external economic forecast and macroeconomic factors, the reasonable and supportable forecast periods, the composition of the peer group and the period from which historical Company and peer experience was used, (2) the expected prepayments assumption, and (3) the qualitative adjustments and their significant assumptions, including the effects of limitations inherent in the quantitative model. The assessment also included an evaluation of the conceptual soundness and performance of the PD and LGD models. In addition, auditor judgment was required to evaluate the sufficiency of audit evidence obtained.

- development of the collective ACL on loans methodology
- development of the PD and LGD models
- monitoring of the PD and LGD models
- identification and determination of the expected prepayments assumptions and the significant assumptions used in the PD and LGD models
- development of the qualitative adjustments, including the significant assumptions used in the measurement of the qualitative adjustments
- analysis of the collective ACL on loan results, trends, and ratios

We evaluated the Company's process to develop the collective ACL on loans estimate by testing certain sources of data, factors, and assumptions that the Company used, and considered the relevance and reliability of such data, factors, and assumptions. In addition, we involved credit risk professionals with specialized skills and knowledge, who assisted in:

- evaluating the Company's collective ACL on loans methodology for compliance with U.S. generally accepted accounting principles
- evaluating judgments made by the Company relative to the development and performance monitoring of the PD and LGD models, by comparing them to relevant Company-specific metrics and trends and the applicable industry and regulatory practices
- assessing the conceptual soundness and performance testing of the PD and LGD models, by inspecting the model documentation to determine whether the models are suitable for their intended use
- evaluating the expected prepayments assumption by comparing to relevant Company-specific metrics and trends and the applicable industry and regulatory practices
- evaluating the economic forecast through comparison to publicly available forecasts
- assessing the economic forecast used by comparing it to the Company's business environment and relevant industry practices
- evaluating the length of the period from which historical Company and peer experience was used and the reasonable and supportable forecast period by comparing them to specific portfolio risk characteristics and trends
- assessing the composition of the peer group by comparing to Company and specific portfolio risk characteristics
- determining whether the loan portfolio is segmented by similar risk characteristics by comparing to the Company's business environment and relevant industry practices
- evaluating the methodology used to develop the qualitative adjustments and the effect of those adjustments on the collective ACL on loans compared with relevant credit risk factors and consistency with credit trends and identified limitations of the underlying quantitative models.

We also assessed the sufficiency of the audit evidence obtained related to the collective ACL on loans by evaluating the:

- cumulative results of the audit procedures
- qualitative aspects of the Company's accounting practices

- Potential bias in the accounting estimate

Assessment of the fair value measurement of loans acquired in the SB One Bancorp acquisition

As discussed in Note 3 to the consolidated financial statements, on July 31, 2020, the Company completed its acquisition of SB One Bancorp (SB One). The acquisition was accounted for as a business combination using the acquisition method of accounting. Accordingly, assets acquired, liabilities assumed and consideration paid for SB One were recorded at their fair values at the acquisition date. The acquisition-date fair value of the acquired loans was \$1.77 billion, which was determined based on a discounted cash flow method based on the remaining maturity and repricing terms, with the cash flows being adjusted for expected losses and prepayments.

We identified the assessment of the fair value measurement of loans acquired in the SB One acquisition as a critical audit matter. There was a high degree of subjective and complex auditor judgment, including specialized skills and knowledge, in the assessment of the fair value measurement of loans acquired due to significant measurement uncertainty. The assessment encompassed the evaluation of the fair value methodology for acquired loans, including the identification of Purchase Credit Deterioration (PCD) loans, valuation assumptions related to prepayment speeds, expected losses and discount rates and the inputs used to determine those key assumptions.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the measurement of the fair value of loans acquired, including controls over the:

- development of the fair value methodology
- identification of PCD loans
- determination of the key valuation assumptions
- evaluation of the inputs used to develop those key assumptions
- analysis of the fair value measurement of loans acquired results

We involved valuation professionals with specialized skills and knowledge, who assisted in:

- evaluating the fair value measurement methodology for compliance with U.S. generally accepted accounting principles, and
- developing an independent estimate of the fair value of a sample of loans using independently developed key assumptions including prepayment speeds, expected losses and discount rates used by other market participants, and compared the result to the Company's fair value estimate

/s/ KPMG LLP

We have not been able to determine the specific year that we began serving as the Company's auditor; however, we are aware that we have served as the Company's auditor since at least 1997.

Short Hills, New Jersey
March 1, 2021

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

To the Stockholders and Board of Directors
Provident Financial Services, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited Provident Financial Services, Inc. and subsidiary's (the Company) internal control over financial reporting as of December 31, 2020, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2020, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated statements of financial condition of the Company as of December 31, 2020 and 2019, the related consolidated statements of income, comprehensive income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes (collectively, the consolidated financial statements), and our report dated March 1, 2021 expressed an unqualified opinion on those consolidated financial statements.

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, included 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 the 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 of internal control over financial reporting 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/ KPMG LLP

Short Hills, New Jersey
March 1, 2021

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY
Consolidated Statements of Financial Condition
December 31, 2020 and 2019
(Dollars in Thousands, except share data))U8i 754er32qd X ACSDXF

	<u>December 31, 2020</u>	<u>December 31, 2019</u>
ASSETS		
Cash and due from banks	\$ 404,355	\$ 131,555
Short-term investments	127,998	55,193
Total cash and cash equivalents	532,353	186,748
Available for sale debt securities, at fair value	1,105,489	976,919
Held to maturity debt securities, net (fair value of \$472,451 and \$467,966 at December 31, 2020 and December 31, 2019, respectively).	450,965	453,629
Equity securities, at fair value	971	825
Federal Home Loan Bank Stock	59,489	57,298
Loans	9,822,890	7,332,885
Less allowance for credit losses	101,466	55,525
Net loans	9,721,424	7,277,360
Foreclosed assets, net	4,475	2,715
Banking premises and equipment, net	75,946	55,210
Accrued interest receivable	46,450	29,031
Intangible assets	466,212	437,019
Bank-owned life insurance	234,607	195,533
Other assets	221,360	136,291
Total assets	<u>\$ 12,919,741</u>	<u>\$ 9,808,578</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Deposits:		
Demand deposits	\$ 7,395,508	\$ 5,384,868
Savings deposits	1,348,147	983,714
Certificates of deposit of \$100 thousand or more	717,216	438,551
Other time deposits	376,958	295,476
Total deposits	9,837,829	7,102,609
Mortgage escrow deposits	34,298	26,804
Borrowed funds	1,175,972	1,125,146
Subordinated debentures	25,135	—
Other liabilities	226,710	140,179
Total liabilities	11,299,944	8,394,738
Stockholders' Equity:		
Preferred stock, \$0.01 par value, 50,000,000 shares authorized, none issued	—	—
Common stock, \$0.01 par value, 200,000,000 shares authorized, 83,209,012 shares issued and 77,611,107 shares outstanding at December 31, 2020, and 83,209,283 shares issued and 65,787,900 shares outstanding at December 31, 2019, respectively.	832	832
Additional paid-in capital	962,453	1,007,303
Retained earnings	718,090	695,273
Accumulated other comprehensive income	17,655	3,821
Treasury stock	(59,018)	(268,504)
Unallocated common stock held by the Employee Stock Ownership Plan	(20,215)	(24,885)
Common stock acquired by deferred compensation plans	(4,549)	(3,833)
Deferred compensation plans	4,549	3,833
Total stockholders' equity	1,619,797	1,413,840
Total liabilities and stockholders' equity	<u>\$ 12,919,741</u>	<u>\$ 9,808,578</u>

See accompanying notes to consolidated financial statements.

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY

Consolidated Statements of Income
Years Ended December 31, 2020, 2019 and 2018
(Dollars in Thousands, except share data)

	Years ended December 31,		
	2020	2019	2018
Interest income:			
Real estate secured loans	\$ 224,925	\$ 223,361	\$ 215,231
Commercial loans	82,157	82,540	79,371
Consumer loans	16,922	18,579	19,906
Available for sale debt securities and Federal Home Loan Bank Stock	25,446	31,842	30,981
Held to maturity debt securities	11,461	12,424	12,606
Deposits, federal funds sold and other short-term investments	2,398	2,724	1,734
Total interest income	<u>363,309</u>	<u>371,470</u>	<u>359,829</u>
Interest expense:			
Deposits	33,589	45,494	30,693
Borrowed funds	16,638	28,003	28,460
Subordinated debentures	512	—	—
Total interest expense	<u>50,739</u>	<u>73,497</u>	<u>59,153</u>
Net interest income	312,570	297,973	300,676
Provision for credit losses	29,719	13,100	23,700
Net interest income after provision for credit losses	<u>282,851</u>	<u>284,873</u>	<u>276,976</u>
Non-interest income:			
Fees	23,847	28,321	28,084
Wealth management income	25,733	22,503	17,957
Insurance agency income	3,513	—	—
Bank-owned life insurance	6,491	6,297	5,514
Net gain on securities transactions	81	72	2,221
Other income	12,766	6,601	4,900
Total non-interest income	<u>72,431</u>	<u>63,794</u>	<u>58,676</u>
Non-interest expense:			
Compensation and employee benefits	130,868	116,849	111,496
Net occupancy expense	27,142	25,895	25,056
Data processing expense	20,767	16,836	14,664
FDIC Insurance	3,116	1,316	3,482
Advertising and promotion expense	4,400	4,115	3,836
Credit loss expense for off-balance sheet credit exposures	1,814	—	—
Amortization of intangibles	3,425	2,740	2,127
Other operating expenses	36,196	33,828	31,074
Total non-interest expenses	<u>227,728</u>	<u>201,579</u>	<u>191,735</u>
Income before income tax expense	127,554	147,088	143,917
Income tax expense	30,603	34,455	25,530
Net income	<u>\$ 96,951</u>	<u>\$ 112,633</u>	<u>\$ 118,387</u>
Basic earnings per share	\$ 1.39	\$ 1.74	\$ 1.82
Average basic shares outstanding	69,548,499	64,604,224	64,942,886
Diluted earnings per share	\$ 1.39	\$ 1.74	\$ 1.82
Average diluted shares outstanding	69,625,958	64,734,591	65,103,097

See accompanying notes to consolidated financial statements.

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY

**Consolidated Statements of Comprehensive Income
Years Ended December 31, 2020, 2019 and 2018
(Dollars in Thousands)**

	Years ended December 31,		
	2020	2019	2018
Net income	\$ 96,951	\$ 112,633	\$ 118,387
Other comprehensive income (loss), net of tax:			
Unrealized gains and losses on available for sale debt securities:			
Net unrealized gains (losses) arising during the period	14,944	18,351	(6,129)
Reclassification adjustment for gains (losses) included in net income	—	—	—
Total	14,944	18,351	(6,129)
Unrealized (losses) gains on derivatives	(5,269)	(579)	221
Amortization related to post-retirement obligations	4,159	(1,615)	1,221
Total other comprehensive income (loss)	13,834	16,157	(4,687)
Total comprehensive income	<u>\$ 110,785</u>	<u>\$ 128,790</u>	<u>\$ 113,700</u>

See accompanying notes to consolidated financial statements.

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY

Consolidated Statement of Changes in Stockholders' Equity for the Years Ended December 31, 2020, 2019 and 2018
(Dollars in Thousands)

	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS	ACCUMULATED OTHER COMPREHENSIVE LOSS	TREASURY STOCK	UNALLOCATED ESOP SHARES	COMMON STOCK ACQUIRED BY DDFP	DEFERRED COMPENSATION DDFP	TOTAL STOCKHOLDERS' EQUITY
Balance at December 31, 2017	\$ 832	\$ 1,012,908	\$ 586,132	\$ (7,465)	\$ (259,907)	\$ (33,839)	\$ (5,175)	\$ 5,175	\$ 1,298,661
Net income	—	—	118,387	—	—	—	—	—	118,387
Other comprehensive loss, net of tax	—	—	—	(4,687)	—	—	—	—	(4,687)
Cash dividends paid (\$0.82 per share)	—	—	(53,604)	—	—	—	—	—	(53,604)
Reclassification due to adopting Accounting Standards Update ("ASU") No. 2016-01	—	—	184	(184)	—	—	—	—	—
Distributions from DDFP	—	156	—	—	—	—	671	(671)	156
Purchases of treasury stock	—	—	—	—	(13,172)	—	—	—	(13,172)
Purchase of employee restricted shares to fund statutory tax withholding	—	—	—	—	(1,896)	—	—	—	(1,896)
Shares issued dividend reinvestment plan	—	577	—	—	1,132	—	—	—	1,709
Option exercises	—	(366)	—	—	1,373	—	—	—	1,007
Allocation of ESOP shares	—	2,022	—	—	—	4,161	—	—	6,183
Allocation of SAP shares	—	6,046	—	—	—	—	—	—	6,046
Allocation of stock options	—	190	—	—	—	—	—	—	190
Balance at December 31, 2018	<u>\$ 832</u>	<u>\$ 1,021,533</u>	<u>\$ 651,099</u>	<u>\$ (12,336)</u>	<u>\$ (272,470)</u>	<u>\$ (29,678)</u>	<u>\$ (4,504)</u>	<u>\$ 4,504</u>	<u>\$ 1,358,980</u>

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY

Consolidated Statement of Changes in Stockholders' Equity for the Years Ended December 31, 2020, 2019 and 2018 (Continued)
(Dollars in Thousands)

	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS	ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)	TREASURY STOCK	UNALLOCATED ESOP SHARES	COMMON STOCK ACQUIRED BY DDFP	DEFERRED COMPENSATION DDFP	TOTAL STOCKHOLDERS' EQUITY
Balance at December 31, 2018	\$ 832	\$ 1,021,533	\$ 651,099	\$ (12,336)	\$ (272,470)	\$ (29,678)	\$ (4,504)	\$ 4,504	\$ 1,358,980
Net income	—	—	112,633	—	—	—	—	—	112,633
Other comprehensive loss, net of tax	—	—	—	16,157	—	—	—	—	16,157
Reclassification due to the adoption of ASU No. 2016-02	—	—	4,350	—	—	—	—	—	4,350
Cash dividends paid (\$1.12 per share)	—	—	(72,809)	—	—	—	—	—	(72,809)
Distributions from DDFP	—	164	—	—	—	—	671	(671)	164
Purchases of treasury stock	—	—	—	—	(19,867)	—	—	—	(19,867)
Purchase of employee restricted shares to fund statutory tax withholding	—	—	—	—	(1,985)	—	—	—	(1,985)
Shares issued dividend reinvestment plan	—	671	—	—	1,559	—	—	—	2,230
Reclass of stock award shares	—	(24,024)	—	—	24,024	—	—	—	—
Option exercises	—	(96)	—	—	235	—	—	—	139
Allocation of ESOP shares	—	2,203	—	—	—	4,793	—	—	6,996
Allocation of SAP shares	—	6,671	—	—	—	—	—	—	6,671
Allocation of stock options	—	181	—	—	—	—	—	—	181
Balance at December 31, 2019	\$ 832	\$ 1,007,303	\$ 695,273	\$ 3,821	\$ (268,504)	\$ (24,885)	\$ (3,833)	\$ 3,833	\$ 1,413,840

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY

Consolidated Statement of Changes in Stockholders' Equity for the Years Ended December 31, 2020, 2019 and 2018 Continued)
(Dollars in Thousands)

	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS	ACCUMULATED OTHER COMPREHENSIVE INCOME	TREASURY STOCK	UNALLOCATED ESOP SHARES	COMMON STOCK ACQUIRED BY DEFERRED COMP PLANS	DEFERRED COMPENSATION PLANS	TOTAL STOCKHOLDERS' EQUITY
Balance at December 31, 2019	\$ 832	\$ 1,007,303	\$ 695,273	\$ 3,821	\$ (268,504)	\$ (24,885)	\$ (3,833)	\$ 3,833	\$ 1,413,840
Net income	—	—	96,951	—	—	—	—	—	96,951
Other comprehensive income, net of tax	—	—	—	13,834	—	—	—	—	13,834
Acquisition of deferred compensation plan	—	—	—	—	—	—	(1,336)	1,336	—
Cash dividends paid (\$0.92 per share)	—	—	(65,823)	—	—	—	—	—	(65,823)
Effect of adopting ASU No. 2016-13 ("CECL")	—	—	(8,311)	—	—	—	—	—	(8,311)
Distributions from deferred comp plans	—	84	—	—	—	—	620	(620)	84
Purchases of treasury stock	—	—	—	—	(21,161)	—	—	—	(21,161)
Purchase of employee restricted shares to fund statutory tax withholding	—	—	—	—	(969)	—	—	—	(969)
Shares issued dividend reinvestment plan	—	50	—	—	401	—	—	—	451
Treasury shares issued due to acquisition	—	(50,387)	—	—	231,215	—	—	—	180,828
Option exercises	—	—	—	—	—	—	—	—	—
Allocation of ESOP shares	—	(116)	—	—	—	4,670	—	—	4,554
Allocation of SAP shares	—	5,330	—	—	—	—	—	—	5,330
Allocation of stock options	—	189	—	—	—	—	—	—	189
Balance at December 31, 2020	\$ 832	\$ 962,453	\$ 718,090	\$ 17,655	\$ (59,018)	\$ (20,215)	\$ (4,549)	\$ 4,549	\$ 1,619,797

See accompanying notes to consolidated financial statements.

PROVIDENT FINANCIAL SERVICES, INC. AND SUBSIDIARY
Consolidated Statements of Cash Flows
Years Ended December 31, 2020, 2019 and 2018
(Dollars in Thousands)

	Years Ended December 31,		
	2020	2019	2018
Cash flows from operating activities:			
Net income	\$ 96,951	\$ 112,633	\$ 118,387
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization of intangibles	11,012	10,395	10,101
Provision for credit losses on loans and securities	29,719	13,100	23,700
Provision for credit loss for off-balance sheet credit exposure	1,814	—	—
Deferred tax expense (benefit)	(7,929)	1,674	(18,541)
Amortization of operating lease right-of-use assets	9,012	8,433	—
Income on Bank-owned life insurance	(6,491)	(6,297)	(5,514)
Net amortization of premiums and discounts on securities	10,058	7,789	8,540
Accretion of net deferred loan fees	(9,492)	(5,643)	(5,773)
Amortization of premiums on purchased loans, net	1,032	845	894
Net increase in loans originated for sale	(87,413)	(16,212)	(36,043)
Proceeds from sales of loans originated for sale	89,126	17,202	37,386
Proceeds from sales and paydowns of foreclosed assets	3,610	1,354	7,963
ESOP expense	2,401	4,533	4,516
Allocation of stock award shares	5,330	6,671	6,046
Allocation of stock options	189	181	190
Net gain on sale of loans	(1,713)	(990)	(1,343)
Net gain on securities transactions	(81)	(72)	(2,221)
Net gain on sale of premises and equipment	(947)	—	(25)
Net gain on sale of foreclosed assets	(821)	(190)	(798)
Decrease (increase) in accrued interest receivable	8,472	2,444	(1,829)
(Increase) decrease in other assets	(106,811)	(46,237)	5,266
Increase in other liabilities	59,883	25,312	4,817
Net cash provided by operating activities	<u>106,911</u>	<u>136,925</u>	<u>155,719</u>
Cash flows from investing activities:			
Proceeds from maturities, calls and paydowns of held to maturity debt securities	62,051	42,696	39,534
Purchases of held to maturity debt securities	(49,228)	(20,303)	(43,887)
Proceeds from sales of available for sale debt securities	13,905	—	2,212
Proceeds from maturities, calls and paydowns of available for sale debt securities	350,335	223,806	196,690
Purchases of available for sale debt securities	(248,863)	(117,022)	(237,076)
Proceeds from redemption of Federal Home Loan Bank stock	115,630	172,293	145,191
Purchases of Federal Home Loan Bank stock	(106,605)	(160,778)	(132,820)
BOLI claim benefits received	6,527	1,891	1,954
Cash received, net of cash consideration paid for acquisition	78,089	(15,022)	—
Purchases of loans	—	—	(1,344)
Net (increase) decrease in loans	(717,947)	(79,812)	79,388
Proceeds from sales of premises and equipment	947	—	25
Purchases of premises and equipment	(12,825)	(4,882)	(3,162)
Net cash provided by (used in) investing activities	<u>(507,984)</u>	<u>42,867</u>	<u>46,705</u>
Cash flows from financing activities:			
Net increase in deposits	977,442	272,487	115,956
Increase (decrease) in mortgage escrow deposits	7,494	1,236	(365)
Purchase of treasury stock	(21,161)	(19,867)	(13,172)
Purchase of employee restricted shares to fund statutory tax withholding	(969)	(1,985)	(1,896)
Cash dividends paid to stockholders	(65,823)	(72,809)	(53,604)
Shares issued to dividend reinvestment plan	451	2,230	1,709
Stock options exercised	—	139	1,007
Proceeds from long-term borrowings	2,429,999	1,243,000	695,000
Payments on long-term borrowings	(2,286,722)	(1,549,551)	(804,375)
Net (decrease) increase in short-term borrowings	(294,033)	(10,585)	(190,857)
Net cash (used in) provided by financing activities	<u>746,678</u>	<u>(135,705)</u>	<u>(250,597)</u>
Net increase (decrease) in cash and cash equivalents	345,605	44,087	(48,173)
Cash and cash equivalents at beginning of period	186,748	142,661	190,834
Cash and cash equivalents at end of period	<u>\$ 532,353</u>	<u>186,748</u>	<u>142,661</u>
Cash paid during the period for:			
Interest on deposits and borrowings	\$ 49,419	73,664	58,959
Income taxes	\$ 36,514	34,494	15,259
Non cash investing activities:			
Initial recognition of operating lease right-of-use assets	\$ —	44,946	—

Initial recognition of operating lease liabilities	\$ —	46,050	—
Transfer of loans receivable to foreclosed assets	\$ 2,516	2,314	1,965
Acquisitions:			
Non-cash assets acquired at fair value:			
Investment securities	255,242	—	—
Loans, net	1,752,529	—	—
Bank-owned life insurance	37,237	—	—
Goodwill and other intangible assets	32,404	21,562	—
Bank premises and equipment	16,620	—	—
Other assets	23,587	71	—
Total non-cash assets acquired at fair value	\$ 2,117,619	21,633	—
Liabilities assumed:			
Deposits	1,757,777	—	—
Borrowings and subordinated debt	226,656	—	—
Other liabilities	30,447	—	—
Total liabilities assumed	\$ 2,014,880	—	—
Common stock issued for acquisitions	\$ 180,828	—	—

See accompanying notes to consolidated financial statements.

(1) Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of Provident Financial Services, Inc. (the “Company”), Provident Bank (the “Bank”) and their wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. Certain reclassifications have been made in the consolidated financial statements to conform with current year classifications.

Business

The Company, through the Bank, provides a full range of banking services to individual and business customers through branch offices in New Jersey, Queens County, New York and eastern Pennsylvania. The Bank is subject to competition from other financial institutions and to the regulations of certain federal and state agencies, and undergoes periodic examinations by those regulatory authorities.

Basis of Financial Statement Presentation

The consolidated financial statements of the Company have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”). In preparing the consolidated financial statements, management is required to make estimates and assumptions about future events. These estimates and the underlying assumptions affect the reported amounts of assets and liabilities and disclosures about contingent assets and liabilities as of the dates of the consolidated statements of financial condition, and revenues and expenses for the periods then ended. Such estimates are used in connection with the determination of the allowance for credit losses, evaluation of goodwill for impairment, evaluation of the need for valuation allowances on deferred tax assets, and determination of liabilities related to retirement and other post-retirement benefits, among others. These estimates and assumptions are based on management’s best estimates and judgment. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the currently forecasted economic environment, which management believes to be reasonable under the circumstances. Such estimates and assumptions are adjusted when facts and circumstances dictate. Illiquid credit markets, volatile securities markets, and declines in the housing market and the economy generally have combined to increase the uncertainty inherent in such estimates and assumptions. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

Cash and Cash Equivalents

For purposes of reporting cash flows, cash and cash equivalents include cash and due from banks, Federal funds sold and commercial paper with original maturity dates less than 90 days.

Securities

Securities include held to maturity debt securities and available for sale debt securities. The available for sale debt securities portfolio is carried at estimated fair value, with any unrealized gains or losses, net of taxes, reported as accumulated other comprehensive income or loss in Stockholders’ Equity. Estimated fair values are based on market quotations or matrix pricing. Securities which the Company has the positive intent and ability to hold to maturity are classified as held to maturity debt securities and carried at amortized cost.

On January 1, 2020, the Company adopted CECL which replaces the incurred loss methodology with an expected loss methodology. Management measures expected credit losses on held to maturity debt securities on a collective basis by security type. Management classifies the held to maturity debt securities portfolio into the following security types:

- Agency obligations;
- Mortgage-backed securities;
- State and municipal obligations; and
- Corporate obligations.

All of the agency obligations held by the Company are issued by U.S. government entities and agencies. These securities are either explicitly or implicitly guaranteed by the U.S. government, are highly rated by major rating agencies and have a long history of no credit losses. The majority of the state and municipal, and corporate obligations carry no lower than A ratings from the rating agencies at December 31, 2020 and the Company had one security rated with a triple-B by Moody's Investors Service.

Premiums on securities are amortized to income using a method that approximates the interest method over the remaining period to the earliest call date or contractual maturity, adjusted for anticipated prepayments. Discounts on securities are accreted to income over the remaining period to the contractual maturity, adjusted for anticipated prepayments. Dividend and interest income are recognized when earned. Realized gains and losses are recognized when securities are sold or called based on the specific identification method.

Fair Value of Financial Instruments

GAAP establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). A financial instrument's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement.

Federal Home Loan Bank of New York Stock

The Bank, as a member of the Federal Home Loan Bank of New York ("FHLBNY"), is required to hold shares of capital stock of the FHLBNY at cost based on a specified formula. The Bank carries this investment at cost, which approximates fair value.

Loans

Loans receivable are carried at unpaid principal balances plus unamortized premiums, purchase accounting mark-to-market adjustments, certain deferred direct loan origination costs and deferred loan origination fees and discounts, less the allowance for credit losses.

The Bank defers loan origination fees and certain direct loan origination costs and accretes or amortizes such amounts as an adjustment to the yield over the expected lives of the related loans using the interest method. Premiums and discounts on loans purchased are amortized or accreted as an adjustment of yield over the contractual lives of the related loans, adjusted for prepayments when applicable, using methodologies which approximate the interest method.

Loans are generally placed on non-accrual status when they are past due 90 days or more as to contractual obligations or when other circumstances indicate that collection is questionable. When a loan is placed on non-accrual status, any interest accrued but not received is reversed against interest income. Payments received on a non-accrual loan are either applied to the outstanding principal balance or recorded as interest income, depending on an assessment of the ability to collect the loan. A non-accrual loan is restored to accrual status when principal and interest payments become less than 90 days past due and its future collectability is reasonably assured.

An impaired loan is defined as a loan for which it is probable, based on current information, that the Bank will not collect all amounts due under the contractual terms of the loan agreement. Impaired loans are individually assessed to determine that each loan's carrying value is not in excess of the fair value of the related collateral or the present value of the expected future cash flows. Residential mortgage and consumer loans are deemed smaller balance homogeneous loans which are evaluated collectively for impairment and are therefore excluded from the population of impaired loans.

Purchased credit deteriorated ("PCD") loans are loans acquired that have experienced more-than-insignificant deterioration in credit quality since origination. The Company evaluates acquired loans for deterioration in credit quality based on any of, but not limited to, the following: (1) non-accrual status; (2) troubled debt restructured designation; (3) risk ratings of special mention, substandard or doubtful; (4) watchlist credits; and (5) delinquency status, including loans that are current on acquisition date, but had been previously delinquent. At the acquisition date, an estimate of expected credit losses is made for groups of PCD loans with similar risk characteristics and individual PCD loans without similar risk characteristics. Subsequent to the acquisition date, the initial allowance for credit losses on PCD loans will increase or decrease based on future evaluations, with changes recognized in the provision for credit losses.

Allowance for Credit Losses on Loans

The allowance for credit losses is a valuation account that reflects management's evaluation of the current expected credit losses in the loan portfolio. The Company maintains the allowance for credit losses through provisions for credit losses that are charged to income. Charge-offs against the allowance for credit losses are taken on loans where management determines that the collection of loan principal and interest is unlikely. Recoveries made on loans that have been charged-off are credited to the allowance for credit losses.

On January 1, 2020, the Company adopted ASU 2016-13, "Measurement of Credit Losses on Financial Instruments," which replaces the incurred loss methodology with an expected loss methodology that is referred to as the current expected credit loss ("CECL") methodology. It also applies to off-balance sheet credit exposures, including loan commitments and lines of credit. The adoption of the new standard resulted in the Company recording a \$7.9 million increase to the allowance for credit losses and a \$3.2 million liability for off-balance sheet credit exposures. The adoption of the standard did not result in a change to the Company's results of operations upon adoption as it was recorded as an \$8.3 million cumulative effect adjustment, net of income taxes, to retained earnings.

The allowance for credit losses is a valuation account that reflects management's evaluation of the current expected credit losses in the loan portfolio. The Company maintains the allowance for credit losses through provisions for credit losses that are charged to income. Charge-offs against the allowance for credit losses are taken on loans where management determines that the collection of loan principal and interest is unlikely. Recoveries made on loans that have been charged-off are credited to the allowance for credit losses.

The calculation of the allowance for credit losses is a critical accounting policy of the Company. Management estimates the allowance balance using relevant available information, from internal and external sources, related to past events, current conditions, and a reasonable and supportable forecast. Historical credit loss experience for both the Company and peers provides the basis for the estimation of expected credit losses, where observed credit losses are converted to probability of default rate ("PDR") curves through the use of segment-specific loss given default ("LGD") risk factors that convert default rates to loss severity based on industry-level, observed relationships between the two variables for each segment, primarily due to the nature of the underlying collateral. These risk factors were assessed for reasonableness against the Company's own loss experience and adjusted in certain cases when the relationship between the Company's historical default and loss severity deviate from that of the wider industry. The historical PDR curves, together with corresponding economic conditions, establish a quantitative relationship between economic conditions and loan performance through an economic cycle.

Using the historical relationship between economic conditions and loan performance, management's expectation of future loan performance is incorporated using an externally developed economic forecast. This forecast is applied over a period that management has determined to be reasonable and supportable. Beyond the period over which management can develop or source a reasonable and supportable forecast, the model will revert to long-term average economic conditions using a straight-line, time-based methodology. The Company's current forecast period is six quarters, with a four quarter reversion period to historical average macroeconomic factors. The Company's economic forecast is approved by the Company's Asset-Liability Committee.

The allowance for credit losses is measured on a collective (pool) basis, with both a quantitative and qualitative analysis that is applied on a quarterly basis, when similar risk characteristics exist. The respective quantitative allowance for each segment is measured using an econometric, discounted PD/LGD modeling methodology in which distinct, segment-specific multi-variate regression models are applied to an external economic forecast. Under the discounted cash flows methodology, expected credit losses are estimated over the effective life of the loans by measuring the difference between the net present value of modeled cash flows and amortized cost basis. Contractual cash flows over the contractual life of the loans are the basis for modeled cash flows, adjusted for modeled defaults and expected prepayments and discounted at the loan-level effective interest rate. The contractual term excludes expected extensions, renewals, and modifications unless either of the following applies: management has a reasonable expectation at the reporting date that a troubled debt restructuring ("TDR") will be executed with an individual borrower or the extension or renewal options are included in the original or modified contract at the reporting date and are not unconditionally cancellable by the Company.

After quantitative considerations, management applies additional qualitative adjustments so that the allowance for credit loss is reflective of the estimate of lifetime losses that exist in the loan portfolio at the balance sheet date. Qualitative considerations include limitations inherent in the quantitative model; portfolio concentrations that may affect loss experience across one or more components of the portfolio; changes in industry conditions; changes in the Company's loan review process; changes in the Company's loan policies and procedures, economic forecast uncertainty and model imprecision.

Portfolio segment is defined as the level at which an entity develops and documents a systematic methodology to determine its allowance for credit losses. Management developed segments for estimating loss based on type of borrower and collateral which is generally based upon federal call report segmentation and have been combined or sub-segmented as needed to ensure loans of similar risk profiles are appropriately pooled. As of December 31, 2020, the portfolio and class segments for the Company's loan portfolio were:

- Mortgage Loans – Residential, Commercial Real Estate, Multi-Family and Construction
- Commercial Loans – Commercial Owner Occupied and Commercial Non-Owner Occupied
- Consumer Loans – First Lien Home Equity and Other Consumer

The allowance for credit losses on loans individually evaluated for impairment is based upon loans that have been identified through the Company's normal loan monitoring process. This process includes the review of delinquent and problem loans at the Company's Delinquency, Credit, Credit Risk Management and Allowance Committees; or which may be identified through the Company's loan review process. Generally, the Company only evaluates loans individually for impairment if the loan is non-accrual, non-homogeneous and the balance is at least \$1.0 million, or if the loan was modified in a Troubled Debt Restructuring ("TDR"). When management determines that foreclosure is probable, expected credit losses are based on the fair value of the collateral at the reporting date, adjusted for selling costs as appropriate. If the loan is not collateral dependent, the allowance for credit losses related to individually assessed loans is based on discounted expected cash flows using the loan's initial effective interest rate.

A loan for which the terms have been modified resulting in a concession by the Company, and for which the borrower is experiencing financial difficulties is considered to be a TDR. The allowance for credit losses on a TDR is measured using the same method as all other impaired loans, except that the original interest rate is used to discount the expected cash flows, not the rate specified within the restructuring.

As previously noted, in accordance with the CARES Act, the Company elected to not apply troubled debt restructuring classification to any COVID-19 related loan modifications that occurred after March 1, 2020 to borrowers who were current as of December 31, 2019. Accordingly, these modifications were not classified as TDRs. In addition, for loans modified in response to the COVID-19 pandemic that did not meet the above criteria (e.g., current payment status at December 31, 2019), the Company applied the guidance included in an interagency statement issued by the bank regulatory agencies. This guidance states that loan modifications performed in light of the COVID-19 pandemic, including loan payment deferrals that are up to six months in duration, that were granted to borrowers who were current as of the implementation date of a loan modification program or modifications granted under government mandated modification programs, are not TDRs.

For loans acquired that have experienced more-than-insignificant deterioration in credit quality since origination are considered PCD loans. The Company evaluates acquired loans for deterioration in credit quality based on any of, but not limited to, the following: (1) non-accrual status; (2) troubled debt restructured designation; (3) risk ratings of special mention, substandard or doubtful; (4) watchlist credits; and (5) delinquency status, including loans that are current on acquisition date, but had been previously delinquent. At the acquisition date, an estimate of expected credit losses is made for groups of PCD loans with similar risk characteristics and individual PCD loans without similar risk characteristics. Subsequent to the acquisition date, the initial allowance for credit losses on PCD loans will increase or decrease based on future evaluations, with changes recognized in the provision for credit losses.

Management believes the primary risks inherent in the portfolio are a general decline in the economy, a decline in real estate market values, rising unemployment or a protracted period of elevated unemployment, increasing vacancy rates in commercial investment properties and possible increases in interest rates in the absence of economic improvement. As the impact of the COVID-19 pandemic continues to unfold, the effectiveness of medical advances, government programs, and the resulting impact on consumer behavior and employment conditions will have a material bearing on future credit conditions. Any one or a combination of these events may adversely affect borrowers' ability to repay the loans, resulting in increased delinquencies, credit losses and higher levels of provisions. Management considers it important to maintain the ratio of the allowance for credit losses to total loans at an acceptable level given current and forecasted economic conditions, interest rates and the composition of the portfolio.

Although management believes that the Company has established and maintained the allowance for credit losses at appropriate levels, additions may be necessary if future economic and other conditions differ substantially from the current operating environment and economic forecast. Management evaluates its estimates and assumptions on an ongoing basis

giving consideration to forecasted economic factors, historical loss experience and other factors. Such estimates and assumptions are adjusted when facts and circumstances dictate. In addition to the ongoing impact of the COVID-19 pandemic, illiquid credit markets, volatile securities markets, and declines in the housing and commercial real estate markets and the economy in general may increase the uncertainty inherent in such estimates and assumptions. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods. In addition, various regulatory agencies periodically review the adequacy of the Company's allowance for credit losses as an integral part of their examination process. Such agencies may require the Company to recognize additions to the allowance or additional write-downs based on their judgments about information available to them at the time of their examination. Although management uses the best information available, the level of the allowance for credit losses remains an estimate that is subject to significant judgment and short-term change.

Going forward, the impact of utilizing the CECL approach to calculate the allowance for credit losses on loans will be significantly influenced by the composition, characteristics and quality of the Company's loan portfolio, as well as the prevailing economic conditions and forecast utilized. Material changes to these and other relevant factors may result in greater volatility to the allowance for credit losses, and therefore, greater volatility to the Company's reported earnings. For the year ended, December 31, 2020, changing economic forecasts attributable to the COVID-19 pandemic and projected economic recovery led to provisions for credit losses and off-balance sheet credit exposures. See Note 7 to the Consolidated Financial Statements for more information on the allowance for credit losses on loans

Allowance for Loan Losses - Incurred Loss Method

Prior to the adoption of CECL on January 1, 2020, the Company calculated the allowance for loan losses using the incurred loss method. Using this method, the allowance represented management's best estimate of probably incurred losses inherent in the current loan portfolio. While management used information to recognize losses on loans, additions and reductions of the allowance for loan losses may fluctuate from one reporting period to another based on changes in economic conditions or changes in the values of properties securing loans in the process of foreclosure. The evaluation of the various components of the allowance for loan losses required considerable judgment in order to estimate inherent loss exposures.

Each quarter, the lending group prepared individual Credit Risk Management Reports for the Credit Administration Department. These reports review all commercial loans and commercial mortgage loans that have been determined to involve above-average risk (risk rating of 5 or worse). The Credit Risk Management Reports contain the reason for the risk rating assigned to each loan, status of the loan and any current developments. These reports are submitted to a committee chaired by the Chief Credit Officer. Each loan officer reviews the loan and the corresponding Credit Risk Management Report with the committee and the risk rating is evaluated for appropriateness.

Management estimated the amount of loan losses for groups of loans by applying quantitative loss factors to loan segments at the risk rating level, and applying qualitative adjustments to each loan segment at the portfolio level. Quantitative loss factors give consideration to historical loss experience by loan type based upon an appropriate look-back period and adjusted for a loss emergence period; these factors are evaluated at least annually. Qualitative adjustments give consideration to other qualitative or environmental factors such as:

- a. levels of and trends in delinquencies and impaired loans;
- b. levels of and trends in charge-offs and recoveries;
- c. trends in volume and terms of loans;
- d. effects of any changes in lending policies, procedures and practices;
- e. changes in the quality or results of the Bank's loan review system;
- f. experience, ability, and depth of lending management and other relevant staff;
- g. national and local economic trends and conditions;
- h. industry conditions;
- i. effects of changes in credit concentration; and
- j. changes in collateral values.

Qualitative adjustments reflect risks in the loan portfolio not captured by the quantitative loss factors and, as such, are evaluated from a risk level perspective relative to the risk levels present over the look-back period. Qualitative adjustments are recalibrated at least annually and evaluated at least quarterly. The reserves resulting from the application of both of these sets of loss factors are combined to arrive at the general allowance for loan losses.

The reserve factors applied to each loan risk rating are inherently subjective in nature. Reserve factors are assigned to each of the risk rating categories. This methodology permits adjustments to the allowance for loan losses in the event that, in management's judgment, significant conditions impacting the credit quality and collectability of the loan portfolio as of the evaluation date are not otherwise adequately reflected in the analysis.

The provision for loan losses is established after considering the allowance for loan loss analysis, the amount of the allowance for loan losses in relation to the total loan balance, loan portfolio growth, loan portfolio composition, loan delinquency and non-performing loan trends and peer group analysis.

Foreclosed Assets

Assets acquired through foreclosure or deed in lieu of foreclosure are carried at the lower of the outstanding loan balance at the time of foreclosure or fair value, less estimated costs to sell. Fair value is generally based on recent appraisals. When an asset is acquired, the excess of the loan balance over fair value, less estimated costs to sell, is charged to the allowance for credit losses. A reserve for foreclosed assets may be established to provide for possible write-downs and selling costs that occur subsequent to foreclosure. Foreclosed assets are carried net of the related reserve. Operating results from real estate owned, including rental income, operating expenses, and gains and losses realized from the sales of real estate owned, are recorded as incurred.

Banking Premises and Equipment

Land is carried at cost. Banking premises, furniture, fixtures and equipment are carried at cost, less accumulated depreciation, computed using the straight-line method based on their estimated useful lives. Leasehold improvements, carried at cost, net of accumulated depreciation, are amortized over the terms of the leases or the estimated useful lives of the assets, whichever are shorter, using the straight-line method. Maintenance and repairs are charged to expense as incurred.

Income Taxes

The Company uses the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in tax expense in the period that includes the enactment date. Deferred tax assets and liabilities are reported as a component of other assets on the Consolidated Statements of Financial Condition. The determination of whether deferred tax assets will be realizable is predicated on estimates of future taxable income. Such estimates are subject to management's judgment. A valuation reserve is established when management is unable to conclude that it is more likely than not that it will realize deferred tax assets based on the nature and timing of these items. The Company recognizes, when applicable, interest and penalties related to unrecognized tax benefits in the provision for income taxes.

Trust Assets

Trust assets consisting of securities and other property (other than cash on deposit held by the Bank in fiduciary or agency capacities for customers of the Bank's wholly owned subsidiary, Beacon) are not included in the accompanying consolidated statements of financial condition because such properties are not assets of the Bank.

Intangible Assets

Intangible assets of the Bank consist of goodwill, core deposit premiums, customer relationship premium and mortgage servicing rights. Goodwill represents the excess of the purchase price over the estimated fair value of identifiable net assets acquired through purchase acquisitions. Goodwill is an intangible asset with an indefinite useful life and, in accordance with GAAP, is not amortized, but is evaluated for impairment on an annual basis, or more frequently if events or changes in circumstances indicate potential impairment between annual measurement dates. Goodwill is analyzed for impairment each

year at September 30. As permitted by GAAP, the Company prepares a qualitative assessment in determining whether goodwill may be impaired. The factors considered in the assessment include macroeconomic conditions, industry and market conditions and overall financial performance of the Company, among others. The Company completed its annual goodwill impairment test as of September 30, 2020. Based upon its qualitative assessment of goodwill, the Company concluded that goodwill was not impaired and no further quantitative analysis was warranted.

Core deposit premiums represent the intangible value of depositor relationships assumed in previous purchase acquisitions and are amortized on an accelerated basis over 8.8 years, while the core deposit premium related to SB One is amortized over its estimated useful life of 10.0 years. Customer relationship premiums represent the intangible value of customer relationships assumed in the purchase acquisitions of Beacon Trust Company ("Beacon"), The MDE Group, Inc. ("MDE"), Tirschwell & Loewy, Inc. ("T&L"), and SB One Bank and are amortized on an accelerated basis over 12.0 years, 10.4 years, 10.0 years, and 13.0 years respectively. Mortgage servicing rights are recorded when purchased or when originated mortgage loans are sold, with servicing rights retained. Mortgage servicing rights are amortized on an accelerated method based upon the estimated lives of the related loans, adjusted for prepayments. Mortgage servicing rights are carried at the lower of amortized cost or fair value.

Bank-owned Life Insurance

Bank-owned life insurance is accounted for using the cash surrender value method and is recorded at its realizable value.

Employee Benefit Plans

The Bank maintains a pension plan which covers full-time employees hired prior to April 1, 2003, the date on which the pension plan was frozen. The Bank's policy is to fund at least the minimum contribution required by the Employee Retirement Income Security Act of 1974. GAAP requires an employer to: (a) recognize in its statement of financial position the over-funded or under-funded status of a defined benefit postretirement plan measured as the difference between the fair value of plan assets and the benefit obligation; (b) measure a plan's assets and its obligations that determine its funded status at the end of the employer's fiscal year (with limited exceptions); and (c) recognize as a component of other comprehensive income, net of tax, the actuarial gains and losses and the prior service costs and credits that arise during the period.

The Bank has a 401(k) plan covering substantially all employees of the Bank. The Bank may match a percentage of the first 6% contributed by participants. The Bank's matching contribution, if any, is determined by the Board of Directors in its sole discretion.

The Bank has an Employee Stock Ownership Plan ("ESOP"). The funds borrowed by the ESOP from the Company to purchase the Company's common stock are being repaid from the Bank's contributions and dividends paid on unallocated ESOP shares over a period of up to 30 years. The Company's common stock not allocated to participants is recorded as a reduction of stockholders' equity at cost. Compensation expense for the ESOP is based on the average price of the Company's stock during each quarter and the amount of shares allocated during the quarter.

The Bank has an Equity Plan designed to provide competitive compensation for demonstrated performance and to align the interests of participants directly to increases in shareholder value. The Equity Plan provides for performance-vesting grants as well as time-vesting grants. Time-vesting stock awards, stock options and performance vesting stock awards that are based on a performance condition, such as return on average assets, are valued on the closing stock price on the date of grant. Performance-vesting stock awards and options that are based on a market condition, such as total shareholder return, would be valued using a generally accepted statistical technique to simulate future stock prices for Provident and the components of the peer group which Provident would be measured against.

Expense related to time-vesting stock awards and stock options is based on the fair value of the common stock on the date of the grant and on the fair value of the stock options on the date of the grant, respectively, and is recognized ratably over the vesting period of the awards. Performance vesting stock awards and stock options are either dependent upon a market condition or a performance condition. A market condition performance metric is tied to a stock price, either on an absolute basis, or a relative basis against peers, while a performance-condition is based on internal operations, such as earnings per share. The expense related to a market condition performance-vesting stock award or stock option requires an initial Monte Carlo simulation to determine grant date fair value, which will be recognized as a compensation expense regardless of actual payout, assuming that the executive is still employed at the end of the requisite service period. If pre-vesting termination (forfeiture) occurs, then any expense recognized to date can be reversed. The grant date fair value is recognized ratably over

the performance period. The expense related to a performance condition stock award or stock option is based on the fair value of the award on the date of grant, adjusted periodically based upon the number of awards or options expected to be earned, recognized over the performance period.

In connection with the First Sentinel acquisition in July 2004, the Company assumed the First Savings Bank Directors' Deferred Fee Plan (the "DDFP"). The DDFP was frozen prior to the acquisition. The Company recorded a deferred compensation equity instrument and corresponding contra-equity account for the value of the shares held by the DDFP at the July 14, 2004 acquisition date. These accounts will be liquidated as shares are distributed from the DDFP in accordance with the plan document. At December 31, 2020, there were 180,897 shares held by the DDFP.

The Bank maintains a non-qualified plan that provides supplemental benefits to certain executives who are prevented from receiving the full benefits contemplated by the 401(k) Plan's and the ESOP's benefit formulas under tax law limits for tax-qualified plans.

Post-retirement Benefits Other Than Pensions

The Bank provides post-retirement health care and life insurance plans to certain of its employees. The life insurance coverage is noncontributory to the participant. Participants contribute to the cost of medical coverage based on the employee's length of service with the Bank. The costs of such benefits are accrued based on actuarial assumptions from the date of hire to the date the employee is fully eligible to receive the benefits. On December 31, 2002, the Bank eliminated postretirement healthcare benefits for employees with less than 10 years of service. GAAP requires an employer to: (a) recognize in its statement of financial position the over-funded or under-funded status of a defined benefit post-retirement plan measured as the difference between the fair value of plan assets and the benefit obligation; (b) measure a plan's assets and its obligations that determine its funded status as of the end of the employer's fiscal year (with limited exceptions); and (c) recognize as a component of other comprehensive income, net of tax, the actuarial gains and losses and the prior service costs and credits that arise during the period.

Derivatives

The Company records all derivatives on the statements of financial condition at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. The Company has interest rate derivatives resulting from a service provided to certain qualified borrowers in a loan related transaction and, therefore, are not used to manage interest rate risk in the Company's assets or liabilities. As such, all changes in fair value of the Company's interest rate derivatives not used to manage interest rate risk are recognized directly in earnings.

The Company also uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreements without the exchange of the underlying notional amount. Changes in the fair value of derivatives designated and that qualify as cash flow hedges of interest rate risk are recorded in accumulated other comprehensive income and are subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. These derivatives were used to hedge the variable cash outflows associated with Federal Home Loan Bank borrowings.

The fair value of the Company's derivatives is determined using discounted cash flow analysis using observable market-based inputs, which are considered Level 2 inputs.

Comprehensive Income

Comprehensive income is divided into net income and other comprehensive income (loss). Other comprehensive income (loss) includes items previously recorded directly to equity, such as unrealized gains and losses on available for sale debt securities, unrealized gains and losses on derivatives and amortization related to post-retirement obligations. Comprehensive income is presented in a separate Consolidated Statement of Comprehensive Income.

Segment Reporting

The Company's operations are solely in the financial services industry and include providing traditional banking and other financial services to its customers. The Company operates primarily in the geographical regions of northern and central New Jersey, Queens County, New York and eastern Pennsylvania. Management makes operating decisions and assesses performance based on an ongoing review of the Bank's consolidated financial results. Therefore, the Company has a single operating segment for financial reporting purposes.

Earnings Per Share

Basic earnings per share is computed by dividing income available to common stockholders by the weighted average number of shares outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock (such as stock options) were exercised or resulted in the issuance of common stock. These potentially dilutive shares would then be included in the weighted average number of shares outstanding for the period using the treasury stock method. Shares issued and shares reacquired during the period are weighted for the portion of the period that they were outstanding.

Impact of Recent Accounting Pronouncements

Accounting Pronouncements Adopted in 2020

In May 2019, the Financial Accounting Standards Board ("FASB") issued ASU No. 2019-05, "Financial Instruments - Credit Losses (Topic 326); Targeted Transition Relief." This ASU allows entities to irrevocably elect, upon adoption of ASU 2016-13, the fair value option on financial instruments that (1) were previously recorded at amortized cost and (2) are within the scope of ASC 326-20 if the instruments are eligible for the fair value option under ASC 825-10. The fair value option election does not apply to held-to-maturity debt securities. Entities are required to make this election on an instrument-by-instrument basis. ASU 2019-05 had the same effective date as ASU 2016-13 (i.e., the first quarter of 2020). The adoption of this guidance had no impact on the Company's consolidated financial statements.

In April 2019, the FASB issued ASU No. 2019-04, "Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments" which clarifies and improves areas of guidance related to the recently issued standards on credit losses, hedging, recognition and measurement. The most significant provisions of this ASU relate to how companies will estimate expected credit losses under Topic 326 by incorporating (1) expected recoveries of financial assets, including recoveries of amounts expected to be written off and those previously written off, and (2) clarifying that contractual extensions or renewal options that are not unconditionally cancellable by the lender are considered when determining the contractual term over which expected credit losses are measured. ASU No. 2019-04 is effective for reporting periods beginning January 1, 2020. The adoption of this guidance had no impact related to Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments on the Company's consolidated financial statements. At January 1, 2020, a \$1.3 million allowance for credit losses for off-balance sheet credit exposures was recorded related to extensions on construction loans and is reflected below in the ASU 2016-13 calculation.

In August 2018, the FASB issued ASU No. 2018-13, "Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement." This ASU eliminates, adds and modifies certain disclosure requirements for fair value measurements. Among the changes, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, but will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. ASU No. 2018-13 was effective for interim and annual reporting periods beginning after December 15, 2019; early adoption was permitted. Entities are also allowed to elect early adoption of the eliminated or modified disclosure requirements and delay adoption of the new disclosure requirements until their effective date. The adoption of this guidance had no impact on the Company's consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, "Measurement of Credit Losses on Financial Instruments." The main objective of this ASU is to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments by a reporting entity at each reporting date. The amendments in this ASU require financial assets measured at amortized cost to be presented at the net amount expected to be collected. The allowance for credit losses would represent a valuation account that would be deducted from the amortized cost basis of the financial asset(s) to present the net carrying value at the amount expected to be collected on the financial asset. The income statement would reflect the measurement of credit losses for newly recognized financial assets, as well as the expected increases or decreases of expected

credit losses that have taken place during the period. The measurement of expected credit losses would be based on relevant information about past events, including historical experience, current conditions, and a reasonable and supportable forecast that affect the collectability of the reported amount. An entity will be required to use judgment in determining the relevant information and estimation methods that are appropriate in its circumstances. Furthermore, ASU 2016-13 will necessitate establishing an allowance for expected credit losses on held to maturity debt securities. This also applies to off-balance sheet credit exposures, which includes loan commitments, unused lines of credit and other similar instruments. The amendments in ASU 2016-13 are effective for fiscal years, including interim periods, beginning after December 15, 2019. Early adoption of this ASU was permitted for fiscal years beginning after December 15, 2018. The adoption of ASU 2016-13 involves changing from an "incurred loss" model, which encompasses allowances for current known and inherent losses within the portfolio, to an "expected loss" model ("CECL"), which encompasses allowances for losses expected to be incurred over the life of the portfolio. The Company adopted CECL on January 1, 2020 using the modified retrospective method for all financial assets measured at amortized cost and off-balance sheet ("OBS") credit exposures. Results for reporting periods beginning after January 1, 2020 are presented under ASC 326 while prior period amounts continue to be recorded with previously applicable GAAP. The Company recorded a \$7.9 million increase to the allowance for credit losses and a \$3.2 million liability for off-balance sheet credit exposures, which resulted in an \$8.3 million cumulative effect adjustment decrease, net of tax, to retained earnings. With regard to regulatory capital, the Company has elected to utilize the five-year CECL transition, which gives the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay.

Accounting Pronouncements Not Yet Adopted

ASU 2020-04, "Reference Rate Reform (Topic 848)" ("ASU 2020-04") provides optional expedients and exceptions for applying GAAP to loan and lease agreements, derivative contracts, and other transactions affected by the anticipated transition away from LIBOR toward new interest rate benchmarks. For transactions that are modified because of reference rate reform and that meet certain scope guidance (i) modifications of loan agreements should be accounted for by prospectively adjusting the effective interest rate and the modification will be considered "minor" so that any existing unamortized origination fees/costs would carry forward and continue to be amortized and (ii) modifications of lease agreements should be accounted for as a continuation of the existing agreement with no reassessments of the lease classification and the discount rate or re-measurements of lease payments that otherwise would be required for modifications not accounted for as separate contracts. ASU 2020-04 also provides numerous optional expedients for derivative accounting. ASU 2020-04 is effective March 12, 2020 through December 31, 2022. An entity may elect to apply ASU 2020-04 for contract modifications as of January 1, 2020, or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. Once elected for a Topic or an Industry Subtopic within the Codification, the amendments in this ASU must be applied prospectively for all eligible contract modifications for that Topic or Industry Subtopic. The Company anticipates this ASU will simplify any modifications we execute between the selected start date (yet to be determined) and December 31, 2022 that are directly related to LIBOR transition by allowing prospective recognition of the continuation of the contract, rather than the extinguishment of the old contract resulting in writing off unamortized fees/costs. In addition, in January 2021 the FASB issued ASU No. 2021-01 "Reference Rate Reform — Scope," which clarified the scope of ASC 848 relating to contract modifications. The Company is evaluating the impacts of this guidance and has not determined whether LIBOR transition and this guidance will have material effects on the Company's business operations and consolidated financial statements.

) Stockholders' Equity

On January 15, 2003, the Bank completed its plan of conversion, and the Bank became a wholly owned subsidiary of the Company. The Company sold 59.6 million shares of common stock (par value \$0.01 per share) at \$10.00 per share. The Company received net proceeds in the amount of \$567.2 million.

In connection with the Bank's commitment to its community, the plan of conversion provided for the establishment of a charitable foundation. Provident donated \$4.8 million in cash and 1.92 million of authorized but unissued shares of common stock to the foundation, which amounted to \$24.0 million in aggregate. The Company recognized an expense, net of income tax benefit, equal to the cash and fair value of the stock during 2003. Conversion costs were deferred and deducted from the proceeds of the shares sold in the offering.

Upon completion of the plan of conversion, a "liquidation account" was established in an amount equal to the total equity of the Bank as of the latest practicable date prior to the conversion. The liquidation account was established to provide a limited priority claim to the assets of the Bank to "eligible account holders" and "supplemental eligible account holders" as defined in

the Plan, who continue to maintain deposits in the Bank after the conversion. In the unlikely event of a complete liquidation of the Bank, and only in such event, each eligible account holder and supplemental eligible account holder would receive a liquidation distribution, prior to any payment to the holder of the Bank's common stock. This distribution would be based upon each eligible account holder's and supplemental eligible account holder's proportionate share of the then total remaining qualifying deposits. At December 31, 2020, the liquidation account, which is an off-balance sheet memorandum account, amounted to \$8.8 million.

(3) Business Combinations

SB One Bancorp Acquisition

On July 31, 2020, the Company completed its acquisition of SB One Bancorp ("SB One"), which added \$2.20 billion to total assets, \$1.77 billion to total loans, which included PCD loans totaling \$294.2 million, and \$1.76 billion to total deposits, and added 18 full-service banking offices in New Jersey and New York. As part of the acquisition, the addition of SB One Insurance Agency allows the Company to expand its products offerings to its customers to include an array of commercial and personal insurance products.

Under the merger agreement, each share of SB One common stock was exchanged for 1.357 shares of the Company's common stock. The Company issued 12.8 million shares of common stock from treasury stock, plus cash in lieu of fractional shares in the acquisition of SB One. The total consideration paid in the acquisition of SB One was \$180.8 million. In connection with the acquisition, SB One Bank, a wholly owned subsidiary of SB One, was merged with and into Provident Bank, a wholly owned subsidiary of the Company.

The acquisition was accounted for under the acquisition method of accounting. Under this method of accounting, the respective assets acquired and liabilities assumed were recorded at their estimated fair value. The excess of consideration paid over the estimated fair value of the net assets acquired totaled \$22.4 million and was recorded as goodwill.

The calculation of goodwill is subject to change for up to one year after the closing date of the transaction as additional information relative to closing date estimates and uncertainties becomes available. As the Company finalizes its analysis of these assets and liabilities, there may be adjustments to the recorded carrying values.

The following table summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of acquisition from SB One (in thousands):

	At July 31, 2020
Assets acquired:	
Cash and cash equivalents, net	\$ 78,089
Available for sale debt securities	231,645
Held to maturity debt securities	12,381
Federal Home Loan Bank stock	11,216
Loans	1,766,115
Allowance for credit losses on PCD loans	(13,586)
Loans, net	1,752,529
Bank-owned life insurance	37,237
Banking premises and equipment	16,620
Accrued interest receivable	8,947
Goodwill	22,439
Other intangibles assets	9,965
Foreclosed assets, net	2,441
Other assets	12,199
Total assets acquired	\$ 2,195,708
Liabilities assumed:	
Deposits	1,757,777
Mortgage escrow deposits	—
Borrowed funds	201,582
Subordinated debentures	25,074
Other liabilities	30,447
Total liabilities assumed	\$ 2,014,880
Net assets acquired	\$ 180,828

Fair Value Measurement of Assets Assumed and Liabilities Assumed

The methods used to determine the fair value of the assets acquired and liabilities assumed in the SB One acquisition were as follows:

Securities Available for Sale

The estimated fair values of the available for sale debt securities, primarily comprised of U.S. Government agency mortgage-backed securities and U.S. government agencies and municipal bonds carried on SB One's balance sheet was confirmed using open market pricing provided by multiple independent securities brokers. Management reviewed the open market quotes used in pricing the securities and a fair value adjustment was not recorded on the investments.

Held to Maturity Debt Securities

The estimated fair values of the held to maturity debt securities, primarily comprised of municipal bonds, were determined using open market pricing provided by multiple independent securities brokers. Management reviewed the open market quotes used in pricing the securities. A fair value premium of \$133,000 was recorded on the investments.

Loans

Loans acquired in the SB One acquisition were recorded at fair value, and there was no carryover related allowance for credit losses. The fair values of loans acquired from SB One were estimated using the discounted cash flow method based on the

remaining maturity and repricing terms. Cash flows were adjusted for expected losses and prepayments. Projected cash flows were then discounted to present value based on: the relative risk of the cash flows, taking into account the loan type, liquidity risk, the maturity of the loans, servicing costs, and a required return on capital; and monthly principal and interest cash flows were discounted to present value and summed to arrive at the calculated value of the loans. The fair value of the acquired loans receivable was \$1.77 billion.

For loans acquired without evidence of more-than-insignificant deterioration in credit quality since origination, the Company prepared the interest rate loan fair value and credit fair value adjustments. Loans were grouped into pools based on similar characteristics, such as loan type, fixed or adjustable interest rates, payment type, index rate and caps/floors, and non-accrual status. The loans were valued at the sub-pool level and were pooled at the summary level based on loan type. Market rates for similar loans were obtained from various internal and external data sources and reviewed by management for reasonableness. The average of these market rates was used as the fair value interest rate that a market participant would utilize. A present value approach was utilized to calculate the interest rate fair value premium of \$8.4 million.

Loans acquired that have experienced more-than-insignificant deterioration in credit quality since origination are considered PCD loans. The Company evaluated acquired loans for deterioration in credit quality based on any of, but not limited to, the following: (1) non-accrual status; (2) troubled debt restructured designation; (3) risk ratings of special mention, substandard or doubtful; (4) watchlist credits; and (5) delinquency status, including loans that were current on acquisition date, but had been previously delinquent. At the acquisition date, an estimate of expected credit losses is made for groups of PCD loans with similar risk characteristics and individual PCD loans without similar risk characteristics.

Additionally for PCD loans, an allowance for credit losses was calculated using management's best estimate of projected losses over the remaining life of the loans in accordance with ASC 326-20. This represents the portion of the loan balances that has been deemed uncollectible based on the Company's expectations of future cash flows for each respective PCD loan pool, given the outlook and forecast inclusive of the impact of the COVID-19 pandemic and related fiscal and regulatory interventions. The expected lifetime losses were calculated using historical losses observed at the Bank, SB One and peer banks. A \$13.6 million allowance for credit losses was recorded on PCD loans. The interest rate fair value adjustment related to PCD loans will be substantially recognized as interest income on a level yield amortization or straight line method over the expected life of the loans. Subsequent to the acquisition date, the initial allowance for credit losses on PCD loans will increase or decrease based on future evaluations, with changes recognized in the provision for credit losses.

The table below illustrates the fair value adjustments made to the amortized cost basis in order to present a fair value of the loans acquired (in thousands):

Gross amortized cost basis at July 31, 2020	\$	1,787,057
Interest rate fair value adjustment on all loans		455
Credit fair value adjustment on non-PCD loans		(21,397)
Fair value of acquired loans at July 31, 2020		1,766,115
Allowance for credit losses on PCD loans		(13,586)
Fair value of acquired loans, net at July 31, 2020	\$	1,752,529

The table below is a summary of the PCD loans accounted for in accordance with ASC 310-26 that were acquired in the SB One acquisition as of the closing date (in thousands):

Gross amortized cost basis at July 31, 2020	\$	315,784
Interest component of expected cash flows (accretable difference)		(7,988)
Allowance for credit losses on PCD loans		(13,586)
Net PCD loans	\$	294,210

Banking Premises and Equipment

The Company acquired 18 branches from SB One, eight of which were owned premises. The fair value of properties acquired was derived by valuations prepared by an independent third party utilizing the sales comparison approach to value the property as improved.

Leases

As part of the SB One acquisition the Company added ten lease obligations. The Company recorded a \$3.8 million right-of-use asset and lease liability for these lease obligations.

Core Deposit Intangible and Customer Relationship Intangible

The fair value of the core deposit intangible was determined based on a discounted cash flow analysis using a discount rate commensurate with market participants. To calculate cash flows, deposit account servicing costs (net of deposit fee income) and interest expense on deposits were compared to the cost of alternative funding sources available through national brokered CD offering rates. The projected cash flows were developed using projected deposit attrition rates.

The fair value of the customer relationship intangible was determined based on a discounted cash flow analysis using the excess of the future cash inflows (i.e., revenue from existing customer the relationships) over the related cash outflows (i.e., operating costs) generated over the useful life of the acquired customer base. These cash flows were discounted to present value using an asset-specific risk-adjusted discount rate. The projected cash flows were developed using projected customer revenue retention rates.

The core deposit intangible totaled \$3.2 million and is being amortized over its estimated useful life of approximately 10 years based on dollar weighted deposit runoff on an annualized basis. The insurance agency customer relationship intangible totaled \$6.8 million and is being amortized over its estimated useful life of approximately 13 years based on customer revenue attrition on an annualized basis.

Goodwill

The calculation of goodwill is subject to change for up to one year after the date of acquisition as additional information relative to the closing date estimates and uncertainties become available. As the Company finalizes its review of the acquired assets and liabilities, certain adjustments to the recorded carrying values may be required. The goodwill will be evaluated annually for impairment. The goodwill is not deductible for tax purposes.

Bank Owned Life Insurance ("BOLI")

SB One's BOLI cash surrender value was \$37.2 million with no fair value adjustment.

Time Deposits

The fair value adjustment for time deposits represents a discount from the value of the contractual repayments of fixed-maturity deposits using prevailing market interest rates for similar-term time deposits. The time deposit discount of approximately \$4.3 million is being amortized into income on a level yield amortization method over the contractual life of the deposits.

Borrowings

The fair value of Federal Home Loan Bank of New York ("FHLBNY") advances was determined based on a discounted cash flow analysis using a discount rate commensurate with FHLBNY rates as of July 31, 2020. The cash flows of the advances were projected based on the scheduled payments of the fixed rate of each advance.

Subordinated Debentures

At the valuation date, SB One had one outstanding Trust Preferred and one subordinated debt issuance with an aggregate balance of \$27.5 million. The fair value of Trust Preferred and subordinated debt issuances was determined based on a discounted cash flow analysis using a discount rate commensurate with yields and terms of comparable issuances. The cash flows were projected through the remaining contractual term of the Trust Preferred issuance and based on the call date for the subordinated debt issuance.

Merger-Related Expenses

Merger-related expenses, which are recorded in other operating expenses on the Consolidated Statements of Income, totaled \$6.3 million for the year ended December 31, 2020, respectively, and primarily consisted of consulting and legal expenses.

Acquisition of Tirschwell & Loewy, Inc.

On April 1, 2019, Beacon Trust Company ("Beacon") completed its acquisition of certain assets of Tirschwell & Loewy, Inc. ("T&L"), a New York City-based independent registered investment adviser. Beacon is a wholly owned subsidiary of Provident Bank. This acquisition expanded the Company's wealth management business by \$822.4 million of assets under management at the time of acquisition.

The acquisition was accounted for under the acquisition method of accounting. The Company recorded goodwill of \$8.2 million, a customer relationship intangible of \$12.6 million and \$800,000 of other identifiable intangibles related to the acquisition. In addition, the Company recorded a contingent consideration liability at its fair value of \$6.6 million. The contingent consideration arrangement requires the Company to pay additional cash consideration to T&L's former stakeholders over a three-year period after the closing date of the acquisition if certain financial and business retention targets are met. The acquisition agreement limits the total additional payment to a maximum of \$11.0 million, to be determined based on actual future results. Total cost of the acquisition was \$21.6 million, which included cash consideration of \$15.0 million and contingent consideration with a fair value of \$6.6 million. Tangible assets acquired in the transaction were nominal. No liabilities were assumed in the acquisition. The goodwill recorded in the transaction is deductible for tax purposes.

In the fourth quarter of 2019, the Company recognized a \$2.8 million increase in the estimated fair value of the contingent consideration liability. While performance of the acquired business has been adversely impacted at December 31, 2020 due to worsening economic conditions and declining asset valuations attributable to the COVID-19 pandemic, asset valuations improved in the fourth quarter of 2020 and management has not identified a reduction in assets under management due to a declining customer base. As a result, the \$9.4 million fair value of the contingent liability was unchanged at December 31, 2020, from December 31, 2019, with maximum potential future payments totaling \$11.0 million.

(4) Restrictions on Cash and Due from Banks

Included in cash on hand and due from banks at December 31, 2020 and 2019 was \$114.3 million and \$77.0 million, respectively, representing cash collateral pledged to secure loan level swaps and reserves required by banking regulations.

(5) Held to Maturity Debt Securities

On January 1, 2020, the Company adopted CECL which replaces the incurred loss methodology with an expected loss methodology. The Company recorded a \$70,000 increase to the allowance for credit losses on held to maturity debt securities with a corresponding cumulative effect adjustment to decrease retained earnings by \$52,000, net of income taxes. (See Adoption of CECL table below for additional detail.)

Management measures expected credit losses on held to maturity debt securities on a collective basis by security type. Management classifies the held to maturity debt securities portfolio into the following security types:

- Agency obligations;
- Mortgage-backed securities;
- State and municipal obligations; and
- Corporate obligations.

All of the agency obligations held by the Company are issued by U.S. government entities and agencies. These securities are either explicitly or implicitly guaranteed by the U.S. government, are highly rated by major rating agencies and have a long history of no credit losses. The majority of the state and municipal, and corporate obligations carry no lower than A ratings from the rating agencies at December 31, 2020 and the Company had one security rated with a triple-B by Moody's Investors Service.

The Company adopted CECL using the prospective transition approach for debt securities for which other-than-temporary impairment had been recognized prior to January 1, 2020. As a result, the amortized cost basis remains the same before and after the effective date of CECL.

Held to maturity debt securities at December 31, 2020 and 2019 are summarized as follows (in thousands):

	2020				
	Amortized cost	Gross unrealized gains	Gross unrealized losses	Allowance for credit losses	Fair value
Agency obligations	\$ 7,600	6	(5)	—	7,601
Mortgage-backed securities	62	2	—	—	64
State and municipal obligations	433,655	21,442	(58)	(66)	454,973
Corporate obligations	9,726	101	(2)	(12)	9,813
	<u>\$ 451,043</u>	<u>21,551</u>	<u>(65)</u>	<u>(78)</u>	<u>472,451</u>

At December 31, 2020, total amortized cost, net of allowance for credit losses totaled \$451.0 million.

	2019				
	Amortized cost	Gross unrealized gains	Gross unrealized losses	Allowance for credit losses	Fair value
Agency obligations	\$ 6,599	11	(9)	—	6,601
Mortgage-backed securities	118	4	—	—	122
State and municipal obligations	437,074	14,394	(115)	—	451,353
Corporate obligations	9,838	58	(6)	—	9,890
	<u>\$ 453,629</u>	<u>14,467</u>	<u>(130)</u>	<u>—</u>	<u>467,966</u>

The Company generally purchases securities for long-term investment purposes, and differences between carrying and fair values may fluctuate during the investment period. Held to maturity debt securities having a carrying value of \$416.1 million and \$428.0 million at December 31, 2020 and 2019, respectively, were pledged to secure municipal deposits.

The amortized cost and fair value of held to maturity debt securities at December 31, 2020 by contractual maturity are shown below (in thousands). Expected maturities may differ from contractual maturities due to prepayment or early call privileges of the issuer.

	2020	
	Amortized cost	Fair value
Due in one year or less	\$ 21,623	21,736
Due after one year through five years	133,869	137,978
Due after five years through ten years	216,671	229,902
Due after ten years	78,818	82,849
	<u>\$ 450,981</u>	<u>472,465</u>

Mortgage-backed securities totaling \$62,000 at amortized cost and \$64,000 at fair value are excluded from the table above as their expected lives are anticipated to be shorter than the contractual maturity date due to principal prepayments. Additionally, the allowance for credit losses totaling \$78,000 is excluded from the table above.

During 2020, the Company recognized gains of \$81,000 and no losses related to calls on securities in the held to maturity debt securities portfolio, with total proceeds from the calls totaling \$49.3 million. There were no sales of securities from the held to maturity debt securities portfolio for the year ended December 31, 2020.

For 2019, the Company recognized gains of \$72,000 and no losses related to calls on securities in the held to maturity debt securities portfolio, with total proceeds from the calls totaling \$33.9 million. There were no sales of securities from the held to maturity debt securities portfolio for the year ended December 31, 2019.

For the 2018 period, the Company recognized gains of \$10,000 and losses of \$1,000 related to calls on certain securities in the held to maturity debt securities portfolio, with total proceeds from the calls totaling \$32.0 million. There were no sales of securities from the held to maturity debt securities portfolio for the year ended December 31, 2018.

The following table illustrates the impact of the January 1, 2020 adoption of CECL on held to maturity debt securities (in thousands):

	January 1, 2020		
	As reported under CECL	Prior to CECL	Impact of CECL adoption
Held to Maturity Debt Securities			
Allowance for credit losses on corporate securities	\$ 6	—	6
Allowance for credit losses on municipal securities	64	—	64
Allowance for credit losses on held to maturity debt securities	<u>\$ 70</u>	<u>—</u>	<u>70</u>

The following tables represent the Company's disclosure on held to maturity debt securities in an unrealized loss position (in thousands):

	December 31, 2020 Unrealized Losses					
	Less than 12 months		12 months or longer		Total	
	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses
Agency obligations	\$ 1,995	(5)	—	—	1,995	(5)
State and municipal obligations	4,846	(41)	406	(17)	5,252	(58)
Corporate obligations	786	(2)	—	—	786	(2)
	<u>\$ 7,627</u>	<u>(48)</u>	<u>406</u>	<u>(17)</u>	<u>8,033</u>	<u>(65)</u>

	December 31, 2019 Unrealized Losses					
	Less than 12 months		12 months or longer		Total	
	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses
Agency obligations	\$ 3,601	(9)	—	—	3,601	(9)
State and municipal obligations	7,675	(42)	2,093	(73)	9,768	(115)
Corporate obligations	3,254	(6)	—	—	3,254	(6)
	<u>\$ 14,530</u>	<u>(57)</u>	<u>2,093</u>	<u>(73)</u>	<u>16,623</u>	<u>(130)</u>

The number of securities in an unrealized loss position as of December 31, 2020 totaled 7, compared with 35 at December 31, 2019. The decrease in the number of securities in an unrealized loss position at December 31, 2020 was due to lower current market interest rates compared to rates at December 31, 2019.

Credit Quality Indicators. The following table provides the amortized cost of held to maturity debt securities by credit rating as of December 31, 2020 (in thousands):

Total Portfolio	December 31, 2020					
	AAA	AA	A	BBB	Not Rated	Total
Agency obligations	\$ 7,600	—	—	—	—	7,600
Mortgage-backed securities	62	—	—	—	—	62
State and municipal obligations	57,830	311,155	53,302	1,115	10,253	433,655
Corporate obligations	—	3,255	6,446	—	25	9,726
	<u>\$ 65,492</u>	<u>314,410</u>	<u>59,748</u>	<u>1,115</u>	<u>10,278</u>	<u>451,043</u>

Total Portfolio	December 31, 2019					
	AAA	AA	A	BBB	Not Rated	Total
Agency obligations	\$ 6,599	—	—	—	—	6,599
Mortgage-backed securities	118	—	—	—	—	118
State and municipal obligations	49,316	330,322	56,317	1,119	—	437,074
Corporate obligations	—	3,128	6,335	350	25	9,838
	<u>\$ 56,033</u>	<u>333,450</u>	<u>62,652</u>	<u>1,469</u>	<u>25</u>	<u>453,629</u>

Credit quality indicators are metrics that provide information regarding the relative credit risk of debt securities. At December 31, 2020, the held to maturity debt securities portfolio was comprised of 15% rated AAA, 70% rated AA, 13% rated A, and less than 2% either below an A rating or not rated by Moody's Investors Service or Standard and Poor's. Securities not explicitly rated were grouped where possible under the credit rating of the issuer of the security.

At December 31, 2020, the allowance for credit losses on held to maturity debt securities was \$78,000, an increase from \$70,000 at January 1, 2020, when the Company adopted CECL.

(6) Available for Sale Debt Securities

On January 1, 2020, the Company adopted CECL which replaces the incurred loss methodology with an expected loss methodology. The Company did not record an allowance for credit losses on available for sale debt securities as this portfolio consisted primarily of debt securities explicitly or implicitly backed by the U.S. Government for which credit risk is deemed immaterial. The impact going forward will depend on the composition, characteristics, and credit quality of the securities portfolio as well as the economic conditions at future reporting periods.

The Company adopted CECL using the prospective transition approach for debt securities for which other-than-temporary impairment had been recognized prior to January 1, 2020. As a result, the amortized cost basis remains the same before and after the effective date of CECL.

Available for sale debt securities at December 31, 2020 and 2019 are summarized as follows (in thousands):

	2020			Fair value
	Amortized cost	Gross unrealized gains	Gross unrealized losses	
Agency obligations	\$ 1,001	8	—	1,009
Mortgage-backed securities	910,393	28,872	(852)	938,413
Asset-backed securities	52,295	1,535		53,830
State and municipal obligations	69,687	1,666	(95)	71,258
Corporate obligations	40,194	809	(24)	40,979
	<u>\$ 1,073,570</u>	<u>32,890</u>	<u>(971)</u>	<u>1,105,489</u>

	2019			Fair value
	Amortized cost	Gross unrealized gains	Gross unrealized losses	
Mortgage-backed securities	\$ 936,196	12,367	(1,133)	947,430
State and municipal obligations	3,907	172	—	4,079
Corporate obligations	25,032	393	(15)	25,410
	<u>\$ 965,135</u>	<u>12,932</u>	<u>(1,148)</u>	<u>976,919</u>

Available for sale debt securities having a carrying value of \$618.0 million and \$536.4 million at December 31, 2020 and 2019, respectively, are pledged to secure securities sold under repurchase agreements and municipal deposits.

The amortized cost and fair value of available for sale debt securities at December 31, 2020, by contractual maturity, are shown below (in thousands). Expected maturities may differ from contractual maturities due to prepayment or early call privileges of the issuer.

	2020	
	Amortized cost	Fair value
Due after one year through five years	\$ 5,676	5,791
Due after five years through ten years	38,046	38,780
Due after ten years	66,159	67,666
	<u>\$ 109,881</u>	<u>112,237</u>

Investments which pay principal on a periodic basis totaling \$963.7 million at amortized cost and \$993.3 million at fair value are excluded from the table above as their expected lives are likely to be shorter than the contractual maturity date due to principal prepayments.

During 2020, proceeds from calls on securities in the available for sale debt securities portfolio totaled \$13.9 million, with no gain or loss recognized. For 2019, there were no sales or calls of securities from the available for sale debt securities.

The following tables represent the Company's disclosure on available for sale debt securities in an unrealized loss position (in thousands):

	December 31, 2020 Unrealized Losses					
	Less than 12 months		12 months or longer		Total	
	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses
Mortgage-backed securities	\$ 127,600	(824)	8,007	(28)	135,607	(852)
State and municipal obligations	5,275	(95)	—	—	5,275	(95)
Corporate obligations	—	—	2,000	(24)	2,000	(24)
	<u>\$ 132,875</u>	<u>(919)</u>	<u>10,007</u>	<u>(52)</u>	<u>142,882</u>	<u>(971)</u>

	December 31, 2019 Unrealized Losses					
	Less than 12 months		12 months or longer		Total	
	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses
Mortgage-backed securities	\$ 136,270	(629)	46,819	(504)	183,089	(1,133)
Corporate obligations	2,013	(15)	—	—	2,013	(15)
	<u>\$ 138,283</u>	<u>(644)</u>	<u>46,819</u>	<u>(504)</u>	<u>185,102</u>	<u>(1,148)</u>

The number of securities in an unrealized loss position as of December 31, 2020 totaled 42, compared with 50 at December 31, 2019. The decrease in the number of securities in an unrealized loss position at December 31, 2020 was due to lower current market interest rates compared to rates at December 31, 2019. All securities in an unrealized loss position were investment grade at December 31, 2020. There was one private-label mortgage-backed security in an unrealized loss position at December 31, 2020, with an amortized cost of \$17,445 and unrealized loss of \$1,300. This private-label mortgage-backed security was investment grade at December 31, 2020.

(7) Loans Receivable and Allowance for Credit Losses

On January 1, 2020, the Company adopted CECL, which replaced the incurred loss methodology with an expected loss methodology. The adoption of the new standard resulted in the Company recording a \$7.9 million increase to the allowance for credit losses on loans with a corresponding cumulative effect adjustment to decrease retained earnings by \$5.9 million, net of income taxes. (See Adoption of CECL table below for additional detail.)

Loans receivable at December 31, 2020 and 2019 are summarized as follows (in thousands):

	2020	2019
Mortgage loans:		
Residential	\$ 1,294,702	1,077,689
Commercial	3,458,666	2,578,393
Multi-family	1,484,515	1,225,551
Construction	541,939	429,812
Total mortgage loans	6,779,822	5,311,445
Commercial loans	2,567,470	1,634,759
Consumer loans	492,566	391,360
Total gross loans	9,839,858	7,337,564
PCI loans prior to CECL	—	746
Premiums on purchased loans	1,566	2,474
Unearned discounts	(12)	(26)
Net deferred fees	(18,522)	(7,873)
Total loans	\$ 9,822,890	7,332,885

Premiums and discounts on purchased loans are amortized over the lives of the loans as an adjustment to yield. Required reductions due to loan prepayments are charged against interest income. For the years ended December 31, 2020, 2019 and 2018, \$1.0 million, \$845,000 and \$894,000 decreased interest income, respectively, as a result of prepayments and normal amortization.

The following tables summarize the aging of loans receivable by portfolio segment and class of loans (in thousands). The December 31, 2020 balances include PCD loans, while the December 31, 2019 balances exclude PCI loans (in accordance with ASC 310, prior to the adoption of ASU 2016-13 on January 1, 2020):

	At December 31, 2020							
	30-59 Days	60-89 Days	Non-accrual	90 days or more past due and accruing	Total Past Due	Current	Total Loans Receivable	Non-accrual loans with no related allowance
Mortgage loans:								
Residential	\$ 15,789	8,852	9,315	—	33,956	1,260,746	1,294,702	9,315
Commercial	761	113	31,982	—	32,856	3,425,810	3,458,666	20,482
Multi-family	206	585	—	—	791	1,483,724	1,484,515	—
Construction	—	—	1,392	—	1,392	540,547	541,939	1,392
Total mortgage loans	16,756	9,550	42,689	—	68,995	6,710,827	6,779,822	31,189
Commercial loans	1,658	1,179	42,118	—	44,955	2,522,515	2,567,470	15,541
Consumer loans	4,348	4,519	2,283	—	11,150	481,416	492,566	2,283
Total gross loans	\$ 22,762	15,248	87,090	—	125,100	9,714,758	9,839,858	49,013

At December 31, 2019								
	30-59 Days	60-89 Days	Non-accrual	90 days or more past due and accruing	Total Past Due	Current	Total Loans Receivable	Non-accrual loans with no related allowance
Mortgage loans:								
Residential	\$ 5,905	2,579	8,543	—	17,027	1,060,662	1,077,689	2,989
Commercial	—	—	5,270	—	5,270	2,573,123	2,578,393	—
Multi-family	—	—	—	—	—	1,225,551	1,225,551	—
Construction	—	—	—	—	—	429,812	429,812	—
Total mortgage loans	5,905	2,579	13,813	—	22,297	5,289,148	5,311,445	2,989
Commercial loans	2,383	95	25,160	—	27,638	1,607,121	1,634,759	3,238
Consumer loans	1,276	337	1,221	—	2,834	388,526	391,360	569
Total gross loans	\$ 9,564	3,011	40,194	—	52,769	7,284,795	7,337,564	6,796

Included in loans receivable are loans for which the accrual of interest income has been discontinued due to deterioration in the financial condition of the borrowers. The principal amount of these nonaccrual loans was \$87.1 million and \$40.2 million at December 31, 2020 and 2019, respectively. There were no loans 90-days or greater past due and still accruing interest at December 31, 2020 and 2019. The increase in non-performing loans in 2020 reflects the effects of the protracted duration of the pandemic and related government response, and the attendant increased uncertainty of affected borrowers' ability to repay all contractually due principal and interest.

Management has elected to measure an allowance for credit losses for accrued interest receivables specifically related to any loan that has been deferred as a result of COVID-19. Generally, accrued interest is written off by reversing interest income during the quarter the loan is moved from an accrual to a non-accrual status.

If the non-accrual loans had performed in accordance with their original terms, interest income would have increased by \$3.2 million, \$1.7 million and \$1.4 million, for the years ended December 31, 2020, 2019 and 2018, respectively. The amount of cash basis interest income that was recognized on impaired loans during the years ended December 31, 2020, 2019 and 2018 was \$1.9 million, \$2.1 million and \$2.0 million respectively.

The Company defines an impaired loan as a non-homogeneous loan greater than \$1.0 million, for which, based on current information, the Bank does not expect to collect all amounts due under the contractual terms of the loan agreement. Impaired loans also include all loans modified as troubled debt restructurings ("TDRs"). An allowance for collateral-dependent impaired loans that have been modified in a TDR is measured based on the present value of expected future cash flows discounted at the loan's effective interest rate, the loan's observable market price, or the estimated fair value of the collateral, less any selling costs. The Company uses third-party appraisals to determine the fair value of the underlying collateral in its analysis of collateral-dependent loans. A third-party appraisal is generally ordered as soon as a loan is designated as a collateral-dependent loan and updated annually, or more frequently if required.

A financial asset is considered collateral-dependent when the debtor is experiencing financial difficulty and repayment is expected to be provided substantially through the sale or operation of the collateral. For all classes of loans deemed collateral-dependent, the Company estimates expected credit losses based on the collateral's fair value less any selling costs. A specific allocation of the allowance for credit losses is established for each collateral-dependent loan with a carrying balance greater than the collateral's fair value, less estimated selling costs. In most cases, the Company records a partial charge-off to reduce the loan's carrying value to the collateral's fair value less estimated selling costs. At each fiscal quarter end, if a loan is designated as collateral-dependent and the third-party appraisal has not yet been received, an evaluation of all available collateral is made using the best information available at the time, including rent rolls, borrower financial statements and tax returns, prior appraisals, management's knowledge of the market and collateral, and internally prepared collateral valuations based upon market assumptions regarding vacancy and capitalization rates, each as and where applicable. Once the appraisal is received and reviewed, the specific reserves are adjusted to reflect the appraised value and evaluated for charge offs. The Company believes there have been no significant time lapses resulting from this process.

At December 31, 2020, there were 169 impaired loans totaling \$86.0 million, of which 135 loans totaling \$39.6 million were TDRs. Included in this total were 112 TDRs related to 110 borrowers totaling \$23.1 million that were performing in accordance with their restructured terms and which continued to accrue interest at December 31, 2020. At December 31, 2019,

there were 158 impaired loans totaling \$70.6 million, of which 147 loans totaling \$48.3 million were TDRs. Included in this total were 133 TDRs related to 128 borrowers totaling \$42.7 million that were performing in accordance with their restructured terms and which continued to accrue interest at December 31, 2019.

At December 31, 2020 and December 31, 2019, the Company had \$26.3 million and \$20.4 million of collateral-dependent impaired loans, respectively. The collateral-dependent impaired loans at December 31, 2020 consisted of \$13.4 million in residential real estate loans, \$12.8 million in commercial loans and \$9,000 in consumer loans. The collateral for these impaired loans was primarily real estate.

The activity in the allowance for credit losses for the years ended December 31, 2020, 2019 and 2018 is as follows (in thousands):

	Years Ended December 31,		
	2020	2019	2018
Balance at beginning of period	\$ 55,525	55,562	60,195
Provision charged to operations	29,712	13,100	23,700
Increase due to the initial adoption of CECL	7,920	—	—
Initial allowance related to PCD loans	13,586	—	—
Recoveries of loans previously charged off	2,636	1,895	1,685
Loans charged off	(7,913)	(15,032)	(30,018)
Balance at end of period	\$ 101,466	55,525	55,562

The activity in the allowance for credit losses by portfolio segment for the years ended December 31, 2020 and 2019 are as follows (in thousands):

	For the Year Ended December 31, 2020			
	Mortgage loans	Commercial loans	Consumer loans	Total Portfolio Segments
Balance at beginning of period	\$ 25,511	28,263	1,751	55,525
Provision charged to operations	18,945	10,199	568	29,712
Increase (decrease) due to the initial adoption of CECL	14,188	(9,974)	3,706	7,920
Initial allowance related to PCD loans	11,984	1,582	20	13,586
Recoveries of loans previously charged off	396	1,776	464	2,636
Loans charged off	(2,717)	(4,762)	(434)	(7,913)
Balance at end of period	\$ 68,307	27,084	6,075	101,466

	For the Year Ended December 31, 2019			
	Mortgage loans	Commercial loans	Consumer loans	Total Portfolio Segments
Balance at beginning of period	\$ 27,678	25,693	2,191	55,562
Provision charged to operations	(2,323)	15,928	(505)	13,100
Recoveries of loans previously charged off	422	665	808	1,895
Loans charged off	(266)	(14,023)	(743)	(15,032)
Balance at end of period	\$ 25,511	28,263	1,751	55,525

As a result of the January 1, 2020 adoption of CECL, the Company recorded a \$7.9 million increase to the allowance for credit losses on loans. For the year ended December 31, 2020, the Company recorded a \$29.7 million provision for credit losses on loans. The increase in the provision for credit losses for the year ended December 31, 2020 reflects management's best estimate of projected losses over the life of loans in the portfolio in accordance with the CECL approach, given the economic

outlook and forecast related to the COVID-19 pandemic, as well as the impact of unprecedented fiscal, monetary and regulatory interventions. The largest increase in the provision for credit losses on loans for the year ended December 31, 2020 was in the commercial real estate portfolio.

The following table illustrates the impact of the January 1, 2020 adoption of CECL on the allowance for credit losses related to the loan portfolio (in thousands):

	January 1, 2020		
	As reported under CECL	Prior to CECL	Impact of CECL adoption
Loans			
Residential	\$ 8,950	3,414	5,536
Commercial	17,118	12,831	4,287
Multi-family	9,519	3,374	6,145
Construction	4,152	5,892	(1,740)
Total mortgage loans	39,739	25,511	14,228
Commercial loans	18,254	28,263	(10,009)
Consumer loans	5,452	1,751	3,701
Allowance for credit losses on loans	\$ 63,445	55,525	7,920

The following tables summarize loans receivable by portfolio segment and impairment method (in thousands):

	At December 31, 2020			
	Mortgage loans	Commercial loans	Consumer loans	Total Portfolio Segments
Individually evaluated for impairment	\$ 48,783	35,832	1,431	86,046
Collectively evaluated for impairment	6,731,039	2,531,638	491,135	9,753,812
Total gross loans	\$ 6,779,822	2,567,470	492,566	9,839,858

	At December 31, 2019			
	Mortgage loans	Commercial loans	Consumer loans	Total Portfolio Segments
Individually evaluated for impairment	\$ 39,910	28,357	2,374	70,641
Collectively evaluated for impairment	5,271,535	1,606,402	388,986	7,266,923
Total gross loans	\$ 5,311,445	1,634,759	391,360	7,337,564

The allowance for credit losses is summarized by portfolio segment and impairment classification as follows (in thousands):

	At December 31, 2020			
	Mortgage loans	Commercial loans	Consumer loans	Total Portfolio Segments
Individually evaluated for impairment	\$ 4,220	4,715	39	8,974
Collectively evaluated for impairment	64,087	22,369	6,036	92,492
Total allowance for credit losses	\$ 68,307	27,084	6,075	101,466

	At December 31, 2019			
	Mortgage loans	Commercial loans	Consumer loans	Total Portfolio Segments
Individually evaluated for impairment	\$ 1,580	3,462	25	5,067
Collectively evaluated for impairment	23,931	24,801	1,726	50,458
Total allowance for credit losses	\$ 25,511	28,263	1,751	55,525

Loan modifications to borrowers experiencing financial difficulties that are considered TDRs primarily involve lowering the monthly payments on such loans through either a reduction in interest rate below a market rate, an extension of the term of the loan without a corresponding adjustment to the risk premium reflected in the interest rate, or a combination of these two methods. These modifications generally do not result in the forgiveness of principal or accrued interest. In addition, management attempts to obtain additional collateral or guarantor support when modifying such loans. If the borrower has demonstrated performance under the previous terms and our underwriting process shows the borrower has the capacity to continue to perform under the restructured terms, the loan will continue to accrue interest. Non-accruing restructured loans may be returned to accrual status when there has been a sustained period of repayment performance (generally six consecutive months of payments) and both principal and interest are deemed collectible.

The following tables present the number of loans modified as TDRs during the years ended December 31, 2020 and 2019 and their balances immediately prior to the modification date and post-modification as of December 31, 2020 and 2019.

	Year Ended December 31, 2020		
	Number of Loans	Pre-Modification Outstanding Recorded Investment	Post-Modification Outstanding Recorded Investment
Troubled Debt Restructurings			
		(\$ in thousands)	
Mortgage loans:			
Residential	2	\$ 434	360
Total mortgage loans	2	434	360
Commercial loans	4	2,715	2,646
Total restructured loans	6	\$ 3,149	3,006

	Year Ended December 31, 2019		
	Number of Loans	Pre-Modification Outstanding Recorded Investment	Post-Modification Outstanding Recorded Investment
Troubled Debt Restructurings			
		(\$ in thousands)	
Mortgage loans:			
Residential	3	\$ 1,617	1,584
Commercial	1	\$ 14,010	14,010
Total mortgage loans	4	15,627	15,594
Commercial loans	6	1,996	1,888
Consumer loans	4	421	402
Total restructured loans	14	\$ 18,044	17,884

All TDRs are impaired loans, which are individually evaluated for impairment, as previously discussed. Estimated collateral values of collateral dependent impaired loans modified during the years ended December 31, 2020 and 2019 exceeded the carrying amounts of such loans. During the year ended December 31, 2020, there were \$7.3 million of charge-offs recorded on collateral dependent impaired loans. There were \$11.6 million of charge-offs recorded on collateral dependent impaired loans for the year ended December 31, 2019. The allowance for credit losses associated with the TDRs presented in the preceding tables totaled \$362,000 and \$177,130 at December 31, 2020 and 2019, respectively, and were included in the

allowance for credit losses for loans individually evaluated for impairment. (See page 109 for further discussion related to COVID-19 loan modifications)

The TDRs presented in the preceding tables had a weighted average modified interest rate of approximately 5.43% and 3.83%, compared to a yield of 5.44% and 3.82% prior to modification for the years ended December 31, 2020 and 2019, respectively.

The following table presents loans modified as TDRs within the previous 12 months from December 31, 2020 and 2019, and for which there was a payment default (90 days or more past due) at the quarter ended December 31, 2020 and 2019.

Troubled Debt Restructurings Subsequently Defaulted	December 31, 2020		December 31, 2019	
	Number of Loans	Outstanding Recorded Investment	Number of Loans	Outstanding Recorded Investment
		(\$ in thousands)		(\$ in thousands)
Mortgage loans:				
Residential	—	\$ —	1	\$ 578
Total mortgage loans	—	—	1	578
Total restructured loans	—	\$ —	1	\$ 578

No loans which were modified as TDRs within the 12 month period ending December 31, 2020 had a payment default (90 days or more past due). There was one payment default (90 days or more past due) for loans modified as TDRs within the 12 month period ending December 31, 2019.

As allowed by CECL, the Company elected to maintain pools of loans accounted for under ASC 310-30. At December 31, 2019, purchased credit impaired (“PCI”) loans totaled \$746,000. In accordance with the CECL standard, management did not reassess whether modifications of individually acquired financial assets accounted for in pools were TDRs as of the date of adoption. Loans considered to be PCI prior to January 1, 2020 were converted to PCD loans on that date. Loans acquired by the Company after January 1, 2020, that experience more-than-insignificant deterioration in credit quality after origination are classified as PCD loans.

The table below is a summary of the PCD loans accounted for in accordance with ASC 310-26 that were acquired in the SB One acquisition at the July 31, 2020 closing date (in thousands):

Gross amortized cost basis at July 31, 2020	\$	315,784
Interest component of expected cash flows (accretable difference)		(7,988)
Fair value of PCD loans		307,796
Allowance for credit losses on PCD loans		(13,586)
Net PCD loans	\$	294,210

The following table presents loans individually evaluated for impairment by class and loan category (in thousands):

	At December 31, 2020					At December 31, 2019				
	Unpaid Principal Balance	Recorded Investment	Related Allowance	Average Recorded Investment	Interest Income Recognized	Unpaid Principal Balance	Recorded Investment	Related Allowance	Average Recorded Investment	Interest Income Recognized
Loans with no related allowance										
Mortgage loans:										
Residential	\$ 13,981	11,380	—	11,587	511	\$ 13,478	10,739	—	10,910	533
Commercial	17,414	17,414	—	16,026	60	—	—	—	—	—
Multi-family	—	—	—	—	—	—	—	—	—	—
Construction	—	—	—	—	—	—	—	—	—	—
Total	31,395	28,794	—	27,613	571	13,478	10,739	—	10,910	533
Commercial loans	15,895	14,009	—	12,791	46	3,927	3,696	—	4,015	17
Consumer loans	1,382	880	—	7	50	2,086	1,517	—	1,491	86
Total loans	\$ 48,672	43,683	—	40,411	667	\$ 19,491	15,952	—	16,416	636
Loans with an allowance recorded										
Mortgage loans:										
Residential	\$ 7,950	7,506	806	7,604	307	\$ 10,860	10,326	829	10,454	428
Commercial	14,993	12,483	3,414	123	570	18,845	18,845	751	18,862	569
Multi-family	—	—	—	—	—	—	—	—	—	—
Construction	—	—	—	—	—	—	—	—	—	—
Total	22,943	19,989	4,220	7,727	877	29,705	29,171	1,580	29,316	997
Commercial loans	24,947	21,823	4,715	18,620	311	27,762	24,661	3,462	27,527	444
Consumer loans	565	551	39	5	20	868	857	25	878	46
Total loans	\$ 48,455	42,363	8,974	26,352	1,208	\$ 58,335	54,689	5,067	57,721	1,487
Total										
Mortgage loans:										
Residential	\$ 21,931	18,886	806	19,191	818	\$ 24,338	21,065	829	21,364	961
Commercial	32,407	29,897	3,414	16,149	630	18,845	18,845	751	18,862	569
Multi-family	—	—	—	—	—	—	—	—	—	—
Construction	—	—	—	—	—	—	—	—	—	—
Total	54,338	48,783	4,220	35,340	1,448	43,183	39,910	1,580	40,226	1,530
Commercial loans	40,842	35,832	4,715	31,411	357	31,689	28,357	3,462	31,542	461
Consumer loans	1,947	1,431	39	12	70	2,954	2,374	25	2,369	132
Total loans	\$ 97,127	86,046	8,974	66,763	1,875	\$ 77,826	70,641	5,067	74,137	2,123

At December 31, 2020, impaired loans consisted of 169 residential, commercial and commercial mortgage loans totaling \$86.0 million, of which 55 loans totaling \$61.4 million were included in nonaccrual loans. At December 31, 2019, impaired loans consisted of 158 residential, commercial and commercial mortgage loans totaling \$70.6 million, of which 25 loans totaling \$27.9 million were included in nonaccrual loans. Specific allocations of the allowance for credit losses attributable to impaired loans totaled \$9.0 million and \$5.1 million at December 31, 2020 and 2019, respectively. At December 31, 2020 and 2019, impaired loans for which there was no related allowance for credit losses totaled \$43.7 million and \$16.0 million, respectively. The average balances of impaired loans during the years ended December 31, 2020 and 2019 were \$66.8 million and \$74.1 million, respectively.

In the normal course of conducting its business, the Bank extends credit to meet the financing needs of its customers through commitments. Commitments and contingent liabilities, such as commitments to extend credit (including loan commitments of \$1.99 billion and \$1.26 billion at December 31, 2020 and 2019, respectively, and undisbursed home equity and personal credit lines of \$241.2 million and \$212.4 million, at December 31, 2020 and 2019, respectively, are not reflected in the accompanying consolidated financial statements. These instruments involve elements of credit and interest rate risk in excess of the amount recognized in the consolidated financial statements. The Bank uses the same credit policies and collateral requirements in making commitments and conditional obligations as it does for on-balance sheet loans. Commitments generally have fixed expiration dates or other termination clauses and may require payment of a fee. Since the commitments may expire without being drawn upon, the total commitment amounts do not necessarily represent future cash requirements.

The Bank evaluates each customer's creditworthiness on a case-by-case basis. The amount of collateral obtained, if deemed necessary by the Bank upon extension of credit, is based on management's credit evaluation of the borrower.

The Bank grants residential real estate loans on single- and multi-family dwellings to borrowers primarily in New Jersey. Its borrowers' abilities to repay their obligations are dependent upon various factors, including the borrowers' income and net worth, cash flows generated by the underlying collateral, value of the underlying collateral, and priority of the Bank's lien on the property. Such factors are dependent upon various economic conditions and individual circumstances beyond the Bank's control; the Bank is therefore subject to risk of loss. The Bank believes that its lending policies and procedures adequately minimize the potential exposure to such risks and that adequate provisions for loan losses are provided for all known and inherent risks. Collateral and/or guarantees are required for virtually all loans.

Management utilizes an internal nine-point risk rating system to summarize its loan portfolio into categories with similar risk characteristics. Loans deemed to be "acceptable quality" are rated 1 through 4, with a rating of 1 established for loans with minimal risk. Loans that are deemed to be of "questionable quality" are rated 5 (watch) or 6 (special mention). Loans with adverse classifications (substandard, doubtful or loss) are rated 7, 8 or 9, respectively. Commercial mortgage, commercial, multi-family and construction loans are rated individually, and each lending officer is responsible for risk rating loans in their portfolio. These risk ratings are then reviewed by the department manager and/or the Chief Lending Officer and by the Credit Department. The risk ratings are also confirmed through periodic loan review examinations which are currently performed by an independent third-party. Reports by the independent third-party are presented directly to the Audit Committee of the Board of Directors.

In response to the COVID-19 pandemic and its adverse economic impact on both our commercial and retail borrowers, the Company implemented a modification program to defer principal or principal and interest payments for borrowers directly impacted by the pandemic and who were not more than 30 days past due as of December 31, 2019, all in accordance with the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.

In addition, the Company participated in the Paycheck Protection Program ("PPP") through the United States Department of the Treasury and Small Business Administration ("SBA"). As of December 31, 2020, the Company secured 1,287 PPP loans for its customers totaling \$473.2 million. The PPP loans are fully guaranteed by the SBA and may be eligible for forgiveness by the SBA to the extent that the proceeds are used to cover eligible payroll costs, interest costs, rent, and utility costs over a period of up to 24 weeks after the loan was made as long as certain conditions are met regarding employee retention and compensation levels. PPP loans deemed eligible for forgiveness by the SBA will be repaid by the SBA to the Company. PPP loans are included in the commercial loan portfolio.

The following table summarizes the Company's gross loans held for investment by year of origination and internally assigned credit grades (in thousands):

At December 31, 2020								
Total portfolio	Residential	Commercial mortgage	Multi-family	Construction	Total mortgages	Commercial	Consumer	Total Loans ⁽¹⁾
Special mention	\$ 2,882	124,631	29,781	24,376	181,670	157,080	1,867	340,617
Substandard	26,651	98,313	1,568	4,924	131,456	127,092	6,746	265,294
Doubtful	—	—	—	—	—	52	—	52
Loss	—	—	—	—	—	—	—	—
Total criticized and classified	29,533	222,944	31,349	29,300	313,126	284,224	8,613	605,963
Pass/Watch	1,265,169	3,235,722	1,453,166	512,639	6,466,696	2,283,246	483,953	9,233,895
Total	\$ 1,294,702	3,458,666	1,484,515	541,939	6,779,822	2,567,470	492,566	9,839,858
2020								
Special mention	\$ —	—	—	1,991	1,991	1,474	—	3,465
Substandard	164	—	—	—	164	726	25	915
Doubtful	—	—	—	—	—	—	—	—
Loss	—	—	—	—	—	—	—	—

Total criticized and classified	164	—	—	1,991	2,155	2,200	25	4,380
Pass/Watch	271,858	653,276	293,188	93,124	1,311,446	785,665	62,716	2,159,827
Total gross loans	\$ 272,022	653,276	293,188	95,115	1,313,601	787,865	62,741	2,164,207

2019

Special mention	\$ —	30,313	682	14,508	45,503	7,080	3	52,586
Substandard	3,375	1,905	—	—	5,280	9,320	365	14,965
Doubtful	—	—	—	—	—	—	—	—
Loss	—	—	—	—	—	—	—	—
Total criticized and classified	3,375	32,218	682	14,508	50,783	16,400	368	67,551
Pass/Watch	152,117	612,694	180,316	236,021	1,181,148	275,410	69,703	1,526,261
Total gross loans	\$ 155,492	644,912	180,998	250,529	1,231,931	291,810	70,071	1,593,812

2018

Special mention	\$ —	33,446	20,125	7,877	61,448	6,544	276	68,268
Substandard	1,669	3,687	—	4,309	9,665	6,066	110	15,841
Doubtful	—	—	—	—	—	—	—	—
Loss	—	—	—	—	—	—	—	—
Total criticized and classified	1,669	37,133	20,125	12,186	71,113	12,610	386	84,109
Pass/Watch	93,588	396,487	188,892	138,190	817,157	233,246	64,151	1,114,554
Total gross loans	\$ 95,257	433,620	209,017	150,376	888,270	245,856	64,537	1,198,663

2017

Special mention	\$ —	22,838	3,117	—	25,955	27,251	70	53,276
Substandard	2,221	21,095	—	615	23,931	16,159	—	40,090
Doubtful	—	—	—	—	—	—	—	—
Loss	—	—	—	—	—	—	—	—
Total criticized and classified	2,221	43,933	3,117	615	49,886	43,410	70	93,366
Pass/Watch	101,943	436,963	170,268	43,224	752,398	200,484	55,768	1,008,650
Total gross loans	\$ 104,164	480,896	173,385	43,839	802,284	243,894	55,838	1,102,016

2016 and prior

Special mention	\$ 2,882	38,034	5,857	—	46,773	114,731	1,518	163,022
Substandard	19,222	71,626	1,568	—	92,416	94,821	6,246	193,483
Doubtful	—	—	—	—	—	52	—	52
Loss	—	—	—	—	—	—	—	—
Total criticized and classified	22,104	109,660	7,425	—	139,189	209,604	7,764	356,557
Pass/Watch	667,767	1,245,962	627,927	2,080	2,543,736	998,045	239,379	3,781,160
Total gross loans	\$ 689,871	1,355,622	635,352	2,080	2,682,925	1,207,649	247,143	4,137,717

At December 31, 2019

	Residential	Commercial mortgage	Multi-family	Construction	Total mortgages	Commercial	Consumer	Total loans
Special mention	\$ 2,402	46,758	—	—	49,160	79,248	286	128,694
Substandard	10,204	13,458	—	6,181	29,843	57,015	1,668	88,526
Doubtful	—	—	—	—	—	836	—	836
Loss	—	—	—	—	—	—	—	—

Total criticized and classified	12,606	60,216	—	6,181	79,003	137,099	1,954	218,056
Pass/Watch	1,065,083	2,518,177	1,225,551	423,631	5,232,442	1,497,660	389,406	7,119,508
Total	\$ 1,077,689	2,578,393	1,225,551	429,812	5,311,445	1,634,759	391,360	7,337,564

⁽¹⁾ Contained within criticized and classified loans at December 31, 2020 are loans that were granted payment deferrals related to COVID-19 totaling \$207.4 million.

(8) Banking Premises and Equipment

A summary of banking premises and equipment at December 31, 2020 and 2019 is as follows (in thousands):

	2020	2019
Land	\$ 13,631	12,440
Banking premises	72,362	59,708
Furniture, fixtures and equipment	52,128	45,660
Leasehold improvements	37,756	35,749
Construction in progress	9,669	3,270
	185,546	156,827
Less accumulated depreciation and amortization	109,600	101,617
Total banking premises and equipment	\$ 75,946	55,210

Depreciation expense for the years ended December 31, 2020, 2019 and 2018 amounted to \$7.6 million, \$7.7 million and \$8.0 million, respectively.

(9) Intangible Assets

Intangible assets at December 31, 2020 and 2019 are summarized as follows (in thousands):

	2020	2019
Goodwill	\$ 443,001	420,562
Core deposit premiums	1,112	1,753
Customer relationship and other intangibles	21,466	14,142
Mortgage servicing rights	633	562
Total intangible assets	\$ 466,212	437,019

Amortization expense of intangible assets for the years ended December 31, 2020, 2019 and 2018 is as follows (in thousands):

	2020	2019	2018
Core deposit premiums	\$ 824	786	931
Customer relationship and other intangibles	2,457	1,869	1,073
Mortgage servicing rights	144	85	123
Total amortization expense of intangible assets	\$ 3,425	2,740	2,127

Scheduled amortization of core deposit premiums and customer relationship and other intangibles for each of the next five years is as follows (in thousands):

Year ended December 31,	Scheduled Amortization
2021	\$ 3,513
2022	3,143
2023	2,771
2024	2,432
2025	2,206

(10) Deposits

Deposits at December 31, 2020 and 2019 are summarized as follows (in thousands):

	2020	Weighted average interest rate	2019	Weighted average interest rate
Savings deposits	\$ 1,348,147	0.11 %	\$ 983,714	0.14 %
Money market accounts	2,245,412	0.45	1,738,202	0.79
NOW accounts	2,808,637	0.42	2,092,413	0.79
Non-interest bearing deposits	2,341,459	—	1,554,253	—
Certificates of deposit	1,094,174	0.89	734,027	1.72
Total deposits	<u>\$ 9,837,829</u>		<u>\$ 7,102,609</u>	

Scheduled maturities of certificates of deposit accounts at December 31, 2020 and 2019 are as follows (in thousands):

	2020	2019
Within one year	\$ 886,018	606,870
One to three years	153,114	81,987
Three to five years	54,544	44,243
Five years and thereafter	498	927
	<u>\$ 1,094,174</u>	<u>734,027</u>

Interest expense on deposits for the years ended December 31, 2020, 2019 and 2018 is summarized as follows (in thousands):

	Years ended December 31,		
	2020	2019	2018
Savings deposits	\$ 1,689	1,681	1,923
NOW and money market accounts	22,762	29,542	20,450
Certificates of deposits	9,138	14,271	8,320
	<u>\$ 33,589</u>	<u>45,494</u>	<u>30,693</u>

(11) Borrowed Funds

Borrowed funds at December 31, 2020 and 2019 are summarized as follows (in thousands):

	2020	2019
Securities sold under repurchase agreements	\$ 99,936	60,737
FHLB line of credit	25,000	298,000
FHLB advances	1,051,036	766,409
Total borrowed funds	<u>\$ 1,175,972</u>	<u>1,125,146</u>

At December 31, 2020, FHLB advances were at fixed rates and mature between January 2020 and May 2022, and at December 31, 2019, FHLB advances were at fixed rates and mature between January 2019 and April 2022. These advances are secured by loans receivable under a blanket collateral agreement.

Scheduled maturities of FHLB advances at December 31, 2020 are as follows (in thousands):

	2020
Due in one year or less	\$ 754,481
Due after one year through two years	168,686
Due after two years through three years	58,650
Due after three years through four years	19,219
Thereafter	—
Total FHLB advances	\$ 1,051,036

Scheduled maturities of securities sold under repurchase agreements at December 31, 2020 are as follows (in thousands):

	2020
Due in one year or less	\$ 99,936
Due after one year through two years	—
Due after two years through three years	—
Due after three years through four years	—
Due after four years through five years	—
Thereafter	—
Total securities sold under repurchase agreements	\$ 99,936

The following tables set forth certain information as to borrowed funds for the years ended December 31, 2020 and 2019 (in thousands):

	Maximum balance	Average balance	Weighted average interest rate
2020			
Securities sold under repurchase agreements	\$ 115,233	86,194	0.28 %
FHLB line of credit	422,000	97,853	1.09
FHLB advances	1,177,083	1,045,282	1.49
2019			
Securities sold under repurchase agreements	\$ 96,914	71,234	.49 %
FHLB line of credit	451,000	325,481	2.40
FHLB advances	1,190,006	939,916	2.11

Securities sold under repurchase agreements include arrangements with deposit customers of the Bank to sweep funds into short-term borrowings. The Bank uses available for sale debt securities to pledge as collateral for the repurchase agreements. At December 31, 2020 and December 31, 2019, available for sale debt securities pledged as collateral for repurchase agreements totaled \$105.1 million and \$56.5 million, respectively.

Interest expense on borrowings for the years ended December 31, 2020, 2019 and 2018 amounted to \$16.6 million, \$28.0 million and \$28.5 million, respectively.

(12) Subordinated Debentures

As part of the July 31, 2020 acquisition of SB One, the Company assumed subordinated debentures with a total outstanding balance of \$27.9 million and a net fair value of \$25.1 million. The outstanding balance consisted of \$12.9 million of subordinated deferrable interest debentures sold by the former SB One Bancorp to Sussex Capital Trust II (the "Trust") and \$15 million of private placement of fixed to-floating rate subordinated notes to an institutional investor.

Sussex Capital Trust II, a non-consolidated subsidiary of the Company acquired as part of the SB One acquisition and a Delaware statutory business trust established on June 28, 2007, issued \$12.5 million of variable rate capital trust pass-through

securities to investors. Concurrently, the Trust purchased \$12.9 million of variable rate subordinated deferrable interest debentures from the former SB One Bancorp and issued \$387,000 of Common Securities in consideration for payment of the assets of the Trust in the same amount. The subordinated debentures are the sole asset of the Trust and their terms are the same as the terms of the capital securities. The Company has also fully and unconditionally guaranteed the obligations of the Trust under the capital securities. The interest rate is based on the three-month LIBOR plus 144 basis points and adjusts quarterly. The rate at December 31, 2020 was 1.66%. The capital trust pass-through securities are currently redeemable by the Company at par in whole or in part. These capital trust pass-through securities must be redeemed upon final maturity on September 15, 2037. The proceeds of these trust preferred securities, which have been contributed to the Bank, are included in the Bank's capital ratio calculations and treated as Tier I capital.

In accordance with FASB ASC 810, Consolidation, Sussex Capital Trust II, is not included in our consolidated financial statements. For regulatory reporting purposes, capital trust pass-through securities qualify as Tier I capital subject to specified limitations.

As part of the acquisition of SB One, the Company assumed a \$15.0 million private placement of fixed to-floating rate subordinated notes to an institutional investor on December 22, 2016. The subordinated notes have a maturity date of December 22, 2026 and bear interest at the rate of 5.75% per annum, payable quarterly, for the first five years of the term, and then at a variable rate that will reset quarterly to a level equal to the then current 3-month LIBOR plus 350 basis points over the remainder of the term.

Subordinated debentures at December 31, 2020 totaled 25.1 million, while interest expense on these subordinated debentures for the year ended December 31, 2020 totaled \$512,000.

(13) Benefit Plans

Pension and Post-retirement Benefits

The Bank has a noncontributory defined benefit pension plan covering its full-time employees who had attained age 21 with at least one year of service as of April 1, 2003. The pension plan was frozen on April 1, 2003. All participants in the pension plan are 100% vested. The pension plan's assets are invested in investment funds and group annuity contracts currently managed by the Principal Financial Group and Allmerica Financial. Based on the measurement date of December 31, 2020, no contributions will be made to the pension plan in 2021.

In addition to pension benefits, certain health care and life insurance benefits are currently made available to certain of the Bank's retired employees. The costs of such benefits are accrued based on actuarial assumptions from the date of hire to the date the employee is fully eligible to receive the benefits. Effective January 1, 2003, eligibility for retiree health care benefits was frozen as to new entrants and benefits were eliminated for employees with less than ten years of service as of December 31, 2002. Effective January 1, 2007, eligibility for retiree life insurance benefits was frozen as to new entrants and retiree life insurance benefits were eliminated for employees with less than ten years of service as of December 31, 2006.

The following table sets forth information regarding the pension plan and post-retirement healthcare and life insurance plans (in thousands):

	Pension			Post-retirement		
	2020	2019	2018	2020	2019	2018
Change in benefit obligation:						
Benefit obligation at beginning of year	\$ 33,058	28,878	31,970	23,323	20,028	22,757
Service cost	—	—	—	78	80	115
Interest cost	1,000	1,198	1,094	712	837	786
Actuarial loss	381	63	—	(169)	—	18
Benefits paid	(1,630)	(1,493)	(1,401)	(627)	(600)	(590)
Change in actuarial assumptions	2,361	4,412	(2,785)	(4,512)	2,978	(3,058)
Benefit obligation at end of year	\$ 35,170	33,058	28,878	18,805	23,323	20,028
Change in plan assets:						
Fair value of plan assets at beginning of year	\$ 49,932	43,449	46,870	—	—	—
Actual return on plan assets	6,315	7,976	(2,020)	—	—	—
Employer contributions	—	—	—	627	600	590
Benefits paid	(1,630)	(1,493)	(1,401)	(627)	(600)	(590)
Fair value of plan assets at end of year	54,617	49,932	43,449	—	—	—
Funded status at end of year	\$ 19,447	16,874	14,571	(18,805)	(23,323)	(20,028)

For the years ended December 31, 2020 and 2019, the Company, in the measurement of its pension plan and post-retirement obligations updated its mortality assumptions to the RP 2014 mortality table with the fully generational projection scale MP 2020 and MP 2019 issued by The Society of Actuaries ("SOA") in October 2020 and 2019, respectively. The prepaid pension benefits of \$19.4 million and the unfunded post-retirement healthcare and life insurance benefits of \$18.8 million at December 31, 2020 are included in other assets and other liabilities, respectively, in the Consolidated Statements of Financial Condition.

The components of accumulated other comprehensive loss (gain) related to the pension plan and other post-retirement benefits, on a pre-tax basis, at December 31, 2020 and 2019 are summarized in the following table (in thousands):

	Pension		Post-retirement	
	2020	2019	2020	2019
Unrecognized prior service cost	\$ —	—	—	—
Unrecognized net actuarial loss (gain)	9,026	10,346	(8,055)	(3,621)
Total accumulated other comprehensive loss (gain)	\$ 9,026	10,346	(8,055)	(3,621)

Net periodic (benefit) increase cost for the years ending December 31, 2020, 2019 and 2018, included the following components (in thousands):

	Pension			Post-retirement		
	2020	2019	2018	2020	2019	2018
Service cost	\$ —	—	—	78	80	115
Interest cost	1,000	1,198	1,094	712	837	786
Return on plan assets	(2,949)	(2,562)	(2,769)	—	—	—
Amortization of:						
Net loss (gain)	696	1,015	795	(248)	(825)	(396)
Unrecognized prior service cost	—	—	—	—	—	—
Net periodic (benefit) increase cost	\$ (1,253)	(349)	(880)	542	92	505

The weighted average actuarial assumptions used in the plan determinations at December 31, 2020, 2019 and 2018 were as follows:

	Pension			Post-retirement		
	2020	2019	2018	2020	2019	2018
Discount rate	2.30 %	3.10 %	4.25 %	2.30 %	3.10 %	4.25 %
Rate of compensation increase	—	—	—	—	—	—
Expected return on plan assets	6.00	6.00	6.00	—	—	—
Medical and life insurance benefits cost rate of increase	—	—	—	6.00	6.00	6.00

The Company provides its actuary with certain rate assumptions used in measuring the benefit obligation. The most significant of these is the discount rate used to calculate the period-end present value of the benefit obligations, and the expense to be included in the following year's financial statements. A lower discount rate will result in a higher benefit obligation and expense, while a higher discount rate will result in a lower benefit obligation and expense. The discount rate assumption was determined based on a cash flow-yield curve model specific to the Company's pension and post-retirement plans. The Company compares this rate to certain market indices, such as long-term treasury bonds, or the Citigroup pension liability indices, for reasonableness. A discount rate of 2.30% was selected for the December 31, 2020 measurement date.

Assumed health care cost trend rates have a significant effect on the amounts reported for health care plans. A 1% change in the assumed health care cost trend rate would have had the following effects on post-retirement benefits at December 31, 2020 (in thousands):

	1% increase	1% decrease
Effect on total service cost and interest cost	\$ 140	110
Effect on post-retirement benefits obligation	\$ 3,900	3,100

Estimated future benefit payments, which reflect expected future service, as appropriate for the next five years, are as follows (in thousands):

	Pension	Post-retirement
2021	\$ 1,721	780
2022	1,740	789
2023	1,774	821
2024	1,779	822
2025	1,772	850

The weighted-average asset allocation of pension plan assets at December 31, 2020 and 2019 were as follows:

Asset Category	2020	2019
Domestic equities	39 %	37 %
Foreign equities	12 %	11 %
Fixed income	47 %	50 %
Real estate	2 %	2 %
Cash	— %	— %
Total	100 %	100 %

The Company's expected return on pension plan assets assumption is based on historical investment return experience and evaluation of input from the Plan's Investment Consultant and the Company's Benefits Committee which manages the pension plan's assets. The expected return on pension plan assets is also impacted by the target allocation of assets, which is based on the Company's goal of earning the highest rate of return while maintaining risk at acceptable levels.

Management strives to have pension plan assets sufficiently diversified so that adverse or unexpected results from one security class will not have a significant detrimental impact on the entire portfolio. The target allocation of assets and acceptable ranges around the targets are as follows:

Asset Category	Target	Allowable Range
Domestic equities	37 %	30-41%
Foreign equities	11 %	5-13%
Fixed income	50 %	40-65%
Real estate	2 %	0-4%
Cash	0 %	0%
Total	100 %	

The Company anticipates that the long-term asset allocation on average will approximate the targeted allocation. Actual asset allocations are the result of investment decisions by a third-party investment manager.

The following tables present the assets that are measured at fair value on a recurring basis by level within the U.S. GAAP fair value hierarchy as reported on the statements of net assets available for Plan benefits at December 31, 2020 and 2019, respectively. Financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

(in thousands)	Fair value measurements at December 31, 2020			
	Total	(Level 1)	(Level 2)	(Level 3)
Group annuity contracts	\$ 64	—	64	—
Mutual funds:				
Fixed income	25,418	25,418	—	—
International equity	6,581	6,581	—	—
Large U.S. equity	1,677	1,677	—	—
Small/Mid U.S. equity	1,225	1,225	—	—
Total mutual funds	34,901	34,901	—	—
Pooled separate accounts	19,652	—	19,652	—
Total Plan assets	\$ 54,617	34,901	19,716	—

(in thousands)	Fair value measurements at December 31, 2019			
	Total	(Level 1)	(Level 2)	(Level 3)
Group annuity contracts	\$ 81	—	81	—
Mutual funds:				
Fixed income	16,609	16,609	—	—
International equity	5,535	5,535	—	—
Large U.S. equity	1,496	1,496	—	—
Small/Mid U.S. equity	996	996	—	—
Total mutual funds	24,636	24,636	—	—
Pooled separate accounts	25,215	—	25,215	—
Total Plan assets	\$ 49,932	24,636	25,296	—

401(k) Plan

The Bank has a 401(k) plan covering substantially all employees of the Bank. For 2020, 2019 and 2018, the Bank matched 25% of the first 6% contributed by the participants. The contribution percentage is determined by the Board of Directors in its sole discretion. The Bank's aggregate contributions to the 401(k) Plan for 2020, 2019 and 2018 were \$1.0 million, \$981,000 and \$973,000, respectively.

Supplemental Executive Retirement Plan

The Bank maintains a non-qualified supplemental retirement plan for certain senior officers of the Bank. This unfunded plan, which was frozen as of April 1, 2003 provides benefits in excess of the benefits permitted to be paid by the pension plan

under provisions of the tax law. Amounts expensed under this supplemental retirement plan amounted to \$80,000, \$85,000 and \$82,000 for the years 2020, 2019 and 2018, respectively. At December 31, 2020 and 2019, \$1.8 million and \$1.9 million, respectively, were recorded in other liabilities on the Consolidated Statements of Financial Condition for this supplemental retirement plan. In connection with this supplemental retirement plan, an increase of \$89,000, an increase of \$187,000, and a decrease of \$119,000, net of tax, were recorded in other comprehensive (loss) income for 2020, 2019 and 2018, respectively.

Retirement Plan for the Board of Directors of Provident Bank

The Bank maintains a Retirement Plan for the Board of Directors of the Bank, a non-qualified plan that provides cash payments for up to 10 years to eligible retired board members based on age and length of service requirements. The maximum payment under this plan to a board member, who terminates service on or after the age of 72 with at least ten years of service on the board, is forty quarterly payments of \$1,250. The Bank may suspend payments under this plan if it does not meet Federal Deposit Insurance Corporation or New Jersey Department of Banking and Insurance minimum capital requirements. The Bank may terminate this plan at any time although such termination may not reduce or eliminate any benefit previously accrued to a board member without his or her consent. The plan was amended in December 2005 to terminate benefits under this plan for any directors who had less than ten years of service on the board of directors of the Bank as of December 31, 2006.

The plan further provides that, in the event of a change in control (as defined in the plan), the undistributed balance of a director's accrued benefit will be distributed to him or her within 60 days of the change in control. The Bank paid \$10,000, \$15,000, and \$10,000 to former board members under this plan for each of the years ended December 31, 2020, 2019 and 2018, respectively. At December 31, 2020 and 2019, \$127,000 and \$130,000, respectively, were recorded in other liabilities on the Consolidated Statements of Financial Condition for this retirement plan. An increase of \$6,334, an increase of \$730, and an increase of \$3,000, net of tax, were recorded in other comprehensive (loss) income for 2020, 2019 and 2018, respectively, in connection with this plan.

Employee Stock Ownership Plan

The ESOP is a tax-qualified plan designed to invest primarily in the Company's common stock that provides employees with the opportunity to receive a funded retirement benefit from the Bank, based primarily on the value of the Company's common stock. The ESOP purchased 4,769,464 shares of the Company's common stock at an average price of \$17.09 per share with the proceeds of a loan from the Company to the ESOP. The outstanding loan principal at December 31, 2020, was \$25.6 million. Shares of the Company's common stock pledged as collateral for the loan are released from the pledge for allocation to participants as loan payments are made.

For the years ending December 31, 2020 and 2019, 273,307 shares and 280,522 shares from the ESOP were released, respectively. Unallocated ESOP shares held in suspense totaled 1,183,180 at December 31, 2020, and had a fair value of \$21.3 million. ESOP compensation expense for the years ended December 31, 2020, 2019 and 2018 was \$2.4 million, \$4.5 million and \$4.5 million, respectively.

Non-Qualified Supplemental Defined Contribution Plan ("the Supplemental Employee Stock Ownership Plan")

Effective January 1, 2004, the Bank established a deferred compensation plan for executive management and key employees of the Bank, known as Provident Bank Non-Qualified Supplemental Employee Stock Ownership Plan (the "Supplemental ESOP"). The Supplemental ESOP was amended and restated as the Non-Qualified Supplemental Defined Contribution Plan (the "Supplemental DC Plan"), effective January 1, 2010. The Supplemental DC Plan is a non-qualified plan that provides additional benefits to certain executives whose benefits under the 401(k) Plan and ESOP are limited by tax law limitations applicable to tax-qualified plans. The Supplemental DC Plan requires a contribution by the Bank for each participant who also participates in the 401(k) Plan and ESOP equal to the amount that would have been contributed under the terms of the 401(k) Plan and ESOP but for the tax law limitations, less the amount actually contributed under the 401(k) Plan and ESOP.

The Supplemental DC Plan provides for a phantom stock allocation for qualified contributions that may not be accrued in the qualified ESOP and for matching contributions that may not be accrued in the qualified 401(k) Plan due to tax law limitations. Under the Supplemental 401(k) provision, the estimated expense for the years ending December 31, 2020, 2019 and 2018 was \$25,000, \$22,000 and \$18,000, respectively, and included the matching contributions plus interest credited at an annual rate equal to the ten-year bond-equivalent yield on U.S. Treasury securities. Under the Supplemental ESOP provision, the estimated expense for the years ending December 31, 2020, 2019 and 2018 was \$180,000, \$140,000 and \$121,000,

respectively. The phantom equity is treated as equity awards (expensed at the time of allocation) and not liability awards which would require periodic adjustment to market, as participants do not have an option to take their distribution in cash.

2019 Long-Term Equity Incentive Plan

Upon stockholders' approval of the 2019 Long-Term Equity Incentive Plan on April 25, 2019, shares available for stock awards and stock options under the Amended and Restated Long-Term Incentive Plan were reserved for issuance under the new 2019 Long-Term Equity Incentive Plan. No additional grants of stock awards and stock options will be made under the Amended and Restated Long-Term Incentive Plan. The new plan authorized the issuance of up to 1,350,000 shares of Company common stock to be issued as stock awards. Shares previously awarded under prior equity incentive plans that are subsequently forfeited or expire may also be issued under this new plan.

Stock Awards

As a general rule, restricted stock grants are held in escrow for the benefit of the award recipient until vested. Awards outstanding generally vest in three annual installments, commencing one year from the date of the award. Additionally, certain awards are three-year performance-vesting awards, which may or may not vest depending upon the attainment of certain corporate financial targets. Expense attributable to stock awards amounted to \$5.4 million, \$6.7 million and \$6.0 million for the years ended December 31, 2020, 2019 and 2018, respectively.

A summary status of the granted but unvested stock awards as of December 31, and changes during the year, is presented below:

	Restricted Stock Awards		
	2020	2019	2018
Outstanding at beginning of year	668,826	651,099	660,783
Granted	429,122	291,034	296,411
Forfeited	(59,938)	(46,914)	(56,296)
Vested	(252,829)	(226,393)	(249,799)
Outstanding at the end of year	785,181	668,826	651,099

As of December 31, 2020, unrecognized compensation cost relating to unvested restricted stock totaled \$6.4 million. This amount will be recognized over a remaining weighted average period of 1.7 years.

Stock Options

Each stock option granted entitles the holder to purchase one share of the Company's common stock at an exercise price not less than the fair value of a share of the Company's common stock at the date of grant. Options generally vest over a five-year period from the date of grant and expire no later than 10 years following the grant date. Additionally, certain options are three-year performance-vesting options, which may or may not vest depending upon the attainment of certain corporate financial targets.

A summary of the status of the granted but unexercised stock options as of December 31, 2020, 2019 and 2018, and changes during the year is presented below:

	2020		2019		2018	
	Number of stock options	Weighted average exercise price	Number of stock options	Weighted average exercise price	Number of stock options	Weighted average exercise price
Outstanding at beginning of year	499,201	\$ 19.32	470,979	\$ 18.36	507,656	\$ 16.84
Granted	107,240	20.62	41,685	27.25	43,124	25.58
Exercised	—	—	(13,463)	10.35	(79,801)	12.61
Forfeited	(10,000)	14.68	—	—	—	—
Expired	—	—	—	—	—	—
Outstanding at the end of year	596,441	\$ 17.96	499,201	\$ 19.32	470,979	\$ 18.36

The total fair value of options vesting during 2020, 2019 and 2018 was \$185,000, \$193,000 and \$189,000, respectively.

Compensation expense of approximately \$139,000, \$76,000 and \$11,000 is projected for 2021, 2022 and 2023, respectively, on stock options outstanding at December 31, 2020.

The following table summarizes information about stock options outstanding at December 31, 2020:

Range of exercise prices	Options Outstanding			Options Exercisable	
	Number of options outstanding	Average remaining contractual life	Weighted average exercise price	Number of options exercisable	Weighted average exercise price
\$14.50-15.23	138,475	1.1	\$ 14.89	138,475	\$ 14.89
\$16.38-27.25	457,966	6.1	\$ 20.83	279,901	\$ 19.50

The stock options outstanding and stock options exercisable at December 31, 2020 have an aggregate intrinsic value of \$553,000.

The expense related to stock options is based on the fair value of the options at the date of the grant and is recognized ratably over the vesting period of the options.

Compensation expense related to the Company's stock option plan totaled \$190,000, \$181,000 and \$190,000 for 2020, 2019 and 2018, respectively.

The estimated fair values were determined on the dates of grant using the Black-Scholes Option pricing model. The fair value of the Company's stock option awards are expensed on a straight-line basis over the vesting period of the stock option. The risk-free rate is based on the implied yield on a U.S. Treasury bond with a term approximating the expected term of the option. The expected volatility computation is based on historical volatility over a period approximating the expected term of the option. The dividend yield is based on the annual dividend payment per share, divided by the grant date stock price. The expected option term is a function of the option life and the vesting period.

The fair value of the option grants was estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

	For the year ended December 31,		
	2020	2019	2018
Expected dividend yield	4.46 %	3.38 %	3.13 %
Expected volatility	20.33 %	22.01 %	20.65 %
Risk-free interest rate	0.75 %	2.53 %	2.65 %
Expected option life	8 years	8 years	8 years

The weighted average fair value of options granted during 2020, 2019 and 2018 was \$1.83, \$4.57 and \$4.29 per option, respectively.

(14) Income Taxes

The Tax Cuts and Jobs Act ("Tax Act") was signed into law on December 22, 2017. Included as part of the law, was a permanent reduction in the federal corporate income tax rate from 35% to 21% effective January 1, 2018. Based upon the change in the tax rate, the Company revalued its net deferred tax asset at December 31, 2017.

The current and deferred amounts of income tax expense (benefit) for the years ended December 31, 2020, 2019 and 2018 are as follows (in thousands):

	Years ended December 31,		
	2020	2019	2018
Current:			
Federal	\$ 27,143	22,427	41,578
State	11,389	10,354	2,493
Total current	38,532	32,781	44,071
Deferred:			
Federal	(5,908)	1,650	(17,302)
State	(2,021)	24	(1,239)
Total deferred	(7,929)	1,674	(18,541)
	<u>\$ 30,603</u>	<u>34,455</u>	<u>25,530</u>

The Company recorded a deferred tax expense (benefit) of \$5.2 million, \$6.6 million and (\$2.4) million during 2020, 2019 and 2018, respectively, related to the unrealized gains (losses) on available for sale debt securities, which is reported in accumulated other comprehensive income (loss), net of tax. Additionally, the Company recorded a deferred tax expense (benefit) of \$1.4 million, (\$463,000) and \$379,000 in 2020, 2019 and 2018, respectively, related to the amortization of post-retirement benefit obligations, which is reported in accumulated other comprehensive income (loss), net of tax.

A reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the applicable statutory income tax rate is as follows (in thousands):

	Years ended December 31,		
	2020	2019	2018
Tax expense at statutory rates	\$ 26,786	30,889	30,223
Increase (decrease) in taxes resulting from:			
State tax, net of federal income tax benefit	7,400	8,197	1,002
Tax-exempt interest income	(2,609)	(3,082)	(2,839)
Bank-owned life insurance	(1,363)	(1,322)	(1,158)
Other, net	389	(227)	(1,698)
	<u>\$ 30,603</u>	<u>34,455</u>	<u>25,530</u>

The net deferred tax asset is included in other assets in the Consolidated Statements of Financial Condition. The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at December 31, 2020 and 2019 are as follows (in thousands):

	2020	2019
Deferred tax assets:		
Allowance for credit losses on loans	\$ 26,156	14,313
Allowance for credit loss OBS	1,295	—
Post-retirement benefit	6,924	6,946
Deferred compensation	839	1,175
Contingent Consideration	714	—
Purchase accounting adjustments	3,099	1,629
Depreciation	331	750
SERP	733	688
ESOP	1,377	1,606
Stock-based compensation	4,481	4,747
Payroll Protection Program fees	2,268	—
Non-accrual interest	225	417
Federal Net Operating Loss ("NOL")	280	321
Net unrealized loss on hedging activities	1,717	—
Pension liability adjustments	376	1,821
Other	925	1,223
Total gross deferred tax assets	51,740	35,636
Deferred tax liabilities:		
Pension expense	7,340	7,017
Deferred loan costs	4,532	5,064
Investment securities, principally due to accretion of discounts	79	70
Intangibles	1,723	1,393
Originated mortgage servicing rights	160	140
Unrealized gain on available for sale debt securities	7,802	3,038
Net unrealized gain on hedging activities	—	114
Total gross deferred tax liabilities	21,636	16,836
Net deferred tax asset	\$ 30,104	18,800

Retained earnings at December 31, 2020 includes approximately \$51.8 million for which no provision for income tax has been made. This amount represents an allocation of income to bad debt deductions for tax purposes only. Events that would result in taxation of these reserves include the failure to qualify as a bank for tax purposes, distributions in complete or partial liquidation, stock redemptions and excess distributions to stockholders. At December 31, 2020, the Company had an unrecognized tax liability of \$13.4 million with respect to this reserve.

As a result of the Beacon acquisition in 2011, the Company acquired federal net operating loss carryforwards. There are approximately \$1.3 million of NOL carryforwards available to offset future taxable income as of December 31, 2020. If not utilized, these carryforwards will expire in 2031. Pursuant to the Tax Act, NOLs created after December 31, 2017 may be carried forward indefinitely and utilization is subject to 80% of taxable income. The federal NOLs are subject to a combined annual Code Section 382 limitation in the amount of approximately \$197,000. Management has determined that it is more likely than not that it will realize the net deferred tax asset based upon the nature and timing of the items listed above. In order to fully realize the net deferred tax asset, the Company will need to generate future taxable income. Management has projected that the Company will generate sufficient taxable income to utilize the net deferred tax asset; however, there can be no assurance that such levels of taxable income will be generated.

The Company's policy is to report interest and penalties, if any, related to unrecognized tax benefits in income tax expense. The Company did not have any liabilities for uncertain tax positions or any known unrecognized tax benefits at December 31, 2020 and 2019.

The Company and its subsidiaries file a consolidated U.S. Federal income tax return. For tax periods prior to December 31, 2018, New Jersey tax law does not and has not allowed for a taxpayer to file a tax return on a combined or consolidated basis with another member of the affiliated group where there is common ownership. As a result of this enacted legislation that New Jersey effectuated on July 1, 2018, beginning in 2019, the Company and its subsidiaries is required to file a combined New Jersey state income tax return on apportioned and allocated income. Also, the Company and its subsidiaries file a combined New York State income tax return on apportioned and allocated income. The Company, through its bank subsidiary, files a Pennsylvania Mutual Thrift Institution Tax return.

The Company's Federal and New York State income tax returns are open for examination from 2017, the New Jersey State income tax returns are open for examination from 2016, and the Pennsylvania Mutual Thrift Institutions return is open from 2017. During the fourth quarter of 2017, the Internal Revenue Service completed its examination of the Company's 2014 Federal tax return. The completion of the examination did not have a material impact on the Company's effective income tax rate. The examination of the Company's 2016 and 2015 New York State tax returns was completed in the first quarter of 2019, and did not have a material impact on the Company's effective income tax rate. The Company's 2017 and 2018 New York State returns are currently under audit. The Company's 2015 thru 2018 New Jersey State returns are currently under audit.

(15) Commitments, Contingencies and Concentrations of Credit Risk

In the normal course of business, various commitments and contingent liabilities are outstanding which are not reflected in the accompanying consolidated financial statements. In the opinion of management, the consolidated financial position of the Company will not be materially affected by the outcome of such commitments or contingent liabilities.

The Company is involved in various legal actions and claims arising in the normal course of its business. In the opinion of management, these legal actions and claims are not expected to have a material adverse impact on the Company's financial condition or results of operations.

A substantial portion of the Bank's loans are to borrowers operating in or, are secured by real estate located in New Jersey, our primary market area. Accordingly, the collectability of a substantial portion of the Bank's loan portfolio may be susceptible to changes in local real estate market conditions and the regional business environment.

(16) Regulatory Capital Requirements

FDIC regulations require banks to maintain minimum levels of regulatory capital. Under the regulations in effect at December 31, 2020, the Bank is required to maintain: (1) a Tier 1 capital to total assets leverage ratio of 4.0%; (2) a common equity Tier 1 capital to risk-based assets ratio of 4.5%; (3) a Tier 1 capital to risk-based assets ratio of 6.0%; and (4) a total capital to risk-based assets ratio of 8.0%. In addition to establishing the minimum regulatory capital requirements, the regulations limit capital distributions and certain discretionary bonus payments to management if the institution does not hold a "capital conservation buffer" consisting of 2.5% of common equity Tier 1 capital to risk-weighted asset above the amount necessary to meet its minimum risk-based capital requirements.

Under its prompt corrective action regulations, the FDIC is required to take certain supervisory actions (and may take additional discretionary actions) with respect to an undercapitalized institution. Such actions could have a direct material effect on an institution's financial statements. The regulations establish a framework for the classification of savings institutions into five categories: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Generally, an institution is considered well capitalized if it has: a leverage (Tier 1) capital ratio of at least 5.00%; a common equity Tier 1 risk-based capital ratio of 6.50%; a Tier 1 risk-based capital ratio of at least 8.00%; and a total risk-based capital ratio of at least 10.00%.

In the first quarter of 2020, U.S. federal regulatory authorities issued an interim final rule providing banking institutions that adopt CECL during the 2020 calendar year with the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay (i.e., a five year transition in total). In connection with its adoption of CECL on January 1, 2020, the Company elected to utilize the five-year CECL transition.

The foregoing capital ratios are based in part on specific quantitative measures of assets, liabilities and certain off-balance sheet items as calculated under regulatory accounting practices. Capital amounts and classifications are also subject to qualitative judgments by the FDIC about capital components, risk weightings and other factors.

As of December 31, 2020 and 2019, the Bank exceeded all minimum capital adequacy requirements to which it is subject. Further, the most recent FDIC notification categorized the Bank as a well-capitalized institution under the prompt corrective action regulations. There have been no conditions or events since that notification that management believes have changed the Bank's capital classification.

The Company is regulated as a bank holding company, and as such, is subject to examination, regulation and periodic reporting under the Bank Holding Company Act, as administered by the Federal Reserve Board ("FRB"). The FRB has adopted capital adequacy guidelines for bank holding companies on a consolidated basis substantially similar to those of the FDIC for the Bank. As of December 31, 2020 and 2019, the Company was "well capitalized" under FRB guidelines. Regulations of the FRB provide that a bank holding company must serve as a source of strength to any of its subsidiary banks and must not conduct its activities in an unsafe or unsound manner. Under the prompt corrective action provisions discussed above, a bank holding company parent of an undercapitalized subsidiary bank would be directed to guarantee, within limitations, the capital restoration plan that is required of such an undercapitalized bank. If the undercapitalized bank fails to file an acceptable capital restoration plan or fails to implement an accepted plan, the FRB may prohibit the bank holding company parent of the undercapitalized bank from paying any dividend or making any other form of capital distribution without the prior approval of the FRB.

The following table shows the Company's actual capital amounts and ratios as of December 31, 2020 and 2019, compared to the FRB minimum capital adequacy requirements and the FRB requirements for classification as a well-capitalized institution (dollars in thousands).

	Actual capital		FRB minimum capital adequacy requirements		FRB minimum capital adequacy requirements with capital conservation buffer		To be well-capitalized under prompt corrective action provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of December 31, 2020								
Tier 1 leverage capital	\$ 1,157,505	9.30 %	\$ 497,794	4.00 %	\$ 497,794	4.00 %	\$ 622,243	5.00 %
Common equity Tier 1 risk-based capital	1,144,618	10.46	492,359	4.50	765,892	7.00	711,185	6.50
Tier 1 risk-based capital	1,157,505	10.58	656,478	6.00	930,011	8.50	875,305	8.00
Total risk-based capital	1,306,494	11.94	875,305	8.00	1,148,837	10.50	1,094,131	10.00

	Actual capital		FRB minimum capital adequacy requirements		FRB minimum capital adequacy requirements with capital conservation buffer		To be well-capitalized under prompt corrective action provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of December 31, 2019								
Tier 1 leverage capital	\$ 973,214	10.34 %	\$ 376,484	4.00 %	\$ 376,484	4.00 %	\$ 470,605	5.00 %
Common equity Tier 1 risk-based capital	973,214	12.74	343,756	4.50	534,732	7.00	496,537	6.50
Tier 1 risk-based capital	973,214	12.74	458,342	6.00	649,317	8.50	611,122	8.00
Total risk-based capital	1,028,879	13.47	611,122	8.00	802,098	10.50	763,903	10.00

The following table shows the Bank's actual capital amounts and ratios as of December 31, 2020 and 2019, compared to the FDIC minimum capital adequacy requirements and the FDIC requirements for classification as a well-capitalized institution (dollars in thousands).

	Actual capital		FDIC minimum capital adequacy requirements		FDIC minimum capital adequacy requirements with capital conservation buffer		To be well-capitalized under prompt corrective action provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of December 31, 2020								
Tier 1 leverage capital	\$ 1,086,589	8.75 %	\$ 496,908	4.00 %	\$ 496,908	4.00 %	\$ 621,135	5.00 %
Common equity Tier 1 risk-based capital	1,086,589	9.96	491,135	4.50	763,988	7.00	709,417	6.50
Tier 1 risk-based capital	1,086,589	9.96	654,847	6.00	927,700	8.50	873,129	8.00
Total risk-based capital	1,223,469	11.21	873,129	8.00	1,145,982	10.50	1,091,411	10.00

	Actual capital		FDIC minimum capital adequacy requirements		FRB minimum capital adequacy requirements with capital conservation buffer		To be well-capitalized under prompt corrective action provisions	
	Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio
As of December 31, 2019								
Tier 1 leverage capital	\$ 923,471	9.81 %	\$ 376,449	4.00 %	\$ 376,449	4.00 %	\$ 470,562	5.00 %
Common equity Tier 1 risk-based capital	923,471	12.09	343,716	4.50	534,670	7.00	496,479	6.50
Tier 1 risk-based capital	923,471	12.09	458,288	6.00	649,242	8.50	611,051	8.00
Total risk-based capital	979,136	12.82	611,051	8.00	802,004	10.50	763,814	10.00

Note 17. Allowance for Credit Losses on Off-Balance Sheet Credit Exposures

On January 1, 2020, the Company adopted CECL, which replaced the incurred loss methodology with an expected loss methodology. This new methodology applies to off-balance sheet credit exposures, including loan commitments and lines of credit. The adoption of this new standard resulted in the Company recording a \$3.2 million increase to the allowance for credit losses on off-balance sheet credit exposures with a corresponding cumulative effect adjustment to decrease retained earnings \$2.4 million, net of income taxes.

Management analyzes the Company's exposure to credit losses for both on-balance sheet and off-balance sheet activity using a consistent methodology for the quantitative framework as well as the qualitative framework. For purposes of estimating the allowance for credit losses for off-balance sheet credit exposures, the exposure at default includes an estimated drawdown of unused credit based on historical credit utilization factors and current loss factors, resulting in a proportionate amount of expected credit losses.

The following table illustrates the impact of the January 1, 2020 adoption of CECL on off-balance sheet credit exposures (dollars in thousands):

	January 1, 2020		
	As reported under CECL	Prior to CECL	Impact of CECL adoption
Liabilities			
Allowance for credit losses on off-balance sheet credit exposure	\$ 3,206	—	3,206

The provision for credit losses for off-balance sheet credit exposures totaled 1.8 million for the year ended December 31, 2020.

The allowance for credit losses for off-balance sheet credit exposures was \$5.0 million at December 31, 2020, included in other liabilities on the Consolidated Statements of Financial Condition.

(18) Fair Value Measurements

The Company utilizes fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. The determination of fair values of financial instruments often requires the use of estimates. Where quoted market values in an active market are not readily available, the Company utilizes various valuation techniques to estimate fair value.

Fair value is an estimate of 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. However, in many instances fair value estimates may not be substantiated by comparison to independent markets and may not be realized in an immediate sale of the financial instrument.

GAAP establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of fair value hierarchy are as follows:

- Level 1: Unadjusted quoted market prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2: Quoted prices in markets that are not active, or inputs that are observable either directly or indirectly, for substantially the full term of the asset or liability; and
- Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

A financial instrument's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement.

The valuation techniques are based upon the unpaid principal balance only, and exclude any accrued interest or dividends at the measurement date. Interest income and expense and dividend income are recorded within the consolidated statements of income depending on the nature of the instrument using the effective interest method based on acquired discount or premium.

Assets Measured at Fair Value on a Recurring Basis

The valuation techniques described below were used to measure fair value of financial instruments in the table below on a recurring basis as of December 31, 2020 and December 31, 2019.

Available for Sale Debt Securities, at Fair Value

For available for sale debt securities, fair value was estimated using a market approach. The majority of the Company's securities are fixed income instruments that are not quoted on an exchange, but are traded in active markets. Prices for these instruments are obtained through third-party data service providers or dealer market participants with whom the Company has historically transacted both purchases and sales of securities. Prices obtained from these sources include market quotations and matrix pricing. Matrix pricing, a Level 2 input, is a mathematical technique used principally to value certain securities to benchmark to comparable securities. The Company evaluates the quality of Level 2 matrix pricing through comparison to similar assets with greater liquidity and evaluation of projected cash flows. As Management is responsible for the determination of fair value, it performs quarterly analyses on the prices received from the pricing service to determine whether the prices are reasonable estimates of fair value. Specifically, Management compares the prices received from the pricing service to a secondary pricing source. Additionally, Management compares changes in the reported market values and returns to relevant market indices to test the reasonableness of the reported prices. The Company's internal price verification procedures and review of fair value methodology documentation provided by independent pricing services has generally not resulted in an adjustment in the prices obtained from the pricing service.

Equity Securities, at Fair Value

The Company holds equity securities that are traded in active markets with readily accessible quoted market prices that are considered Level 1 inputs.

Derivatives

The Company records all derivatives on the statements of financial condition at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. The Company has interest rate derivatives resulting from a service provided to certain qualified borrowers in a loan related transaction which, therefore, are not used to manage interest rate risk in the Company's assets or liabilities. As such, all changes in fair value of the Company's derivatives are recognized directly in earnings.

The Company also uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges, and which satisfy hedge accounting requirements, involve the receipt of variable amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreements without the exchange of the underlying notional amount. These derivatives were used to hedge the variable cash outflows associated with FHLBNY borrowings. The change in the fair value of these derivatives is recorded in accumulated other comprehensive income, and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings.

The fair value of the Company's derivatives is determined using discounted cash flow analysis using observable market-based inputs, which are considered Level 2 inputs.

Assets Measured at Fair Value on a Non-Recurring Basis

The valuation techniques described below were used to estimate fair value of financial instruments measured on a non-recurring basis as of December 31, 2020 and 2019.

Collateral Dependent Impaired Loans

For loans measured for impairment based on the fair value of the underlying collateral, fair value was estimated using a market approach. The Company measures the fair value of collateral underlying impaired loans primarily through obtaining independent appraisals that rely upon quoted market prices for similar assets in active markets. These appraisals include adjustments, on an individual case-by-case basis, to comparable assets based on the appraisers' market knowledge and experience, as well as adjustments for estimated costs to sell between 5% and 10%. Management classifies these loans as Level 3 within the fair value hierarchy.

Foreclosed Assets

Assets acquired through foreclosure or deed in lieu of foreclosure are carried at fair value, less estimated selling costs, which range between 5% and 10%. Fair value is generally based on independent appraisals that rely upon quoted market prices for similar assets in active markets. These appraisals include adjustments, on an individual case basis, to comparable assets based on the appraisers' market knowledge and experience, and are classified as Level 3. When an asset is acquired, the excess of the loan balance over fair value less estimated selling costs is charged to the allowance for credit losses. A reserve for foreclosed assets may be established to provide for possible write-downs and selling costs that occur subsequent to foreclosure. Foreclosed assets are carried net of the related reserve. Operating results from real estate owned, including rental income, operating expenses, and gains and losses realized from the sales of real estate owned, are recorded as incurred.

There were no changes to the valuation techniques for fair value measurements during the years ended December 31, 2020 and 2019.

The following tables present the assets and liabilities reported on the consolidated statements of financial condition at their fair value as of December 31, 2020 and 2019, by level within the fair value hierarchy (in thousands).

	December 31, 2020	Fair Value Measurements at Reporting Date Using:		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Measured on a recurring basis:				
Available for sale debt securities:				
Agency obligations	\$ 1,009	1,009	—	—
Mortgage-backed securities	938,413	—	938,413	—
Asset-backed securities	53,830	—	53,830	—
State and municipal obligations	71,258	—	71,258	—
Corporate obligations	40,979	—	40,979	—
Total available for sale debt securities	\$ 1,105,489	1,009	1,104,480	—
Equity Securities	971	971	—	—
Derivative assets	101,079	—	101,079	—
	\$ 1,207,539	1,980	1,205,559	—
Derivative liabilities	\$ 109,148	—	109,148	—
Measured on a non-recurring basis:				
Loans measured for impairment based on the fair value of the underlying collateral				
Foreclosed assets	\$ 4,475	—	—	4,475
	\$ 30,725	—	—	30,725

	December 31, 2019	Fair Value Measurements at Reporting Date Using:		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Measured on a recurring basis:				
Available for sale debt securities:				
Mortgage-backed securities	\$ 947,430	—	947,430	—
State and municipal obligations	4,079	—	4,079	—
Corporate obligations	25,410	—	25,410	—
Total available for sale debt securities	\$ 976,919	—	976,919	—
Equity Securities	825	825	—	—
Derivative assets	39,305	—	39,305	—
	\$ 1,017,049	825	1,016,224	—
Derivative liabilities	\$ 39,356	—	39,356	—
Measured on a non-recurring basis:				
Loans measured for impairment based on the fair value of the underlying collateral				
Foreclosed assets	\$ 2,715	—	—	2,715
	\$ 23,118	—	—	23,118

There were no transfers between Level 1, Level 2 and Level 3 during the years ended December 31, 2020 and 2019.

Other Fair Value Disclosures

The Company is required to disclose estimated fair value of financial instruments, both assets and liabilities on and off the balance sheet, for which it is practicable to estimate fair value. The following is a description of valuation methodologies used for those assets and liabilities.

Cash and Cash Equivalents

For cash and due from banks, federal funds sold and short-term investments, the carrying amount approximates fair value. Included in cash and cash equivalents at December 31, 2020 and December 31, 2019 was \$114.3 million and \$77.0 million, respectively, representing cash collateral pledged to secure loan level swaps and reserves required by banking regulations.

Held to Maturity Debt Securities, Net of Allowance for Credit Losses

For held to maturity debt securities, fair value was estimated using a market approach. The majority of the Company's securities are fixed income instruments that are not quoted on an exchange, but are traded in active markets. Prices for these instruments are obtained through third party data service providers or dealer market participants with whom the Company has historically transacted both purchases and sales of securities. Prices obtained from these sources include market quotations and matrix pricing. Matrix pricing, a Level 2 input, is a mathematical technique used principally to value certain securities to benchmark to comparable securities. Management evaluates the quality of Level 2 matrix pricing through comparison to similar assets with greater liquidity and evaluation of projected cash flows. As management is responsible for the determination of fair value, it performs quarterly analyses on the prices received from the pricing service to determine whether the prices are reasonable estimates of fair value. Specifically, management compares the prices received from the pricing service to a secondary pricing source. Additionally, management compares changes in the reported market values and returns to relevant market indices to test the reasonableness of the reported prices. The Company's internal price verification procedures and review of fair value methodology documentation provided by independent pricing services has generally not resulted in adjustment in the prices obtained from the pricing service. The Company also holds debt instruments issued by the U.S. government and U.S. government agencies that are traded in active markets with readily accessible quoted market prices that are considered Level 1 within the fair value hierarchy.

FHLBNY Stock

The carrying value of FHLBNY stock is its cost. The fair value of FHLBNY stock is based on redemption at par value. The Company classifies the estimated fair value as Level 1 within the fair value hierarchy.

Loans

Fair values are estimated for portfolios of loans with similar financial characteristics. Loans are segregated by type such as commercial mortgage, residential mortgage, commercial, construction and consumer. Each loan category is further segmented into fixed and adjustable rate interest terms and into performing and non-performing categories. The fair value of performing loans was estimated using a combination of techniques, including a discounted cash flow model that utilizes a discount rate that reflects the Company's current pricing for loans with similar characteristics and remaining maturity, adjusted by an amount for estimated credit losses inherent in the portfolio at the balance sheet date (i.e. exit pricing). The rates take into account the expected yield curve, as well as an adjustment for prepayment risk, when applicable. The Company classifies the estimated fair value of its loan portfolio as Level 3.

The fair value for significant non-performing loans was based on recent external appraisals of collateral securing such loans, adjusted for the timing of anticipated cash flows. The Company classifies the estimated fair value of its non-performing loan portfolio as Level 3.

Deposits

The fair value of deposits with no stated maturity, such as non-interest bearing demand deposits and savings deposits, was equal to the amount payable on demand and classified as Level 1. The estimated fair value of certificates of deposit was based on the discounted value of contractual cash flows. The discount rate was estimated using the Company's current rates offered for deposits with similar remaining maturities. The Company classifies the estimated fair value of its certificates of deposit portfolio as Level 2.

Borrowed Funds

The fair value of borrowed funds was estimated by discounting future cash flows using rates available for debt with similar terms and maturities and is classified by the Company as Level 2 within the fair value hierarchy.

Commitments to Extend Credit and Letters of Credit

The fair value of commitments to extend credit and letters of credit was estimated using the fees currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the present creditworthiness of the counterparties. For fixed rate loan commitments, fair value also considers the difference between current levels of interest rates and the committed rates.

Limitations

Fair value estimates are made at a specific point in time, based on relevant market information and information about the financial instrument. These estimates do not reflect any premium or discount that could result from offering for sale at one time the Company's entire holdings of a particular financial instrument. Because no market exists for a significant portion of the Company's financial instruments, fair value estimates are based on judgments regarding future expected loss experience, current economic conditions, risk characteristics of various financial instruments, and other factors. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and, therefore, cannot be determined with precision. Changes in assumptions could significantly affect the estimates.

Fair value estimates are based on existing on- and off-balance sheet financial instruments without attempting to estimate the value of anticipated future business and the value of assets and liabilities that are not considered financial instruments.

Significant assets and liabilities that are not considered financial assets or liabilities include goodwill and other intangibles, deferred tax assets and premises and equipment. In addition, the tax ramifications related to the realization of the unrealized gains and losses can have a significant effect on fair value estimates and have not been considered in the estimates.

The following tables present the Company's financial instruments at their carrying and fair values as of December 31, 2020 and December 31, 2019. Fair values are presented by level within the fair value hierarchy.

(Dollars in thousands)	Fair Value Measurements at December 31, 2020 Using:				
	Carrying value	Fair value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Financial assets:					
Cash and cash equivalents	\$ 532,353	532,353	532,353	—	—
Available for sale debt securities:					
Agency obligations	\$ 1,009	1,009	1,009	—	—
Mortgage-backed securities	938,413	938,413	—	938,413	—
Asset-backed securities	53,830	53,830	—	53,830	—
State and municipal obligations	71,258	71,258	—	71,258	—
Corporate obligations	40,979	40,979	—	40,979	—
Total available for sale debt securities	\$ 1,105,489	1,105,489	1,009	1,104,480	—
Held to maturity debt securities, net of allowance for credit losses:					
Agency obligations	\$ 7,600	7,601	7,601	—	—
Mortgage-backed securities	62	64	—	64	—
State and municipal obligations	433,589	454,973	—	454,973	—
Corporate obligations	9,714	9,813	—	9,813	—
Total held to maturity debt securities, net of allowance for credit losses	\$ 450,965	472,451	7,601	464,850	—
FHLBNY stock	59,489	59,489	59,489	—	—
Equity Securities	971	971	971	—	—
Loans, net of allowance for credit losses	9,721,424	9,969,330	—	—	9,969,330
Derivative assets	101,079	101,079	—	101,079	—
Financial liabilities:					
Deposits other than certificates of deposits	\$ 8,743,655	8,743,655	8,743,655	—	—
Certificates of deposit	1,094,174	1,097,993	—	1,097,993	—
Total deposits	\$ 9,837,829	9,841,648	8,743,655	1,097,993	—
Borrowings	1,175,972	1,193,024	—	1,193,024	—
Subordinated Debentures	25,135	24,375	—	24,375	—
Derivative liabilities	109,148	109,148	—	109,148	—

(Dollars in thousands)	Fair Value Measurements at December 31, 2019 Using:				
	Carrying value	Fair value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Financial assets:					
Cash and cash equivalents	\$ 186,748	186,748	186,748	—	—
Available for sale debt securities:					
Mortgage-backed securities	947,430	947,430	—	947,430	—
State and municipal obligations	4,079	4,079	—	4,079	—
Corporate obligations	25,410	25,410	—	25,410	—
Total available for sale debt securities	\$ 976,919	976,919	—	976,919	—
Held to maturity debt securities:					
Agency obligations	\$ 6,599	6,601	6,601	—	—
Mortgage-backed securities	118	122	—	122	—
State and municipal obligations	437,074	451,353	—	451,353	—
Corporate obligations	9,838	9,890	—	9,890	—
Total held to maturity debt securities	\$ 453,629	467,966	6,601	461,365	—
FHLBNY stock	57,298	57,298	57,298	—	—
Equity Securities	825	825	825	—	—
Loans, net of allowance for credit losses	7,277,360	7,296,744	—	—	7,296,744
Derivative assets	39,305	39,305	—	39,305	—
Financial liabilities:					
Deposits other than certificates of deposits	\$ 6,368,582	6,368,582	6,368,582	—	—
Certificates of deposit	734,027	734,047	—	734,047	—
Total deposits	\$ 7,102,609	7,102,629	6,368,582	734,047	—
Borrowings	1,125,146	1,127,569	—	1,127,569	—
Derivative liabilities	39,356	39,356	—	39,356	—

(19) Selected Quarterly Financial Data (Unaudited)

The following tables are a summary of certain quarterly financial data for the years ended December 31, 2020 and 2019.

	2020 Quarters Ended			
	March 31	June 30	September 30	December 31
	(In thousands, except per share data)			
Interest income	\$ 88,169	81,537	93,453	100,150
Interest expense	16,148	11,709	11,468	11,412
Net interest income	72,021	69,828	81,985	88,738
Provision for credit losses	14,717	10,900	6,400	(2,298)
Net interest income after provision for loan losses	57,304	58,928	75,585	91,036
Non-interest income	16,991	14,365	20,626	20,448
Non-interest expense	54,107	55,267	59,783	58,571
Income before income tax expense	20,188	18,026	36,428	52,913
Income tax expense	5,257	3,715	9,285	12,346
Net income	\$ 14,931	14,311	27,143	40,567
Basic earnings per share	\$ 0.23	0.22	0.37	0.53
Diluted earnings per share	0.23	0.22	0.37	0.53

	2019 Quarters Ended			
	March 31	June 30	September 30	December 31
	(In thousands, except per share data)			
Interest income	\$ 92,411	95,648	93,026	90,385
Interest expense	17,404	19,093	19,498	17,502
Net interest income	75,007	76,555	73,528	72,883
Provision for credit losses	200	9,500	500	2,900
Net interest income after provision for loan losses	74,807	67,055	73,028	69,983
Non-interest income	12,188	15,834	18,047	17,725
Non-interest expense	48,416	49,694	49,738	53,731
Income before income tax expense	38,579	33,195	41,337	33,977
Income tax expense	7,689	8,802	9,938	8,026
Net income	\$ 30,890	24,393	31,399	25,951
Basic earnings per share	\$ 0.48	0.38	0.49	0.40
Diluted earnings per share	0.48	0.38	0.49	0.40

(20) Earnings Per Share

The following is a reconciliation of the outstanding shares used in the basic and diluted earnings per share calculations.

	For the Year Ended December 31,		
	2020	2019	2018
	(In thousands, except per share data)		
Net income	\$ 96,951	112,633	118,387
Basic weighted average common shares outstanding	69,548,499	64,604,224	64,942,886
Plus:			
Dilutive shares	77,459	130,367	160,211
Diluted weighted average common shares outstanding	69,625,958	64,734,591	65,103,097
Earnings per share:			
Basic	\$ 1.39	1.74	1.82
Diluted	\$ 1.39	1.74	1.82

Anti-dilutive stock options and awards totaling 999,718 shares, 646,457 shares and 443,748 shares at December 31, 2020, 2019 and 2018, respectively, were excluded from the earnings per share calculations.

(21) Parent-only Financial Information

The condensed financial statements of Provident Financial Services, Inc. (parent company only) are presented below:

Condensed Statements of Financial Condition**(Dollars in Thousands)**

	December 31, 2020	December 31, 2019
Assets		
Cash and due from banks	\$ 10,634	29,723
Available for sale debt securities, at fair value	971	825
Investment in subsidiary	1,561,769	1,364,097
ESOP loan	25,555	31,113
Other assets	(622)	37
Total assets	<u>\$ 1,640,654</u>	<u>1,425,795</u>
Liabilities and Stockholders' Equity		
Due to subsidiary—SAP	\$ —	11,741
Other liabilities	(4,279)	214
Subordinated Debentures	25,135	—
Total stockholders' equity	1,619,798	1,413,840
Total liabilities and stockholders' equity	<u>\$ 1,640,654</u>	<u>1,425,795</u>

Condensed Statements of Operations**(Dollars in Thousands)**

	For the Years Ended December 31,		
	2020	2019	2018
Dividends from subsidiary	\$ 65,823	72,809	53,604
Interest income	1,245	1,470	1,657
Investment gain	147	162	2294
Total income	<u>67,215</u>	<u>74,441</u>	<u>57,555</u>
Subordinated debentures	512	—	—
Non-interest expense	1,196	1,192	1,049
Total expense	<u>1,708</u>	<u>1,192</u>	<u>1,049</u>
Income before income tax expense	65,507	73,249	56,506
Income tax expense	—	127	692
Income before undistributed net income of subsidiary	65,507	73,122	55,814
Earnings in excess of dividends (equity in undistributed net income) of subsidiary	31,444	39,511	62,573
Net income	<u>\$ 96,951</u>	<u>112,633</u>	<u>118,387</u>

Condensed Statements of Cash Flows
(Dollars in Thousands)

	For the Years Ended December 31,		
	2020	2019	2018
Cash flows from operating activities:			
Net income	\$ 96,951	112,633	118,387
Adjustments to reconcile net income to net cash provided by operating activities			
Earnings in excess of dividends (equity in undistributed net income) of subsidiary	(31,444)	(39,511)	(62,573)
ESOP allocation	2,401	4,533	4,516
SAP allocation	5,433	6,671	6,046
Stock option allocation	190	181	190
Increase in due to subsidiary—SAP	54,088	3,745	3,577
Decrease (increase) in other assets	(138,360)	21,285	(18,598)
(Decrease) increase in other liabilities	(4,493)	(734)	396
Net cash (used in) provided by operating activities	(15,234)	108,803	51,941
Cash flows from investing activities:			
Cash received, net of cash consideration paid for acquisition	78,089	—	—
Net decrease in ESOP loan	5,558	5,643	4,663
Net cash provided by investing activities	83,647	5,643	4,663
Cash flows from financing activities:			
Purchases of treasury stock	(21,161)	(19,867)	(13,172)
Purchase of employee restricted shares to fund statutory tax withholding	(969)	(1,985)	(1,896)
Cash dividends paid	(65,823)	(72,809)	(53,604)
Shares issued dividend reinvestment plan	451	2,230	1,709
Stock options exercised	—	139	1,007
Net cash used in financing activities	(87,502)	(92,292)	(65,956)
Net increase (decrease) in cash and cash equivalents	(19,089)	22,154	(9,352)
Cash and cash equivalents at beginning of period	29,723	7,569	16,921
Cash and cash equivalents at end of period	\$ 10,634	29,723	7,569

(22) Other Comprehensive Income (Loss)

The following table presents the components of other comprehensive income (loss) both gross and net of tax, for the years ended December 31, 2020, 2019 and 2018 (in thousands):

	For the Years Ended December 31,								
	2020			2019			2018		
	Before Tax	Tax Effect	After Tax	Before Tax	Tax Effect	After Tax	Before Tax	Tax Effect	After Tax
Components of Other Comprehensive Income (Loss):									
Unrealized losses on available for sale debt securities:									
Net gains (losses) arising during the period	\$ 20,134	(5,190)	14,944	24,987	(6,636)	18,351	(8,425)	2,296	(6,129)
Reclassification adjustment for gains included in net income	—	—	—	—	—	—	—	—	—
Total	20,134	(5,190)	14,944	24,987	(6,636)	18,351	(8,425)	2,296	(6,129)
Unrealized (losses) gains on derivatives (cash flow hedges)	(7,099)	1,830	(5,269)	(780)	201	(579)	304	(83)	221
Amortization related to post-retirement obligations	5,604	(1,445)	4,159	(2,176)	561	(1,615)	1,678	(457)	1,221
Total other comprehensive income (loss)	\$ 18,639	(4,805)	13,834	22,031	(5,874)	16,157	(6,443)	1,756	(4,687)

The following table presents the changes in the components of accumulated other comprehensive loss, net of tax, for the years ended December 31, 2020 and 2019 (in thousands):

	Changes in Accumulated Other Comprehensive Income by Component, net of tax							
	2020				2019			
	Unrealized Gains on Available for Sale Debt Securities	Post-Retirement Obligations	Unrealized Gains (Losses) on Derivatives (cash flow hedges)	Accumulated Other Comprehensive Income	Unrealized Gains (Losses) on Available for Sale Debt Securities	Post-Retirement Obligations	Unrealized Gains (Losses) on Derivatives (cash flow hedges)	Accumulated Other Comprehensive Income (Loss)
Balance at the beginning of the period	\$ 8,746	(5,240)	315	3,821	(9,605)	(3,625)	894	(12,336)
Current period change in other comprehensive income (loss)	14,944	4,159	(5,269)	13,834	18,351	(1,615)	(579)	16,157
Balance at the end of the period	\$ 23,690	(1,081)	(4,954)	17,655	8,746	(5,240)	315	3,821

The following table summarizes the reclassifications out of accumulated other comprehensive (loss) income for the years ended December 31, 2020, 2019 and 2018 (in thousands):

	Reclassifications Out of Accumulated Other Comprehensive Income (Loss)			Affected line item in the Consolidated Statement of Income
	Amount reclassified from AOCI for the years ended December 31,			
	2020	2019	2018	
Details of AOCI:				
Available for sale debt securities:				
Realized net gains on the sale of securities available for sale	\$ —	—	—	Net gain on securities transactions
	—	—	—	Income tax expense
	—	—	—	Net of tax
Post-retirement obligations:				
Amortization of actuarial losses	448	189	399	Compensation and employee benefits ⁽¹⁾
	(115)	(49)	(109)	Income tax expense
	333	140	290	Net of tax
Total reclassifications	<u>\$ 333</u>	<u>140</u>	<u>290</u>	Net of tax

(1) This item is included in the computation of net periodic benefit cost. See Note 13. Benefit Plans

(23) Derivative and Hedging Activities

The Company is exposed to certain risks arising from both its business operations and economic conditions. The Company principally manages its exposures to a wide variety of business and operational risks through the management of its core business activities. The Company manages economic risks, including interest rate, liquidity, and credit risk, primarily by managing the amount, sources, and duration of its assets and liabilities.

Non-designated Hedges. Derivatives not designated in qualifying hedging relationships are not speculative and result from a service the Company provides to certain qualified commercial borrowers in loan related transactions which, therefore, are not used to manage interest rate risk in the Company's assets or liabilities. The Company executes interest rate swaps with qualified commercial banking customers to facilitate their respective risk management strategies. Those interest rate swaps are simultaneously hedged by offsetting interest rate swaps that the Company executes with a third party, such that the Company minimizes its net risk exposure resulting from such transactions. The interest rate swap agreement which the Company executes with the commercial borrower is collateralized by the borrower's commercial real estate financed by the Company. As the Company has not elected to apply hedge accounting and these interest rate swaps do not meet the hedge accounting requirements, changes in the fair value of both the customer swaps and the offsetting swaps are recognized directly in earnings. At December 31, 2020 and 2019, the Company had 172 and 92 interest rate swaps with an aggregate notional amount of \$2.63 billion and \$1.61 billion, respectively.

The Company periodically enters into risk participation agreements ("RPAs"), with the Company functioning as either the lead institution, or as a participant when another company is the lead institution on a commercial loan. These RPAs are entered into to manage the credit exposure on interest rate contracts associated with these loan participation agreements. Under the RPAs, the Company will either receive or make a payment in the event the borrower defaults on the related interest rate contract. The Company has minimum collateral posting thresholds with certain of its risk participation counterparties, and has posted collateral of \$650,000 against the potential risk of default by the borrower under these agreements. At December 31, 2020 and 2019, the Company had 13 credit derivatives, respectively, with aggregate notional amounts of \$121.7 million and \$106.0 million, respectively, from participations in interest rate swaps as part of these loan participation arrangements. At December 31, 2020 and December 31, 2019, the fair value of these credit derivatives were \$97,000 and \$47,323, respectively.

Cash Flow Hedges of Interest Rate Risk. The Company's objective in using interest rate derivatives is to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish this objective, the Company primarily uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable payment amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount.

Changes in the fair value of derivatives designated and that qualify as cash flow hedges of interest rate risk are recorded in accumulated other comprehensive income and are subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. During the years ended December 31, 2020, 2019 and 2018, such derivatives were used to hedge the variable cash outflows associated with Federal Home Loan Bank borrowings.

Amounts reported in accumulated other comprehensive income (loss) related to derivatives will be reclassified to interest expense as interest payments are made on the Company's borrowings. During the next twelve months, the Company estimates that \$3.7 million will be reclassified as an increase to interest expense. As of December 31, 2020, the Company had 14 outstanding interest rate derivatives with an aggregate notional amount of \$600.0 million that was designated as a cash flow hedge of interest rate risk.

The table below presents the fair value of the Company's derivative financial instruments as well as their classification on the Consolidated Statements of Financial Condition as of December 31, 2020 and 2019 (in thousands):

	At December 31, 2020			
	Asset Derivatives		Liability Derivatives	
	Consolidated Statements of Financial Condition	Fair Value	Consolidated Statements of Financial Condition	Fair Value
Derivatives not designated as hedging instruments:				
Interest rate products	Other assets	\$ 107,652	Other liabilities	\$ 109,148
Credit contracts	Other assets	97	Other liabilities	—
Total derivatives not designated as hedging instruments		<u>\$ 107,749</u>		<u>\$ 109,148</u>
Derivatives designated as hedging instruments:				
Interest rate products	Other assets	\$ (6,671)	Other liabilities	\$ —
Total derivatives designated as hedging instruments		<u>\$ (6,671)</u>		<u>\$ —</u>

	At December 31, 2019			
	Asset Derivatives		Liability Derivatives	
	Consolidated Statements of Financial Condition	Fair Value	Consolidated Statements of Financial Condition	Fair Value
Derivatives not designated as hedging instruments:				
Interest rate products	Other assets	\$ 38,830	Other liabilities	\$ 39,356
Credit contracts	Other assets	47	Other liabilities	—
Total derivatives not designated as hedging instruments		<u>\$ 38,877</u>		<u>\$ 39,356</u>
Derivatives designated as hedging instruments:				
Interest rate products	Other assets	\$ 428	Other liabilities	\$ —
Total derivatives designated as hedging instruments		<u>\$ 428</u>		<u>\$ —</u>

The table below presents the effect of the Company's derivative financial instruments on the Consolidated Statements of Income for the years ended December 31, 2020, 2019 and 2018 (in thousands).

	Consolidated Statements of Income	Gain (loss) recognized in Income on derivatives For the Year Ended December 31,		
		2020	2019	2018
Derivatives not designated as a hedging instruments:				
Interest rate products	Other income	\$ (950)	(64)	(414)
Credit contracts	Other income	30	(53)	63
Total derivatives not designated as hedging instruments		\$ (920)	(117)	(351)
Derivatives designated as a hedging instruments:				
		Loss (gain) recognized in Expense on derivatives		
Interest rate products	Interest expense	\$ 1,741	(624)	312
Total derivatives designated as a hedging instruments		\$ 1,741	(624)	312

The Company has agreements with certain of its dealer counterparties which contain a provision that if the Company defaults on any of its indebtedness, including a default where repayment of the indebtedness has not been accelerated by the lender, then the Company could also be deemed in default on its derivative obligations.

In addition, the Company has agreements with certain of its dealer counterparties which contain a provision that if the Company fails to maintain its status as a well or adequately capitalized institution, then the counterparty could terminate the derivative positions and the Company would be required to settle its obligations under the agreements.

As of December 31, 2020, the Company had four dealer counterparties. The Company had a net liability position with respect to all four of the counterparties. The termination value for this net liability position, which includes accrued interest, was \$116.2 million at December 31, 2020. The Company has minimum collateral posting thresholds with certain of its derivative counterparties, and has posted collateral of \$113.6 million against its obligations under these agreements. If the Company had breached any of these provisions at December 31, 2020, it could have been required to settle its obligations under the agreements at the termination value.

(24) Revenue Recognition

The Company generates revenue from several business channels. The guidance in ASU 2014-09, Revenue from Contracts with Customers (Topic 606) does not apply to revenue associated with financial instruments, including interest income on loans and investments, which comprise the majority of the Company's revenue. For the years ended December 31, 2020, 2019 and 2018 the out-of-scope revenue related to financial instruments were 83%, 85% and 86% of the Company's total revenue, respectively. Revenue-generating activities that are within the scope of Topic 606, are components of non-interest income. These revenue streams can generally be classified into wealth management revenue, insurance agency income and banking service charges and other fees.

The following table presents non-interest income, segregated by revenue streams in-scope and out-of-scope of Topic 606, for the years ended December 31, 2020, 2019 and 2018:

<i>(in-thousands)</i>	December 31,		
	2020	2019	2018
Non-interest income			
In-scope of Topic 606:			
Wealth management fees	\$ 25,733	22,503	17,957
Insurance agency income	3,513	—	—
Banking service charges and other fees:			
Service charges on deposit accounts	10,312	13,117	13,330
Debit card and ATM fees	5,974	5,734	5,997
Total banking service charges and other fees	16,286	18,851	19,327
Total in-scope non-interest income	45,532	41,354	37,284
Total out-of-scope non-interest income	26,899	22,440	21,392
Total non-interest income	\$ 72,431	63,794	58,676

Wealth management fee income represents fees earned from customers as consideration for asset management, investment advisory and trust services. The Company's performance obligation is generally satisfied monthly and the resulting fees are recognized monthly. The fee is generally based upon the average market value of the assets under management ("AUM") for the month and the applicable fee rate. The monthly accrual of wealth management fees is recorded in other assets on the Company's Consolidated Statements of Financial Condition. Fees are received from the customer on a monthly basis. The Company does not earn performance-based incentives. To a lesser extent, optional services such as tax return preparation and estate settlement are also available to existing customers. The Company's performance obligation for these transaction-based services are generally satisfied, and related revenue recognized, at either a point in time when the service is completed, or in the case of estate settlement, over a relatively short period of time, as each service component is completed.

Insurance agency income, consisting of commissions and fees, is generally recognized as of the effective date of the insurance policy. Commission revenues related to installment billings are recognized on the invoice date. Subsequent commission adjustments are recognized upon the receipt of notification from insurance companies concerning matters necessitating such adjustments. Profit-sharing contingent commissions are recognized when determinable, which is generally when such commissions are received from insurance companies, or when the Company receives formal notification of the amount of such payments.

Service charges on deposit accounts include overdraft service fees, account analysis fees and other deposit related fees. These fees are generally transaction-based, or time-based services. The Company's performance obligation for these services are generally satisfied, and revenue recognized, at the time the transaction is completed, or the service rendered. Fees for these services are generally received from the customer either at the time of transaction, or monthly. Debit card and ATM fees are generally transaction-based. Debit card revenue is primarily comprised of interchange fees earned when a customer's Company card is processed through a card payment network. ATM fees are largely generated when a Company cardholder uses a non-Company ATM, or a non-Company cardholder uses a Company ATM. The Company's performance obligation for these services is satisfied when the service is rendered. Payment is generally received at time of transaction or monthly.

Out-of-scope non-interest income primarily consists of Bank-owned life insurance and net fees on loan level interest rate swaps, along with gains and losses on the sale of loans and foreclosed real estate, loan prepayment fees and loan servicing fees. None of these revenue streams are subject to the requirements of Topic 606.

(25) Leases

On January 1, 2019, the Company adopted ASU 2016-02, "Leases" (Topic 842) and all subsequent ASU's that modified Topic 842. For the Company, Topic 842 primarily affected the accounting treatment for operating lease agreements in which the Company is the lessee. The Company elected the modified retrospective transition option effective with the period of adoption, elected not to recast comparative periods presented when transitioning to the new leasing standard and adjustments, if required, are made at the beginning of the period through a cumulative-effect adjustment to opening retained earnings. The Company also elected practical expedients, which allowed the Company to forego a reassessment of: (1) whether any expired or existing contracts are or contain leases; (2) the lease classification for any expired or existing leases; and (3) the initial direct costs for any existing leases. The adoption of the new standard resulted in the Company recording a right-of-use asset and an operating lease liability of \$44.9 million and \$46.1 million, respectively, based on the present value of the expected remaining lease payments at January 1, 2019.

Also, on January 1, 2019, the Company had \$5.9 million of net deferred gains associated with several sale and leaseback transactions executed prior to the adoption of ASU 2016-02. In accordance with the guidance, these net deferred gains were adjusted, net of tax, as a cumulative-effect adjustment to opening retained earnings.

All of the leases in which the Company is the lessee are classified as operating leases and are primarily comprised of real estate property for branches and administrative offices with terms extending through 2040.

The following table represents the consolidated statements of financial condition classification of the Company's right-of use-assets and lease liabilities at December 31, 2020 (in thousands):

	Classification	December 31, 2020
Lease Right-of-Use Assets:		
Operating lease right-of-use assets	Other assets	\$ 41,142
Lease Liabilities:		
Operating lease liabilities	Other liabilities	\$ 42,042

The calculated amount of the right-of-use assets and lease liabilities in the table above are impacted by the length of the lease term and the discount rate used to present value the minimum lease payments. 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 the right-of-use asset and lease liability. Generally, the Company considers the first renewal option to be reasonably certain and includes it in the calculation of the right-of use asset and lease liability. Regarding the discount rate, Topic 842 requires the use of the rate implicit in the lease whenever this rate is readily determinable. As this rate is rarely determinable, the Company utilizes its incremental borrowing rate at lease inception based upon the term of the lease. For operating leases existing prior to January 1, 2019, the rate for the remaining lease term as of January 1, 2019 was applied.

At December 31, 2020, the weighted-average remaining lease term and the weighted-average discount rate for the Company's operating leases were 9.2 years and 3.22%, respectively.

The following table represents lease costs and other lease information for the Company's operating leases. The variable lease cost primarily represents variable payments such as common area maintenance and utilities (in thousands):

	Year ended December 31, 2020	Year ended December 31, 2019
Lease Costs		
Operating lease cost	\$ 9,012	8,433
Variable lease cost	2,756	2,765
Total Lease Cost	\$ 11,768	11,198

Cash paid for amounts included in the measurement of lease liabilities (in thousands):	Year ended December 31, 2020	Year ended December 31, 2019
Operating cash flows from operating leases	\$ 8,863	8,304

For the year ended December 31, 2020, the Company added nine lease obligations related to the SB One acquisition. The Company recorded a \$3.8 million right-of-use asset and lease liability for these lease obligations.

Future minimum payments for operating leases with initial or remaining terms of one year or more as of December 31, 2020 were as follows (in thousands):

	Operating Leases
Years ended:	
2020	\$ 7,165
2021	6,227
2022	5,712
2023	5,309
2024	4,722
Thereafter	20,001
Total future minimum lease payments	49,136
Amounts representing interest	7,094
Present value of net future minimum lease payments	<u>\$ 42,042</u>

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

Christopher Martin, the Company's Principal Executive Officer, and Thomas M. Lyons, the Company's Principal Financial Officer, conducted an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of December 31, 2020. Based upon their evaluation, they each found that the Company's disclosure controls and procedures were effective as of that date.

Management's Report on Internal Control Over Financial Reporting

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control system is a process designed to provide reasonable assurance to the Company's management and board of directors regarding the preparation and fair presentation of published financial statements.

The Company's internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and the directors of the Company; and 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 its financial statements.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. 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.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2020. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control-Integrated Framework (2013).

Based on the assessment management believes that, as of December 31, 2020, the Company's internal control over financial reporting is effective based on those criteria.

Report of Independent Registered Public Accounting Firm

The Company's independent registered public accounting firm that audited the consolidated financial statements has issued an audit report on the effectiveness of the Company's internal control over financial reporting as of December 31, 2020. This report appears on page 63 of this Annual Report on Form 10-K.

Changes in Internal Control Over Financial Reporting

During the last quarter of the year under report, there was no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information required by this item regarding directors, executive officers and corporate governance is incorporated herein by reference to the Proxy Statement to be filed for the Annual Meeting of Stockholders to be held on April 29, 2021.

Item 11. Executive Compensation

The information required by this item is incorporated herein by reference to the Proxy Statement to be filed for the Annual Meeting of Stockholders to be held on April 29, 2021.

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

The information required by this item is incorporated herein by reference to the Proxy Statement to be filed for the Annual Meeting of Stockholders to be held on April 29, 2021.

Securities Authorized for Issuance Under Equity Compensation Plans

Set forth below is information as of December 31, 2020 regarding equity compensation plans categorized by those plans that have been approved by the Company's stockholders. There are no plans that have not been approved by the Company's stockholders.

<u>Plan</u>	<u>Number of Securities to be Issued Upon Exercise of Outstanding Options and Rights(1)</u>	<u>Weighted Average Exercise Price(2)</u>	<u>Number of Securities Remaining Available For Issuance Under Plan (3)</u>
Equity compensation plans approved by stockholders	596,441	\$ 17.96	2,009,578
Total	596,441	\$ 17.96	2,009,578

1. Consists of outstanding stock options to purchase 596,441 shares of common stock granted under the Company's stock-based compensation plans.
2. The weighted average exercise price reflects an exercise price of \$14.50 for 44,052 stock options granted in 2011; an exercise price of \$14.88 for 42,542 stock options granted in 2012; an exercise price of \$15.23 for 51,881 stock options granted in 2013; an exercise price of \$16.38 for 80,760 stock options granted in 2014; an exercise price of \$18.34 for 65,972 stock options granted in 2015; an exercise price of \$18.70 for 76,327 stock options granted in 2016; an exercise price of \$26.31 for 42,857 stock options granted in 2017; an exercise price of \$25.58 for 43,123 stock options granted in 2018; an exercise price of \$27.25 for 41,685 stock options granted in 2019; and an exercise price of \$20.62 for 107,240 stock options granted in 2020 under the Company's stock-based compensation plans.
3. Represents the number of available shares that may be granted as stock options and other stock awards under the Company's stock-based compensation plans.

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

The information required by this item is incorporated herein by reference to the Proxy Statement to be filed for the Annual Meeting of Stockholders to be held on April 29, 2021.

Item 14. Principal Accountant Fees and Services

The information required by this item is incorporated herein by reference to the Proxy Statement to be filed for the Annual Meeting of Stockholders to be held on April 29, 2021.

PART IV

Item 15. Exhibits and Financial Statement Schedules

The exhibits and financial statement schedules filed as a part of this Annual Report on Form 10-K are as follows:

(a)(1) Financial Statements

	<u>Page Number</u>
Report of Independent Registered Public Accounting Firm	70
Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting	73
Consolidated Statements of Financial Condition, December 31, 2020 and 2019	74
Consolidated Statements of Income, Years Ended December 31, 2020, 2019 and 2018	75
Consolidated Statements of Comprehensive Income, Years Ended December 31, 2020, 2019 and 2018	76
Consolidated Statements of Changes in Stockholders' Equity, Years Ended December 31, 2020, 2019 and 2018	77
Consolidated Statements of Cash Flows, Years Ended December 31, 2020, 2019 and 2018	80
Notes to Consolidated Financial Statements.	81

(a)(2) Financial Statement Schedules

No financial statement schedules are filed because the required information is not applicable or is included in the consolidated financial statements or related notes.

(a)(3) Exhibits

2.1	Agreement and Plan of Merger by and between Provident Financial Services, Inc. and SB One Bancorp. (Filed as Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-31566) filed with the Securities and Exchange Commission on March 12, 2020)
3.1	Certificate of Incorporation of Provident Financial Services, Inc. (Filed as an exhibit to the Company's Registration Statement on Form S-1, and any amendments thereto, with the Securities and Exchange Commission/Registration No. 333-98241.)
3.2	Amended and Restated Bylaws of Provident Financial Services, Inc. (Filed as an exhibit to the Company's December 31, 2011 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012/File No. 001-31566.)
4.1	Form of Common Stock Certificate of Provident Financial Services, Inc. (Filed as an exhibit to the Company's Registration Statement on Form S-1, and any amendments thereto, with the Securities and Exchange Commission/Registration No. 333-98241.)
4.2	Description of Capital Stock of Provident Financial Services, Inc. (Filed as an exhibit to the Company's December 31, 2019 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on March 1, 2020/File No. 001-31566.)
4.3	Form of Subordinated Note Certificate
4.4	Form of Senior Debt Indenture
4.5	Form of Subordinated Debt Indenture
10.1	Employment Agreement by and between Provident Financial Services, Inc. and Christopher Martin dated September 23, 2009. (Filed as an exhibit to the Company's September 30, 2009 Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 9, 2009/ File No. 001-31566.)
10.2	Change in Control Agreement by and between Provident Financial Services, Inc. and Christopher Martin dated as of December 16, 2015. (Filed as Exhibit 10.2 to the Company's December 31, 2015 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on February 29, 2016/File No. 001-31566.)

- 10.3 [Employment Agreement, dated March 11, 2020, by and between Provident Financial Services, Inc. and Anthony J. Labozzetta \(Filed as Exhibit 10.2 to the Company's Current Report on Form 8-K \(File No. 001-31566\) filed with the Securities and Exchange Commission on March 12, 2020\)](#)
- 10.4 [Side-Letter Agreement, dated March 11, 2020, by and among Provident Financial Services, Inc., Provident Bank and Anthony J. Labozzetta \(Filed as Exhibit 10.3 to the Company's Current Report on Form 8-K \(File No. 001-31566\) filed with the Securities and Exchange Commission on March 12, 2020\)](#)
- 10.5 [Change in Control Agreement, dated March 11, 2020, by and between Provident Financial Services, Inc. and Anthony J. Labozzetta \(Filed as Exhibit 10.4 to the Company's Current Report on Form 8-K \(File No. 001-31566\) filed with the Securities and Exchange Commission on March 12, 2020\)](#)
- 10.6 [Settlement Agreement, dated March 11, 2020, by and among SB One Bancorp, SB One Bank, Provident Financial Services, Inc., Provident Bank and Anthony J. Labozzetta \(Filed as Exhibit 10.5 to the Company's Current Report on Form 8-K \(File No. 001-31566\) filed with the Securities and Exchange Commission on March 12, 2020\)](#)
- 10.7 [Supplemental Executive Retirement Agreement, as amended by the benefit of Anthony J. Labozzetta.](#)
- 10.8 [Form of Three-Year Change in Control Agreement between Provident Financial Services, Inc. and each of Messrs. Kuntz, Lyons and Sierotko and Ms. Murray. \(Filed as Exhibit 10.3 to the Company's December 31, 2015 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on February 29, 2016/File No. 001-31566.\)](#)
- 10.9 [Form of Two-Year Change in Control Agreement between Provident Financial Services, Inc. and certain senior officers. \(Filed as Exhibit 10.4 to the Company's December 31, 2015 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on February 29, 2016/File No. 001-31566.\)](#)
- 10.10 [Form of One-Year Change in Control Agreement between Provident Financial Services, Inc. and certain senior officers. \(Filed as Exhibit 10.5 to the Company's December 31, 2015 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on February 29, 2016/File No. 001-31566.\)](#)
- 10.11 [Supplemental Executive Retirement Plan of Provident Bank. \(Filed as Exhibit 10.5 to the Company's December 31, 2008 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on March 2, 2009/File No. 001-31566.\)](#)
- 10.12 [Retirement Plan for the Board of Managers of Provident Bank. \(Filed as Exhibit 10.7 to the Company's December 31, 2008 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on March 2, 2009 /File No. 001-31566.\)](#)
- 10.13 [Provident Financial Services, Inc. Board of Directors Voluntary Fee Deferral Plan. \(Filed as Exhibit 10.9 to the Company's December 31, 2008 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on March 2, 2009/File No. 001-31566.\)](#)
- 10.14 [First Savings Bank Directors' Deferred Fee Plan, as amended. \(Filed as Exhibit 10.10 to the Company's September 30, 2004 Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 9, 2004/File No. 001-31566.\)](#)
- 10.15 [Provident Bank Non-Qualified Supplemental Defined Contribution Plan. \(Filed as an exhibit to the Company's May 27, 2010 Current Report on Form 8-K filed with the Securities and Exchange Commission on June 3, 2010/File No. 001-31566.\)](#)
- 10.16 [Provident Financial Services, Inc. Amended and Restated the Long-Term Equity Incentive Plan. \(Filed as an appendix to the Company's Proxy Statement for the 2014 Annual Meeting of Stockholders filed with the Securities and Exchange Commission on March 14, 2014/File No. 001-31566.\)](#)
- 10.17 [Omnibus Incentive Compensation Plan. \(Filed as Exhibit 10.19 to the Company's December 31, 2011 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on February 29, 2012/File No. 001-31566.\)](#)
- 10.18 [Provident Financial Services, Inc. Executive Annual Incentive Plan \(Filed as an appendix to the Company's Proxy Statement for the Annual Meeting of Stockholders filed with the Securities and Exchange Commission on March 13, 2015/File No. 001-31566.\)](#)
- 10.19 [Provident Financial Services, Inc. 2019 Long-Term Equity Incentive Plan \(Filed as an exhibit to the Company's December 31, 2019 Annual Report to Stockholders on Form 10-K filed with the Securities and Exchange Commission on March 1, 2020/File No. 001-31566.\)](#)
- 21 [Subsidiaries of the Registrant.](#)
- 23 [Consent of KPMG LLP.](#)
- 31.1 [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)

- 31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32 [Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101 The following materials from the Company's Annual Report to Stockholders on Form 10-K for the year ended December 31, 2020, formatted in iXBRL (Inline Extensible Business Reporting Language): (i) the Consolidated Statements of Financial Condition, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Comprehensive Income, (iv) the Consolidated Statements of Changes in Stockholder's Equity, (v) the Consolidated Statements of Cash Flows and (vi) the Notes to Consolidated Financial Statements.
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema Document
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB XBRL Taxonomy Extension Labels Linkbase Document
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document
- 104 Cover Page Interactive Data File (formatted in iXBRL and contained in exhibit 101).

Item 16. Form 10-K Summary

Not applicable.

SUBORDINATED NOTE CERTIFICATE

**SUSSEX BANCORP
5.75% FIXED TO FLOATING Subordinated Note due DECEMBER 22, 2026**

THE INDEBTEDNESS EVIDENCED BY THIS SUBORDINATED NOTE IS SUBORDINATED AND JUNIOR IN RIGHT OF PAYMENT TO THE CLAIMS OF CREDITORS (OTHER THAN CREDITORS OF EXISTING SUBORDINATED DEBT) OF SUSSEX BANCORP CORPORATION (THE "COMPANY"), AND DEPOSITORS OF SUSSEX BANK, INCLUDING OBLIGATIONS OF THE COMPANY TO ITS GENERAL AND SECURED CREDITORS, AND IS UNSECURED. IT IS INELIGIBLE AS COLLATERAL FOR ANY EXTENSION OF CREDIT BY THE COMPANY OR ANY OF ITS SUBSIDIARIES. IN THE EVENT OF LIQUIDATION ALL DEPOSITORS AND OTHER CREDITORS OF THE COMPANY SHALL BE ENTITLED TO BE PAID IN FULL WITH SUCH INTEREST AS MAY BE PROVIDED BY LAW BEFORE ANY PAYMENT SHALL BE MADE ON ACCOUNT OF PRINCIPAL OF OR INTEREST ON THIS SUBORDINATED NOTE. AFTER PAYMENT IN FULL OF ALL SUMS OWING TO SUCH DEPOSITORS AND CREDITORS, THE HOLDER OF THIS SUBORDINATED NOTE SHALL BE ENTITLED TO BE PAID FROM THE REMAINING ASSETS OF THE COMPANY THE UNPAID PRINCIPAL AMOUNT OF THIS SUBORDINATED NOTE PLUS ACCRUED AND UNPAID INTEREST THEREON BEFORE ANY PAYMENT OR OTHER DISTRIBUTION, WHETHER IN CASH, PROPERTY OR OTHERWISE, SHALL BE MADE ON ACCOUNT OF ANY SHARES OF CAPITAL STOCK OF THE COMPANY.

THE INDEBTEDNESS EVIDENCED BY THIS SUBORDINATED NOTE IS NOT A DEPOSIT OR BANK ACCOUNT AND IS NOT INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") OR ANY OTHER AGENCY, AND IS SUBJECT TO INVESTMENT RISK, INCLUDING POSSIBLE LOSS OF PRINCIPAL.

THIS SUBORDINATED NOTE WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN MINIMUM DENOMINATIONS OF \$1,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF. ANY ATTEMPTED TRANSFER OF THIS SUBORDINATED NOTE IN A DENOMINATION OF LESS THAN \$1,000 SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF THIS SUBORDINATED NOTE FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PAYMENTS ON THIS SUBORDINATED NOTE, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN THIS SUBORDINATED NOTE.

THIS SUBORDINATED NOTE MAY BE SOLD ONLY IN COMPLIANCE WITH APPLICABLE FEDERAL AND STATE SECURITIES LAWS. THIS SUBORDINATED NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER STATE SECURITIES LAWS OR ANY OTHER APPLICABLE SECURITIES LAWS. NEITHER THIS SUBORDINATED NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS SUBORDINATED NOTE IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SUBORDINATED NOTE PURCHASE AGREEMENT DATED DECEMBER 22, 2016, BETWEEN THE COMPANY AND THE PURCHASER REFERRED TO THEREIN (THE "PURCHASE AGREEMENT"), A COPY OF WHICH IS ON FILE WITH THE COMPANY. THE SUBORDINATED NOTE REPRESENTED BY THIS INSTRUMENT MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE PURCHASE AGREEMENT AND THIS SUBORDINATED NOTE. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH THE PURCHASE AGREEMENT AND THIS SUBORDINATED NOTE WILL BE VOID.

CERTAIN ERISA CONSIDERATIONS:

THE HOLDER OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) (EACH A “PLAN”), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE “PLAN ASSETS” BY REASON OF ANY PLAN’S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING “PLAN ASSETS” OF ANY PLAN MAY ACQUIRE OR HOLD THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, ARE NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE AND HOLDING. ANY PURCHASER OR HOLDER OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER: (i) IT IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN TO WHICH TITLE I OF ERISA OR SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE “PLAN ASSETS” OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE OR (ii) SUCH PURCHASE OR HOLDING WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH FULL EXEMPTIVE RELIEF IS NOT AVAILABLE UNDER APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

ANY FIDUCIARY OF ANY PLAN WHO IS CONSIDERING THE ACQUISITION OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN SHOULD CONSULT WITH HIS OR HER LEGAL COUNSEL PRIOR TO ACQUIRING THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN.

No. A-1

SUSSEX BANCORP CORPORATION

5.75% FIXED TO FLOATING RATE SUBORDINATED NOTE DUE 2026

1. Subordinated Note. This Subordinated Note is a note of Sussex Bancorp, a New Jersey corporation (the “Company”) designated as the “5.75% Fixed to Floating Rate Subordinated Note due 2026” (the “Subordinated Note”).

2. Payment. The Company, for value received, promises to pay to [_____], or its registered assigns, the principal sum of fifteen million Dollars (U.S.) (\$15,000,000), plus accrued but unpaid interest on December 22, 2026 (“Stated Maturity”) and to pay interest thereon (i) from and including the original issue date

of the Subordinated Note to but excluding December 22, 2021 or the earlier redemption date contemplated by Section 4(a) of this Subordinated Note, at the rate of 5.75% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable quarterly in arrears on March 22, June 22, September 22 and December 22 of each year (each, a “Fixed Interest Payment Date”), beginning March 22, 2017, and (ii) from and including December 22, 2021 to but excluding the Stated Maturity or the earlier redemption date contemplated by Section 4(b) of this Subordinated Note, at the rate per annum, reset quarterly, equal to LIBOR determined on the determination date of the applicable Interest Period plus 350 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on March 22, June 22, September 22 and December 22 of each year (each, a “Floating Interest Payment Date”). An “Interest Payment Date” is either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable. “Interest Period” means each 3-month period beginning on a scheduled Interest Payment Date commencing on March 22, 2017 through the Stated Maturity or the earlier redemption date contemplated by Section 4(b) of this Subordinated Note. “LIBOR” means the 3-month USD LIBOR, which will be the offered rate for 3-month deposits in U.S. dollars, as that rate appears on the Reuters Screen LIBOR01 Page (or any successor page thereto) as of 11:00 a.m., London time, as observed two London banking days prior to the first day of the applicable Interest Period. If 3-month USD LIBOR is not displayed as of such time with respect to any applicable Interest Period, then LIBOR will be LIBOR in effect for the Interest Period preceding the Interest Period for which LIBOR is to be determined, or, with respect to the first Interest Period, the most recent possible prior date. A London banking day is a day on which commercial banks and foreign currency markets settle payments and are open for general business in London. Any payment of principal of or interest on this Subordinated Note that would otherwise become due and payable on a day which is not a Business Day shall become due and payable on the next succeeding Business Day, with the same force and effect as if made on the date for payment of such principal or interest, and no interest will accrue in respect of such payment for the period after such day. The term “Business Day” means any day that is not a Saturday or Sunday and that is not a day on which banks in the State of New Jersey are generally authorized or required by law or executive order to be closed.

3. Subordination. The indebtedness of the Company evidenced by this Subordinated Note, including the principal and interest on this Subordinated Note, shall be subordinate and junior in right of payment to the prior payment in full of all existing claims of creditors and depositors of the Company, whether now outstanding or subsequently created, assumed, guaranteed or incurred (collectively, “Senior Indebtedness”), which shall consist of principal of (and premium, if any) and interest, if any, on: (a) all indebtedness and obligations of, or guaranteed or assumed by, the Company for money borrowed, whether or not evidenced by bonds, debentures, securities, notes or other similar instruments, and including, but not limited to, deposits of the Company, and all obligations to the Company’s general and secured creditors; (b) any deferred obligations of the Company for the payment of the purchase price of property or assets acquired other than in the ordinary course of business; (c) all obligations, contingent or otherwise, of the Company in respect of any letters of credit, bankers’ acceptances, security purchase facilities, and similar direct credit substitutes; (d) any capital lease obligations of the Company; (e) all obligations of the Company in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity contracts and other similar arrangements or derivative products; (f) all obligations that are similar to those in clauses (a) through (e) of other persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise arising from an off-balance sheet guarantee; and (g) all obligations of the types referred to in clauses (a) through (f) of other persons secured by a lien on any property or asset of the Company, and (h) in the case of (a) through (g) above, all amendments, renewals, extensions, modifications and refundings of such indebtedness and obligations; *except* “Senior Indebtedness” does not include (i) the Subordinated Note, (ii) any obligation that by its terms expressly is junior to, or ranks equally in right of payment with, the Subordinated Note, (iii) the existing junior subordinated debentures of the Company (underlying the outstanding trust preferred securities) as of the date of the issuance of this Subordinated Note to which this Subordinated Note shall be senior, or (iv) any indebtedness between the Company and any of its subsidiaries or Affiliates. This Subordinated Note is not secured by any assets of the Company.

In the event of liquidation of the Company, all creditors of the Company shall be entitled to be paid in full with such interest as may be provided by law before any payment shall be made on account of principal of or interest on this Subordinated Note. Additionally, in the event of any insolvency, dissolution, assignment for the benefit of creditors or any liquidation or winding up of or relating to the Company, whether voluntary or involuntary, holders of Senior Indebtedness shall be entitled to be paid in full before any payment shall be made on account of the principal of or interest on the Subordinated Note. In the event of any such proceeding, after payment in full of all sums owing with respect to the Senior Indebtedness, the registered holders of the Subordinated Note from time to time (each a “Noteholder” and, collectively, the “Noteholders”), together with the holders of any obligations of the Company ranking on a parity with the Subordinated Note, shall be entitled to be paid from the remaining assets of the Company the unpaid principal thereof, and the unpaid interest thereon before any payment or other distribution, whether in cash, property or otherwise, shall be made (i) on account of any capital stock or (ii) with respect to any present or future obligation of the Company that by its terms expressly is junior to, or ranks equally in right of payment with this Subordinated Note, or any indebtedness between the Issuer and any of its subsidiaries or Affiliates.

If there shall have occurred and be continuing (a) a default in any payment with respect to any Senior Indebtedness or (b) an event of default with respect to any Senior Indebtedness as a result of which the maturity thereof is accelerated, unless and until such payment default or event of default shall have been cured or waived or shall have ceased to exist, no payments shall be made by the Company with respect to the Subordinated Note. The provisions of this paragraph shall not apply to any payment with respect to which the immediately preceding paragraph of this Section 3 would be applicable.

Nothing herein shall act to prohibit, limit or impede the Company from issuing additional debt of the Company having the same rank as the Subordinated Note or which may be junior or senior in rank to the Subordinated Note.

4. Redemption.

(a) Redemption Prior to Fifth Anniversary. This Subordinated Note shall not be redeemable by the Company in whole or in part prior to the fifth anniversary of the date upon which this Subordinated Note was originally issued (the “Issue Date”), except in the event: (i) this Subordinated Note no longer qualifies as “Tier 2” Capital (as defined by the Board of Governors of the Federal Reserve System (the “Federal Reserve”)) as a result of a change in interpretation or application of law or regulation by any judicial, legislative or regulatory authority that becomes effective after the date of issuance of this Subordinated Note (“Tier 2 Capital Event”); (ii) of a Tax Event (as defined below); or (iii) the Company becomes required to register as an investment company pursuant to the Investment Company Act of 1940, as amended (an “Investment Company Event”). Upon the occurrence of a Tier 2 Capital Event, a Tax Event or an Investment Company Event, the Company may redeem this Subordinated Note in whole at any time, or in part from time to time, upon giving not less than 10 days’ notice to the holder of this Subordinated Note at an amount equal to 100% of the outstanding principal amount being redeemed plus accrued but unpaid interest to, but excluding, the redemption date. “Tax Event” means the receipt by the Company of an opinion of counsel to the Company that as a result of any amendment to, or change (including any final and adopted (or enacted) prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or as a result of any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, there exists a material risk that interest payable by the Company on the Subordinated Note is not, or within 120 days after the receipt of such opinion will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes. The redemption provisions of this Section 4(a) are intended to ensure that the Subordinated Note qualifies as “Tier 2” Capital pursuant to the Tier 2 Capital Definition, and this Section shall be interpreted in a manner consistent with the Tier 2 Capital Definition.

(b) Redemption on or after Fifth Anniversary. On or after the fifth anniversary of the Issue Date, this Subordinated Note shall be redeemable at the option of and by the Company, in whole or in part at any time upon any Interest Payment Date, at an amount equal to 100% of the outstanding principal amount being redeemed plus accrued but unpaid interest, to but excluding the redemption date, but in all cases in a principal amount with integral multiples of \$1,000. In addition, the Company may redeem all or a portion of the Subordinated Note, at any time upon the occurrence of a Tier 2 Capital Event, Tax Event or an Investment Company Event.

(c) Partial Redemption. If less than the then outstanding principal amount of this Subordinated Note is redeemed, (i) a new Subordinated Note shall be issued representing the unredeemed portion without charge to the holder thereof and (ii) such redemption shall be effected on a pro rata basis as to the Noteholders. For purposes of clarity, upon a partial redemption, a like percentage of the principal amount of every Subordinated Note held by every Noteholder shall be redeemed.

(d) No Redemption at Option of Noteholder. This Subordinated Note is not subject to redemption at the option of the holder of this Subordinated Note.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and notwithstanding that this Subordinated Note has been called for redemption but has not yet been surrendered for cancellation, on and after the date fixed for redemption interest shall cease to accrue on this Subordinated Note, this Subordinated Note shall no longer be deemed outstanding and all rights with respect to this Subordinated Note shall forthwith on such date fixed for redemption cease and terminate unless the Company shall default in the payment of the redemption price, except only the right of the holder hereof to receive the amount payable on such redemption, without interest.

(f) Regulatory Approvals. Any such redemption shall be subject to receipt of any and all required federal and state regulatory approvals, including, but not limited to, the consent of the Federal Reserve. In the case of any redemption of this Subordinated Note pursuant to paragraphs (b) and (c) of this Section 4, the Company will give the holder hereof notice of redemption, which notice shall indicate the aggregate principal amount of Subordinated Note to be redeemed, not less than 30 nor more than 45 calendar days prior to the redemption date.

(g) Purchase and Resale of the Subordinated Note. Subject to any required federal and state regulatory approvals and the provisions of this Subordinated Note, the Company shall have the right to purchase the Subordinated Note at any time in the open market, private transactions or otherwise. If the Company purchases the Subordinated Note, it may, in its discretion, hold, resell or cancel any of the purchased Subordinated Note.

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5. Events of Default; Acceleration; Compliance Certificate. Each of the following events shall constitute an “Event of Default”:

(a) the entry of a decree or order for relief in respect of the Company by a court having jurisdiction in the premises in an involuntary case or proceeding under any applicable bankruptcy, insolvency, or reorganization law, now or hereafter in effect of the United States or any political subdivision thereof, and such decree or order will have continued unstayed and in effect for a period of 60 consecutive days;

(b) the commencement by the Company of a voluntary case under any applicable bankruptcy, insolvency or reorganization law, now or hereafter in effect of the United States or any political subdivision

thereof, or the consent by the Company to the entry of a decree or order for relief in an involuntary case or proceeding under any such law;

(c) the failure of the Company to pay any installment of interest on the Subordinated Note as and when the same will become due and payable, and the continuation of such failure for a period of 30 days;

(d) the failure of the Company to pay all or any part of the principal of the Subordinated Note as and when the same will become due and payable;

(e) the failure of the Company to perform any other material covenant or agreement on the part of the Company contained in the Subordinated Note, and the continuation of such failure for a period of 30 days after the date on which notice specifying such failure, stating that such notice is a “Notice of Default” hereunder and demanding that the Company remedy the same, will have been given, in the manner set forth in Section 21, to the Company by the Noteholders of at least 25% in aggregate principal amount of the Subordinated Note at the time outstanding; or the default by the Company under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company having an aggregate principal amount outstanding of at least \$15,000,000, whether such indebtedness now exists or is created or incurred in the future, which default (i) constitutes a failure to pay any portion of the principal of such indebtedness when due and payable after the expiration of any applicable grace period or (ii) results in such indebtedness becoming due or being declared due and payable prior to the date on which it otherwise would have become due and payable without, in the case of clause (i), such indebtedness having been discharged or, in the case of clause (ii), without such indebtedness having been discharged or such acceleration having been rescinded or annulled.

Unless the principal of this Subordinated Note already shall have become due and payable, if an Event of Default set forth in subsections (a) or (b) above shall have occurred and be continuing, the holder of this Subordinated Note, by notice in writing to the Company, may declare the principal amount of this Subordinated Note to be due and payable immediately and, upon any such declaration the same shall become and shall be immediately due and payable. The Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. The Company, within 45 calendar days after the receipt of written notice from any Noteholder of the occurrence of an Event of Default with respect to this Subordinated Note, shall mail to all Noteholders, at their addresses shown on the Security Register (as defined in Section 13 below), such written notice of Event of Default, unless such Event of Default shall have been cured or waived before the giving of such notice as certified by the Company in writing.

A-1-6

6. Failure to Make Payments. In the event of failure by the Company to make any required payment of principal or interest on this Subordinated Note (and, in the case of payment of interest, such failure to pay shall have continued for 15 calendar days), the Company will, upon demand of the holder of this Subordinated Note, pay to the holder of this Subordinated Note the amount then due and payable on this Subordinated Note for principal and interest (without acceleration of the Note in any manner), with interest on the overdue principal and interest at the rate borne by this Subordinated Note, to the extent permitted by applicable law. If the Company fails to pay such amount upon such demand, the holder of this Subordinated Note may, among other things, institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company and collect the amounts adjudged or decreed to be payable in the manner provided by law out of the property of the Company.

Upon the occurrence of a failure by the Company to make any required payment of principal or interest on this Subordinated Note, or an Event of Default until such Event of Default is cured by the Company, the Company shall not: (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation

payment with respect to, any of the Company's capital stock; (b) make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to the Subordinated Note; or (c) make any payments under any guarantee that ranks equal with or junior to the Subordinated Note, other than (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of the Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock; (iv) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of the Company's common stock related to the issuance of common stock or rights under any benefit plans for the Company's directors, officers or employees or any of the Company's dividend reinvestment plans.

7. Affirmative Covenants of the Company.

(a) Payment of Principal and Interest. The Company covenants and agrees for the benefit of the holder of this Subordinated Note that it will duly and punctually pay the principal of, and interest on, this Subordinated Note, in accordance with the terms hereof. Principal and interest will be considered paid on the date due if the Company or a subsidiary thereof, holds as of 11:00 a.m., Rockaway, New Jersey time, on any Interest Payment Date, an amount in immediately available funds provided by the Company that is designated for and sufficient to pay all principal and interest then due.

(b) Maintenance of Office. The Company will maintain an office or agency in Rockaway, New Jersey where the Subordinated Note may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Subordinated Note may be served.

The Company may also from time to time designate one or more other offices or agencies where the Subordinated Note may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in Rockaway, New Jersey. The Company will give prompt written notice to the Noteholders of any such designation or rescission and of any change in the location of any such other office or agency.

A-1-7

(c) Corporate Existence. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect: (i) the corporate existence of the Company; (ii) the existence (corporate or other) of each of its subsidiaries; and (iii) the rights (charter and statutory), licenses and franchises of the Company and each of its subsidiaries; provided, however, that the Company will not be required to preserve the existence (corporate or other) of any of its subsidiaries or any such right, license or franchise of the Company or any of its subsidiaries if the Board of Directors of the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and its subsidiaries taken as a whole and that the loss thereof will not be disadvantageous in any material respect to the Noteholders.

(d) Maintenance of Properties. The Company will, and will cause each subsidiary to, cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times;

provided, however, that nothing in this Section will prevent the Company or any subsidiary from discontinuing the operation and maintenance of any of their respective properties if such discontinuance is, in the judgment of the Board of Directors of the Company or of any subsidiary, as the case may be desirable in the conduct of its business.

(e) Waiver of Certain Covenants. The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 7(a) or Section 7(b) above, with respect to this Subordinated Note if before the time for such compliance the Noteholders of at least a majority in principal amount of the outstanding Subordinated Note, by act of such Noteholders, either will waive such compliance in such instance or generally will have waived compliance with such term, provision or condition, but no such waiver will extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver will become effective, the obligations of the Company in respect of any such term, provision or condition will remain in full force and effect.

(f) Company Statement as to Compliance. The Company will deliver to the Noteholders, within 120 days after the end of each fiscal year, an Officer's Certificate covering the preceding calendar year, stating whether or not, to the best of his or her knowledge, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Subordinated Note (without regard to notice requirements or periods of grace) and if the Company will be in default, specifying all such defaults and the nature and status thereof of which he or she may have knowledge.

(g) Tier 2 Capital. If all or any portion of the Subordinated Note ceases to be deemed to be Tier 2 Capital, other than due to the limitation imposed on the capital treatment of subordinated debt during the five years immediately preceding the Maturity Date of the Subordinated Note, the Company and the Noteholders will work together in good faith to execute and deliver all agreements as reasonably necessary in order to restructure the applicable portions of the obligations evidenced by the Subordinated Note to qualify as Tier 2 Capital.

(h) Compliance with Laws. The Company shall comply with the requirements of all laws, regulations, orders and decrees applicable to it or its properties, except for such noncompliance that would not reasonably be expected to result in a material adverse effect (i) in the condition (financial or otherwise), or in the earnings of the Company, whether or not arising in the ordinary course of business, or (ii) on the ability of the Company to perform its obligations under this Subordinated Note.

(i) Taxes and Assessments. The Company shall punctually pay and discharge all material taxes, assessments, and other governmental charges or levies imposed upon it or upon its income or upon any of its properties; provided, that no such taxes, assessments or other governmental charges need be paid if they are being contested in good faith by the Company.

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8. Negative Covenants of the Company.

(a) Limitation on Dividends. The Company shall not declare or pay any dividend or make any distribution on capital stock or other equity securities of any kind of the Company if the Company is not "well capitalized" for regulatory purposes (only to the extent Company is subject to regulatory capital requirements) immediately prior to the declaration of such dividend or distribution, except for dividends payable solely in shares of common stock of the Company.

(b) Merger or Sale of Assets. The Company shall not merge into another entity or convey, transfer or lease substantially all of its properties and assets to any person, unless:

(i) the continuing entity into which the Company is merged or the person which acquires by conveyance or transfer or which leases substantially all of the properties and assets of the Company shall be a corporation, association or other legal entity organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and expressly assumes the due and punctual payment of the principal of and any premium and interest on the Subordinated Note according to their terms, and the due and punctual performance of all covenants and conditions hereof on the part of the Company to be performed or observed; and

(ii) immediately after giving effect to such transaction, no Event of Default (as defined below), and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing.

9. Denominations. The Subordinated Note is issuable only in registered form without interest coupons in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

10. Charges and Transfer Taxes. No service charge will be made for any registration of transfer or exchange of this Subordinated Note, or any redemption or repayment of this Subordinated Note, or any conversion or exchange of this Subordinated Note for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of this Subordinated Note from the Noteholder requesting such transfer or exchange.

11. Payment Procedures. Payment of the principal and interest payable on the Maturity Date will be made by check, or by wire transfer in immediately available funds to a bank account in the United States designated by the registered holder of this Subordinated Note if such Noteholder shall have previously provided wire instructions to the Company, upon presentation and surrender of this Subordinated Note at the Payment Office (as defined in Section 21 below) or at such other place or places as the Company shall designate by notice to the registered Noteholders as the Payment Office, provided that this Subordinated Note is presented to the Company in time for the Company to make such payments in such funds in accordance with its normal procedures. Payments of interest (other than interest payable on the Maturity Date) shall be made by wire transfer in immediately available funds or check mailed to the registered holder of this Subordinated Note, as such person's address appears on the Security Register (as defined below). Interest payable on any Interest Payment Date shall be payable to the Noteholder in whose name this Subordinated Note is registered at the close of business on the fifteenth calendar day prior to the applicable Interest Payment Date, without regard to whether such date is a Business Day (such date being referred to herein as the "Regular Record Date"), except that interest not paid on the Interest Payment Date, if any, will be paid to the holder in whose name this Subordinated Note is registered at the close of business on a special record date fixed by the Company (a "Special Record Date"), notice of which shall be given to the holder of this Subordinated Note not less than 10 calendar days prior to such Special Record Date. (The Regular Record Date and Special Record Date are referred to herein collectively as the "Record Dates"). To the extent permitted by applicable law, interest shall accrue, at the rate at which interest accrues on the principal of this Subordinated Note, on any amount of principal or interest on this Subordinated Note not paid when due. All payments on this Subordinated Note shall be applied first against costs and expenses of the holder of this Subordinated Note; then against interest due hereunder; and then against principal due hereunder. In the event that the holder of this Subordinated Note receives payments in excess of payments owed to such holder, then the holder of this Subordinated Note shall hold in trust all such excess payments for the benefit of the Company.

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12. Form of Payment. Payments of principal and interest on this Subordinated Note shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

13. Registration of Transfer, Security Register. Except as otherwise provided herein, this Subordinated Note is transferable in whole or in part, and may be exchanged for a like aggregate principal amount of Subordinated Note of other authorized denominations, by the holder of this Subordinated Note in person, or by his attorney duly authorized in writing, at the Payment Office. The Company shall maintain a register providing for the registration of the Subordinated Note and any exchange or transfer thereof (the "Security Register"). Upon surrender or presentation of this Subordinated Note for exchange or registration of transfer, the Company shall execute and deliver in exchange therefor a Subordinated Note of like aggregate principal amount, each in a minimum denomination of \$1,000 or any amount in excess thereof which is an integral multiple of \$1,000 (and, in the absence of an opinion of counsel satisfactory to the Company to the contrary, bearing the restrictive legend(s) set forth hereinabove) and that is or are registered in such name or names requested by the Noteholder. Any Subordinated Note presented or surrendered for registration of transfer or for exchange shall be duly endorsed and accompanied by a written instrument of transfer in such form as is attached hereto and incorporated herein, duly executed by the holder of this Subordinated Note or his attorney duly authorized in writing, with such tax identification number or other information for each person in whose name a Subordinated Note is to be issued, and accompanied by evidence of compliance with any restrictive legend(s) appearing on such Subordinated Note as the Company may reasonably request to comply with applicable law. No exchange or registration of transfer of this Subordinated Note shall be made on or after the fifteenth day immediately preceding the Maturity Date.

14. Charges and Transfer Taxes. No service charge (other than any cost of delivery) will be made for any registration of transfer or exchange of this Subordinated Note, or any redemption or repayment of this Subordinated Note, or any conversion or exchange of this Subordinated Note for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of this Subordinated Note from the Noteholder requesting such transfer or exchange.

15. Priority. The Subordinated Note ranks *pari passu*, in the event of any insolvency proceeding, dissolution, assignment for the benefit of creditors, reorganization, restructuring of debt, marshaling of assets and liabilities or similar proceeding or any liquidation or winding up of the Company, with all other present or future unsecured subordinated debt obligations of the Company, except any unsecured subordinated debt that, pursuant to its express terms, is senior or subordinate in right of payment to the Subordinated Note.

16. Ownership. Prior to due presentment of this Subordinated Note for registration of transfer, the Company may treat the holder in whose name this Subordinated Note is registered in the Security Register as the absolute owner of this Subordinated Note for receiving payments of principal and interest on this Subordinated Note and for all other purposes whatsoever, whether or not this Subordinated Note be overdue, and the Company shall not be affected by any notice to the contrary.

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17. Waiver and Consent. Any consent or waiver given by the holder of this Subordinated Note shall be conclusive and binding upon such holder and upon all future holders of this Subordinated Note and of any Subordinated Note issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Subordinated Note. This Subordinated Note may be also amended or waived pursuant to, and in accordance with, the provisions of Section 8.3 of the Purchase Agreement. No delay or omission of the holder of this Subordinated Note to exercise any right or remedy accruing upon any Event of Default shall impair such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Any insured depository institution which shall be a holder of this Subordinated Note or which otherwise shall have any beneficial ownership interest in this Subordinated Note shall, by its acceptance of such

Subordinated Note (or beneficial interest therein), be deemed to have waived any right of offset with respect to the indebtedness evidenced thereby.

18. Absolute and Unconditional Obligation of the Company. No provisions of this Subordinated Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal and interest on this Subordinated Note at the times, places and rate, and in the coin or currency, herein prescribed.

(a) No delay or omission of the holder of this Subordinated Note to exercise any right or remedy accruing upon any Event of Default shall impair such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein.

(b) Any insured depository institution which shall be a holder of this Subordinated Note or which otherwise shall have any beneficial ownership interest in this Subordinated Note shall, by its acceptance of such Note (or beneficial interest therein), be deemed to have waived any right of offset with respect to the indebtedness evidenced thereby.

19. No Sinking Fund; Convertibility. This Subordinated Note is not entitled to the benefit of any sinking fund. This Subordinated Note is not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any subsidiary.

20. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement contained in this Subordinated Note, or for any claim based thereon or otherwise in respect thereof, will be had against any past, present or future shareholder, employee, officer, or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rate of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Subordinated Note by the holder hereof and as part of the consideration for the issuance of this Subordinated Note.

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21. Notices. All notices to the Company under this Subordinated Note shall be in writing and addressed to the Company at Sussex Bancorp, 100 Enterprise Drive, Suite 700, Rockaway, New Jersey, Attn: Steven Fusco, or to such other address as the Company may notify to the holder of this Subordinated Note (the "Payment Office"). All notices to the Noteholders shall be in writing and sent by first-class mail to each Noteholder at his or its address as set forth in the Security Register.

22. Further Issues. The Company may, without the consent of the holder of the Subordinated Note, create and issue additional notes having the same terms and conditions of the Subordinated Note (except for the Issue Date) so that such further notes shall be consolidated and form a single series with the Subordinated Note.

23. Governing Law. THIS SUBORDINATED NOTE WILL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THEREOF. THIS SUBORDINATED NOTE IS INTENDED TO MEET THE CRITERIA FOR QUALIFICATION OF THE OUTSTANDING PRINCIPAL AS TIER 2 CAPITAL UNDER THE REGULATORY GUIDELINES OF THE FEDERAL RESERVE, AND THE TERMS HEREOF SHALL BE INTERPRETED IN A MANNER TO SATISFY SUCH INTENT.

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be duly executed.

Dated: December 22, 2016

SUSSEX BANCORP

By: _____
Name: Steven Fusco
Title: Chief Financial Officer / Senior Executive Vice President

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ASSIGNMENT FORM

To assign this Subordinated Note, fill in the form below: (I) or (we) assign and transfer this Subordinated Note to:

(Print or type assignee's name, address and zip code)

(Insert assignee's social security or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Subordinated Note on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your signature: _____
(Sign exactly as your name appears on the face of this Subordinated Note)

Tax Identification No: _____

Signature Guarantee: _____

(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbroker's, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

The undersigned certifies that it [is / is not] an Affiliate of the Company and that, to its knowledge, the proposed transferee [is / is not] an Affiliate of the Company.

In connection with any transfer or exchange of this Subordinated Note occurring prior to the date that is one year after the later of the date of original issuance of this Subordinated Note and the last date, if any, on which this Subordinated Note was owned by the Company or any Affiliate of the Company, the undersigned confirms that this Subordinated Note is being:

CHECK ONE BOX BELOW:

- (1) acquired for the undersigned's own account, without transfer;
- (2) transferred to the Company;
- (3) transferred in accordance and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act");
- (4) transferred under an effective registration statement under the Securities Act;
- (5) transferred in accordance with and in compliance with Regulation S under the Securities Act;
- (6) transferred to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an "accredited investor" (as defined in Rule 501(a)(4) under the Securities Act), that has furnished a signed letter containing certain representation's and agreements; or
- (7) transferred in accordance with another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Company will refuse to register this Subordinated Note in the name of any person other than the registered holder thereof; provided, however, that if box (5), (6) or (7) is checked, the Company may require, prior to registering any such transfer of this Subordinated Note, in its sole discretion, such legal opinions, certifications and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act such as the exemption provided by Rule 144 under such Act.

Signature: _____

Signature Guarantee: _____

(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbroker's, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Subordinated Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____

Signature: _____

SUSSEX BANCORP INC.,

Issuer

to

[NAME OF TRUSTEE],

Trustee

SENIOR DEBT INDENTURE

Dated as of _____, 20

Senior Debt Securities

Reconciliation and tie between
Trust Indenture Act of 1939 (the "Trust Indenture Act")
and Indenture

Trust Indenture Act Section	Indenture Section
§310(a)(1)	607
(a)(2)	607
(b)	608
§312(a)	701
(b)	702
(c)	702
§313(a)	703
(b)(2)	703
(c)	703
(d)	703
§314(a)	704
(c)(1)	102
(c)(2)	102
(e)	102
§315(b)	602
(e)	515
§316(a) (last sentence)	101
(a)(1)(A)	502, 512
(a)(1)(B)	513
(b)	508
§317(a)(1)	503
(a)(2)	504
(b)	1003
§318(a)	108

Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

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SENIOR DEBT INDENTURE, dated as of _____, 20____ (the “Indenture”), between Sussex Bancorp, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the “Company”), having its principal executive office located at 100 Enterprise Drive, Suite 700, Rockaway, New Jersey 07866, and _____, a banking association duly organized and existing under the laws of _____ (hereinafter called the “Trustee”).

RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its senior unsecured debentures, notes or other evidences of indebtedness (hereinafter called the “Securities”), unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, to be issued in one or more series and to have such other provisions as shall be fixed as hereinafter provided.

The Company has duly authorized the execution and delivery of this Indenture. All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders (as herein defined) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof and any Coupons (as herein defined) as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. *Definitions.*

Except as otherwise expressly provided in or pursuant to this Indenture or unless the context otherwise requires, for all purposes of this Indenture:

- (1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (4) the words “herein”, “hereof”, “hereto” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (5) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both”, not “either A or B but not both”);
- (6) provisions apply to successive events and transactions;
- (7) the term “merger” includes a statutory share exchange and the terms “merge” and “merged” have correlative meanings;
- (8) the masculine gender includes the feminine and the neuter; and
- (9) references to agreements and other instruments include subsequent amendments and supplements thereto.

Certain terms used principally in certain Articles hereof are defined in those Articles.

“Act”, when used with respect to any Holders, has the meaning specified in Section 104.

“Additional Amounts” means any additional amounts which are required by this Indenture or by any Security, or by the terms of any Security established pursuant to Section 301, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes, duties, levies, imposts, assessments or other governmental charges imposed on Holders specified herein or therein.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control”, when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Authenticating Agent” means any Person authorized by the Trustee pursuant to Section 611 to act on behalf of the Trustee to authenticate Securities of one or more series.

“Authorized Newspaper” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are not Business Days in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same place meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

“Bearer Security” means any Security in the form established pursuant to Section 201 which is payable to bearer.

“Board of Directors” means the board of directors of the Company or any committee of that board duly authorized to act generally or in any particular respect for the Company hereunder. The term “board of directors” means the board of directors of the Company and does not include committees of the board of directors.

“Board Resolution” means a copy of one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, delivered to the Trustee.

“Business Day” means, unless otherwise specified with respect to the Securities of any series pursuant to Section 301, any day other than a Saturday, Sunday or other day on which banking institutions in The City of New York or Rockaway, New Jersey are authorized or obligated by law, regulation or executive order to close; provided that such term shall mean, when used with respect to any payment of principal of, or premium or interest, if any, on, or Additional Amounts with respect to, the Securities of any series to be made at any Place of Payment for such Securities, unless otherwise specified pursuant to Section 301 with respect to such Securities, any day other than a Saturday, Sunday or other day on which banking institutions in such Place of Payment are authorized or obligated by law, regulation or executive order to close.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Common Stock” includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person and any other obligor upon the Securities.

“Company Request” and “Company Order” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by the Chairman, the Chief Executive Officer, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

“Conversion Event” means the cessation of use of (i) a Foreign Currency both by the government of the country or the confederation which issued such Foreign Currency and for the settlement of transactions by a central bank or

other public institutions of or within the international banking community or (ii) any currency unit or composite currency for the purposes for which it was established.

“Corporate Trust Office” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at _____ or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“corporation” includes corporations, partnerships, associations, limited liability companies and other companies, and business trusts.

“Coupon” means any interest coupon appertaining to a Bearer Security.

“Currency”, with respect to any payment, deposit or other transfer in respect of the principal of or any premium or interest on or any Additional Amounts with respect to any Security, means Dollars or the Foreign Currency, as the case may be, in which such payment, deposit or other transfer is required to be made by or pursuant to the terms hereof or such Security and, with respect to any other payment, deposit or transfer pursuant to or contemplated by the terms hereof or such Security, means Dollars.

“CUSIP number” means the alphanumeric designation assigned to a Security by Standard & Poor’s, CUSIP Service Bureau.

“Defaulted Interest” has the meaning specified in Section 307.

“Depository” means, with respect to any Security issuable or issued in the form of one or more global Securities, the Person designated as depository by the Company in or pursuant to this Indenture, and, unless otherwise provided with respect to any Security, any successor to such Person. If at any time there is more than one such Person, “Depository” shall mean, with respect to any Securities, the depository which has been appointed with respect to such Securities.

“Dollars” or “\$” means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

“Event of Default” has the meaning specified in Section 501.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor thereto, in each case as amended from time to time.

“Foreign Currency” means any currency, currency unit or composite currency issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such government.

“GAAP” and “generally accepted accounting principles” mean, unless otherwise specified with respect to any series of Securities pursuant to Section 301, such accounting principles as are generally accepted in the United States of America as of the date or time of any computation required hereunder.

“Government Obligations” means securities which are (i) direct obligations of the United States of America or the other government or governments in the confederation which issued the Foreign Currency in which the principal of

or any premium or interest on the relevant Security or any Additional Amounts in respect thereof shall be payable, in each case where the payment or payments thereunder are supported by the full faith and credit of such government or governments or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such other government or governments, in each case where the timely payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government or governments, and which, in the case of (i) or (ii), are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

“Holder”, in the case of any Registered Security, means the Person in whose name such Security is registered in the Security Register and, in the case of any Bearer Security, means the bearer thereof and, in the case of any Coupon, means the bearer thereof.

“Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, with respect to any Security, by the terms and provisions of such Security and any Coupon appertaining thereto established pursuant to Section 301 (as such terms and provisions may be amended pursuant to the applicable provisions hereof), provided, however, that, if at any time more than one Person is acting as Trustee under this instrument, “Indenture” shall mean, with respect to any one or more series of Securities for which such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of those particular series of Securities for which such Person is Trustee established pursuant to Section 301, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted.

“Indexed Security” means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

“interest”, with respect to any Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“Interest Payment Date”, with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Judgment Currency” has the meaning specified in Section 116.

“Maturity”, with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as provided in or pursuant to this Indenture or such Security, whether at the Stated Maturity or by declaration of acceleration, upon redemption at the option of the Company, upon repurchase or repayment at the option of the Holder or otherwise, and includes a Redemption Date for such Security and a date fixed for the repurchase or repayment of such Security at the option of the Holder.

“New York Banking Day” has the meaning specified in Section 116.

“Office” or “Agency”, with respect to any Securities, means an office or agency of the Company maintained or designated in a Place of Payment for such Securities pursuant to Section 1002 or any other office or agency of the Company maintained or designated for such Securities pursuant to Section 1002 or, to the extent designated or required by Section 1002 in lieu of such office or agency, the Corporate Trust Office of the Trustee.

“Officers’ Certificate” means a certificate signed by the Chairman, the Chief Executive Officer, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that, if required by the Trust Indenture Act, complies with the requirements of Section 314(e) of the Trust Indenture Act.

“Original Issue Discount Security” means a Security issued pursuant to this Indenture which provides for an amount less than the principal face amount thereof to be due and payable upon declaration of acceleration pursuant to Section 502.

“Outstanding”, when used with respect to any Securities, means, as of the date of determination, all such Securities theretofore authenticated and delivered under this Indenture, except:

- (a) any such Security theretofore cancelled by the Trustee or the Security Registrar or delivered to the Trustee or the Security Registrar for cancellation;
 - (b) any such Security for whose payment at the Maturity thereof money in the necessary amount (or, to the extent that such Security is payable at such Maturity in shares of Common Stock or other securities or property, Common Stock or such other securities or property in the necessary amount, together with, if applicable, cash in lieu of fractional shares or securities) has been theretofore deposited pursuant hereto (other than pursuant to Section 402) with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any Coupons appertaining thereto, *provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
 - (c) any such Security with respect to which the Company has effected defeasance or covenant defeasance pursuant to Section 402, except to the extent provided in Section 402;
 - (d) any such Security which has been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, unless there shall have been presented to the Trustee proof satisfactory to it that such Security is held by a bona fide purchaser in whose hands such Security is a valid obligation of the Company; and
 - (e) any such Security converted or exchanged as contemplated by this Indenture into Common Stock or other securities or property, if the terms of such Security provide for such conversion or exchange pursuant to Section 301;
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provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that pursuant to the terms of such Original Issue Discount Security would be declared (or shall have been declared to be) due and payable upon a declaration of acceleration thereof pursuant to Section 502 at the time of such determination, and (ii) the principal amount of any Indexed Security that may be counted in making such determination and that shall be deemed Outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided in or pursuant to this Indenture, and (iii) the principal amount of a Security denominated in a Foreign Currency that may be counted in making such determination and that shall be deemed Outstanding for such purposes shall be the Dollar equivalent, determined on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent on the date of original issuance of such Security of the amount determined as provided in (i) above) of such Security, and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making any such determination or relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which shall have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee (A) the pledgee's right so to act with respect to such Securities and (B) that the pledgee is not the Company or any other obligor upon the Securities or any Coupons appertaining thereto or an Affiliate (other than a Trust) of the Company or such other obligor.

“Paying Agent” means any Person authorized by the Company, including the Company, to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Security or any Coupon on behalf of the Company.

“Person” and “person” mean any individual, corporation, partnership, association, limited liability company, other company, business trust, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment”, with respect to any Security, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to such Security are payable as provided in or pursuant to this Indenture or such Security.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same indebtedness as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security or any Security to which a mutilated, destroyed, lost or stolen Coupon appertains shall be deemed to evidence the same indebtedness as the lost, destroyed, mutilated or stolen Security or the Security to which a mutilated, destroyed, lost or stolen Coupon appertains.

“Redemption Date”, with respect to any Security or portion thereof to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture or such Security.

“Redemption Price”, with respect to any Security or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or pursuant to this Indenture or such Security.

“Registered Security” means any Security established pursuant to Section 201 which is registered in the Security Register.

“Regular Record Date” for the interest payable on any Registered Security on any Interest Payment Date therefor means the date, if any, specified in or pursuant to this Indenture or such Security as the record date for the payment of such interest.

“Required Currency” has the meaning specified in Section 116.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Securities Act” means the Securities Act of 1933, as amended, or any successor thereto, in each case as amended from time to time.

“Security” or “Securities” means any note or notes, bond or bonds, debenture or debentures, or any other evidences of indebtedness, as the case may be, authenticated and delivered under this Indenture; *provided, however*, that, if at any time there is more than one Person acting as Trustee under this Indenture, “Securities”, with respect to any such Person, shall mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

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“Security Register” and “Security Registrar” have the respective meanings specified in Section 305.

“Significant Subsidiary” means any Subsidiary of the Company that is a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X promulgated by the Commission (as such rule is in effect on the date of this Indenture).

“Special Record Date” for the payment of any Defaulted Interest on any Registered Security means a date fixed by the Trustee pursuant to Section 307.

“Stated Maturity”, with respect to any Security or any installment of principal thereof or interest thereon or any Additional Amounts with respect thereto, means the date established by or pursuant to this Indenture or such Security as the fixed date on which the principal of such Security or such installment of principal or interest is, or such Additional Amounts are, due and payable.

“Subsidiary” means a corporation or a partnership or a limited liability company a majority of the outstanding voting stock or partnership or membership interests, as the case may be, of which is owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries of the Company. For the purposes of this definition, “voting stock” means stock having voting power for the election of directors, or trustees, as the case may be, whether at all times or only so long as no senior class of stock has voting power by reason of any contingency.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Act or provision, as the case may be, as amended or replaced from time to time or as supplemented from time to time by rules or regulations adopted by the Commission under or in furtherance of the purposes of such Act or provision, as the case may be.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean each Person who is then a Trustee hereunder; *provided, however*, that if at any time there is more than one such Person, “Trustee” shall mean each such Person and as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of such series.

“United States”, means the United States of America (including the states thereof and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction; and the term “United States of America” means the United States of America.

“United States Alien”, except as otherwise provided in or pursuant to this Indenture or any Security, means any Person who, for United States Federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, for United States Federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“Vice President”, when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “Vice President”.

Section 102. *Compliance Certificates and Opinions.*

Except as otherwise expressly provided in or pursuant to this Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers’ Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Section 103. *Form of Documents Delivered to Trustee.*

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the opinion with respect to the matters upon which his certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, a governmental official or officers or any other Person or Persons, stating that the information with respect to such factual matters is in the possession of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate, opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture or any Security, they may, but need not, be consolidated and form one instrument.

Section 104. *Acts of Holders.*

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or pursuant to this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If, but only if, Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Fifteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 315 of the Trust Indenture Act) conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1506.

Without limiting the generality of this Section 104, unless otherwise provided in or pursuant to this Indenture, a Holder, including a Depository that is a Holder of a global Security, may make, give or take, by a proxy or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or pursuant to this Indenture or the Securities to be made, given or taken by Holders, and a Depository that is a Holder of a global Security may provide its proxy or proxies to the beneficial owners of interests in any such global Security through such Depository's standing instructions and customary practices.

(2) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(3) The ownership, principal amount and serial numbers of Registered Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, shall be proved by the Security Register.

(4) The ownership, principal amount and serial numbers of Bearer Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depositary, by any trust company, bank, banker or other depositary reasonably acceptable to the Company, wherever situated, if such certificate shall be deemed by the Company and the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Company and the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The ownership, principal amount and serial numbers of Bearer Securities held by the Person so executing such

instrument or writing and the date of the commencement and the date of the termination of holding the same may also be proved in any other manner which the Company and the Trustee deem sufficient.

(5) If the Company shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may at its option (but is not obligated to), by Board Resolution, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders of Registered Securities shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

(6) Any request, demand, authorization, direction, notice, consent, waiver or other Act by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee, any Security Registrar, any Paying Agent or the Company in reliance thereon, whether or not notation of such Act is made upon such Security.

Section 105. Notices, etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company by the Trustee or any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to the attention of its Treasurer at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

Section 106. Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided in or pursuant to this Indenture, where this Indenture provides for notice to Holders of Securities of any event,

(1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice; and

(2) such notice shall be sufficiently given to Holders of Bearer Securities, if any, if published in an Authorized Newspaper in The City of New York and, if such Securities are then listed on any stock exchange outside the United States, in an Authorized Newspaper in such city as the Company shall advise the Trustee that such stock exchange so requires, on a Business Day at least twice, the first such publication to be not earlier than the earliest date and the second such publication not later than the latest date prescribed for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 107. Language of Notices.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 108. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with any duties under any required provision of the Trust Indenture Act imposed hereon by Section 318(c) thereof, such required provision shall control.

Section 109. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 110. Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 111. Separability Clause.

In case any provision in this Indenture, any Security or any Coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, to the fullest extent permitted by law, in any way be affected or impaired thereby.

Section 112. Benefits of Indenture.

Nothing in this Indenture, any Security or any Coupon, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent and their successors hereunder and the Holders of Securities or Coupons, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 113. *Governing Law.*

This Indenture, the Securities and any Coupons shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made or instruments entered into and, in each case, performed in said State.

Section 114. *Legal Holidays.*

Unless otherwise specified in or pursuant to this Indenture or any Securities, in any case where any Interest Payment Date, Stated Maturity or Maturity of, or any other day on which a payment is due with respect to, any Security shall be a day which is not a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture, any Security or any Coupon other than a provision in any Security or Coupon or in the Board Resolution, Officers' Certificate or supplemental indenture establishing the terms of any Security that specifically states that such provision shall apply in lieu hereof) payment need not be made at such Place of Payment on such date, but such payment may be made on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, at the Stated Maturity or Maturity or on any such other payment date, as the case may be, and no interest shall accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date, Stated Maturity, Maturity or other payment date, as the case may be, to the next succeeding Business Day.

Section 115. *Counterparts.*

This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 116. *Judgment Currency.*

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, or Additional Amounts on the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding that on which a final unappealable judgment is given and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with clause (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or obligated by law, regulation or executive order to be closed. The provisions of this Section 116 shall not be applicable with respect to any payment due on a Security which is payable in Dollars.

Section 117. *Extension of Payment Dates.*

In the event that (i) the terms of any Security or Coupon appertaining thereto established in or pursuant to this Indenture permit the Company or any Holder thereof to extend the date on which any payment of principal of, or premium, if any, or interest, if any, on, or Additional Amounts, if any, with respect to such Security or Coupon is due and payable and (ii) the due date for any such payment shall have been so extended, then all references herein to the Stated Maturity of such payment (and all references of like import) shall be deemed to refer to the date as so extended.

Section 118. *Immunity of Stockholders, Directors, Officers and Agents of the Company.*

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any past, present or future stockholder, employee, officer or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders and as part of the consideration for the issue of the Securities.

Section 119. *Waiver of Jury Trial.*

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 120. *Force Majeure.*

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE TWO

SECURITIES FORMS

Section 201. *Forms Generally.*

Each Registered Security, Bearer Security, Coupon and temporary or permanent global Security issued pursuant to this Indenture shall be in the form established by or pursuant to a Board Resolution and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by or pursuant to this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officer of the Company executing such Security or Coupon as evidenced by the execution of such Security or Coupon.

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall be issuable in registered form without Coupons.

Definitive Securities and definitive Coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officer of the Company executing such Securities or Coupons, as evidenced by the execution of such Securities or Coupons.

Section 202. *Form of Trustee's Certificate of Authentication.*

Subject to Section 611, the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

_____,
as Trustee
By: _____
Authorized Signatory

Section 203. *Securities in Global Form.*

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall not be issuable in global form. If Securities of a series shall be issuable in temporary or permanent global form, any such Security may provide that it or any number of such Securities shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon or reflected on the books and records of the Trustee and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of any Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or pursuant to Section 301 with respect to such Security or in the Company Order to be delivered pursuant to Section 303 or 304 with respect thereto. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in global form in the manner and upon instructions given by the Person or Persons specified therein or pursuant to Section 301 with respect to such Security or in the applicable Company Order. If a Company Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Company with respect to a Security in global form shall be in writing but need not be accompanied by or contained in an Officers' Certificate and need not be accompanied by an Opinion of Counsel. Notwithstanding the foregoing provisions of this paragraph, in the event a global Security is exchangeable for definitive Securities as provided in Section 305, then, unless otherwise provided in or pursuant to this Indenture with respect to the Securities of such series, the Trustee shall deliver and redeliver such global Security to the extent necessary to effect such exchanges, shall endorse such global Security to reflect any decrease in the principal amount thereto resulting from such exchanges and shall take such other actions, all as contemplated by Section 305.

Notwithstanding the provisions of Section 307, unless otherwise specified in or pursuant to this Indenture or any Securities, payment of principal of, any premium and interest on, and any Additional Amounts in respect of any Security in temporary or permanent global form shall be made to the Person or Persons specified therein.

Notwithstanding the provisions of Section 308 and except as provided in the preceding paragraph, the Company, the Trustee and any agent of the Company and the Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a global Security (i) in the case of a global Security in registered form, the Holder of such global Security in registered form, or (ii) in the case of a global Security in bearer form, the Person or Persons specified pursuant to Section 301.

ARTICLE THREE

THE SECURITIES

Section 301. *Amount Unlimited; Issuable in Series.*

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series.

With respect to any Securities to be authenticated and delivered hereunder, there shall be established in or pursuant to one or more Board Resolutions and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of any Securities of a series,

(1) the title of the Securities of such series;

(2) any limit upon the aggregate principal amount of the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 304, 305, 306, 905 or 1107, upon repayment in part of any Security of such series pursuant to Article Thirteen or upon surrender in part of any Security for conversion or exchange into Common Stock or other securities or property pursuant to its terms), and if such series may be reopened from time to time for the issuance of additional Securities of such series or to establish additional terms of such series;

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(3) if such Securities are to be issuable as Registered Securities, as Bearer Securities or alternatively as Bearer Securities and Registered Securities, and whether the Bearer Securities are to be issuable with Coupons, without Coupons or both, and any restrictions applicable to the offer, sale or delivery of the Bearer Securities and the terms, if any, upon which Bearer Securities may be exchanged for Registered Securities and vice versa;

(4) if any of such Securities are to be issuable in global form, when any of such Securities are to be issuable in global form and (i) whether such Securities are to be issued in temporary or permanent global form or both, (ii) whether beneficial owners of interests in any such global Security may exchange such interests for Securities of the same series and of like tenor and of any authorized form and denomination, and the circumstances under which any such exchanges may occur, if other than in the manner specified in Section 305, (iii) the name of the Depository with respect to any such global Security and (iv) if applicable and in addition to the Persons specified in Section 305, the Person or Persons who shall be entitled to make any endorsements on any such global Security and to give the instructions and take the other actions with respect to such global Security contemplated by the first paragraph of Section 203;

(5) if any of such Securities are to be issuable as Bearer Securities, the date as of which any such Bearer Security shall be dated (if other than the date of original issuance of the first of such Securities to be issued);

(6) if any of such Securities are to be issuable as Bearer Securities, whether interest in respect of any portion of a temporary Bearer Security in global form payable in respect of an Interest Payment Date therefor prior to the exchange, if any, of such temporary Bearer Security for definitive Securities shall be paid to any clearing organization with respect to the portion of such temporary Bearer Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date;

(7) the date or dates, or the method or methods, if any, by which such date or dates shall be determined, on which the principal and premium, if any, of such Securities is payable;

(8) the rate or rates at which such Securities shall bear interest, if any, or the method or methods, if any, by which such rate or rates are to be determined, the date or dates, if any, from which such interest shall accrue or the method or methods, if any, by which such date or dates are to be determined, the Interest Payment Dates, if any, on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on Registered Securities on any Interest Payment Date, the notice, if any, to Holders regarding the determination of interest on a floating rate Security and the manner of giving such notice, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(9) if in addition to or other than the Borough of Manhattan, The City of New York, the place or places where the principal of, any premium and interest on or any Additional Amounts with respect to such Securities shall be payable, any of such Securities that are Registered Securities may be surrendered for registration of transfer or exchange, any of such Securities may be surrendered for conversion or exchange and notices or demands to or upon the Company in respect of such Securities and this Indenture may be served;

(10) whether any of such Securities are to be redeemable at the option of the Company and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Company;

(11) if the Company is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or analogous provision or at the option of any Holder thereof and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased;

(12) the denominations in which any of such Securities that are Registered Securities shall be issuable if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any of such Securities that are Bearer Securities shall be issuable if other than the denomination of \$5,000;

(13) whether the Securities of the series will be convertible into and/or exchangeable for Common Stock or other securities or property, and if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, and any deletions from or modifications or additions to this Indenture to permit or to facilitate the issuance of such convertible or exchangeable Securities or the administration thereof;

(14) if other than the principal amount thereof, the portion of the principal amount of any of such Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or the method by which such portion is to be determined;

(15) if other than Dollars, the Foreign Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities shall be payable;

(16) if the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities are to be payable, at the election of the Company or a Holder thereof or otherwise, in Dollars or in a Foreign Currency other than that in which such Securities are stated to be payable, the date or dates on which, the period or periods within which, and the other terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the Currency in which such Securities are stated to be payable and the Currency in which such Securities or any of them are to be paid pursuant to such election, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;

(17) if the amount of payments of principal of, any premium or interest on or any Additional Amounts with respect to such Securities may be determined with reference to an index, formula or other method or methods (which index, formula or method or methods may be based, without limitation, on one or more Currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

(18) any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to any of such Securities (whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein), and if Section 1007 shall be applicable with respect to any such additional covenants;

(19) if any one or more of Section 401 relating to satisfaction and discharge, Section 402(2) relating to defeasance or Section 402(3) relating to covenant defeasance shall not be applicable to the Securities of such series, and any covenants in addition to or other than those specified in Section 402(3) relating to the Securities of such series which shall be subject to covenant defeasance, and, if the Securities of such series are subject to repurchase or repayment at the option of the Holders thereof pursuant to Article Thirteen, if the Company's obligation to repurchase or repay such Securities will be subject to satisfaction and discharge pursuant to Section 401 or to defeasance or covenant defeasance pursuant to Section 402, and, if the Holders of such Securities have the right to convert or exchange such Securities into Common Stock or other securities or property, if the right to effect such conversion or exchange will be subject to satisfaction and discharge pursuant to Section 401 or to defeasance or covenant defeasance pursuant to Section 402, and any deletions from, or modifications or additions to, the provisions of Article Four (including any modification which would permit satisfaction and discharge, defeasance or covenant defeasance to be effected with respect to less than all of the outstanding Securities of such series) in respect of the Securities of such series;

(20) if any of such Securities are to be issuable upon the exercise of warrants, and the time, manner and place for such Securities to be authenticated and delivered;

(21) if any of such Securities are issuable in global form and are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(22) whether and under what circumstances the Company will pay Additional Amounts on such Securities to any holder who is a United States Alien in respect of any tax, assessment or other government charge and, if so, whether the Company will have the option to redeem such Securities rather than pay such Additional Amounts;

(23) if there is more than one Trustee, the identity of the Trustee and, if not the Trustee, the identity of each Security Registrar, Paying Agent or Authenticating Agent with respect to such Securities;

(24) the Person to whom any interest on any Registered Security of such series shall be payable, if other than the Person in whose name the Registered Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, the manner in which, or the Person to whom, any interest on any Bearer Security of such series shall be payable, if other than upon presentation and surrender of the Coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary global Security will be paid if other than in the manner provided in this Indenture;

(25) whether and to what extent the Securities shall be guaranteed by any Person or Persons; and

(26) any other terms of such Securities and any deletions from or modifications or additions to this Indenture in respect of such Securities.

All Securities of any one series and all Coupons, if any, appertaining to Bearer Securities of such series shall be substantially identical except as to Currency of payments due thereunder, denomination and the rate of interest, or method of determining the rate of interest, if any, Maturity, and the date from which interest, if any, shall accrue and except as may otherwise be provided by the Company in or pursuant to the Board Resolution and set forth in the Officers' Certificate or in any indenture or indentures supplemental hereto pertaining to such series of Securities. The terms of the Securities of any series may provide, without limitation, that the Securities shall be authenticated and delivered by the Trustee on original issue from time to time upon telephonic or written order of persons designated in the Board Resolution, Officers' Certificate or supplemental indenture, as the case may be, pertaining to such series of Securities (telephonic instructions to be promptly confirmed in writing by such person) and that such persons are authorized to determine, consistent with such Board Resolution, Officers' Certificate or supplemental indenture, such terms and conditions of the Securities of such series as are specified in such Board Resolution, Officers' Certificate or supplemental indenture. All Securities of any one series need not be issued at the same time and, if so provided by the Company as contemplated by this Section 301, a series may be reopened from time to time without the consent of any Holders for issuances of additional Securities of such series or to establish additional terms of such series of Securities.

If any of the terms of the Securities of any series shall be established by action taken by or pursuant to a Board Resolution, the Board Resolution shall be delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of such series.

Section 302. *Currency; Denominations.*

Unless otherwise provided in or pursuant to this Indenture, the principal of, any premium and interest on and any Additional Amounts with respect to the Securities shall be payable in Dollars. Unless otherwise provided in or pursuant to this Indenture, Registered Securities denominated in Dollars shall be issuable in registered form without Coupons in denominations of \$1,000 and any integral multiple thereof, and the Bearer Securities denominated in Dollars shall be issuable in the denomination of \$5,000. Securities not denominated in Dollars shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

Section 303. *Execution, Authentication, Delivery and Dating.*

Securities shall be executed on behalf of the Company by its Chairman, its President or one of its Vice Presidents and by its Treasurer, one of its Assistant Treasurers, its Secretary or one of its Assistant Secretaries and may (but need not) have its corporate seal or a facsimile thereof reproduced thereon. Coupons shall be executed on behalf of the Company by the Chairman, the President or any Vice President of the Company. The signature of any of these officers on the Securities or any Coupons appertaining thereto may be manual or facsimile.

Securities and any Coupons appertaining thereto bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall, to the fullest extent permitted by law, bind the Company,

notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities or Coupons.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities, together with any Coupons appertaining thereto, executed by the Company, to the Trustee for authentication and, provided that the Board Resolution and Officers' Certificate or supplemental indenture or indentures with respect to such Securities referred to in Section 301 and a Company Order for the authentication and delivery of such Securities have been delivered to the Trustee, the Trustee in accordance with the Company Order and subject to the provisions hereof and of such Securities shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities and any Coupons appertaining thereto, the Trustee shall be entitled to receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon, an Opinion of Counsel to the following effect, which Opinion of Counsel may contain such assumptions, qualifications and limitations as such counsel shall deem appropriate:

(a) the form or forms and terms of such Securities and Coupons, if any, have been established in conformity with Sections 201 and 301 of this Indenture;

(b) all conditions precedent set forth in Sections 201, 301 and 303 of this Indenture to the authentication and delivery of such Securities and Coupons, if any, appertaining thereto have been complied with and that such Securities, and Coupons, when completed by appropriate insertions (if applicable), executed by duly authorized officers of the Company, delivered by duly authorized officers of the Company to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be subject to or limited by bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance, fraudulent transfer or other similar laws relating to or affecting creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel at the time of issuance of each Security, but such opinion, with such modifications as counsel shall deem appropriate, shall be delivered at or before the time of issuance of the first Security of such series. After any such first delivery, any separate request by the Company that the Trustee authenticate Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Indenture relating to authentication and delivery of such Securities continue to have been complied with.

The Trustee shall not be required to authenticate or to cause an Authenticating Agent to authenticate any Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

Each Registered Security shall be dated the date of its authentication. Each Bearer Security and any Bearer Security in global form shall be dated as of the date specified in or pursuant to this Indenture.

No Security or Coupon appertaining thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 202 or 611 executed by or on behalf of the Trustee or by the Authenticating Agent by the manual signature of one of its authorized signatories. Such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Except as

permitted by Section 306 or 307 or as may otherwise be provided in or pursuant to this Indenture, the Trustee shall not authenticate and deliver any Bearer Security unless all Coupons appertaining thereto then matured have been detached and cancelled.

Section 304. *Temporary Securities.*

Pending the preparation of definitive Securities, the Company may execute and deliver to the Trustee and, upon Company Order, the Trustee shall authenticate and deliver, in the manner provided in Section 303, temporary Securities in lieu thereof which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form or, if authorized in or pursuant to this Indenture, in bearer form with one or more Coupons or without Coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Company executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions set forth in this Indenture or the provisions established pursuant to Section 301, if temporary Securities are issued, the Company shall cause definitive Securities to be prepared without unreasonable delay. Except as otherwise provided in or pursuant to this Indenture, after the preparation of definitive Securities of the same series and containing terms and provisions that are identical to those of any temporary Securities, such temporary Securities shall be exchangeable for such definitive Securities upon surrender of such temporary Securities at an Office or Agency for such Securities, without charge to any Holder thereof. Except as otherwise provided in or pursuant to this Indenture, upon surrender for cancellation of any one or more temporary Securities (accompanied by any unmatured Coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and containing identical terms and provisions; *provided, however*, that no definitive Bearer Security, except as provided in or pursuant to this Indenture, shall be delivered in exchange for a temporary Registered Security; and *provided, further*, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in or pursuant to this Indenture. Unless otherwise provided in or pursuant to this Indenture with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. *Registration, Transfer and Exchange.*

With respect to the Registered Securities of each series, if any, the Company shall cause to be kept a register (each such register being herein sometimes referred to as the "Security Register") at an Office or Agency for such series in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Registered Securities of such series and of transfers of the Registered Securities of such series. Such Office or Agency shall be the "Security Registrar" for that series of Securities. Unless otherwise specified in or pursuant to this Indenture or the Securities, the initial Security Registrar for each series of Securities shall be as specified in the penultimate paragraph of Section 1002. The Company shall have the right to remove and replace from time to time the Security Registrar for any series of Securities; provided that no such removal or replacement shall be effective until a successor Security Registrar with respect to such series of Securities shall have been appointed by the Company and shall have accepted such appointment. In the event that the Trustee shall not be or shall cease to be Security Registrar with respect to a series of Securities, it shall have the right to examine the Security Register for such series at all reasonable times. There shall be only one Security Register for each series of Securities.

Except as otherwise provided in or pursuant to this Indenture, upon surrender for registration of transfer of any Registered Security of any series at any Office or Agency for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series denominated as authorized in or pursuant to this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

Except as otherwise provided in or pursuant to this Indenture, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any Office or Agency for such series. Whenever any Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

If provided in or pursuant to this Indenture, with respect to Securities of any series, at the option of the Holder, Bearer Securities of such series may be exchanged for Registered Securities of such series containing identical terms, denominated as authorized in or pursuant to this Indenture and in the same aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any Office or Agency for such series, with all unmatured Coupons and all matured Coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured Coupon or Coupons or matured Coupon or Coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company and the Trustee in an amount equal to the face amount of such missing Coupon or Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to any Paying Agent any such missing Coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; *provided, however*, that, except as otherwise provided in Section 1002, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such series located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such Office or Agency for such series in exchange for a Registered Security of such series and like tenor after the close of business at such Office or Agency on (i) any Regular Record Date and before the opening of business at such Office or Agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such Office or Agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date or proposed date of payment, as the case may be (or, if such Coupon is so surrendered with such Bearer Security, such Coupon shall be returned to the Person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

If provided in or pursuant to this Indenture with respect to Securities of any series, at the option of the Holder, Registered Securities of such series may be exchanged for Bearer Securities upon such terms and conditions as may be provided in or pursuant to this Indenture with respect to such series.

Whenever any Securities are surrendered for exchange as contemplated by the immediately preceding two paragraphs, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, the global Securities of any series shall be exchangeable for definitive certificated Securities of such series only if (i) the Depository for such global Securities notifies the Company that it is unwilling or unable to continue as a Depository for such global Securities or at any time the Depository for such global Securities ceases to be a clearing agency registered as such under the Exchange Act, if so required by applicable law or regulation, and no successor Depository for such Securities shall have been appointed within 90 days of such notification or of the Company becoming aware of the Depository's ceasing to be so registered, as the case may be, (ii) the Company, in its sole discretion, determines that the Securities of such series shall no longer be represented by one or more global Securities and executes and delivers to the Trustee a Company Order to the effect that such global Securities shall be so exchangeable, or (iii) an Event of Default has occurred and is continuing with respect to such Securities.

If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities as the result of an event described in clause (i), (ii) or (iii) of the preceding paragraph, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Securities in such form and denominations as are required by or pursuant to this Indenture, and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of such global Security, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such global Security shall be surrendered from time to time by the Depository (or its custodian) as shall be specified in the Company Order with respect thereto (which the Company agrees to deliver), and in accordance with instructions given to the Trustee and the Depository (which instructions shall be in writing but need not be contained in or accompanied by an Officers' Certificate or be accompanied by an Opinion of Counsel), as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged, which (unless such Securities are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the global Security shall be issuable only in the form in which the Securities are issuable, as provided in or pursuant to this Indenture) shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, and which shall be in such denominations and, in the case of Registered Securities, registered in such names, as shall be specified by the Depository, but subject to the satisfaction of any certification or other requirements to the issuance of Bearer Securities; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series to be redeemed and ending on the relevant Redemption Date; and *provided, further*, that (unless otherwise provided in or pursuant to this Indenture) no Bearer Security delivered in exchange for a portion of a global Security shall be mailed or otherwise delivered to any location in the United States. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to such Depository (or its custodian) or such other Depository (or its custodian) referred to above in accordance with the instructions of the Company referred to above, and the Trustee shall endorse such global Security to reflect the decrease in the principal amount thereof resulting from such exchange. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the Office or Agency for such Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at such Office or Agency on the next Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such Office or Agency on the related proposed date for payment of interest or Defaulted Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

Every Registered Security presented or surrendered for registration of transfer or for exchange or redemption shall (if so required by the Company or the Security Registrar for such Security) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar for such Security duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, or any redemption or repayment of Securities, or any conversion or exchange of Securities for other types of securities or property, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 905 or 1107, upon repayment or repurchase in part of any Registered Security pursuant to Article Thirteen, or upon surrender in part of any Registered Security for conversion or exchange into Common Stock or other securities or property pursuant to its terms, in each case not involving any transfer.

Except as otherwise provided in or pursuant to this Indenture, the Company shall not be required (i) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the selection for redemption of Securities of like tenor and terms and of the same series under Section 1103 and ending at the close of business on the day of such selection, or (ii) to register the transfer of or exchange any Registered Security, or portion thereof, so selected for redemption, except in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except, to the extent provided with respect to such Bearer Security, that such Bearer Security may be exchanged for a Registered Security of like tenor and terms and of the same series, provided that such Registered Security shall be simultaneously surrendered for redemption with written instruction for payment consistent with the provisions of this Indenture or (iv) to issue, register the transfer of or exchange any Security which, in accordance with its terms, has been surrendered for repayment at the option of the Holder pursuant to Article Thirteen and not withdrawn, except the portion, if any, of such Security not to be so repaid.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any Paying Agent shall have any responsibility for any actions taken or not taken by the Depository.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security or a Security with a mutilated Coupon appertaining to it is surrendered to the Trustee, subject to the provisions of this Section 306, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons appertaining thereto corresponding to the Coupons, if any, appertaining to the surrendered Security.

If there be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or Coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or Coupon has been acquired by a bona fide purchaser, the Company shall execute and, upon the Company's request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen Coupon appertains with all appurtenant Coupons not destroyed, lost or stolen, a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons corresponding to the Coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Coupon appertains.

Notwithstanding the foregoing provisions of this Section 306, in case any mutilated, destroyed, lost or stolen Security or Coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or Coupon; *provided, however*, that payment of principal of, any premium or interest on or any Additional Amounts with respect to any Bearer Securities shall, except as otherwise provided in Section 1002, be payable only at an Office or Agency for such Securities located outside the United States and, unless otherwise provided in or pursuant to this Indenture, any interest on Bearer Securities and any Additional Amounts with respect to such interest shall be payable only upon presentation and surrender of the Coupons appertaining thereto.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security, with any Coupons appertaining thereto issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen Coupon appertains shall constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Security and Coupons appertaining thereto or the destroyed, lost or stolen Coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series and any Coupons, if any, duly issued hereunder.

The provisions of this Section, as amended or supplemented pursuant to this Indenture with respect to particular Securities or generally, shall (to the extent lawful) be exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons.

Section 307. Payment of Interest and Certain Additional Amounts; Rights to Interest and Certain Additional Amounts Preserved.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, and are punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest. Unless otherwise provided in or pursuant to this Indenture, in case a Bearer Security is surrendered in exchange for a Registered Security after the close of business at an Office or Agency for such Security on any Regular Record Date therefor and before the opening of business at such Office or Agency on the next succeeding Interest Payment Date therefor, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date and interest shall not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer

Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, but shall not be punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Registered Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this Clause provided. Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of such Registered Security (or a Predecessor Security thereof) at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company cause a similar notice to be published at least once in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security is surrendered at the Office or Agency for such Security in exchange for a Registered Security after the close of business at such Office or Agency on any Special Record Date and before the opening of business at such Office or Agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Defaulted Interest and Defaulted Interest shall not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Security may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such payment shall be deemed practicable by the Trustee.

Unless otherwise provided in or pursuant to this Indenture or the Securities of any particular series, at the option of the Company, interest on Registered Securities that bear interest may be paid by mailing a check to the address of the Person entitled thereto as such address shall appear in the Security Register or by transfer to an account maintained by the payee with a bank located in the United States of America.

Subject to the foregoing provisions of this Section and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. *Persons Deemed Owners.*

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered in the Security Register as the owner of such Registered Security for the purpose of receiving payment of principal of, any premium and (subject to Sections 305 and 307) interest on and any Additional Amounts with respect to such Registered Security and for all other purposes whatsoever, whether or not any payment with respect to such Registered Security shall be overdue, and neither the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

The Company, the Trustee and any agent of the Company or the Trustee may treat the bearer of any Bearer Security or the bearer of any Coupon as the absolute owner of such Security or Coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not any payment with respect to such Security or Coupon shall be overdue, and neither the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such global Security, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, any Paying Agent or the Security Registrar from giving effect to any written certification, proxy or other authorization furnished by the applicable Depository, as a Holder, with respect to a global Security or impair, as between such Depository and the owners of beneficial interests in such global Security, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as the Holder of such global Security.

Section 309. *Cancellation.*

All Securities and Coupons surrendered for payment, redemption, registration of transfer, exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Coupons, as well as Securities and Coupons surrendered directly to the Trustee for any such purpose, shall be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by or pursuant to this Indenture. All cancelled Securities and Coupons held by the Trustee shall be disposed of in accordance with its procedure for the disposition of cancelled Securities and the Trustee shall deliver to the Company a certificate of such disposition, unless by a Company Order the Company directs their return to it.

Section 310. *Computation of Interest.*

Except as otherwise provided in or pursuant to this Indenture or in the Securities of any series, interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE FOUR

SATISFACTION AND DISCHARGE OF INDENTURE

Section 401. *Satisfaction and Discharge.*

Unless, pursuant to Section 301, the provisions of this Section 401 shall not be applicable with respect to the Securities of any series, upon the direction of the Company by a Company Order, this Indenture shall cease to be of further effect with respect to any series of Securities specified in such Company Order and any Coupons appertaining thereto, and the Trustee, on receipt of a Company Order, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when

(1) either

(a) all Securities of such series theretofore authenticated and delivered and all Coupons appertaining thereto (other than (i) Coupons appertaining to Bearer Securities of such series surrendered in exchange for Registered Securities of such series and maturing after such exchange whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and Coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) Coupons appertaining to Securities of such series called for redemption and maturing after the relevant Redemption Date whose surrender has been waived as provided in Section 1106, and (iv) Securities and Coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(b) all Securities of such series and, in the case of (i) or (ii) below, if applicable, any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, money in the Currency in which such Securities are payable in an amount sufficient to pay and discharge the entire indebtedness on such Securities and any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and, to the extent that the Securities of such series provide for the payment of Additional Amounts thereon and the amount of any such Additional Amounts which are or will be payable with respect to the Securities of such series is at the time of deposit determinable by the Company (in the exercise by the Company of its reasonable discretion), any Additional Amounts with respect to, such Securities and any Coupons appertaining thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Outstanding Securities of such series and any Coupons appertaining thereto; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to such series have been complied with.

In the event there are Securities of two or more series Outstanding hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of such series as to which it is Trustee and if the other conditions thereto are met.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Company to the Trustee under Section 606 and, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section, the obligations of the Company and the Trustee with respect to the Securities of such series under Sections 305, 306, 403, 404, 1002, 1003 and, if applicable to the Securities of such series, 1004 (including, without limitation, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 1004, but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to Section 401(1)(b)), any rights of Holders of the Securities of such series (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to require the Company to repurchase or repay, and the obligations of the Company to repurchase or repay, such Securities at the option of the Holders pursuant to Article Thirteen hereof, and any rights of Holders of the Securities of such series (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to convert or exchange, and the obligations of the Company to convert or exchange, such Securities into Common Stock or other securities or property, shall survive.

Section 402. Defeasance and Covenant Defeasance.

(1) Unless, pursuant to Section 301, either or both of (i) defeasance of the Securities of or within a series under clause (2) of this Section 402 or (ii) covenant defeasance of the Securities of or within a series under clause (3) of this Section 402 shall not be applicable with respect to the Securities of such series, then such provisions, together with the other provisions of this Section 402 (with such modifications thereto as may be specified pursuant to Section 301 with respect to any Securities), shall be applicable to such Securities and any Coupons appertaining thereto, and the Company may at its option by Board Resolution, at any time, with respect to the Securities of or within such series and any Coupons appertaining thereto, elect to have Section 402(2) or Section 402(3) be applied to such Outstanding Securities and any Coupons appertaining thereto upon compliance with the conditions set forth below in this Section 402. Unless otherwise specified pursuant to Section 301 with respect to the Securities of any series, defeasance under clause (2) of this Section 402 and covenant defeasance under clause (3) of this Section 402 may be effected only with respect to all, and not less than all, of the Outstanding Securities of any series. To the extent that the terms of any Security or Coupon appertaining thereto established in or pursuant to this Indenture permit the Company or any Holder thereof to extend the date on which any payment of principal of, or premium, if any, or interest, if any, on, or Additional Amounts, if any, with respect to such Security or Coupon is due and payable, then unless otherwise provided pursuant to Section 301, the right to extend such date shall terminate upon defeasance or covenant defeasance, as the case may be.

(2) Upon the Company's exercise of the above option applicable to this Section 402(2) with respect to any Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Securities and any Coupons appertaining thereto on the date the conditions set forth in clause (4) of this Section 402 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities and any Coupons appertaining thereto, which shall thereafter be deemed to be "Outstanding" only for the purposes of clause (5) of this Section 402 and the other Sections of this Indenture referred to in clauses (i) through (iv) of this paragraph, and to have satisfied all of its other obligations under such Securities and any Coupons appertaining thereto and this Indenture insofar as such Securities and any Coupons appertaining thereto are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such

Outstanding Securities and any Coupons appertaining thereto to receive, solely (except as provided in clause (ii) below) from the trust fund described in clause (4) (a) of this Section 402 and as more fully set forth in this Section 402 and 403, payments in respect of the principal of (and premium, if any) and interest, if any, on, and Additional Amounts, if any, with respect to, such Securities and any Coupons appertaining thereto when such payments are due, (ii) the obligations of the Company and the Trustee with respect to such Securities under Sections 305, 306, 1002, 1003 and, if applicable to the Securities of such series, 1004 (including, without limitation, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 1004, but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to clause (4)(a) of this Section 402)), any rights of Holders of such Securities (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to require the Company to repurchase or repay, and the obligations of the Company to repurchase or repay, such Securities at the option of the Holders pursuant to Article Thirteen hereof, and any rights of Holders of such Securities (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to convert or exchange, and the obligations of the Company to convert or exchange, such Securities into Common Stock or other securities or property, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 402 and Sections 403 and 404. The Company may exercise its option under this Section 402(2) notwithstanding the prior exercise of its option under Section 402(3) with respect to such Securities and any Coupons appertaining thereto.

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(3) Upon the Company's exercise of the above option applicable to this Section 402(3) with respect to any Securities of or within a series, the Company shall be released from its obligations under clauses (ii) and (iii) of Section 1005 and under Sections 1006, 1007, and 1008 and any other covenant applicable to such Securities with respect to such Securities and any Coupons appertaining thereto shall cease to be applicable to such Securities on and after the date the conditions set forth in clause (4) of this Section 402 are satisfied (hereinafter, "covenant defeasance"), and such Securities and any Coupons appertaining thereto shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with any such covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that with respect to such Outstanding Securities and any Coupons appertaining thereto, the Company may omit to comply with, and shall have no liability in respect of, any term, condition or limitation set forth in any such Section or any such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 501(4) or 501(8) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities and Coupons appertaining thereto shall be unaffected thereby.

(4) The following shall be the conditions to application of clause (2) or (3) of this Section 402 to any Outstanding Securities of or within a series and any Coupons appertaining thereto:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 607 who shall agree to comply with the provisions of this Section 402 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities and any Coupons appertaining thereto, (1) an amount in Dollars or in such Foreign Currency in which such Securities and any Coupons appertaining thereto are then specified as payable at Stated Maturity or, if such defeasance or covenant defeasance is to be effected in compliance with subsection (f) below, on the relevant Redemption Date, as the case may be, or (2) Government Obligations applicable to such Securities and Coupons appertaining thereto (determined on the basis of the Currency in which such Securities and Coupons appertaining thereto are then specified as payable at Stated Maturity or, if such defeasance or covenant defeasance is to be effected in compliance with subsection (f) below, on

the relevant Redemption Date, as the case may be) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities and any Coupons appertaining thereto, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on, and, to the extent that such Securities provide for the payment of Additional Amounts thereon and the amount of any such Additional Amounts which are or will be payable with respect to the Securities of such series is at the time of deposit determinable by the Company (in the exercise by the Company of its reasonable discretion), any Additional Amounts with respect to, such Outstanding Securities and any Coupons appertaining thereto on the Stated Maturity of such principal or installment of principal or interest or the applicable Redemption Date, as the case may be, and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities and any Coupons appertaining thereto on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities and any Coupons appertaining thereto.

(b) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company or any Subsidiary is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any Coupons appertaining thereto shall have occurred and be continuing on the date of such deposit, and, solely in the case of defeasance under Section 402(2), no Event of Default with respect to such Securities and any Coupons appertaining thereto under clause (5) or (6) of Section 501 or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any Coupons appertaining thereto under clause (5) or (6) of Section 501 shall have occurred and be continuing at any time during the period ending on and including the 91st day after the date of such deposit (it being understood that this condition to defeasance under Section 402(2) shall not be deemed satisfied until the expiration of such period).

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(d) In the case of defeasance pursuant to Section 402(2), the Company shall have delivered to the Trustee an opinion of independent counsel reasonably acceptable to the Trustee stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in applicable federal income tax law, in either case to the effect that, and based thereon such opinion of independent counsel shall confirm that, the Holders of such Outstanding Securities and any Coupons appertaining thereto will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred; or, in the case of covenant defeasance pursuant to Section 402(3), the Company shall have delivered to the Trustee an opinion of independent counsel reasonably acceptable to the Trustee to the effect that the Holders of such Outstanding Securities and any Coupons appertaining thereto will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(e) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance, as the case may be, under this Indenture have been complied with.

(f) If the monies or Government Obligations or combination thereof, as the case may be, deposited under clause (a) above are sufficient to pay the principal of, and premium, if any, and interest, if any, on and, to the extent provided in such clause (a), Additional Amounts with respect to, such Securities provided such Securities are redeemed on a particular Redemption Date, the Company shall have given the Trustee irrevocable instructions to redeem such Securities on such date and to provide notice of such redemption to Holders as provided in or pursuant to this Indenture.

(g) Notwithstanding any other provisions of this Section 402(4), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 301.

(5) Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations (or other property as may be provided pursuant to Section 301) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee—collectively for purposes of this Section 402(5) and Section 403, the “Trustee”) pursuant to clause (4)(a) of Section 402 in respect of any Outstanding Securities of any series and any Coupons appertaining thereto shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and any Coupons appertaining thereto and this Indenture, to the payment, either directly or through any Paying Agent (other than the Company or any Subsidiary or Affiliate of the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities and any Coupons appertaining thereto of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

Unless otherwise specified in or pursuant to this Indenture or any Securities, if, after a deposit referred to in Section 402(4)(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 301 or the terms of such Security to receive payment in a Currency other than that in which the deposit pursuant to Section 402(4)(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to Section 402(4)(a) has been made, the indebtedness represented by such Security and any Coupons appertaining thereto shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on, and Additional Amounts, if any, with respect to, such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the Currency in which such Security becomes payable as a result of such election or Conversion Event based on (x) in the case of payments made pursuant to clause (a) above, the applicable market exchange rate for such Currency in effect on the second Business Day prior to each payment date, or (y) with respect to a Conversion Event, the applicable market exchange rate for such Foreign Currency in effect (as nearly as feasible) at the time of the Conversion Event.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited pursuant to this Section 402 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities and any Coupons appertaining thereto.

Anything in this Section 402 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in clause (4)(a) of this Section 402 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 402.

Section 403. *Application of Trust Money.*

Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations deposited with the Trustee pursuant to Section 401 or 402 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the Coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, interest and Additional Amounts for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

Section 404. *Reinstatement.*

If the Trustee (or other qualifying trustee appointed pursuant to Section 402(4)(a)) or any Paying Agent is unable to apply any moneys or Government Obligations deposited pursuant to Section 401(1) or 402(4)(a) to pay any principal of or premium, if any, or interest, if any, on or Additional Amounts, if any, with respect to the Securities of any series by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities of such series shall be revived and reinstated as though no such deposit had occurred, until such time as the Trustee (or other qualifying trustee) or Paying Agent is permitted to apply all such moneys and Government Obligations to pay the principal of and premium, if any, and interest, if any, on and Additional Amounts, if any, in respect of the Securities of such series as contemplated by Sections 401 or 402 as the case may be, and Section 403; *provided, however*, that if the Company makes any payment of the principal of or premium, if any, or interest if any, on or Additional Amounts, if any, in respect of the Securities of such series following the reinstatement of its obligations as aforesaid, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the funds held by the Trustee (or other qualifying trustee) or Paying Agent.

ARTICLE FIVE

REMEDIES

Section 501. *Events of Default.*

"Event of Default", wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) unless such event is specifically deleted or modified in or pursuant to the supplemental indenture, Board Resolution or Officers' Certificate establishing the terms of such series pursuant to this Indenture:

(1) default in the payment of any interest on, or any Additional Amounts payable in respect of any interest on, any of the Securities of such series or any Coupon appertaining thereto when such interest or such Additional Amounts, as the case may be, become due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of any principal of or premium, if any, on, or any Additional Amounts payable in respect of any principal of or premium, if any, on, any of the Securities of such series when due (whether at Maturity or otherwise and whether payable in cash or in shares of Common Stock or other securities or property); or

(3) default in the deposit of any sinking fund payment or payment under any analogous provision when due with respect to any of the Securities of such series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or any Security of such series (other than a covenant or warranty for which the consequences of breach or nonperformance are addressed elsewhere in this Section 501 or a covenant or warranty which has expressly been included in this Indenture, whether or not by means of a supplemental indenture, solely for the benefit of Securities of a series other than such series), and continuance of such default or breach (without such default or breach having been waived in accordance of the provisions of this Indenture) for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or

(5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company or any Significant Subsidiary of the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary of the Company under any applicable Federal or State law, or appointing a custodian, receiver, conservator, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary of the Company or of any substantial part of the property of the Company or any Significant Subsidiary of the Company, or ordering the winding up or liquidation of the affairs of the Company or any Significant Subsidiary of the Company, and the continuance of any such decree or order for relief unstayed and in effect for a period of 60 consecutive days; or

(6) the commencement by the Company or any Significant Subsidiary of the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company or any Significant Subsidiary of the Company to the entry of a decree or order for relief in respect of the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company or any Significant Subsidiary of the Company, or the filing by the Company or any Significant Subsidiary of the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by the Company or any Significant Subsidiary of the Company to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, conservator, liquidator, assignee, trustee, sequestrator or similar official of the Company or any Significant Subsidiary of the Company or of any substantial part of the property of the Company or any Significant Subsidiary of the Company, or the making by the Company or any Significant Subsidiary of the Company of an assignment for the benefit of creditors, or the taking of corporate action by the Company or any Significant Subsidiary of the Company in furtherance of any such action; or

(7) default in the delivery of any shares of Common Stock, together with cash in lieu of fractional shares, or any other securities or property (including cash) when required to be delivered upon conversion of any convertible Security of such series or upon the exchange of any Security of such series which is exchangeable for other securities or property, and continuance of such default for a period of 10 days; or

(8) any other Event of Default provided in or pursuant to this Indenture with respect to Securities of such series.

Section 502. *Acceleration of Maturity; Rescission and Annulment.*

If an Event of Default (other than an Event of Default specified in clause (5) or (6) of Section 501) with respect to Securities of any series occurs and is continuing, then either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series may declare the principal of all the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, and accrued and unpaid interest, if any, thereon to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal or such lesser amount, as the

case may be, and such accrued and unpaid interest shall become immediately due and payable. If an Event of Default specified in clause (5) or (6) of Section 501 with respect to the Securities of any series occurs, then the principal of all of the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, and accrued and unpaid interest, if any, thereon shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of the Securities of such series.

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At any time after Securities of any series have been accelerated and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum of money sufficient to pay (or, to the extent that the terms of the Securities of such series established pursuant to Section 301 expressly provide for payment to be made in shares of Common Stock or other securities or property, shares of Common Stock or other securities or property, together with cash in lieu of fractional shares or securities, sufficient to pay)

(a) all overdue installments of any interest on any Securities of such series and any Coupons appertaining thereto which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto,

(b) the principal of and any premium on any Securities of such series which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto and, to the extent permitted by applicable law, interest thereon at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities,

(c) to the extent permitted by applicable law, interest upon installments of any interest, if any, which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities, and

(d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 606; and

(2) all Events of Default with respect to Securities of such series other than the non-payment of the principal of, any premium and interest on, and any Additional Amounts with respect to Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

The Company covenants that if:

(1) default is made in the payment of any interest on, or any Additional Amounts payable in respect of any interest on, any Security or any Coupon appertaining thereto when such interest or Additional Amounts, as the case may be, shall have become due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of any principal of or premium, if any, on, or any Additional Amounts payable in respect of any principal of or premium, if any, on, any Security at its Maturity, or

(3) default is made in the deposit of any sinking fund payment when due,

the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities and any Coupons appertaining thereto, the whole amount of money then due and payable with respect to such Securities and any Coupons appertaining thereto, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest and Additional Amounts at the rate or respective rates, as the case may be, provided for or with respect to such Securities or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities, and, in addition thereto, such further amount of money as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due to the Trustee under Section 606.

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If the Company fails to pay the money it is required to pay the Trustee pursuant to the preceding paragraph forthwith upon the demand of the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the money so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and any Coupons appertaining thereto and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities and any Coupons appertaining thereto, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any Coupons appertaining thereto by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or such Securities or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.

Section 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any overdue principal, premium, interest or Additional Amounts) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of the principal and any premium, interest and Additional Amounts owing and unpaid in respect of the Securities and any Coupons appertaining thereto and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or counsel) and of the Holders of Securities or any Coupons allowed in such judicial proceeding, and

(2) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities or any Coupons to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities or any Coupons, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 606.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or any Coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or Coupons or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or any Coupon in any such proceeding.

Section 505. Trustee May Enforce Claims without Possession of Securities or Coupons.

All rights of action and claims under this Indenture or any of the Securities or Coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or Coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every Holder of a Security or Coupon in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article with respect to the Securities of any series shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, or any premium, interest or Additional Amounts, upon presentation of such Securities or the Coupons, if any, appertaining thereto, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 606;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and any Coupons for principal and any premium, interest and Additional Amounts in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and Coupons for principal and any premium, interest and Additional Amounts;

THIRD: The balance, if any, to the Person or Persons entitled thereto.

Section 507. Limitations on Suits.

No Holder of any Security of any series or any Coupons appertaining thereto shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of such series;

- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of such series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or any Security to affect, disturb or prejudice the rights of any other such Holders or Holders of Securities of any other series, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 508. Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts.

Notwithstanding any other provision in this Indenture, the Holder of any Security or Coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of, any premium, if any, and (subject to Sections 305 and 307) interest, if any, on and any Additional Amounts with respect to such Security or such Coupon, as the case may be, on the respective Stated Maturity or Maturities therefor specified in such Security or Coupon (or, in the case of redemption, on the Redemption Date or, in the case of repayment pursuant to Article Thirteen hereof at the option of such Holder if provided in or pursuant to this Indenture, on the date such repayment is due) and, in the case of any Security which is convertible into or exchangeable for other securities or property, to convert or exchange, as the case may be, such Security in accordance with its terms, and to institute suit for the enforcement of any such payment and any such right to convert or exchange, and such right shall not be impaired without the consent of such Holder.

Section 509. Restoration of Rights and Remedies.

If the Trustee or any Holder of a Security or a Coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and each such Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and each such Holder shall continue as though no such proceeding had been instituted.

Section 510. Rights and Remedies Cumulative.

To the extent permitted by applicable law and except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to each and every Holder of a Security or a Coupon is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at

law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or of any Holder of any Security or Coupon to exercise any right or remedy accruing upon any Event of Default shall, to the extent permitted by applicable law, impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to any Holder of a Security or a Coupon may, to the extent permitted by applicable law, be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such Holder, as the case may be.

Section 512. *Control by Holders of Securities.*

The Holders of a majority in aggregate principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series and any Coupons appertaining thereto, provided that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of any series,
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (3) such direction is not unduly prejudicial to the rights of the other Holders of Securities of such series not joining in such action.

Section 513. *Waiver of Past Defaults.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series on behalf of the Holders of all the Securities of such series and any Coupons appertaining thereto may waive any past default hereunder with respect to such series and its consequences, except

- (1) a default in the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to, any Security of such series or any Coupons appertaining thereto, or
- (2) in the case of any Securities which are convertible into or exchangeable for Common Stock or other securities or property, a default in any such conversion or exchange, or
- (3) a default in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 514. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants that (to the extent that it may lawfully do so) it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or any other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal of or premium, if any, or interest, if any on or Additional Amounts, if any, with respect to any Securities as contemplated herein and therein or which may affect the covenants or the performance of this Indenture or the Securities; and the Company (to the extent that it may lawfully do so) expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee or the Holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 515. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and disbursements, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 515 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on or Additional Amounts, if any, with respect to any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date, and, in the case of repayment at the option of the Holder pursuant to Article Thirteen hereof, on or after the date for repayment) or for the enforcement of the right, if any, to convert or exchange any Security into Common Stock or other securities in accordance with its terms.

ARTICLE SIX

THE TRUSTEE

Section 601. *Certain Rights of Trustee.*

Subject to Sections 315(a) through 315(d) of the Trust Indenture Act:

- (1) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or a Company Order (in each case, other than delivery of any Security, together with any Coupons appertaining thereto, to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;
- (3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence shall be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

- (4) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;
- (5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series or any Coupons appertaining thereto pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;
- (6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;
- (7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;
- (8) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;
- (9) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;
- (10) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;
- (11) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and
- (12) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

Section 602. *Notice of Defaults.*

Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series entitled to receive reports pursuant to Section 703(3), notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any), or interest, if any, on, or Additional Amounts or any sinking fund installment with respect to, any Security of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the best interest of the Holders of Securities and Coupons of such series; and *provided, further*, that in the case of any default of the character specified in Section 501(4) or 501(8)

with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term “default” means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee’s certificate of authentication, and in any Coupons shall be taken as the statements of the Company and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or the Coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

Section 604. May Hold Securities.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other Person.

Section 605. Money Held in Trust.

Except as provided in Section 403 and Section 1003, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and shall be held uninvested. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 606. Compensation and Reimbursement.

The Company agrees:

- (1) to pay to the Trustee from time to time reasonable compensation for all services rendered by the Trustee hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
 - (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee’s negligence or bad faith; and
 - (3) to indemnify each of the Trustee or any predecessor Trustee and their agents for, and to hold them harmless against, any loss, liability or reasonable expense (including, without limitation, the reasonable fees and disbursements of the Trustee’s agents, legal counsel, accountants and experts) and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder,
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including the reasonable costs and expenses of defending themselves against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of their powers or duties hereunder, or in connection with enforcing the provisions of this Section, except to the extent that any such loss, liability or expense was due to the Trustee's negligence or bad faith.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, or premium or interest on or any Additional Amounts with respect to Securities or any Coupons appertaining thereto.

Any compensation or expense incurred by the Trustee after a default specified by Section 501(5) or (6) is intended to constitute an expense of administration under any then applicable bankruptcy or insolvency law. "Trustee" for purposes of this Section 606 shall include any predecessor Trustee but the negligence or bad faith of any Trustee shall not affect the rights of any other Trustee under this Section 606. The provisions of this Section 606 shall, to the extent permitted by law, survive any termination of this Indenture (including, without limitation, termination pursuant to any Bankruptcy Laws) and the resignation or removal of the Trustee.

Section 607. Corporate Trustee Required; Eligibility.

(1) There shall at all times be a Trustee hereunder that is a corporation, organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, eligible under Section 310(a)(1) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 subject to supervision or examination by Federal or state authority. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(2) The following indenture shall be considered specifically described herein for purposes of clause (i) of the proviso contained in Section 310(b)(1) of the Trust Indenture Act: [Indenture dated as of _____ between the Company and _____, as successor trustee]; and, pursuant to Section 310(b)(1)(C)(i) of the Trust Indenture Act, unless otherwise ordered by the Commission, an event of default by the Company under this Indenture will not disqualify the Trustee under this Indenture because it is a trustee under such other indenture.

Section 608. Resignation and Removal; Appointment of Successor.

(1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 609.

(2) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 609 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(3) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and the Company.

(4) If at any time:

(a) the Trustee shall fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Securities of any series after written request therefor by the Company or any Holder of a Security of such series who has been a bona fide Holder of a Security of such series for at least six months, or

(b) the Trustee shall cease to be eligible under Section 607 and shall fail to resign after written request therefor by the Company or any such Holder, or

(c) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

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(5) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 609. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 609, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by Section 609, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(6) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Registered Securities, if any, of such series as their names and addresses appear in the Security Register and, if Securities of such series are issued as Bearer Securities, by publishing notice of such event once in an Authorized Newspaper in each Place of Payment located outside the United States. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 609. Acceptance of Appointment by Successor.

(1) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor

Trustee, such retiring Trustee, upon payment of its charges, shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 1003, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 606.

(2) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor relates and subject to Section 1003 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, subject to its claim, if any, provided for in Section 606.

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(3) Upon request of any Person appointed hereunder as a successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (1) or (2) of this Section, as the case may be.

(4) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified and eligible under this Article.

Section 610. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder (provided that such corporation shall otherwise be qualified and eligible under this Article), without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any such successor to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect

as if such successor Trustee had itself authenticated such Securities. In case any Securities shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Securities in either its own name or that of its predecessor Trustee.

Section 611. *Appointment of Authenticating Agent.*

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer, partial redemption, partial repayment, partial conversion or exchange for Common Stock or other securities or property, or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent shall be acceptable to the Company and, except as provided in or pursuant to this Indenture, shall at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, *provided* such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall (i) mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Registered Securities, if any, of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register, and (ii) if Securities of the series are issued as Bearer Securities, publish notice of such appointment at least once in an Authorized Newspaper in the place where such successor Authenticating Agent has its principal office if such office is located outside the United States. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section. If the Trustee makes such payments, it shall be entitled to be reimbursed for such payments, subject to the provisions of Section 606.

The provisions of Sections 308, 603 and 604 shall be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed with respect to one or more series of Securities pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

As Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officers' Certificate of the Company), shall appoint in accordance with this Section an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Securities.

ARTICLE SEVEN

HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 701. *Company to Furnish Trustee Names and Addresses of Holders.*

In accordance with Section 312(a) of the Trust Indenture Act, the Company shall furnish or cause to be furnished to the Trustee

(1) semi-annually with respect to Securities of each series not later than _____ and _____ of the year or upon such other dates as are set forth in or pursuant to the Board Resolution or indenture supplemental hereto authorizing such series, a list, in each case in such form as the Trustee may reasonably require, of the names and addresses of Holders as of the applicable date, and

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(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

provided, however, that so long as the Trustee is the Security Registrar no such list shall be required to be furnished.

Section 702. Preservation of Information; Communications to Holders.

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Every Holder of Securities or Coupons, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee, any Paying Agent or any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 312(c) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

Section 703. Reports by Trustee.

(1) Within 60 days after July 15 of each year commencing with the first July 15 following the first issuance of Securities pursuant to Section 301, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such July 15 with respect to any of the events specified in said Sections 313(a) and 313(b)(2) which may have occurred since the later of the immediately preceding July 15 and the date of this Indenture.

(2) The Trustee shall transmit the reports required by Section 313(a) of the Trust Indenture Act at the times specified therein.

(3) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and 313(d) of the Trust Indenture Act.

Section 704. Reports by Company.

(a) The Company, pursuant to Section 314(a) of the Trust Indenture Act, shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company, with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(b) The Company intends to file the reports referred to in Section 7.04(a) hereof with the Commission in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, shall constitute delivery by the Company of such reports to the Trustee and Holders in compliance with the provision of Section 7.04(a) and TIA Sections 314(a). Notwithstanding anything to the contrary herein, the Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee pursuant to this Section 7.04(b) shall be solely for the purposes of compliance with this Section 7.04(b) and with TIA Section 314(a). The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or of any matter determinable from the content thereof (and the Trustee shall not have any duty to ascertain or inquire as to such content or matter), including the Company's compliance with any of its covenants hereunder, as to which the Trustee is absolutely entitled to conclusively rely upon Officers' Certificates.

ARTICLE EIGHT

CONSOLIDATION, MERGER AND SALES

Section 801. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not, in any transaction or series of related transactions, consolidate with or merge into any Person or sell, assign, transfer, lease or otherwise convey all or substantially all its properties and assets to any Person, unless:

- (1) either (A) the Company shall be the continuing Person (in the case of a merger), or (B) the successor Person (if other than the Company) formed by such consolidation or into which the Company is merged or which acquires by sale, assignment, transfer, lease or other conveyance all or substantially all the properties and assets of the Company shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor corporation and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, any premium and interest on, and any Additional Amounts with respect to, all the Outstanding Securities and the due and punctual performance and observance of every obligation in this Indenture and the Outstanding Securities on the part of the Company to be performed or observed, and which supplemental indenture shall provide for conversion or exchange rights in accordance with the provisions of the Securities of any series that are convertible or exchangeable into Common Stock or other securities;
 - (2) immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Company or any Subsidiary as a result of that transaction as having been incurred by the Company or any Subsidiary at the time of the transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and
 - (3) either the Company or the successor Person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease or other conveyance and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.
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For purposes of the foregoing, any sale, assignment, transfer, lease or other conveyance of all or any of the properties and assets of one or more Subsidiaries of the Company (other than to the Company or another Subsidiary), which, if such properties and assets were owned by the Company, would constitute all or substantially all of the Company's properties and assets, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

Section 802. *Successor Person Substituted for Company.*

Upon any consolidation by the Company with or merger of the Company into any other Person or any sale, assignment, transfer, lease or conveyance of all or substantially all of the properties and assets of the Company to any Person in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, assignment, transfer, lease or other conveyance is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture, the Securities and the Coupons.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 901. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders of Securities or Coupons, the Company (when authorized by or pursuant to a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company contained herein and in the Securities or to evidence the addition or release of any guarantor; or
 - (2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company with respect to all or any series of Securities issued under this Indenture (as shall be specified in such supplemental indenture or indentures); or
 - (3) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of, any premium or interest on or any Additional Amounts with respect to Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be exchanged for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated or global form, provided any such action shall not adversely affect the interests of the Holders of Securities of any series or any Coupons appertaining thereto; or
 - (4) to establish the form or terms of Securities of any series and any Coupons appertaining thereto as permitted by Sections 201 and 301, including, without limitation, any conversion or exchange provisions applicable to Securities which are convertible into or exchangeable for other securities or property, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other series of Securities then Outstanding); or
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(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 609; or

(6) (a) to cure any ambiguity or to correct or supplement any provision herein which may be defective or which may be inconsistent with any other provision herein, or (b) to make any other provisions with respect to matters or questions arising under this Indenture which shall not adversely affect the interests of the Holders of Securities of any series then Outstanding or any Coupons appertaining thereto in any material respect; or

(7) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture); or

(8) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance, covenant defeasance and/or satisfaction and discharge of any series of Securities pursuant to Article Four, *provided* that any such action shall not adversely affect the interests of any Holder of a Security of such series and any Coupons appertaining thereto or any other Security or Coupon in any material respect; or

(9) to secure or otherwise or to add guarantees for the benefit of the Securities; or

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(10) to make provisions with respect to conversion or exchange rights of Holders of Securities of any series; or

(11) to amend, supplement or eliminate any provision contained herein or in any supplemental indenture or in any Securities (which amendment or supplement may apply to one or more series of Securities or to one or more Securities within any series as specified in such supplemental indenture or indentures), *provided* that such amendment, supplement or elimination does not apply to any Outstanding Security issued prior to the date of such supplemental indenture and entitled to the benefits of such provision; or

(12) in the case of any series of Securities which are convertible into or exchangeable for Common Stock or other securities or property, to safeguard or provide for the conversion or exchange rights, as the case may be, of such Securities in the event of any reclassification or change of outstanding shares of Common Stock or any merger, consolidation, statutory share exchange or combination of the Company with or into another Person or any sale, lease, assignment, transfer, disposition or other conveyance of all or substantially all of the properties and assets of the Company to any other Person or other similar transactions, if expressly required by the terms of such series of Securities established pursuant to Section 301; or

(13) to add to, delete from or revise the conditions, limitations or restrictions on issue, authentication and delivery of Securities; or

(14) to conform any provision in an indenture to the requirements of the Trust Indenture Act; or

(15) to make any change that does not adversely affect the legal rights of any Holder of Securities of any series.

Section 902. *Supplemental Indentures with Consent of Holders.*

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or pursuant to a Board Resolution), and the Trustee may enter into an indenture

or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of the Securities of such series or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; *provided*, that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall

(1) change the Stated Maturity of the principal of, or premium, if any, or any installment of interest, if any, on, or any Additional Amounts, if any, with respect to, any Security, or reduce the principal amount thereof or the premium, if any, thereon or the rate (or modify the calculation of such rate) of interest thereon, or reduce the amount payable upon redemption thereof at the option of the Company or repayment thereof at the option of the Holder, or reduce any Additional Amounts payable with respect thereto, or change the obligation of the Company to pay Additional Amounts pursuant to Section 1004 (except as contemplated by Section 801(1) and permitted by Section 901(1)), or reduce the amount of the principal of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 or the amount thereof provable in bankruptcy pursuant to Section 504, or adversely affect the right of repayment at the option of any Holder as contemplated by Article Thirteen, or extend the time of payment of interest on any Security or any Additional Amounts, or change any of the conversion, exchange or redemption provisions of any Security or change the Place of Payment where or the Currency in which the principal of, any premium or interest on, or any Additional Amounts with respect to any Security is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date or, in the case of repayment pursuant to Article Thirteen at the option of the Holder, on or after the date for repayment) in each case as such Stated Maturity, Redemption Date or date for repayment may, if applicable, be extended in accordance with the terms of such Security or any Coupon appertaining thereto, or in the case of any Security which is convertible into or exchangeable for other securities or property, impair the right to institute suit to enforce the right to convert or exchange such Security in accordance with its terms or release any guarantors from their guarantees of the Securities, or, except as contemplated in any supplemental indenture, make any change in a guarantee of a Security that would adversely affect the interests of the Holders of those Securities, or modify the ranking or priority of the Securities in a manner adverse to the Holders of the Securities, or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in Section 513 or 1010 of this Indenture, or reduce the requirements of Section 1504 for quorum or voting, or

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(3) modify any of the provisions of this Section, Section 513 or Section 1010, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which shall have been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Anything in this Indenture to the contrary notwithstanding, if more than one series of Securities is Outstanding, the Company shall be entitled to enter into a supplemental indenture under this Section 902 with respect to any one or more series of Outstanding Securities without entering into a supplemental indenture with respect to any other series of Outstanding Securities.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. Execution of Supplemental Indentures.

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel to the effect that the execution of such supplemental indenture is authorized or permitted by this Indenture and that such supplemental indenture has been duly authorized, executed and delivered by, and is a valid, binding and enforceable obligation of, the Company, subject to customary exceptions. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of a Security theretofore or thereafter authenticated and delivered hereunder and of any Coupon appertaining thereto shall be bound thereby.

Section 905. Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 906. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE TEN

COVENANTS

Section 1001. Payment of Principal, Premium, Interest and Additional Amounts.

The Company covenants and agrees for the benefit of the Holders of the Securities of each series that it will duly and punctually pay the principal of, any premium and interest on and any Additional Amounts with respect to the Securities of such series, whether payable in cash, shares of Common Stock or other securities or property, in accordance with the terms thereof, any Coupons appertaining thereto and this Indenture. Any interest due on any Bearer Security on or before the Maturity thereof, and any Additional Amounts payable with respect to such interest, shall be payable only upon presentation and surrender of the Coupons appertaining thereto for such interest as they severally mature.

Section 1002. *Maintenance of Office or Agency.*

The Company shall maintain in each Place of Payment for any series of Securities an Office or Agency where Securities of such series (but not Bearer Securities, except as otherwise provided below, unless such Place of Payment is located outside the United States) may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange, where Securities of such series that are convertible or exchangeable may be surrendered for conversion or exchange, and where notices and demands to or upon the Company in respect of the Securities of such series relating thereto and this Indenture may be served; provided that, if (i) the Borough of Manhattan, The City of New York is a Place of Payment for the Securities of any series, (ii) there shall be another Place of Payment in the United States of America for such Securities in addition to the Borough of Manhattan, The City of New York, and (iii) all Securities of such series are originally issued solely in the form of one or more permanent global Securities, then the Company shall not be required to maintain any such office or agency in the Borough of Manhattan, The City of New York unless and until all or any portion of such global Securities shall be exchanged for or otherwise issued as definitive certificated Securities of such series as contemplated by the last paragraph of this Section 1002. If Securities of a series are issuable as Bearer Securities, the Company shall maintain, subject to any laws or regulations applicable thereto, an Office or Agency in a Place of Payment for such series which is located outside the United States where Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment; *provided, however*, that if the Securities of such series are listed on the London Stock Exchange or the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Company shall maintain a Paying Agent in London, Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of such series are listed on such exchange. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such Office or Agency. If at any time the Company shall fail to maintain any such required Office or Agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment at the place specified for the purpose with respect to such Securities as provided in or pursuant to this Indenture, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

Except as otherwise provided in or pursuant to this Indenture, no payment of principal, premium, interest or Additional Amounts with respect to Bearer Securities shall be made at any Office or Agency in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; *provided, however*, if amounts owing with respect to any Bearer Securities shall be payable in Dollars, payment of principal of, any premium or interest on and any Additional Amounts with respect to any such Security may be made at the Corporate Trust Office of the Trustee or any Office or Agency designated by the Company in the Borough of Manhattan, The City of New York, if (but only if) payment of the full amount of such principal, premium, interest or Additional Amounts at all offices outside the United States maintained for such purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other Offices or Agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an Office or Agency in each Place of Payment for Securities of any series for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other Office or Agency.

Unless otherwise provided in or pursuant to this Indenture, the Company hereby designates the Borough of Manhattan, the City of New York as a Place of Payment for each series of Securities, initially appoints the Corporate Trust Office of the Trustee in the Borough of Manhattan, The City of New York as the Company's Office or Agency in the Borough of Manhattan, The City of New York for such purpose and initially appoints the Trustee as the Security Registrar for each series of Securities and, if the Securities of any series are convertible into or exchangeable for Common Stock or other securities or property, initially appoints the Trustee as conversion or exchange agent, as the case may be, for the Securities of such series. The Company may subsequently appoint a different Office or Agency in the Borough of Manhattan, The City of New York and, as provided in Section 305, may remove and replace from time to time the Security Registrar.

As set forth above in this Section 1002, and unless otherwise provided pursuant to Section 301 with respect to any series of Securities, in the event that the Securities of a series are originally issued solely in the form of one or more permanent global Securities and if at any time thereafter Securities of such series are issued in definitive certificated form in exchange for all or any portion of such global Securities (whether pursuant to Section 305 or otherwise pursuant to the terms of such Securities), the Company shall, at all times from and after the date of the first such exchange until such time as no Securities of such series in definitive certificated form are Outstanding, establish and maintain an Office or Agency in the Borough of Manhattan, The City of New York (in addition to any other Offices or Agencies the Company is required to maintain in respect of such Securities) where Securities of such series may be surrendered and where notices and demands in respect of Securities of such series and this Indenture may be served for the purposes specified in, and as contemplated by, the first paragraph of this Section 1002.

Section 1003. Money for Securities Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it shall, on or before each due date of the principal of, any premium or interest on, or any Additional Amounts with respect to any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the Currency or Currencies in which the Securities of such series are payable sufficient to pay the principal, any premium, interest and Additional Amounts, as the case may be, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and shall promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it shall, on or prior to each due date of the principal of, or any premium or interest on or any Additional Amounts with respect to, any Securities of such series, deposit with any Paying Agent a sum (in the Currency or Currencies described in the preceding paragraph) sufficient to pay the principal, premium, interest and Additional Amounts, as the case may be, so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company shall cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent shall:

- (1) hold all sums held by it for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in or pursuant to this Indenture;
 - (2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any payment of principal, any premium or interest on or any Additional Amounts with respect to the Securities of such series; and
 - (3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.
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To the extent that the terms of any Securities established pursuant to Section 301 provide that any principal of, or premium or interest, if any, on or any Additional Amounts with respect to any such Securities is or may be payable in Common Stock or other securities or property, then the provisions of this Section 1003 shall apply, mutatis mutandis, to such Common Stock or other securities or property.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Except as otherwise provided herein or pursuant hereto, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to any Security of any series or any Coupon appertaining thereto and remaining unclaimed for two years after such principal or such premium or interest or Additional Amount shall have become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security or any Coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may, not later than 30 days after the Company's request for such repayment, at the expense of the Company cause to be published once, in an Authorized Newspaper in each Place of Payment for such series or to be mailed to Holders of Registered Securities of such series, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing nor shall it be earlier than two years after such principal and any premium or interest or Additional Amounts shall have become due and payable, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 1004. *Additional Amounts.*

If any Securities of a series provide for the payment of Additional Amounts, the Company agrees to pay to the Holder of any such Securities or any Coupon appertaining thereto Additional Amounts as provided in or pursuant to this Indenture or such Securities. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or any Coupon, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of Additional Amounts (if applicable) in any provision hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise provided in or pursuant to this Indenture or the Securities of any series, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to such series of Securities (or if the Securities of such series shall not bear interest prior to Maturity, the first day on which a payment of principal is made), and at least 10 days prior to each date of payment of principal or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company shall furnish to the Trustee and the Paying Agent or Paying Agents, if other than the Trustee, an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of and premium, if any, or interest, if any, on the Securities of such series shall be made to Holders of Securities of such series or the Coupons appertaining thereto who are United States Aliens without withholding or deduction for or on account of any tax, assessment or other governmental charge described in the

Securities of such series or pursuant to Section 301 with respect to the Securities of such series. If any such withholding or deduction shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on or deducted from such payments to such Holders of Securities or Coupons, and the Company agrees to pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section. Nothing in this Section 1004 or elsewhere in this Indenture shall limit the obligation of the Company to pay Additional Amounts with respect to the Securities of any series pursuant to the terms, if any, established pursuant to Section 301 with respect to the Securities of such series.

Section 1005. *Corporate Existence.*

Subject to Article Eight, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) the corporate existence of the Company, (ii) the existence (corporate or other) of each Significant Subsidiary of the Company and (iii) the rights (charter and statutory), licenses and franchises of the Company and each of its Significant Subsidiaries; *provided, however*, that the Company shall not be required to preserve the existence (corporate or other) of any of its Significant Subsidiaries or any such right, license or franchise of the Company or any of its Significant Subsidiaries if the Board of Directors of the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Significant Subsidiaries taken as a whole and that the loss thereof will not be disadvantageous in any material respect to the Holders.

Section 1006. *Maintenance of Properties.*

The Company will, and will cause each Significant Subsidiary to, cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, that nothing in this Section shall prevent the Company or any Significant Subsidiary from discontinuing the operation and maintenance of any of their respective properties if such discontinuance is, in the judgment of the Board of Directors of the Company or of any Significant Subsidiary, as the case may be, desirable in the conduct of its business.

Section 1007. *Waiver of Certain Covenants.*

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1002 to 1006, inclusive, with respect to the Securities of any series and, if expressly provided pursuant to Section 301(18), any additional covenants applicable to the Securities of such series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series, by Act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1008. *Company Statement as to Compliance.*

The Company shall deliver to the Trustee, within 180 days after the end of each fiscal year, a written statement (which need not be contained in or accompanied by an Officers' Certificate) signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating whether or not, to the best of his or her knowledge, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to notice requirements or periods of grace) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which he or she may have knowledge.

ARTICLE ELEVEN

REDEMPTION OF SECURITIES

Section 1101. *Applicability of Article.*

Redemption of Securities of any series at the option of the Company as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and (except as otherwise provided herein or pursuant hereto) this Article.

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Section 1102. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of less than all of the Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice

shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed and, in the event that the Company shall determine that the Securities of any series to be redeemed shall be selected from Securities of such series having the same issue date, interest rate or interest rate formula, Stated Maturity and other terms (the "Equivalent Terms"), the Company shall notify the Trustee of such Equivalent Terms.

In the case of any redemption of Securities (A) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture or (B) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish to the Trustee an Officers' Certificate evidencing compliance with such restriction or condition.

Section 1103. *Selection by Trustee of Securities to be Redeemed.*

If less than all of the Securities of any series are to be redeemed or if less than all of the Securities of any series with Equivalent Terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series or from the Outstanding Securities of such series with Equivalent Terms, as the case may be, not previously called for redemption, by lot or such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; *provided, however*, that no such partial redemption shall reduce the portion of the principal amount of a Security of such series not redeemed to less than the minimum denomination for a Security of such series established herein or pursuant hereto.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal of such Securities which has been or is to be redeemed.

Unless otherwise specified in or pursuant to this Indenture or the Securities of any series, if any Security selected for partial redemption is converted or exchanged for Common Stock or other securities or property in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted or exchanged portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

Section 1104. *Notice of Redemption.*

Notice of redemption shall be given in the manner provided in Section 106, not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice by mailing in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portions thereof.

Any notice that is mailed to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption shall state:

(1) the Redemption Date,

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(2) the Redemption Price,

(3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed, (4) that, in case any Security is to be redeemed in part only, on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,

(5) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Security or portion thereof to be redeemed, together (if applicable) with accrued and unpaid interest, if any, thereon (subject, if applicable, to the provisos to the first paragraph of Section 1106), and, if applicable, that interest thereon shall cease to accrue on and after said date,

(6) the place or places where such Securities, together (in the case of Bearer Securities) with all Coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and any accrued interest and Additional Amounts pertaining thereto,

(7) that the redemption is for a sinking fund, if such is the case,

(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all Coupons maturing subsequent to the date fixed for redemption or the amount of any such missing Coupon or Coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Trustee and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on the Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Company, on which such exchanges may be made,

(10) in the case of Securities of any series that are convertible or exchangeable into Common Stock or other securities or property, the then current conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such series to be redeemed will commence or terminate, as applicable, and the place or places where and the Persons to whom such Securities may be surrendered for conversion or exchange,

(11) the CUSIP number or the Euroclear or the Cedel reference numbers of such Securities, if any (or any other numbers used by a Depository to identify such Securities), and

(12) if the Redemption Price or any portion thereof shall be payable, at the option of the Company or any Holders, in cash or in Common Stock or other securities or property (or a combination thereof), a statement as to whether the Company has elected to pay the Redemption Price in cash or Common Stock or other securities or property or a combination thereof and, if applicable, the portion of the Redemption Price that is to be paid in cash, Common Stock or other securities or property.

A notice of redemption published as contemplated by Section 106 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request delivered at least 10 days before the date such notice is to be given (unless a shorter period shall be acceptable to the Trustee), by the Trustee in the name and at the expense of the Company.

Section 1105. Deposit of Redemption Price.

On or prior to noon (local time in New York City) on any Redemption Date, the Company shall deposit, with respect to the Securities of any series called for redemption pursuant to Section 1104, with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money in the applicable Currency sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date, unless otherwise specified pursuant to Section 301 for or in the Securities of such series) any accrued interest on and Additional Amounts with respect to, all such Securities or portions thereof which are to be redeemed on that date, except that, if the Securities of such series are convertible or exchangeable into Common Stock or other securities or property, no such deposit shall be required with respect to any such Securities (or portions thereof) which have been converted or exchanged prior to such Redemption Date.

Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed (except, in the case of Securities which are convertible or exchangeable into Common Stock or other securities or property, any such Securities which shall have been so converted or exchanged prior to the applicable Redemption Date) shall, on the

Redemption Date, become due and payable at the Redemption Price therein specified, together with (unless otherwise provided with respect to the Securities of such series pursuant to Section 301) accrued and unpaid interest, if any, thereon and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest, if any) such Securities shall cease to bear interest and the Coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all Coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with, unless otherwise provided in or pursuant to this Indenture, any accrued and unpaid interest thereon and Additional Amounts with respect thereto to but excluding the Redemption Date; *provided, however*, that, except as otherwise provided in or pursuant to this Indenture or the Bearer Securities of such series, installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of Coupons for such interest (at an Office or Agency located outside the United States except as otherwise provided in Section 1002), and *provided, further*, that, except as otherwise specified in or pursuant to this Indenture or the Registered Securities of such series, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price or, at the option of the Company, after payment to the Trustee for the benefit of the Company of, an amount equal to the face amount of all such missing Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing Coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; *provided, however*, that any interest or Additional Amounts represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such Security located outside of the United States except as otherwise provided in Section 1002.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium, until paid, shall bear interest from the Redemption Date at the rate prescribed therefor in the Security or, if no rate is prescribed therefor in the Security, at the rate of interest, if any, borne by such Security.

Section 1107. *Securities Redeemed in Part.*

Any Registered Security which is to be redeemed only in part shall be surrendered at any Office or Agency for such Security (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Security in global form is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to the Depository for such Security in global form as shall be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Security in global form in a denomination equal to and in exchange for the unredeemed portion of the principal of the Security in global form so surrendered.

ARTICLE TWELVE

SINKING FUNDS

Section 1201. *Applicability of Article.*

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series that by its terms provides for such a sinking fund, except as otherwise permitted or required in or pursuant to this Indenture or any Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and this Indenture.

Section 1202. *Satisfaction of Sinking Fund Payments with Securities.*

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any series to be made pursuant to the terms of such Securities (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Company), together in the case of any Bearer Securities of such series with all unmatured Coupons appertaining thereto, and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such series of Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 1202, the principal amount of Securities of such series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such series for redemption, except upon Company Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, *provided, however,* that the Trustee or such Paying Agent shall at the request of the Company from time to time pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that series purchased by the Company having an unpaid principal amount equal to the cash payment requested to be released to the Company.

Section 1203. *Redemption of Securities for Sinking Fund.*

Not less than 75 days prior to each sinking fund payment date for any series of Securities, the Company shall deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 1202, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 60 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN**REPAYMENT AT THE OPTION OF HOLDERS***Section 1301. Applicability of Article.*

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Section 1301, in connection with any repayment of Securities, the Company may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the applicable repayment date an amount not less than the repayment price payable by the Company on repayment of such Securities, and the obligation of the Company to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

Unless otherwise expressly stated in this Indenture or pursuant to Section 301 with respect to the Securities of any series or unless the context otherwise requires, all references in this Indenture to the repayment of Securities at the option of the Holders thereof (and all references of like import) shall be deemed to include a reference to the repurchase of Securities at the option of the Holders thereof.

ARTICLE FOURTEEN**SECURITIES IN FOREIGN CURRENCIES***Section 1401. Applicability of Article.*

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same Currency or (ii) any distribution to Holders of Securities of any series in which not all of such Securities are denominated in the same Currency, in the absence of any provision to the contrary in or pursuant to this Indenture or the Securities of such series, any amount in respect of any Security denominated in a Currency other than Dollars shall be treated for any such action, determination or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

ARTICLE FIFTEEN**MEETINGS OF HOLDERS OF SECURITIES***Section 1501. Purposes for Which Meetings May Be Called.*

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other Act provided by this Indenture to be made, given or taken by Holders of Securities of such series.

Section 1502. *Call, Notice and Place of Meetings.*

(1) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1501, to be held at such time and at such place in the Borough of Manhattan, The City of New York, or, if Securities of such series have been issued in whole or in part as Bearer Securities, in London or in such place outside the United States as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

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(2) In case at any time the Company (by or pursuant to a Board Resolution) or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1501, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of or made the first publication of the notice of such meeting within 21 days after receipt of such request (whichever shall be required pursuant to Section 106) or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or, if Securities of such series are to be issued as Bearer Securities, in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause (1) of this Section.

Section 1503. *Persons Entitled to Vote at Meetings.*

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 1504. *Quorum; Action.*

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting or duly reconvened meeting of Holders of Securities of such series; *provided, however*, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of at least 66- 2/3% in principal amount of the Outstanding Securities of a series, the Persons entitled to vote 66- 2/3% in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1502(1), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state

expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; *provided, however*, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other Act which this Indenture expressly provides may be made, given or taken by the Holders of at least 66- 2/3% in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly convened and at which a quorum is present as aforesaid only by the affirmative vote of the Holders of at least 66- 2/3% in principal amount of the Outstanding Securities of that series; and *provided, further*, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other Act which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of such series.

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Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the Coupons appertaining thereto, whether or not such Holders were present or represented at the meeting.

Section 1505. *Determination of Voting Rights; Conduct and Adjournment of Meetings.*

(1) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of such series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(2) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 1502(2), in which case the Company or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(3) At any meeting, each Holder of a Security of such series or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. If the Securities of such series are issuable in minimum denominations of less than \$1,000, then a Holder of such a Security in a principal amount of less than \$1,000 shall be entitled to a fraction

of one vote which is equal to the fraction that the principal amount of such Security bears to \$1,000. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(4) Any meeting of Holders of Securities of any series duly called pursuant to Section 1502 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 1506. *Counting Votes and Recording Action of Meetings.*

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1502 and, if applicable, Section 1504. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

* * * * *

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This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

SUSSEX BANCORP

By: _____

Name:

Title:

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[NAMES OF TRUSTEE],
as Trustee

By: _____

Name:

Title:

SUSSEX BANCORP,

Issuer

to

[NAME OF TRUSTEE],

Trustee

SUBORDINATED DEBT INDENTURE

Dated as of _____, 20

Subordinated Debt Securities

Reconciliation and tie between
Trust Indenture Act of 1939 (the "Trust Indenture Act")
and Indenture

**Trust Indenture
Act Section**

Indenture Section

§310(a)(1)	607
(a)(2)	607
(b)	608
§312(a)	701
(b)	702
(c)	702
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Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

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ARTICLE SIXTEEN

SUBORDINATION OF SECURITIES

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SUBORDINATED DEBT INDENTURE, dated as of _____, 20____ (the “Indenture”), between Sussex Bancorp, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the “Company”), having its principal executive office located at 100 Enterprise Drive, Suite 700, Rockaway, New Jersey 07866, and _____, a banking association duly organized and existing under the laws of _____ (hereinafter called the “Trustee”).

RECITALS

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its subordinated unsecured debentures, notes or other evidences of indebtedness (hereinafter called the “Securities”), unlimited as to principal amount, to bear such rates of interest, to mature at such time or times, to be issued in one or more series, to have such relative rankings in priority of payment, and to have such other provisions as shall be fixed as hereinafter provided.

The Company has duly authorized the execution and delivery of this Indenture. All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder that are required to be part of this Indenture and, to the extent applicable, shall be governed by such provisions.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders (as herein defined) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof and any Coupons (as herein defined) as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. *Definitions.*

Except as otherwise expressly provided in or pursuant to this Indenture or unless the context otherwise requires, for all purposes of this Indenture:

- (1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
 - (2) all other terms used herein which are defined in the Trust Indenture Act either directly or by reference therein, have the meanings assigned to them therein;
 - (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
 - (4) the words “herein”, “hereof”, “hereto” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
 - (5) the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both”, not “either A or B but not both”);
 - (6) provisions apply to successive events and transactions;
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(7) the term “merger” includes a statutory share exchange and the terms “merge” and “merged” have correlative meanings;

(8) the masculine gender includes the feminine and the neuter; and

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(9) references to agreements and other instruments include subsequent amendments and supplements thereto.

Certain terms used principally in certain Articles hereof are defined in those Articles.

“Act”, when used with respect to any Holders, has the meaning specified in Section 104.

“Additional Amounts” means any additional amounts which are required by this Indenture or by any Security, or by the terms of any Security established pursuant to Section 301, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes, duties, levies, imposts, assessments or other governmental charges imposed on Holders specified herein or therein.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control”, when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Authenticating Agent” means any Person authorized by the Trustee pursuant to Section 611 to act on behalf of the Trustee to authenticate Securities of one or more series.

“Authorized Newspaper” means a newspaper, in an official language of the place of publication or in the English language, customarily published on each day that is a Business Day in the place of publication, whether or not published on days that are not Business Days in the place of publication, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same place meeting the foregoing requirements and in each case on any day that is a Business Day in the place of publication.

“Bearer Security” means any Security in the form established pursuant to Section 201 which is payable to bearer.

“Board of Directors” means the board of directors of the Company or any committee of that board duly authorized to act generally or in any particular respect for the Company hereunder. The term “board of directors” means the board of directors of the Company and does not include committees of the board of directors.

“Board Resolution” means a copy of one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, delivered to the Trustee.

“Business Day” means, unless otherwise specified with respect to the Securities of any series pursuant to Section 301, any day other than a Saturday, Sunday or other day on which banking institutions in The City of New York or Rockaway, New Jersey are authorized or obligated by law, regulation or executive order to close; provided that such term shall mean, when used with respect to any payment of principal of, or premium or interest, if any, on, or Additional Amounts with respect to, the Securities of any series to be made at any Place of Payment for such Securities, unless otherwise specified pursuant to Section 301 with respect to such Securities, any day other than a

Saturday, Sunday or other day on which banking institutions in such Place of Payment are authorized or obligated by law, regulation or executive order to close.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Common Stock” includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company.

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“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person and any other obligor upon the Securities.

“Company Request” and “Company Order” mean, respectively, a written request or order, as the case may be, signed in the name of the Company by the Chairman, the Chief Executive Officer, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

“Conversion Event” means the cessation of use of (i) a Foreign Currency both by the government of the country or the confederation which issued such Foreign Currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community or (ii) any currency unit or composite currency for the purposes for which it was established.

“Corporate Trust Office” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at _____, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“corporation” includes corporations, partnerships, associations, limited liability companies and other companies, and business trusts.

“Coupon” means any interest coupon appertaining to a Bearer Security.

“Currency”, with respect to any payment, deposit or other transfer in respect of the principal of or any premium or interest on or any Additional Amounts with respect to any Security, means Dollars or the Foreign Currency, as the case may be, in which such payment, deposit or other transfer is required to be made by or pursuant to the terms hereof or such Security and, with respect to any other payment, deposit or transfer pursuant to or contemplated by the terms hereof or such Security, means Dollars.

“CUSIP number” means the alphanumeric designation assigned to a Security by Standard & Poor’s, CUSIP Service Bureau.

“Defaulted Interest” has the meaning specified in Section 307.

“Depository” means, with respect to any Security issuable or issued in the form of one or more global Securities, the Person designated as depository by the Company in or pursuant to this Indenture, and, unless otherwise provided

with respect to any Security, any successor to such Person. If at any time there is more than one such Person, “Depository” shall mean, with respect to any Securities, the depository which has been appointed with respect to such Securities.

“Dollars” or “\$” means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

“Event of Default” has the meaning specified in Section 501.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor thereto, in each case as amended from time to time.

“Foreign Currency” means any currency, currency unit or composite currency issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such government.

“GAAP” and “generally accepted accounting principles” mean, unless otherwise specified with respect to any series of Securities pursuant to Section 301, such accounting principles as are generally accepted in the United States of America as of the date or time of any computation required hereunder.

“Government Obligations” means securities which are (i) direct obligations of the United States of America or the other government or governments in the confederation which issued the Foreign Currency in which the principal of or any premium or interest on the relevant Security or any Additional Amounts in respect thereof shall be payable, in each case where the payment or payments thereunder are supported by the full faith and credit of such government or governments or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such other government or governments, in each case where the timely payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government or governments, and which, in the case of (i) or (ii), are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

“Holder”, in the case of any Registered Security, means the Person in whose name such Security is registered in the Security Register and, in the case of any Bearer Security, means the bearer thereof and, in the case of any Coupon, means the bearer thereof.

“Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, with respect to any Security, by the terms and provisions of such Security and any Coupon appertaining thereto established pursuant to Section 301 (as such terms and provisions may be amended pursuant to the applicable provisions hereof), provided, however, that, if at any time more than one Person is acting as Trustee under this instrument, “Indenture” shall mean, with respect to any one or more series of Securities for which such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of those particular series of Securities for which such Person is Trustee established pursuant to Section 301,

exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted.

“Indexed Security” means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

“interest”, with respect to any Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“Interest Payment Date”, with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Judgment Currency” has the meaning specified in Section 116.

“Maturity”, with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as provided in or pursuant to this Indenture or such Security, whether at the Stated Maturity or by declaration of acceleration, upon redemption at the option of the Company, upon repurchase or repayment at the option of the Holder or otherwise, and includes a Redemption Date for such Security and a date fixed for the repurchase or repayment of such Security at the option of the Holder.

“New York Banking Day” has the meaning specified in Section 116.

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“Office” or “Agency”, with respect to any Securities, means an office or agency of the Company maintained or designated in a Place of Payment for such Securities pursuant to Section 1002 or any other office or agency of the Company maintained or designated for such Securities pursuant to Section 1002 or, to the extent designated or required by Section 1002 in lieu of such office or agency, the Corporate Trust Office of the Trustee.

“Officers’ Certificate” means a certificate signed by the Chairman, the Chief Executive Officer, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, that complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be an employee of or counsel for the Company or other counsel who shall be reasonably acceptable to the Trustee, that, if required by the Trust Indenture Act, complies with the requirements of Section 314(e) of the Trust Indenture Act.

“Original Issue Discount Security” means a Security issued pursuant to this Indenture which provides for an amount less than the principal face amount thereof to be due and payable upon declaration of acceleration pursuant to Section 502.

“Outstanding”, when used with respect to any Securities, means, as of the date of determination, all such Securities theretofore authenticated and delivered under this Indenture, except:

- (a) any such Security theretofore cancelled by the Trustee or the Security Registrar or delivered to the Trustee or the Security Registrar for cancellation;
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- (b) any such Security for whose payment at the Maturity thereof money in the necessary amount (or, to the extent that such Security is payable at such Maturity in shares of Common Stock or other securities or property, Common Stock or such other securities or property in the necessary amount, together with, if applicable, cash in lieu of fractional shares or securities) has been theretofore deposited pursuant hereto (other than pursuant to Section 402) with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any Coupons appertaining thereto, *provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (c) any such Security with respect to which the Company has effected defeasance or covenant defeasance pursuant to Section 402, except to the extent provided in Section 402;
- (d) any such Security which has been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, unless there shall have been presented to the Trustee proof satisfactory to it that such Security is held by a bona fide purchaser in whose hands such Security is a valid obligation of the Company; and
- (e) any such Security converted or exchanged as contemplated by this Indenture into Common Stock or other securities or property, if the terms of such Security provide for such conversion or exchange pursuant to Section 301;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that pursuant to the terms of such Original Issue Discount Security would be declared (or shall have been declared to be) due and payable upon a declaration of acceleration thereof pursuant to Section 502 at the time of such determination, and (ii) the principal amount of any Indexed Security that may be counted in making such determination and that shall be deemed Outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided in or pursuant to this Indenture, and (iii) the principal amount of a Security denominated in a Foreign Currency that may be counted in making such determination and that shall be deemed Outstanding for such purposes shall be the Dollar equivalent, determined on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent on the date of original issuance of such Security of the amount determined as provided in (i) above) of such Security, and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making any such determination or relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which shall have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee (A) the pledgee's right so to act with respect to such Securities and (B) that the pledgee is not the Company or any other obligor upon the Securities or any Coupons appertaining thereto or an Affiliate (other than a Trust) of the Company or such other obligor.

“Paying Agent” means any Person authorized by the Company, including the Company to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Security or any Coupon on behalf of the Company.

“Person” and “person” mean any individual, corporation, partnership, association, limited liability company, other company, business trust, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment”, with respect to any Security, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to such Security are payable as provided in or pursuant to this Indenture or such Security.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same indebtedness as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security or any Security to which a mutilated, destroyed, lost or stolen Coupon appertains shall be deemed to evidence the same indebtedness as the lost, destroyed, mutilated or stolen Security or the Security to which a mutilated, destroyed, lost or stolen Coupon appertains.

“Redemption Date”, with respect to any Security or portion thereof to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture or such Security.

“Redemption Price”, with respect to any Security or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or pursuant to this Indenture or such Security.

“Registered Security” means any Security established pursuant to Section 201 which is registered in the Security Register.

“Regular Record Date” for the interest payable on any Registered Security on any Interest Payment Date therefor means the date, if any, specified in or pursuant to this Indenture or such Security as the record date for the payment of such interest.

“Required Currency” has the meaning specified in Section 116.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Securities Act” means the Securities Act of 1933, as amended, or any successor thereto, in each case as amended from time to time.

“Security” or “Securities” means any note or notes, bond or bonds, debenture or debentures, or any other evidences of indebtedness, as the case may be, authenticated and delivered under this Indenture; *provided, however*, that, if at any time there is more than one Person acting as Trustee under this Indenture, “Securities”, with respect to any such

Person, shall mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 305.

“Senior Indebtedness” means the principal of, and premium, if any, and interest, including interest accruing after the commencement of any bankruptcy proceeding relating to the Company, on, or substantially similar payments the Company makes in respect of the following categories of debt, whether that debt is outstanding at the date of execution of the applicable indenture or thereafter incurred, created or assumed.

(1) other indebtedness of the Company evidenced by notes, debentures, or bonds or other securities issued under the provisions of any indenture, fiscal agency agreement, note purchase agreement or other agreement, including any senior debt securities that may be offered;

(2) indebtedness of the Company for money borrowed or represented by purchase-money obligations, as defined below;

(3) the Company’s obligations as lessee under leases of property either made as part of a sale and leaseback transaction to which it is a party or otherwise;

(4) indebtedness, obligations and liabilities of others in respect of which the Company is liable contingently or otherwise to pay or advance money or property or as guarantor, endorser or otherwise or which it has agreed to purchase or otherwise acquire and indebtedness of partnerships and joint ventures which is included in the Company’s consolidated financial statements;

(5) reimbursement and other obligations relating to letters of credit, bankers’ acceptances and similar obligations;

(7) obligations under various hedging arrangements and agreements, including interest rate and currency hedging agreements;

(8) all of the Company’s obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business; and

(9) deferrals, renewals or extensions of any of the indebtedness or obligations described in clauses (1) through (8) above.

However, clauses (1) through (9) above exclude:

- any indebtedness, obligation or liability referred to in clauses (1) through (9) above as to which, in the instrument creating or evidencing that indebtedness, obligation or liability, it is expressly provided that the indebtedness, obligation or liability is not senior in right of payment to the Securities or ranks equally with the Securities;
- any indebtedness, obligation or liability which is subordinated to indebtedness of the Company to substantially the same extent as or to a greater extent than the Securities are subordinated; and
- the Securities and, unless expressly provided in the terms thereof, any other indebtedness of the Company to its Subsidiaries.

As used above, the term “purchase money obligations” means indebtedness, obligations or guarantees evidenced by a note, debenture, bond or other instrument, whether or not secured by a lien or other security interest, and any

deferred obligation for the payment of the purchase price of property but excluding indebtedness or obligations for which recourse is limited to the property purchased, issued or assumed as all or a part of the consideration for the acquisition of property or services, whether by purchase, merger, consolidation or otherwise, but does not include any trade accounts payable.

“Significant Subsidiary” means any Subsidiary of the Company which is a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X promulgated by the Commission (as such rule is in effect on the date of this Indenture).

“Special Record Date” for the payment of any Defaulted Interest on any Registered Security means a date fixed by the Trustee pursuant to Section 307.

“Stated Maturity”, with respect to any Security or any installment of principal thereof or interest thereon or any Additional Amounts with respect thereto, means the date established by or pursuant to this Indenture or such Security as the fixed date on which the principal of such Security or such installment of principal or interest is, or such Additional Amounts are, due and payable.

“Subordination Provisions”, when used with respect to the Securities of any series, shall have the meaning established pursuant to Section 301(25) with respect to the Securities of such series.

“Subsidiary” means a corporation or a partnership or a limited liability company a majority of the outstanding voting stock or partnership or membership interests, as the case may be, of which is owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries of the Company. For the purposes of this definition, “voting stock” means stock having voting power for the election of directors, or trustees, as the case may be, whether at all times or only so long as no senior class of stock has voting power by reason of any contingency.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Act or provision, as the case may be, as amended or replaced from time to time or as supplemented from time to time by rules or regulations adopted by the Commission under or in furtherance of the purposes of such Act or provision, as the case may be.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean each Person who is then a Trustee hereunder; *provided, however*, that if at any time there is more than one such Person, “Trustee” shall mean each such Person and as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of such series.

“United States”, means the United States of America (including the states thereof and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction; and the term “United States of America” means the United States of America.

“United States Alien”, except as otherwise provided in or pursuant to this Indenture or any Security, means any Person who, for United States Federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, for United States Federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

“Vice President”, when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “Vice President”.

Section 102. *Compliance Certificates and Opinions.*

Except as otherwise expressly provided in or pursuant to this Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Section 103. *Form of Documents Delivered to Trustee.*

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the opinion with respect to the matters upon which his certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, a governmental official or officers or any other Person or Persons, stating that the information with respect to such factual matters is in the possession of the Company unless such counsel knows, or in the exercise of reasonable care should know, that the certificate, opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture or any Security, they may, but need not, be consolidated and form one instrument.

Section 104. *Acts of Holders.*

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or pursuant to this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If, but only if, Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided in or pursuant to this Indenture to be made, given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Fifteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 315 of the Trust Indenture Act) conclusive in favor of the Trustee and the

Company and any agent of the Trustee or the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1506.

Without limiting the generality of this Section 104, unless otherwise provided in or pursuant to this Indenture, a Holder, including a Depository that is a Holder of a global Security, may make, give or take, by a proxy or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or pursuant to this Indenture or the Securities to be made, given or taken by Holders, and a Depository that is a Holder of a global Security may provide its proxy or proxies to the beneficial owners of interests in any such global Security through such Depository's standing instructions and customary practices.

(2) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(3) The ownership, principal amount and serial numbers of Registered Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, shall be proved by the Security Register.

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(4) The ownership, principal amount and serial numbers of Bearer Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depository, by any trust company, bank, banker or other depository reasonably acceptable to the Company, wherever situated, if such certificate shall be deemed by the Company and the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Company and the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The ownership, principal amount and serial numbers of Bearer Securities held by the Person so executing such instrument or writing and the date of the commencement and the date of the termination of holding the same may also be proved in any other manner which the Company and the Trustee deem sufficient.

(5) If the Company shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may at its option (but is not obligated to), by Board Resolution, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders of Registered Securities shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

(6) Any request, demand, authorization, direction, notice, consent, waiver or other Act by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the

Trustee, any Security Registrar, any Paying Agent or the Company in reliance thereon, whether or not notation of such Act is made upon such Security.

Section 105. Notices, etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company by the Trustee or any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to the attention of its Treasurer at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

Section 106. Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided in or pursuant to this Indenture, where this Indenture provides for notice to Holders of Securities of any event,

(1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice; and

(2) such notice shall be sufficiently given to Holders of Bearer Securities, if any, if published in an Authorized Newspaper in The City of New York and, if such Securities are then listed on any stock exchange outside the United States, in an Authorized Newspaper in such city as the Company shall advise the Trustee that such stock exchange so requires, on a Business Day at least twice, the first such publication to be not earlier than the earliest date and the second such publication not later than the latest date prescribed for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice.

Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 107. *Language of Notices.*

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that, if the Company so elects, any published notice may be in an official language of the country of publication.

Section 108. *Conflict with Trust Indenture Act.*

If any provision hereof limits, qualifies or conflicts with any duties under any required provision of the Trust Indenture Act imposed hereon by Section 318(c) thereof, such required provision shall control.

Section 109. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 110. *Successors and Assigns.*

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 111. *Separability Clause.*

In case any provision in this Indenture, any Security or any Coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, to the fullest extent permitted by law, in any way be affected or impaired thereby.

Section 112. *Benefits of Indenture.*

Nothing in this Indenture, any Security or any Coupon, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent and their successors hereunder and the Holders of Securities or Coupons, and the holders of Senior Indebtedness with respect to such series, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 113. *Governing Law.*

This Indenture, the Securities and any Coupons shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made or instruments entered into and, in each case, performed in said State.

Section 114. *Legal Holidays.*

Unless otherwise specified in or pursuant to this Indenture or any Securities, in any case where any Interest Payment Date, Stated Maturity or Maturity of, or any other day on which a payment is due with respect to, any Security shall be a day which is not a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture, any Security or any Coupon other than a provision in any Security or Coupon or in the Board Resolution,

Officers' Certificate or supplemental indenture establishing the terms of any Security that specifically states that such provision shall apply in lieu hereof) payment need not be made at such Place of Payment on such date, but such payment may be made on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, at the Stated Maturity or Maturity or on any such other payment date, as the case may be, and no interest shall accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date, Stated Maturity, Maturity or other payment date, as the case may be, to the next succeeding Business Day.

Section 115. *Counterparts.*

This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 116. *Judgment Currency.*

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, or Additional Amounts on the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding that on which a final unappealable judgment is given and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with clause (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or obligated by law, regulation or executive order to be closed. The provisions of this Section 116 shall not be applicable with respect to any payment due on a Security which is payable in Dollars.

Section 117. *Extension of Payment Dates.*

In the event that (i) the terms of any Security or Coupon appertaining thereto established in or pursuant to this Indenture permit the Company or any Holder thereof to extend the date on which any payment of principal of, or premium, if any, or interest, if any, on, or Additional Amounts, if any, with respect to such Security or Coupon is due and payable and (ii) the due date for any such payment shall have been so extended, then all references herein to the Stated Maturity of such payment (and all references of like import) shall be deemed to refer to the date as so extended.

Section 118. *Immunity of Stockholders, Directors, Officers and Agents of the Company.*

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any past, present or future stockholder, employee, officer or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitutional provision or by the

enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders and as part of the consideration for the issue of the Securities.

Section 119. *Waiver of Jury Trial.*

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 120. *Force Majeure.*

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE TWO
SECURITIES FORMS

Section 201. *Forms Generally.*

Each Registered Security, Bearer Security, Coupon and temporary or permanent global Security issued pursuant to this Indenture shall be in the form established by or pursuant to a Board Resolution and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by or pursuant to this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officer of the Company executing such Security or Coupon as evidenced by the execution of such Security or Coupon.

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall be issuable in registered form without Coupons.

Definitive Securities and definitive Coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officer of the Company executing such Securities or Coupons, as evidenced by the execution of such Securities or Coupons.

Section 202. *Form of Trustee's Certificate of Authentication.*

Subject to Section 611, the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

as Trustee

By: _____
Authorized Signatory

Section 203. *Securities in Global Form.*

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall not be issuable in global form. If Securities of a series shall be issuable in temporary or permanent global form, any such Security may provide that it or any number of such Securities shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon or reflected on the books and records of the Trustee and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of any Security in global form to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or pursuant to Section 301 with respect to such Security or in the Company Order to be delivered pursuant to Section 303 or 304 with respect thereto. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in global form in the manner and upon instructions given by the Person or Persons specified therein or pursuant to Section 301 with respect to such Security or in the applicable Company Order. If a Company Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Company with respect to a Security in global form shall be in writing but need not be accompanied by or contained in an Officers' Certificate and need not be accompanied by an Opinion of Counsel. Notwithstanding the foregoing provisions of this paragraph, in the event a global Security is exchangeable for definitive Securities as provided in Section 305, then, unless otherwise provided in or pursuant to this Indenture with respect to the Securities of such series, the Trustee shall deliver and redeliver such global Security to the extent necessary to effect such exchanges, shall endorse such global Security to reflect any decrease in the principal amount thereto resulting from such exchanges and shall take such other actions, all as contemplated by Section 305.

Notwithstanding the provisions of Section 307, unless otherwise specified in or pursuant to this Indenture or any Securities, payment of principal of, any premium and interest on, and any Additional Amounts in respect of any Security in temporary or permanent global form shall be made to the Person or Persons specified therein.

Notwithstanding the provisions of Section 308 and except as provided in the preceding paragraph, the Company, the Trustee and any agent of the Company and the Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a global Security (i) in the case of a global Security in registered form, the Holder of such global Security in registered form, or (ii) in the case of a global Security in bearer form, the Person or Persons specified pursuant to Section 301.

ARTICLE THREE

THE SECURITIES

Section 301. *Amount Unlimited; Issuable in Series.*

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series.

The Securities shall be subordinated in right of payment to Senior Indebtedness as provided in Article 16.

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With respect to any Securities to be authenticated and delivered hereunder, there shall be established in or pursuant to one or more Board Resolutions and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of any Securities of a series,

(1) the title of the Securities of such series;

(2) any limit upon the aggregate principal amount of the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 304, 305, 306, 905 or 1107, upon repayment in part of any Security of such series pursuant to Article Thirteen or upon surrender in part of any Security for conversion or exchange into Common Stock or other securities or property pursuant to its terms), and if such series may be reopened from time to time for the issuance of additional Securities of such series or to establish additional terms of such series;

(3) if such Securities are to be issuable as Registered Securities, as Bearer Securities or alternatively as Bearer Securities and Registered Securities, and whether the Bearer Securities are to be issuable with Coupons, without Coupons or both, and any restrictions applicable to the offer, sale or delivery of the Bearer Securities and the terms, if any, upon which Bearer Securities may be exchanged for Registered Securities and vice versa;

(4) if any of such Securities are to be issuable in global form, when any of such Securities are to be issuable in global form and (i) whether such Securities are to be issued in temporary or permanent global form or both, (ii) whether beneficial owners of interests in any such global Security may exchange such interests for Securities of the same series and of like tenor and of any authorized form and denomination, and the circumstances under which any such exchanges may occur, if other than in the manner specified in Section 305, (iii) the name of the Depository with respect to any such global Security and (iv) if applicable and in addition to the Persons specified in Section 305, the Person or Persons who shall be entitled to make any endorsements on any such global Security and to give the instructions and take the other actions with respect to such global Security contemplated by the first paragraph of Section 203;

(5) if any of such Securities are to be issuable as Bearer Securities, the date as of which any such Bearer Security shall be dated (if other than the date of original issuance of the first of such Securities to be issued);

(6) if any of such Securities are to be issuable as Bearer Securities, whether interest in respect of any portion of a temporary Bearer Security in global form payable in respect of an Interest Payment Date therefor prior to the exchange, if any, of such temporary Bearer Security for definitive Securities shall be paid to any clearing organization with respect to the portion of such temporary Bearer Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date;

(7) the date or dates, or the method or methods, if any, by which such date or dates shall be determined, on which the principal and premium, if any, of such Securities is payable;

(8) the rate or rates at which such Securities shall bear interest, if any, or the method or methods, if any, by which such rate or rates are to be determined, the date or dates, if any, from which such interest shall accrue or the method or methods, if any, by which such date or dates are to be determined, the Interest Payment Dates, if any, on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on Registered Securities on any Interest Payment Date, the notice, if any, to Holders regarding the determination of interest on a floating rate Security and the manner of giving such notice, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(9) if in addition to or other than the Borough of Manhattan, The City of New York, the place or places where the principal of, any premium and interest on or any Additional Amounts with respect to such Securities shall be payable, any of such Securities that are Registered Securities may be surrendered for registration of transfer or exchange, any of such Securities may be surrendered for conversion or exchange and notices or demands to or upon the Company in respect of such Securities and this Indenture may be served;

(10) whether any of such Securities are to be redeemable at the option of the Company and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Company;

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(11) if the Company is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or analogous provision or at the option of any Holder thereof and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased;

(12) the denominations in which any of such Securities that are Registered Securities shall be issuable if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any of such Securities that are Bearer Securities shall be issuable if other than the denomination of \$5,000;

(13) whether the Securities of the series will be convertible into and/or exchangeable for Common Stock or other securities or property, and if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, and any deletions from or modifications or additions to this Indenture to permit or to facilitate the issuance of such convertible or exchangeable Securities or the administration thereof;

(14) if other than the principal amount thereof, the portion of the principal amount of any of such Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or the method by which such portion is to be determined;

(15) if other than Dollars, the Foreign Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities shall be payable;

(16) if the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities are to be payable, at the election of the Company or a Holder thereof or otherwise, in Dollars or in a Foreign Currency other than that in which such Securities are stated to be payable, the date or dates on which, the period or periods within which, and the other terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the Currency in which such Securities are stated to be payable and the Currency in which such Securities or any of them are to be paid pursuant to such election, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of

Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;

(17) if the amount of payments of principal of, any premium or interest on or any Additional Amounts with respect to such Securities may be determined with reference to an index, formula or other method or methods (which index, formula or method or methods may be based, without limitation, on one or more Currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

(18) any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to any of such Securities (whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein), and if Section 1007 shall be applicable with respect to any such additional covenants;

(19) if any one or more of Section 401 relating to satisfaction and discharge, Section 402(2) relating to defeasance or Section 402(3) relating to covenant defeasance shall not be applicable to the Securities of such series, and any covenants in addition to or other than those specified in Section 402(3) relating to the Securities of such series which shall be subject to covenant defeasance, and, if the Securities of such series are subject to repurchase or repayment at the option of the Holders thereof pursuant to Article Thirteen, if the Company's obligation to repurchase or repay such Securities will be subject to satisfaction and discharge pursuant to Section 401 or to defeasance or covenant defeasance pursuant to Section 402, and, if the Holders of such Securities have the right to convert or exchange such Securities into Common Stock or other securities or property, if the right to effect such conversion or exchange will be subject to satisfaction and discharge pursuant to Section 401 or to defeasance or covenant defeasance pursuant to Section 402, and any deletions from, or modifications or additions to, the provisions of Article Four (including any modification which would permit satisfaction and discharge, defeasance or covenant defeasance to be effected with respect to less than all of the outstanding Securities of such series) in respect of the Securities of such series;

(20) if any of such Securities are to be issuable upon the exercise of warrants, and the time, manner and place for such Securities to be authenticated and delivered;

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(21) if any of such Securities are issuable in global form and are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(22) whether and under what circumstances the Company will pay Additional Amounts on such Securities to any holder who is a United States Alien in respect of any tax, assessment or other government charge and, if so, whether the Company will have the option to redeem such Securities rather than pay such Additional Amounts;

(23) if there is more than one Trustee, the identity of the Trustee and, if not the Trustee, the identity of each Security Registrar, Paying Agent or Authenticating Agent with respect to such Securities;

(24) the Person to whom any interest on any Registered Security of such series shall be payable, if other than the Person in whose name the Registered Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, the manner in which, or the Person to whom, any interest on any Bearer Security of such series shall be payable, if other than upon presentation and surrender of the Coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary global Security will be paid if other than in the manner provided in this Indenture;

(25) whether and to what extent the Securities shall be guaranteed by any Person or Persons;

(26) the terms pursuant to which the Securities of such series will be made subordinate in right of payment to Senior Indebtedness, the definition of such Senior Indebtedness with respect to such series and any changes in Article Sixteen with respect to such series; and a Board Resolution, Officers' Certificate or supplemental indenture, as the case may be, establishing the terms of such series shall expressly state which articles, sections or other provisions thereof constitute the "Subordination Provisions" with respect to the Securities of such series; and

(27) any other terms of such Securities and any deletions from or modifications or additions to this Indenture in respect of such Securities.

All Securities of any one series and all Coupons, if any, appertaining to Bearer Securities of such series shall be substantially identical except as to Currency of payments due thereunder, denomination and the rate of interest, or method of determining the rate of interest, if any, Maturity, and the date from which interest, if any, shall accrue and except as may otherwise be provided by the Company in or pursuant to the Board Resolution and set forth in the Officers' Certificate or in any indenture or indentures supplemental hereto pertaining to such series of Securities. The terms of the Securities of any series may provide, without limitation, that the Securities shall be authenticated and delivered by the Trustee on original issue from time to time upon telephonic or written order of persons designated in the Board Resolution, Officers' Certificate or supplemental indenture, as the case may be, pertaining to such series of Securities (telephonic instructions to be promptly confirmed in writing by such person) and that such persons are authorized to determine, consistent with such Board Resolution, Officers' Certificate or supplemental indenture, such terms and conditions of the Securities of such series as are specified in such Board Resolution, Officers' Certificate or supplemental indenture. All Securities of any one series need not be issued at the same time and, if so provided by the Company as contemplated by this Section 301, a series may be reopened from time to time without the consent of any Holders for issuances of additional Securities of such series or to establish additional terms of such series of Securities.

If any of the terms of the Securities of any series shall be established by action taken by or pursuant to a Board Resolution, the Board Resolution shall be delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of such series.

Section 302. *Currency; Denominations.*

Unless otherwise provided in or pursuant to this Indenture, the principal of, any premium and interest on and any Additional Amounts with respect to the Securities shall be payable in Dollars. Unless otherwise provided in or pursuant to this Indenture, Registered Securities denominated in Dollars shall be issuable in registered form without Coupons in denominations of \$1,000 and any integral multiple thereof, and the Bearer Securities denominated in Dollars shall be issuable in the denomination of \$5,000. Securities not denominated in Dollars shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

Section 303. *Execution, Authentication, Delivery and Dating.*

Securities shall be executed on behalf of the Company by its Chairman, its President or one of its Vice Presidents and by its Treasurer, one of its Assistant Treasurers, its Secretary or one of its Assistant Secretaries and may (but need not) have its corporate seal or a facsimile thereof reproduced thereon. Coupons shall be executed on behalf of the Company by the Chairman, the President or any Vice President of the Company. The signature of any of these officers on the Securities or any Coupons appertaining thereto may be manual or facsimile.

Securities and any Coupons appertaining thereto bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall, to the fullest extent permitted by law, bind the Company,

notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities or Coupons.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities, together with any Coupons appertaining thereto, executed by the Company, to the Trustee for authentication and, provided that the Board Resolution and Officers' Certificate or supplemental indenture or indentures with respect to such Securities referred to in Section 301 and a Company Order for the authentication and delivery of such Securities have been delivered to the Trustee, the Trustee in accordance with the Company Order and subject to the provisions hereof and of such Securities shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities and any Coupons appertaining thereto, the Trustee shall be entitled to receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon, an Opinion of Counsel to the following effect, which Opinion of Counsel may contain such assumptions, qualifications and limitations as such counsel shall deem appropriate:

(a) the form or forms and terms of such Securities and Coupons, if any, have been established in conformity with Sections 201 and 301 of this Indenture;

(b) all conditions precedent set forth in Sections 201, 301 and 303 of this Indenture to the authentication and delivery of such Securities and Coupons, if any, appertaining thereto have been complied with and that such Securities, and Coupons, when completed by appropriate insertions (if applicable), executed by duly authorized officers of the Company, delivered by duly authorized officers of the Company to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforcement thereof may be subject to or limited by bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance, fraudulent transfer or other similar laws relating to or affecting creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Opinion of Counsel at the time of issuance of each Security, but such opinion, with such modifications as counsel shall deem appropriate, shall be delivered at or before the time of issuance of the first Security of such series. After any such first delivery, any separate request by the Company that the Trustee authenticate Securities of such series for original issue will be deemed to be a certification by the Company that all conditions precedent provided for in this Indenture relating to authentication and delivery of such Securities continue to have been complied with.

The Trustee shall not be required to authenticate or to cause an Authenticating Agent to authenticate any Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

Each Registered Security shall be dated the date of its authentication. Each Bearer Security and any Bearer Security in global form shall be dated as of the date specified in or pursuant to this Indenture.

No Security or Coupon appertaining thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 202 or 611 executed by or on behalf of the Trustee or by the Authenticating Agent by the manual signature of one of its authorized signatories. Such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Except as

permitted by Section 306 or 307 or as may otherwise be provided in or pursuant to this Indenture, the Trustee shall not authenticate and deliver any Bearer Security unless all Coupons appertaining thereto then matured have been detached and cancelled.

Section 304. *Temporary Securities.*

Pending the preparation of definitive Securities, the Company may execute and deliver to the Trustee and, upon Company Order, the Trustee shall authenticate and deliver, in the manner provided in Section 303, temporary Securities in lieu thereof which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form or, if authorized in or pursuant to this Indenture, in bearer form with one or more Coupons or without Coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Company executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions set forth in this Indenture or the provisions established pursuant to Section 301, if temporary Securities are issued, the Company shall cause definitive Securities to be prepared without unreasonable delay. Except as otherwise provided in or pursuant to this Indenture, after the preparation of definitive Securities of the same series and containing terms and provisions that are identical to those of any temporary Securities, such temporary Securities shall be exchangeable for such definitive Securities upon surrender of such temporary Securities at an Office or Agency for such Securities, without charge to any Holder thereof. Except as otherwise provided in or pursuant to this Indenture, upon surrender for cancellation of any one or more temporary Securities (accompanied by any unmatured Coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and containing identical terms and provisions; *provided, however*, that no definitive Bearer Security, except as provided in or pursuant to this Indenture, shall be delivered in exchange for a temporary Registered Security; and *provided, further*, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in or pursuant to this Indenture. Unless otherwise provided in or pursuant to this Indenture with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. *Registration, Transfer and Exchange.*

With respect to the Registered Securities of each series, if any, the Company shall cause to be kept a register (each such register being herein sometimes referred to as the "Security Register") at an Office or Agency for such series in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Registered Securities of such series and of transfers of the Registered Securities of such series. Such Office or Agency shall be the "Security Registrar" for that series of Securities. Unless otherwise specified in or pursuant to this Indenture or the Securities, the initial Security Registrar for each series of Securities shall be as specified in the penultimate paragraph of Section 1002. The Company shall have the right to remove and replace from time to time the Security Registrar for any series of Securities; provided that no such removal or replacement shall be effective until a successor Security Registrar with respect to such series of Securities shall have been appointed by the Company and shall have accepted such appointment. In the event that the Trustee shall not be or shall cease to be Security Registrar with respect to a series of Securities, it shall have the right to examine the Security Register for such series at all reasonable times. There shall be only one Security Register for each series of Securities.

Except as otherwise provided in or pursuant to this Indenture, upon surrender for registration of transfer of any Registered Security of any series at any Office or Agency for such series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series denominated as authorized in or pursuant to this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

Except as otherwise provided in or pursuant to this Indenture, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any Office or Agency for such series. Whenever any Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

If provided in or pursuant to this Indenture, with respect to Securities of any series, at the option of the Holder, Bearer Securities of such series may be exchanged for Registered Securities of such series containing identical terms, denominated as authorized in or pursuant to this Indenture and in the same aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any Office or Agency for such series, with all unmatured Coupons and all matured Coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured Coupon or Coupons or matured Coupon or Coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company and the Trustee in an amount equal to the face amount of such missing Coupon or Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Bearer Security shall surrender to any Paying Agent any such missing Coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; *provided, however*, that, except as otherwise provided in Section 1002, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such series located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such Office or Agency for such series in exchange for a Registered Security of such series and like tenor after the close of business at such Office or Agency on (i) any Regular Record Date and before the opening of business at such Office or Agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such Office or Agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date or proposed date of payment, as the case may be (or, if such Coupon is so surrendered with such Bearer Security, such Coupon shall be returned to the Person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

If provided in or pursuant to this Indenture with respect to Securities of any series, at the option of the Holder, Registered Securities of such series may be exchanged for Bearer Securities upon such terms and conditions as may be provided in or pursuant to this Indenture with respect to such series.

Whenever any Securities are surrendered for exchange as contemplated by the immediately preceding two paragraphs, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, the global Securities of any series shall be exchangeable for definitive certificated Securities of such series only if (i) the Depository for such global Securities notifies the Company that it is unwilling or unable to continue as a Depository for such global Securities or at any time the Depository for such global Securities ceases to be a clearing agency registered as such under the Exchange Act, if so required by applicable law or regulation, and no successor Depository for such Securities shall have been appointed within 90 days of such notification or of the Company becoming aware of the Depository's ceasing to be so registered, as the case may be, (ii) the Company, in its sole discretion, determines that

the Securities of such series shall no longer be represented by one or more global Securities and executes and delivers to the Trustee a Company Order to the effect that such global Securities shall be so exchangeable, or (iii) an Event of Default has occurred and is continuing with respect to such Securities.

If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities as the result of an event described in clause (i), (ii) or (iii) of the preceding paragraph, then without unnecessary delay but in any event not later than the earliest date on which such interests may be so exchanged, the Company shall deliver to the Trustee definitive Securities in such form and denominations as are required by or pursuant to this Indenture, and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of such global Security, executed by the Company. On or after the earliest date on which such interests may be so exchanged, such global Security shall be surrendered from time to time by the Depository (or its custodian) as shall be specified in the Company Order with respect thereto (which the Company agrees to deliver), and in accordance with instructions given to the Trustee and the Depository (which instructions shall be in writing but need not be contained in or accompanied by an Officers' Certificate or be accompanied by an Opinion of Counsel), as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged, which (unless such Securities are not issuable both as Bearer Securities and as Registered Securities, in which case the definitive Securities exchanged for the global Security shall be issuable only in the form in which the Securities are issuable, as provided in or pursuant to this Indenture) shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, and which shall be in such denominations and, in the case of Registered Securities, registered in such names, as shall be specified by the Depository, but subject to the satisfaction of any certification or other requirements to the issuance of Bearer Securities; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series to be redeemed and ending on the relevant Redemption Date; and *provided, further*, that (unless otherwise provided in or pursuant to this Indenture) no Bearer Security delivered in exchange for a portion of a global Security shall be mailed or otherwise delivered to any location in the United States. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to such Depository (or its custodian) or such other Depository (or its custodian) referred to above in accordance with the instructions of the Company referred to above, and the Trustee shall endorse such global Security to reflect the decrease in the principal amount thereof resulting from such exchange. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the Office or Agency for such Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at such Office or Agency on the next Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such Office or Agency on the related proposed date for payment of interest or Defaulted Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

Every Registered Security presented or surrendered for registration of transfer or for exchange or redemption shall (if so required by the Company or the Security Registrar for such Security) be duly endorsed, or be accompanied by

a written instrument of transfer in form satisfactory to the Company and the Security Registrar for such Security duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, or any redemption or repayment of Securities, or any conversion or exchange of Securities for other types of securities or property, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 905 or 1107, upon repayment or repurchase in part of any Registered Security pursuant to Article Thirteen, or upon surrender in part of any Registered Security for conversion or exchange into Common Stock or other securities or property pursuant to its terms, in each case not involving any transfer.

Except as otherwise provided in or pursuant to this Indenture, the Company shall not be required (i) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the selection for redemption of Securities of like tenor and terms and of the same series under Section 1103 and ending at the close of business on the day of such selection, or (ii) to register the transfer of or exchange any Registered Security, or portion thereof, so selected for redemption, except in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except, to the extent provided with respect to such Bearer Security, that such Bearer Security may be exchanged for a Registered Security of like tenor and terms and of the same series, provided that such Registered Security shall be simultaneously surrendered for redemption with written instruction for payment consistent with the provisions of this Indenture or (iv) to issue, register the transfer of or exchange any Security which, in accordance with its terms, has been surrendered for repayment at the option of the Holder pursuant to Article Thirteen and not withdrawn, except the portion, if any, of such Security not to be so repaid.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any Paying Agent shall have any responsibility for any actions taken or not taken by the Depository.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security or a Security with a mutilated Coupon appertaining to it is surrendered to the Trustee, subject to the provisions of this Section 306, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons appertaining thereto corresponding to the Coupons, if any, appertaining to the surrendered Security.

If there be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or Coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or Coupon has been acquired by a bona fide purchaser, the Company shall execute and, upon the Company's request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen Coupon appertains with all appurtenant Coupons not destroyed, lost or stolen, a new Security of the same series containing

identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons corresponding to the Coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Coupon appertains.

Notwithstanding the foregoing provisions of this Section 306, in case any mutilated, destroyed, lost or stolen Security or Coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or Coupon; *provided, however*, that payment of principal of, any premium or interest on or any Additional Amounts with respect to any Bearer Securities shall, except as otherwise provided in Section 1002, be payable only at an Office or Agency for such Securities located outside the United States and, unless otherwise provided in or pursuant to this Indenture, any interest on Bearer Securities and any Additional Amounts with respect to such interest shall be payable only upon presentation and surrender of the Coupons appertaining thereto.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security, with any Coupons appertaining thereto issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen Coupon appertains shall constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Security and Coupons appertaining thereto or the destroyed, lost or stolen Coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series and any Coupons, if any, duly issued hereunder.

The provisions of this Section, as amended or supplemented pursuant to this Indenture with respect to particular Securities or generally, shall (to the extent lawful) be exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons.

Section 307. Payment of Interest and Certain Additional Amounts; Rights to Interest and Certain Additional Amounts Preserved.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, and are punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest. Unless otherwise provided in or pursuant to this Indenture, in case a Bearer Security is surrendered in exchange for a Registered Security after the close of business at an Office or Agency for such Security on any Regular Record Date therefor and before the opening of business at such Office or Agency on the next succeeding Interest Payment Date therefor, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date and interest shall not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, but shall not be punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Registered Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this Clause provided. Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of such Registered Security (or a Predecessor Security thereof) at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company cause a similar notice to be published at least once in an Authorized Newspaper of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security is surrendered at the Office or Agency for such Security in exchange for a Registered Security after the close of business at such Office or Agency on any Special Record Date and before the opening of business at such Office or Agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Defaulted Interest and Defaulted Interest shall not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but shall be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Security may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such payment shall be deemed practicable by the Trustee.

Unless otherwise provided in or pursuant to this Indenture or the Securities of any particular series, at the option of the Company, interest on Registered Securities that bear interest may be paid by mailing a check to the address of the Person entitled thereto as such address shall appear in the Security Register or by transfer to an account maintained by the payee with a bank located in the United States of America.

Subject to the foregoing provisions of this Section and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. *Persons Deemed Owners.*

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered in the Security Register as the owner of such Registered Security for the purpose of receiving payment of principal of,

any premium and (subject to Sections 305 and 307) interest on and any Additional Amounts with respect to such Registered Security and for all other purposes whatsoever, whether or not any payment with respect to such Registered Security shall be overdue, and neither the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

The Company, the Trustee and any agent of the Company or the Trustee may treat the bearer of any Bearer Security or the bearer of any Coupon as the absolute owner of such Security or Coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not any payment with respect to such Security or Coupon shall be overdue, and neither the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any global Security held on its behalf by a Depository shall have any rights under this Indenture with respect to such global Security, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, any Paying Agent or the Security Registrar from giving effect to any written certification, proxy or other authorization furnished by the applicable Depository, as a Holder, with respect to a global Security or impair, as between such Depository and the owners of beneficial interests in such global Security, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as the Holder of such global Security.

Section 309. Cancellation.

All Securities and Coupons surrendered for payment, redemption, registration of transfer, exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Coupons, as well as Securities and Coupons surrendered directly to the Trustee for any such purpose, shall be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by or pursuant to this Indenture. All cancelled Securities and Coupons held by the Trustee shall be disposed of in accordance with its procedure for the disposition of cancelled Securities and the Trustee shall deliver to the Company a certificate of such disposition, unless by a Company Order the Company directs their return to it.

Section 310. Computation of Interest.

Except as otherwise provided in or pursuant to this Indenture or in the Securities of any series, interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

ARTICLE FOUR

SATISFACTION AND DISCHARGE OF INDENTURE

Section 401. Satisfaction and Discharge.

Unless, pursuant to Section 301, the provisions of this Section 401 shall not be applicable with respect to the Securities of any series, upon the direction of the Company by a Company Order, this Indenture shall cease to be of further effect with respect to any series of Securities specified in such Company Order and any Coupons appertaining thereto, and the Trustee, on receipt of a Company Order, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when

(1) either

(a) all Securities of such series theretofore authenticated and delivered and all Coupons appertaining thereto (other than (i) Coupons appertaining to Bearer Securities of such series surrendered in exchange for Registered Securities of such series and maturing after such exchange whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and Coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) Coupons appertaining to Securities of such series called for redemption and maturing after the relevant Redemption Date whose surrender has been waived as provided in Section 1106, and (iv) Securities and Coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(b) all Securities of such series and, in the case of (i) or (ii) below, if applicable, any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, money in the Currency in which such Securities are payable in an amount sufficient to pay and discharge the entire indebtedness on such Securities and any Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and, to the extent that the Securities of such series provide for the payment of Additional Amounts thereon and the amount of any such Additional Amounts which are or will be payable with respect to the Securities of such series is at the time of deposit determinable by the Company (in the exercise by the Company of its reasonable discretion), any Additional Amounts with respect to, such Securities and any Coupons appertaining thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Outstanding Securities of such series and any Coupons appertaining thereto; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to such series have been complied with.

In the event there are Securities of two or more series Outstanding hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of such series as to which it is Trustee and if the other conditions thereto are met.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Company to the Trustee under Section 606 and, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section, the obligations of the Company and the Trustee with respect to the Securities of such series under Sections 305, 306, 403, 404, 1002, 1003 and, if applicable to the Securities of such series, 1004 (including, without limitation, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 1004, but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to Section 401(1)(b)), any rights of Holders of the Securities of such series (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to require the Company to repurchase or repay, and the obligations of the Company to repurchase or repay, such Securities at the option of the Holders pursuant to Article Thirteen hereof, and any rights of Holders of the Securities of such series (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to convert or exchange, and the obligations of the Company to convert or exchange, such Securities into Common Stock or other securities or property, shall survive.

Section 402. *Defeasance and Covenant Defeasance.*

(1) Unless, pursuant to Section 301, either or both of (i) defeasance of the Securities of or within a series under clause (2) of this Section 402 or (ii) covenant defeasance of the Securities of or within a series under clause (3) of this Section 402 shall not be applicable with respect to the Securities of such series, then such provisions, together with the other provisions of this Section 402 (with such modifications thereto as may be specified pursuant to Section 301 with respect to any Securities), shall be applicable to such Securities and any Coupons appertaining thereto, and the Company may at its option by Board Resolution, at any time, with respect to the Securities of or within such series and any Coupons appertaining thereto, elect to have Section 402(2) or Section 402(3) be applied to such Outstanding Securities and any Coupons appertaining thereto upon compliance with the conditions set forth below in this Section 402. Unless otherwise specified pursuant to Section 301 with respect to the Securities of any series, defeasance under clause (2) of this Section 402 and covenant defeasance under clause (3) of this Section 402 may be effected only with respect to all, and not less than all, of the Outstanding Securities of any series. To the extent that the terms of any Security or Coupon appertaining thereto established in or pursuant to this Indenture

permit the Company or any Holder thereof to extend the date on which any payment of principal of, or premium, if any, or interest, if any, on, or Additional Amounts, if any, with respect to such Security or Coupon is due and payable, then unless otherwise provided pursuant to Section 301, the right to extend such date shall terminate upon defeasance or covenant defeasance, as the case may be.

(2) Upon the Company's exercise of the above option applicable to this Section 402(2) with respect to any Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Securities and any Coupons appertaining thereto on the date the conditions set forth in clause (4) of this Section 402 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities and any Coupons appertaining thereto, which shall thereafter be deemed to be "Outstanding" only for the purposes of clause (5) of this Section 402 and the other Sections of this Indenture referred to in clauses (i) through (iv) of this paragraph, and to have satisfied all of its other obligations under such Securities and any Coupons appertaining thereto and this Indenture insofar as such Securities and any Coupons appertaining thereto are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Securities and any Coupons appertaining thereto to receive, solely (except as provided in clause (ii) below) from the trust fund described in clause (4)(a) of this Section 402 and as more fully set forth in this Section 402 and 403, payments in respect of the principal of (and premium, if any) and interest, if any, on, and Additional Amounts, if any, with respect to, such Securities and any Coupons appertaining thereto when such

payments are due, (ii) the obligations of the Company and the Trustee with respect to such Securities under Sections 305, 306, 1002, 1003 and, if applicable to the Securities of such series, 1004 (including, without limitation, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 1004, but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to clause (4)(a) of this Section 402), any rights of Holders of such Securities (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to require the Company to repurchase or repay, and the obligations of the Company to repurchase or repay, such Securities at the option of the Holders pursuant to Article Thirteen hereof, and any rights of Holders of such Securities (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to convert or exchange, and the obligations of the Company to convert or exchange, such Securities into Common Stock or other securities or property, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 402 and Sections 403 and 404. The Company may exercise its option under this Section 402(2) notwithstanding the prior exercise of its option under Section 402(3) with respect to such Securities and any Coupons appertaining thereto.

(3) Upon the Company's exercise of the above option applicable to this Section 402(3) with respect to any Securities of or within a series, the Company shall be released from its obligations under clauses (ii) and (iii) of Section 1005 and under Sections 1006, 1007, and 1008 and any other covenant applicable to such Securities with respect to such Securities and any Coupons appertaining thereto shall cease to be applicable to such Securities on and after the date the conditions set forth in clause (4) of this Section 402 are satisfied (hereinafter, "covenant defeasance"), and such Securities and any Coupons appertaining thereto shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with any such covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that with respect to such Outstanding Securities and any Coupons appertaining thereto, the Company may omit to comply with, and shall have no liability in respect of, any term, condition or limitation set forth in any such Section or any such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 501(4) or 501(8) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities and Coupons appertaining thereto shall be unaffected thereby.

(4) The following shall be the conditions to application of clause (2) or (3) of this Section 402 to any Outstanding Securities of or within a series and any Coupons appertaining thereto:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 607 who shall agree to comply with the provisions of this Section 402 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities and any Coupons appertaining thereto, (1) an amount in Dollars or in such Foreign Currency in which such Securities and any Coupons appertaining thereto are then specified as payable at Stated Maturity or, if such defeasance or covenant defeasance is to be effected in compliance with subsection (f) below, on the relevant Redemption Date, as the case may be, or (2) Government Obligations applicable to such Securities and Coupons appertaining thereto (determined on the basis of the Currency in which such Securities and Coupons appertaining thereto are then specified as payable at Stated Maturity or, if such defeasance or covenant defeasance is to be effected in compliance with subsection (f) below, on the relevant Redemption Date, as the case may be) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities and any Coupons appertaining thereto, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without

consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on, and, to the extent that such Securities provide for the payment of Additional Amounts thereon and the amount of any such Additional Amounts which are or will be payable with respect to the Securities of such series is at the time of deposit determinable by the Company (in the exercise by the Company of its reasonable discretion), any Additional Amounts with respect to, such Outstanding Securities and any Coupons appertaining thereto on the Stated Maturity of such principal or installment of principal or interest or the applicable Redemption Date, as the case may be, and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities and any Coupons appertaining thereto on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities and any Coupons appertaining thereto.

(b) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company or any Subsidiary is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any Coupons appertaining thereto shall have occurred and be continuing on the date of such deposit, and, solely in the case of defeasance under Section 402(2), no Event of Default with respect to such Securities and any Coupons appertaining thereto under clause (5) or (6) of Section 501 or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any Coupons appertaining thereto under clause (5) or (6) of Section 501 shall have occurred and be continuing at any time during the period ending on and including the 91st day after the date of such deposit (it being understood that this condition to defeasance under Section 402(2) shall not be deemed satisfied until the expiration of such period).

(d) In the case of defeasance pursuant to Section 402(2), the Company shall have delivered to the Trustee an opinion of independent counsel reasonably acceptable to the Trustee stating that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in applicable federal income tax law, in either case to the effect that, and based thereon such opinion of independent counsel shall confirm that, the Holders of such Outstanding Securities and any Coupons appertaining thereto will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred; or, in the case of covenant defeasance pursuant to Section 402(3), the Company shall have delivered to the Trustee an opinion of independent counsel reasonably acceptable to the Trustee to the effect that the Holders of such Outstanding Securities and any Coupons appertaining thereto will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(e) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance, as the case may be, under this Indenture have been complied with.

(f) If the monies or Government Obligations or combination thereof, as the case may be, deposited under clause (a) above are sufficient to pay the principal of, and premium, if any, and interest, if any, on and, to the extent provided in such clause (a), Additional Amounts with respect to, such Securities provided such Securities are redeemed on a particular Redemption Date, the Company shall have given the Trustee irrevocable instructions to

redeem such Securities on such date and to provide notice of such redemption to Holders as provided in or pursuant to this Indenture.

(g) No event or condition will exist pursuant to the terms of Section 301(25) that would prevent the Company from making payments of principal and premium, if any, and interest on the Securities at the date of the irrevocable deposit referred to above.

(h) Notwithstanding any other provisions of this Section 402(4), such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Company in connection therewith pursuant to Section 301.

(5) Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations (or other property as may be provided pursuant to Section 301) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee—collectively for purposes of this Section 402(5) and Section 403, the “Trustee”) pursuant to clause (4)(a) of Section 402 in respect of any Outstanding Securities of any series and any Coupons appertaining thereto shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and any Coupons appertaining thereto and this Indenture, to the payment, either directly or through any Paying Agent (other than the Company or any Subsidiary or Affiliate of the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities and any Coupons appertaining thereto of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

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Unless otherwise specified in or pursuant to this Indenture or any Securities, if, after a deposit referred to in Section 402(4)(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 301 or the terms of such Security to receive payment in a Currency other than that in which the deposit pursuant to Section 402(4)(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to Section 402(4)(a) has been made, the indebtedness represented by such Security and any Coupons appertaining thereto shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on, and Additional Amounts, if any, with respect to, such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the Currency in which such Security becomes payable as a result of such election or Conversion Event based on (x) in the case of payments made pursuant to clause (a) above, the applicable market exchange rate for such Currency in effect on the second Business Day prior to each payment date, or (y) with respect to a Conversion Event, the applicable market exchange rate for such Foreign Currency in effect (as nearly as feasible) at the time of the Conversion Event.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited pursuant to this Section 402 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities and any Coupons appertaining thereto.

Anything in this Section 402 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in clause (4)(a) of this Section 402 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 402.

Section 403. *Application of Trust Money.*

Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations deposited with the Trustee pursuant to Section 401 or 402 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the Coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, interest and Additional Amounts for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

Section 404. *Reinstatement.*

If the Trustee (or other qualifying trustee appointed pursuant to Section 402(4)(a)) or any Paying Agent is unable to apply any moneys or Government Obligations deposited pursuant to Section 401(1) or 402(4)(a) to pay any principal of or premium, if any, or interest, if any, on or Additional Amounts, if any, with respect to the Securities of any series by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities of such series shall be revived and reinstated as though no such deposit had occurred, until such time as the Trustee (or other qualifying trustee) or Paying Agent is permitted to apply all such moneys and Government Obligations to pay the principal of and premium, if any, and interest, if any, on and Additional Amounts, if any, in respect of the Securities of such series as contemplated by Sections 401 or 402 as the case may be, and Section 403; *provided, however*, that if the Company makes any payment of the principal of or premium, if any, or interest if any, on or Additional Amounts, if any, in respect of the Securities of such series following the reinstatement of its obligations as aforesaid, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the funds held by the Trustee (or other qualifying trustee) or Paying Agent.

Section 405. *Effect on Subordination Provisions.*

Unless otherwise expressly provided pursuant to Section 301 with respect to the Securities of any series, the provisions of Article Sixteen hereof, insofar as they pertain to the Securities of such series, and the Subordination Provisions established pursuant to Section 301(25) with respect to such series are hereby expressly made subject to the provisions for satisfaction and discharge set forth in Section 401 hereof and the provisions for defeasance and covenant defeasance set forth in Section 402 hereof and, anything herein to the contrary notwithstanding, upon the effectiveness of such satisfaction and discharge pursuant to Section 401 with respect to the Securities of such series or any such defeasance or covenant defeasance pursuant to Section 402 with respect to the Securities of or within such series, all of the Securities of such series (in the case of satisfaction and discharge pursuant to Section 401) or the Securities of such series as to which defeasance or covenant defeasance, as the case may be, shall have become effective shall thereupon cease to be so subordinated and shall no longer be subject to the provisions of Article Sixteen or the Subordination Provisions established pursuant to Section 301(25) with respect to such Securities and, without limitation to the foregoing, all moneys, Government Obligations and other securities or property deposited with the Trustee (or other qualifying trustee) in trust in connection with such satisfaction and discharge, defeasance or covenant defeasance, as the case may be, and all proceeds therefrom may be applied to pay the principal of, premium, if any, and interest, if any, on, and Additional Amounts, if any, with respect to such Securities as and when the same shall become due and payable notwithstanding the provisions of Article Sixteen or such Subordination Provisions.

ARTICLE FIVE

REMEDIES

Section 501. *Events of Default.*

“Event of Default”, wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) unless such event is specifically deleted or modified in or pursuant to the supplemental indenture, Board Resolution or Officers’ Certificate establishing the terms of such series pursuant to this Indenture:

- (1) default in the payment of any interest on, or any Additional Amounts payable in respect of any interest on, any of the Securities of such series or any Coupon appertaining thereto when such interest or such Additional Amounts, as the case may be, become due and payable (whether or not such payment is prohibited by the Subordination Provisions applicable thereto), and continuance of such default for a period of 30 days; or
 - (2) default in the payment of any principal of or premium, if any, on, or any Additional Amounts payable in respect of any principal of or premium, if any, on, any of the Securities of such series when due (whether at Maturity or otherwise and whether payable in cash or in shares of Common Stock or other securities or property), whether or not such payment is prohibited by the Subordination Provisions applicable thereto; or
 - (3) default in the deposit of any sinking fund payment or payment under any analogous provision when due with respect to any of the Securities of such series (whether or not such deposit or payment is prohibited by the Subordination Provisions applicable thereto); or
 - (4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or any Security of such series (other than a covenant or warranty for which the consequences of breach or nonperformance are addressed elsewhere in this Section 501 or a covenant or warranty which has expressly been included in this Indenture, whether or not by means of a supplemental indenture, solely for the benefit of Securities of a series other than such series), and continuance of such default or breach (without such default or breach having been waived in accordance of the provisions of this Indenture) for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or
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- (5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company or any Significant Subsidiary of the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary of the Company under any applicable Federal or State law, or appointing a custodian, receiver, conservator, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary of the Company or of any substantial part of the property of the Company or any Significant Subsidiary of the Company, or ordering the winding up or liquidation of the affairs of the Company or any Significant Subsidiary of the Company, and the continuance of any such decree or order for relief unstayed and in effect for a period of 60 consecutive days; or
 - (6) the commencement by the Company or any Significant Subsidiary of the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company or any
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Significant Subsidiary of the Company to the entry of a decree or order for relief in respect of the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company or any Significant Subsidiary of the Company, or the filing by the Company or any Significant Subsidiary of the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by the Company or any Significant Subsidiary of the Company to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, conservator, liquidator, assignee, trustee, sequestrator or similar official of the Company or any Significant Subsidiary of the Company or of any substantial part of the property of the Company or any Significant Subsidiary of the Company, or the making

by the Company or any Significant Subsidiary of the Company of an assignment for the benefit of creditors, or the taking of corporate action by the Company or any Significant Subsidiary of the Company in furtherance of any such action; or

(7) default in the delivery of any shares of Common Stock, together with cash in lieu of fractional shares, or any other securities or property (including cash) when required to be delivered upon conversion of any convertible Security of such series or upon the exchange of any Security of such series which is exchangeable for other securities or property (whether or not such delivery is prohibited by the Subordination Provisions applicable thereto), and continuance of such default for a period of 10 days; or

(8) any other Event of Default provided in or pursuant to this Indenture with respect to Securities of such series.

Section 502. *Acceleration of Maturity; Rescission and Annulment.*

If an Event of Default (other than an Event of Default specified in clause (5) or (6) of Section 501) with respect to Securities of any series occurs and is continuing, then either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series may declare the principal of all the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, and accrued and unpaid interest, if any, thereon to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal or such lesser amount, as the case may be, and such accrued and unpaid interest shall become immediately due and payable. If an Event of Default specified in clause (5) or (6) of Section 501 with respect to the Securities of any series occurs, then the principal of all of the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, and accrued and unpaid interest, if any, thereon shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of the Securities of such series.

At any time after Securities of any series have been accelerated and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum of money sufficient to pay (or, to the extent that the terms of the Securities of such series established pursuant to Section 301 expressly provide for payment to be made in shares of Common Stock or other securities or property, shares of Common Stock or other securities or property, together with cash in lieu of fractional shares or securities, sufficient to pay)

- (a) all overdue installments of any interest on any Securities of such series and any Coupons appertaining thereto which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto,
- (b) the principal of and any premium on any Securities of such series which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto and, to the extent permitted by applicable law, interest thereon at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities,
- (c) to the extent permitted by applicable law, interest upon installments of any interest, if any, which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities, and
- (d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 606; and
- (2) all Events of Default with respect to Securities of such series other than the non-payment of the principal of, any premium and interest on, and any Additional Amounts with respect to Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if:

- (1) default is made in the payment of any interest on, or any Additional Amounts payable in respect of any interest on, any Security or any Coupon appertaining thereto when such interest or Additional Amounts, as the case may be, shall have become due and payable and such default continues for a period of 30 days, or
- (2) default is made in the payment of any principal of or premium, if any, on, or any Additional Amounts payable in respect of any principal of or premium, if any, on, any Security at its Maturity, or
- (3) default is made in the deposit of any sinking fund payment when due,

the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities and any Coupons appertaining thereto, the whole amount of money then due and payable with respect to such Securities and any Coupons appertaining thereto, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest and Additional Amounts at the rate or respective rates, as the case may be, provided for or with respect to such Securities or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities, and, in addition thereto, such further amount of money as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due to the Trustee under Section 606.

If the Company fails to pay the money it is required to pay the Trustee pursuant to the preceding paragraph forthwith upon the demand of the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the money so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and any Coupons appertaining thereto and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities and any Coupons appertaining thereto, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any Coupons appertaining thereto by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or such Securities or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.

Section 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any overdue principal, premium, interest or Additional Amounts) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of the principal and any premium, interest and Additional Amounts owing and unpaid in respect of the Securities and any Coupons appertaining thereto and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or counsel) and of the Holders of Securities or any Coupons allowed in such judicial proceeding, and

(2) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities or any Coupons to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities or any Coupons, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 606.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or any Coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or Coupons or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or any Coupon in any such proceeding.

Section 505. Trustee May Enforce Claims without Possession of Securities or Coupons.

All rights of action and claims under this Indenture or any of the Securities or Coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or Coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every Holder of a Security or Coupon in respect of which such judgment has been recovered.

Section 506. *Application of Money Collected.*

Any money collected by the Trustee pursuant to this Article with respect to the Securities of any series shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, or any premium, interest or Additional Amounts, upon presentation of such Securities or the Coupons, if any, appertaining thereto, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 606;

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SECOND: To the payment of amounts then due and unpaid to the holders of Senior Indebtedness with respect to such series, to the extent required pursuant to the Subordination Provisions established with respect to the Securities of such series pursuant to Section 301(25);

THIRD: To the payment of the amounts then due and unpaid upon the Securities and any Coupons for principal and any premium, interest and Additional Amounts in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and Coupons for principal and any premium, interest and Additional Amounts;

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

Section 507. *Limitations on Suits.*

No Holder of any Security of any series or any Coupons appertaining thereto shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of such series;
- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of such series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or any Security to affect, disturb or prejudice the rights of any other such Holders or Holders of Securities of any other series, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 508. *Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts.*

Notwithstanding any other provision in this Indenture, the Holder of any Security or Coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of, any premium, if any, and (subject to Sections 305 and 307) interest, if any, on and any Additional Amounts with respect to such Security or such Coupon, as the case may be, on the respective Stated Maturity or Maturities therefor specified in such Security or Coupon (or, in the case of redemption, on the Redemption Date or, in the case of repayment pursuant to Article Thirteen hereof at the option of such Holder if provided in or pursuant to this Indenture, on the date such repayment is due) and, in the case of any Security which is convertible into or exchangeable for other securities or property, to convert or exchange, as the case may be, such Security in accordance with its terms, and to institute suit for the enforcement of any such payment and any such right to convert or exchange, and such right shall not be impaired without the consent of such Holder.

Section 509. *Restoration of Rights and Remedies.*

If the Trustee or any Holder of a Security or a Coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and each such Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and each such Holder shall continue as though no such proceeding had been instituted.

Section 510. *Rights and Remedies Cumulative.*

To the extent permitted by applicable law and except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to each and every Holder of a Security or a Coupon is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or of any Holder of any Security or Coupon to exercise any right or remedy accruing upon any Event of Default shall, to the extent permitted by applicable law, impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to any Holder of a Security or a Coupon may, to the extent permitted by applicable law, be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such Holder, as the case may be.

Section 512. *Control by Holders of Securities.*

The Holders of a majority in aggregate principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series and any Coupons appertaining thereto, provided that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of any series,
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (3) such direction is not unduly prejudicial to the rights of the other Holders of Securities of such series not joining in such action.

Section 513. *Waiver of Past Defaults.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series on behalf of the Holders of all the Securities of such series and any Coupons appertaining thereto may waive any past default hereunder with respect to such series and its consequences, except

- (1) a default in the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to, any Security of such series or any Coupons appertaining thereto, or
- (2) in the case of any Securities which are convertible into or exchangeable for Common Stock or other securities or property, a default in any such conversion or exchange, or
- (3) a default in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 514. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants that (to the extent that it may lawfully do so) it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or any other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal of or premium, if any, or interest, if any on or Additional Amounts, if any, with respect to any Securities as contemplated herein and therein or which may affect the covenants or the performance of this Indenture or the Securities; and the Company (to the extent that it may lawfully do so) expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee or the Holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 515. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and disbursements, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but

the provisions of this Section 515 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on or Additional Amounts, if any, with respect to any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date, and, in the case of repayment at the option of the Holder pursuant to Article Thirteen hereof, on or after the date for repayment) or for the enforcement of the right, if any, to convert or exchange any Security into Common Stock or other securities in accordance with its terms.

ARTICLE SIX

THE TRUSTEE

Section 601. *Certain Rights of Trustee.*

Subject to Sections 315(a) through 315(d) of the Trust Indenture Act:

- (1) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or a Company Order (in each case, other than delivery of any Security, together with any Coupons appertaining thereto, to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;
- (3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence shall be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;
- (4) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;
- (5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series or any Coupons appertaining thereto pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

- (6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;
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(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(9) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(10) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(11) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(12) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

Section 602. Notice of Defaults.

Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series entitled to receive reports pursuant to Section 703(3), notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any), or interest, if any, on, or Additional Amounts or any sinking fund installment with respect to, any Security of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the best interest of the Holders of Securities and Coupons of such series; and *provided, further*, that in the case of any default of the character specified in Section 501(4) or 501(8) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term “default” means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee’s certificate of authentication, and in any Coupons shall be taken as the statements of the Company and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or the Coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

Section 604. *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other Person.

Section 605. *Money Held in Trust.*

Except as provided in Section 403 and Section 1003, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and shall be held uninvested. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 606. *Compensation and Reimbursement.*

The Company agrees:

- (1) to pay to the Trustee from time to time reasonable compensation for all services rendered by the Trustee hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's negligence or bad faith; and
- (3) to indemnify each of the Trustee or any predecessor Trustee and their agents for, and to hold them harmless against, any loss, liability or reasonable expense (including, without limitation, the reasonable fees and disbursements of the Trustee's agents, legal counsel, accountants and experts) and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending themselves against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of their powers or duties hereunder, or in connection with enforcing the provisions of this Section, except to the extent that any such loss, liability or expense was due to the Trustee's negligence or bad faith.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, or premium or interest on or any Additional Amounts with respect to Securities or any Coupons appertaining thereto.

Any compensation or expense incurred by the Trustee after a default specified by Section 501(5) or (6) is intended to constitute an expense of administration under any then applicable bankruptcy or insolvency law. "Trustee" for purposes of this Section 606 shall include any predecessor Trustee but the negligence or bad faith of any Trustee shall not affect the rights of any other Trustee under this Section 606. The provisions of this Section 606 shall, to the extent permitted by law, survive any termination of this Indenture (including, without limitation, termination pursuant to any Bankruptcy Laws) and the resignation or removal of the Trustee.

Section 607. *Corporate Trustee Required; Eligibility.*

(1) There shall at all times be a Trustee hereunder that is a corporation, organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, eligible under Section 310(a)(1) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 subject to supervision or examination by Federal or state authority. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(2) The following indenture shall be considered specifically described herein for purposes of clause (i) of the proviso contained in Section 310(b)(1) of the Trust Indenture Act: Indenture dated as of _____ between the Company and _____, as successor trustee; and, pursuant to Section 310(b)(1)(C)(i) of the Trust Indenture Act, unless otherwise ordered by the Commission, an event of default by the Company under this Indenture will not disqualify the Trustee under this Indenture because it is a trustee under such other indenture.

Section 608. *Resignation and Removal; Appointment of Successor.*

(1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 609.

(2) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 609 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(3) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and the Company.

(4) If at any time:

(a) the Trustee shall fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Securities of any series after written request therefor by the Company or any Holder of a Security of such series who has been a bona fide Holder of a Security of such series for at least six months, or

(b) the Trustee shall cease to be eligible under Section 607 and shall fail to resign after written request therefor by the Company or any such Holder, or

(c) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

(5) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by or pursuant to a Board

Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 609. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 609, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders of Securities and accepted appointment in the manner required by Section 609, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(6) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Registered Securities, if any, of such series as their names and addresses appear in the Security Register and, if Securities of such series are issued as Bearer Securities, by publishing notice of such event once in an Authorized Newspaper in each Place of Payment located outside the United States. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 609. Acceptance of Appointment by Successor.

(1) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges, shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 1003, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 606.

(2) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any

other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor relates and subject to Section 1003 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, subject to its claim, if any, provided for in Section 606.

(3) Upon request of any Person appointed hereunder as a successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (1) or (2) of this Section, as the case may be.

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(4) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified and eligible under this Article.

Section 610. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder (provided that such corporation shall otherwise be qualified and eligible under this Article), without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any such successor to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities. In case any Securities shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Securities in either its own name or that of its predecessor Trustee.

Section 611. Appointment of Authenticating Agent.

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer, partial redemption, partial repayment, partial conversion or exchange for Common Stock or other securities or property, or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent shall be acceptable to the Company and, except as provided in or pursuant to this Indenture, shall at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to

act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, *provided* such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall (i) mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Registered Securities, if any, of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register, and (ii) if Securities of the series are issued as Bearer Securities, publish notice of such appointment at least once in an Authorized Newspaper in the place where such successor Authenticating Agent has its principal office if such office is located outside the United States. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section. If the Trustee makes such payments, it shall be entitled to be reimbursed for such payments, subject to the provisions of Section 606.

The provisions of Sections 308, 603 and 604 shall be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed with respect to one or more series of Securities pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

As Trustee

By: _____
As Authenticating Agent

By: _____
Authorized Signatory

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officers' Certificate of the Company), shall appoint in accordance with this Section an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Securities.

ARTICLE SEVEN

HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 701. *Company to Furnish Trustee Names and Addresses of Holders.*

In accordance with Section 312(a) of the Trust Indenture Act, the Company shall furnish or cause to be furnished to the Trustee

(1) semi-annually with respect to Securities of each series not later than _____ and _____ of the year or upon such other dates as are set forth in or pursuant to the Board Resolution or indenture supplemental hereto authorizing such series, a list, in each case in such form as the Trustee may reasonably require, of the names and addresses of Holders as of the applicable date, and

(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

provided, however, that so long as the Trustee is the Security Registrar no such list shall be required to be furnished.

Section 702. *Preservation of Information; Communications to Holders.*

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Every Holder of Securities or Coupons, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee, any Paying Agent or any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 312(c) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

Section 703. Reports by Trustee.

(1) Within 60 days after July 15 of each year commencing with the first July 15 following the first issuance of Securities pursuant to Section 301, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such July 15 with respect to any of the events specified in said Sections 313(a) and 313(b)(2) which may have occurred since the later of the immediately preceding July 15 and the date of this Indenture.

(2) The Trustee shall transmit the reports required by Section 313(a) of the Trust Indenture Act at the times specified therein.

(3) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and 313(d) of the Trust Indenture Act.

Section 704. Reports by Company.

(a) The Company, pursuant to Section 314(a) of the Trust Indenture Act, shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company, with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(b) The Company intends to file the reports referred to in Section 7.04(a) hereof with the Commission in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, shall constitute delivery by the Company of such reports to the Trustee and Holders in compliance with the provision of Section 7.04(a) and TIA Sections 314(a). Notwithstanding anything to the contrary herein, the

Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee pursuant to this Section 7.04(b) shall be solely for the purposes of compliance with this Section 7.04(b) and with TIA Section 314(a). The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or of any matter determinable from the content thereof (and the Trustee shall not have any duty to ascertain or inquire as to such content or matter), including the Company's compliance with any of its covenants hereunder, as to which the Trustee is conclusively entitled to rely upon Officers' Certificates.

ARTICLE EIGHT

CONSOLIDATION, MERGER AND SALES

Section 801. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not, in any transaction or series of related transactions, consolidate with or merge into any Person or sell, assign, transfer, lease or otherwise convey all or substantially all its properties and assets to any Person, unless:

- (1) either (A) the Company shall be the continuing Person (in the case of a merger), or (B) the successor Person (if other than the Company) formed by such consolidation or into which the Company is merged or which acquires by sale, assignment, transfer, lease or other conveyance all or substantially all the properties and assets of the Company shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor corporation and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, any premium and interest on, and any Additional Amounts with respect to, all the Outstanding Securities and the due and punctual performance and observance of every obligation in this Indenture and the Outstanding Securities on the part of the Company to be performed or observed, and which supplemental indenture shall provide for conversion or exchange rights in accordance with the provisions of the Securities of any series that are convertible or exchangeable into Common Stock or other securities;
- (2) immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Company or any Subsidiary as a result of that transaction as having been incurred by the Company or any Subsidiary at the time of the transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and
- (3) either the Company or the successor Person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease or other conveyance and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, assignment, transfer, lease or other conveyance of all or any of the properties and assets of one or more Subsidiaries of the Company (other than to the Company or another Subsidiary), which, if such properties and assets were owned by the Company, would constitute all or substantially all of the Company's properties and assets, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

Section 802. *Successor Person Substituted for Company.*

Upon any consolidation by the Company with or merger of the Company into any other Person or any sale, assignment, transfer, lease or conveyance of all or substantially all of the properties and assets of the Company to any Person in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, assignment, transfer, lease or other conveyance is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture, the Securities and the Coupons.

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ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 901. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders of Securities or Coupons, the Company (when authorized by or pursuant to a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company contained herein and in the Securities or to evidence the addition or release of any guarantor; or
 - (2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company with respect to all or any series of Securities issued under this Indenture (as shall be specified in such supplemental indenture or indentures); or
 - (3) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of, any premium or interest on or any Additional Amounts with respect to Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be exchanged for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated or global form, provided any such action shall not adversely affect the interests of the Holders of Securities of any series or any Coupons appertaining thereto; or
 - (4) to establish the form or terms of Securities of any series and any Coupons appertaining thereto as permitted by Sections 201 and 301, including, without limitation, any Subordination Provisions and any conversion or exchange provisions applicable to Securities which are convertible into or exchangeable for other securities or property, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other series of Securities then Outstanding); or
 - (5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 609; or
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(6) (a) to cure any ambiguity or to correct or supplement any provision herein which may be defective or which may be inconsistent with any other provision herein, or (b) to make any other provisions with respect to matters or questions arising under this Indenture which shall not adversely affect the interests of the Holders of Securities of any series then Outstanding or any Coupons appertaining thereto in any material respect; or

(7) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture); or

(8) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance, covenant defeasance and/or satisfaction and discharge of any series of Securities pursuant to Article Four, *provided* that any such action shall not adversely affect the interests of any Holder of a Security of such series and any Coupons appertaining thereto or any other Security or Coupon in any material respect; or

(9) to secure or otherwise or to add guarantees for the benefit of the Securities; or

(10) to make provisions with respect to conversion or exchange rights of Holders of Securities of any series; or

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(11) to amend, supplement or eliminate any provision contained herein or in any supplemental indenture or in any Securities (which amendment or supplement may apply to one or more series of Securities or to one or more Securities within any series as specified in such supplemental indenture or indentures), *provided* that such amendment, supplement or elimination does not apply to any Outstanding Security issued prior to the date of such supplemental indenture and entitled to the benefits of such provision; or

(12) in the case of any series of Securities which are convertible into or exchangeable for Common Stock or other securities or property, to safeguard or provide for the conversion or exchange rights, as the case may be, of such Securities in the event of any reclassification or change of outstanding shares of Common Stock or any merger, consolidation, statutory share exchange or combination of the Company with or into another Person or any sale, lease, assignment, transfer, disposition or other conveyance of all or substantially all of the properties and assets of the Company to any other Person or other similar transactions, if expressly required by the terms of such series of Securities established pursuant to Section 301; or

(13) to add to, delete from or revise the conditions, limitations or restrictions on issue, authentication and delivery of Securities; or

(14) to conform any provision in an indenture to the requirements of the Trust Indenture Act; or

(15) to make any change that does not adversely affect the legal rights under an indenture of any Holder of Securities of any series issued under that indenture.

Section 902. *Supplemental Indentures with Consent of Holders.*

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or pursuant to a Board Resolution), and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of the Securities of such series or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; *provided*, that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall

(1) change the Stated Maturity of the principal of, or premium, if any, or any installment of interest, if any, on, or any Additional Amounts, if any, with respect to, any Security, or reduce the principal amount thereof or the premium, if any, thereon or the rate (or modify the calculation of such rate) of interest thereon, or reduce the amount payable upon redemption thereof at the option of the Company or repayment thereof at the option of the Holder, or reduce any Additional Amounts payable with respect thereto, or change the obligation of the Company to pay Additional Amounts pursuant to Section 1004 (except as contemplated by Section 801(1) and permitted by Section 901(1)), or reduce the amount of the principal of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 or the amount thereof provable in bankruptcy pursuant to Section 504, or adversely affect the right of repayment at the option of any Holder as contemplated by Article Thirteen, or extend the time of payment of interest on any Security or any Additional Amounts, or change any of the conversion, exchange or redemption provisions of any Security or change the Place of Payment where or the Currency in which the principal of, any premium or interest on, or any Additional Amounts with respect to any Security is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date or, in the case of repayment pursuant to Article Thirteen at the option of the Holder, on or after the date for repayment) in each case as such Stated Maturity, Redemption Date or date for repayment may, if applicable, be extended in accordance with the terms of such Security or any Coupon appertaining thereto, or in the case of any Security which is convertible into or exchangeable for other securities or property, impair the right to institute suit to enforce the right to convert or exchange such Security in accordance with its terms or release any guarantors from their guarantees of the Securities, or, except as contemplated in any supplemental indenture, make any change in a guarantee of a Security that would adversely affect the interests of the Holders of those Securities, or modify the ranking or priority of the Securities in a manner adverse to the Holders of the Securities, or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in Section 513 or 1010 of this Indenture, or reduce the requirements of Section 1504 for quorum or voting, or

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(3) modify any of the provisions of this Section, Section 513 or Section 1010, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which shall have been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Anything in this Indenture to the contrary notwithstanding, if more than one series of Securities is Outstanding, the Company shall be entitled to enter into a supplemental indenture under this Section 902 with respect to any one or more series of Outstanding Securities without entering into a supplemental indenture with respect to any other series of Outstanding Securities.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. *Execution of Supplemental Indentures.*

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel to the effect that the execution of such supplemental indenture is authorized or permitted by this Indenture and that such supplemental indenture has been duly authorized, executed and delivered by, and is a valid, binding and enforceable obligation of, the Company, subject to customary exceptions. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of a Security theretofore or thereafter authenticated and delivered hereunder and of any Coupon appertaining thereto shall be bound thereby.

Section 905. *Reference in Securities to Supplemental Indentures.*

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 906. *Effect on Senior Indebtedness.*

No supplemental indenture shall directly or indirectly modify or eliminate the Subordination Provisions or the definition of "Senior Indebtedness" applicable with respect to the Securities of any series in any manner which might terminate or impair the subordination of such series of Securities to such Senior Indebtedness without the prior written consent of the Holders of such Senior Indebtedness.

Section 907. *Conformity with Trust Indenture Act.*

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE TEN

COVENANTS

Section 1001. *Payment of Principal, Premium, Interest and Additional Amounts.*

The Company covenants and agrees for the benefit of the Holders of the Securities of each series that it will duly and punctually pay the principal of, any premium and interest on and any Additional Amounts with respect to the Securities of such series, whether payable in cash, shares of Common Stock or other securities or property, in accordance with the terms thereof, any Coupons appertaining thereto and this Indenture. Any interest due on any Bearer Security on or before the Maturity thereof, and any Additional Amounts payable with respect to such interest,

shall be payable only upon presentation and surrender of the Coupons appertaining thereto for such interest as they severally mature.

Section 1002. *Maintenance of Office or Agency.*

The Company shall maintain in each Place of Payment for any series of Securities an Office or Agency where Securities of such series (but not Bearer Securities, except as otherwise provided below, unless such Place of Payment is located outside the United States) may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange, where Securities of such series that are convertible or exchangeable may be surrendered for conversion or exchange, and where notices and demands to or upon the Company in respect of the Securities of such series relating thereto and this Indenture may be served, provided that, if (i) the Borough of Manhattan, the City of New York is a Place of Payment for the Securities of any series, (ii) there shall be another Place of Payment in the United States of America for such Securities in addition to the Borough of Manhattan, the City of New York, and (iii) all Securities of such series are originally issued solely in the form of one or more permanent global Securities, then the Company shall not be required to maintain any such office or agency in the Borough of Manhattan, the City of New York unless and until all or any portion of such global Securities shall be exchanged for or otherwise issued as definitive certificated Securities of such series as contemplated by the last paragraph of this Section 1002. If Securities of a series are issuable as Bearer Securities, the Company shall maintain, subject to any laws or regulations applicable thereto, an Office or Agency in a Place of Payment for such series which is located outside the United States where Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment; *provided, however*, that if the Securities of such series are listed on the London Stock Exchange or the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Company shall maintain a Paying Agent in London, Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of such series are listed on such exchange. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such Office or Agency. If at any time the Company shall fail to maintain any such required Office or Agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of such series and any Coupons appertaining thereto may be presented and surrendered for payment at the place specified for the purpose with respect to such Securities as provided in or pursuant to this Indenture, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

Except as otherwise provided in or pursuant to this Indenture, no payment of principal, premium, interest or Additional Amounts with respect to Bearer Securities shall be made at any Office or Agency in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; *provided, however*, if amounts owing with respect to any Bearer Securities shall be payable in Dollars, payment of principal of, any premium or interest on and any Additional Amounts with respect to any such Security may be made at the Corporate Trust Office of the Trustee or any Office or Agency designated by the Company in the Borough of Manhattan, The City of New York, if (but only if) payment of the full amount of such principal, premium, interest or Additional Amounts at all offices outside the United States maintained for such purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other Offices or Agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an Office or Agency in each Place of Payment for Securities of any series for

such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other Office or Agency.

Unless otherwise provided in or pursuant to this Indenture, the Company hereby designates the Borough of Manhattan, the City of New York as a Place of Payment for each series of Securities, initially appoints the Corporate Trust Office of the Trustee in the Borough of Manhattan, the City of New York as the Company's Office or Agency in the Borough of Manhattan, The City of New York for such purpose and initially appoints the Trustee as the Security Registrar for each series of Securities and, if the Securities of any series are convertible into or exchangeable for Common Stock or other securities or property, initially appoints the Trustee as conversion or exchange agent, as the case may be, for the Securities of such series. The Company may subsequently appoint a different Office or Agency in the Borough of Manhattan, The City of New York and, as provided in Section 305, may remove and replace from time to time the Security Registrar.

As set forth above in this Section 1002, and unless otherwise provided pursuant to Section 301 with respect to any series of Securities, in the event that the Securities of a series are originally issued solely in the form of one or more permanent global Securities and if at any time thereafter Securities of such series are issued in definitive certificated form in exchange for all or any portion of such global Securities (whether pursuant to Section 305 or otherwise pursuant to the terms of such Securities), the Company shall, at all times from and after the date of the first such exchange until such time as no Securities of such series in definitive certificated form are Outstanding, establish and maintain an Office or Agency in the Borough of Manhattan, the City of New York (in addition to any other Offices or Agencies the Company is required to maintain in respect of such Securities) where Securities of such series may be surrendered and where notices and demands in respect of Securities of such series and this Indenture may be served for the purposes specified in, and as contemplated by, the first paragraph of this Section 1002.

Section 1003. Money for Securities Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it shall, on or before each due date of the principal of, any premium or interest on, or any Additional Amounts with respect to any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the Currency or Currencies in which the Securities of such series are payable sufficient to pay the principal, any premium, interest and Additional Amounts, as the case may be, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and shall promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it shall, on or prior to each due date of the principal of, or any premium or interest on or any Additional Amounts with respect to, any Securities of such series, deposit with any Paying Agent a sum (in the Currency or Currencies described in the preceding paragraph) sufficient to pay the principal, premium, interest and Additional Amounts, as the case may be, so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company shall cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent shall:

- (1) hold all sums held by it for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in or pursuant to this Indenture;
 - (2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any payment of principal, any premium or interest on or any Additional Amounts with respect to the Securities of such series; and
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(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

To the extent that the terms of any Securities established pursuant to Section 301 provide that any principal of, or premium or interest, if any, on or any Additional Amounts with respect to any such Securities is or may be payable in Common Stock or other securities or property, then the provisions of this Section 1003 shall apply, mutatis mutandis, to such Common Stock or other securities or property.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Except as otherwise provided herein or pursuant hereto, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium or interest on or any Additional Amounts with respect to any Security of any series or any Coupon appertaining thereto and remaining unclaimed for two years after such principal or such premium or interest or Additional Amount shall have become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security or any Coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may, not later than 30 days after the Company's request for such repayment, at the expense of the Company cause to be published once, in an Authorized Newspaper in each Place of Payment for such series or to be mailed to Holders of Registered Securities of such series, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing nor shall it be earlier than two years after such principal and any premium or interest or Additional Amounts shall have become due and payable, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 1004. *Additional Amounts.*

If any Securities of a series provide for the payment of Additional Amounts, the Company agrees to pay to the Holder of any such Securities or any Coupon appertaining thereto Additional Amounts as provided in or pursuant to this Indenture or such Securities. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or any Coupon, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of Additional Amounts (if applicable) in any provision hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise provided in or pursuant to this Indenture or the Securities of any series, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to such series of Securities (or if the Securities of such series shall not bear interest prior to Maturity, the first day on which a payment of principal is made), and at least 10 days prior to each date of payment of principal or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company shall furnish to the Trustee and the Paying Agent or Paying Agents, if other than the Trustee, an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such

payment of principal of and premium, if any, or interest, if any, on the Securities of such series shall be made to Holders of Securities of such series or the Coupons appertaining thereto who are United States Aliens without withholding or deduction for or on account of any tax, assessment or other governmental charge described in the Securities of such series or pursuant to Section 301 with respect to the Securities of such series. If any such withholding or deduction shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on or deducted from such payments to such Holders of Securities or Coupons, and the Company agrees to pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. The Company covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section. Nothing in this Section 1004 or elsewhere in this Indenture shall limit the obligation of the Company to pay Additional Amounts with respect to the Securities of any series pursuant to the terms, if any, established pursuant to Section 301 with respect to the Securities of such series.

Section 1005. *Corporate Existence.*

Subject to Article Eight, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) the corporate existence of the Company, (ii) the existence (corporate or other) of each Significant Subsidiary of the Company and (iii) the rights (charter and statutory), licenses and franchises of the Company and each of its Significant Subsidiaries; *provided, however*, that the Company shall not be required to preserve the existence (corporate or other) of any of its Significant Subsidiaries or any such right, license or franchise of the Company or any of its Significant Subsidiaries if the Board of Directors of the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Significant Subsidiaries taken as a whole and that the loss thereof will not be disadvantageous in any material respect to the Holders.

Section 1006. *Maintenance of Properties.*

The Company will, and will cause each Significant Subsidiary to, cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, that nothing in this Section shall prevent the Company or any Significant Subsidiary from discontinuing the operation and maintenance of any of their respective properties if such discontinuance is, in the judgment of the Board of Directors of the Company or of any Significant Subsidiary, as the case may be, desirable in the conduct of its business.

Section 1007. *Waiver of Certain Covenants.*

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1002 to 1006, inclusive, with respect to the Securities of any series and, if expressly provided pursuant to Section 301(18), any additional covenants applicable to the Securities of such series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series, by Act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1008. *Company Statement as to Compliance.*

The Company shall deliver to the Trustee, within 180 days after the end of each fiscal year, a written statement (which need not be contained in or accompanied by an Officers' Certificate) signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating whether or not, to the best of his or her knowledge, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to notice requirements or periods of grace) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which he or she may have knowledge.

ARTICLE ELEVEN
REDEMPTION OF SECURITIES

Section 1101. *Applicability of Article.*

Redemption of Securities of any series at the option of the Company as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and (except as otherwise provided herein or pursuant hereto) this Article.

Section 1102. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of less than all of the Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed and, in the event that the Company shall determine that the Securities of any series to be redeemed shall be selected from Securities of such series having the same issue date, interest rate or interest rate formula, Stated Maturity and other terms (the "Equivalent Terms"), the Company shall notify the Trustee of such Equivalent Terms.

In the case of any redemption of Securities (A) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture or (B) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish to the Trustee an Officers' Certificate evidencing compliance with such restriction or condition.

Section 1103. *Selection by Trustee of Securities to be Redeemed.*

If less than all of the Securities of any series are to be redeemed or if less than all of the Securities of any series with Equivalent Terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series or from the Outstanding Securities of such series with Equivalent Terms, as the case may be, not previously called for redemption, by lot or such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; *provided, however*, that no such partial redemption shall reduce the portion of the principal amount of a Security of such series not redeemed to less than the minimum denomination for a Security of such series established herein or pursuant hereto.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal of such Securities which has been or is to be redeemed.

Unless otherwise specified in or pursuant to this Indenture or the Securities of any series, if any Security selected for partial redemption is converted or exchanged for Common Stock or other securities or property in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted or exchanged portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

Section 1104. *Notice of Redemption.*

Notice of redemption shall be given in the manner provided in Section 106, not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice by mailing in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portions thereof.

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Any notice that is mailed to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption shall state:

- (1) the Redemption Date,
 - (2) the Redemption Price,
 - (3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,
 - (4) that, in case any Security is to be redeemed in part only, on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,
 - (5) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Security or portion thereof to be redeemed, together (if applicable) with accrued and unpaid interest, if any, thereon (subject, if applicable, to the provisos to the first paragraph of Section 1106), and, if applicable, that interest thereon shall cease to accrue on and after said date,
 - (6) the place or places where such Securities, together (in the case of Bearer Securities) with all Coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and any accrued interest and Additional Amounts pertaining thereto,
 - (7) that the redemption is for a sinking fund, if such is the case,
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(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all Coupons maturing subsequent to the date fixed for redemption or the amount of any such missing Coupon or Coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Trustee and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on the Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Company, on which such exchanges may be made,

(10) in the case of Securities of any series that are convertible or exchangeable into Common Stock or other securities or property, the then current conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such series to be redeemed will commence or terminate, as applicable, and the place or places where and the Persons to whom such Securities may be surrendered for conversion or exchange,

(11) the CUSIP number or the Euroclear or the Cedel reference numbers of such Securities, if any (or any other numbers used by a Depository to identify such Securities), and

(12) if the Redemption Price or any portion thereof shall be payable, at the option of the Company or any Holders, in cash or in Common Stock or other securities or property (or a combination thereof), a statement as to whether the Company has elected to pay the Redemption Price in cash or Common Stock or other securities or property or a combination thereof and, if applicable, the portion of the Redemption Price that is to be paid in cash, Common Stock or other securities or property.

A notice of redemption published as contemplated by Section 106 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request delivered at least 10 days before the date such notice is to be given (unless a shorter period shall be acceptable to the Trustee), by the Trustee in the name and at the expense of the Company.

Section 1105. Deposit of Redemption Price.

On or prior to noon (local time in New York City) on any Redemption Date, the Company shall deposit, with respect to the Securities of any series called for redemption pursuant to Section 1104, with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money in the applicable Currency sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date, unless otherwise specified pursuant to Section 301 for or in the Securities of such series) any accrued interest on and Additional Amounts with respect to, all such Securities or portions thereof which are to be redeemed on that date, except that, if the Securities of such series are convertible or exchangeable into Common Stock or other securities or property, no such deposit shall be required with respect to any such Securities (or portions thereof) which have been converted or exchanged prior to such Redemption Date.

Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed (except, in the case of Securities which are convertible or exchangeable into Common Stock or other securities or property, any such Securities which shall have been so converted or exchanged prior to the applicable Redemption Date) shall, on the

Redemption Date, become due and payable at the Redemption Price therein specified, together with (unless otherwise provided with respect to the Securities of such series pursuant to Section 301) accrued and unpaid interest, if any, thereon and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest, if any) such Securities shall cease to bear interest and the Coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all Coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with, unless otherwise provided in or pursuant to this Indenture, any accrued and unpaid interest thereon and Additional Amounts with respect thereto to but excluding the Redemption Date; *provided, however*, that, except as otherwise provided in or pursuant to this Indenture or the Bearer Securities of such series, installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of Coupons for such interest (at an Office or Agency located outside the United States except as otherwise provided in Section 1002), and *provided, further*, that, except as otherwise specified in or pursuant to this Indenture or the Registered Securities of such series, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price or, at the option of the Company, after payment to the Trustee for the benefit of the Company of, an amount equal to the face amount of all such missing Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing Coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; *provided, however*, that any interest or Additional Amounts represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an Office or Agency for such Security located outside of the United States except as otherwise provided in Section 1002.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium, until paid, shall bear interest from the Redemption Date at the rate prescribed therefor in the Security or, if no rate is prescribed therefor in the Security, at the rate of interest, if any, borne by such Security.

Section 1107. *Securities Redeemed in Part.*

Any Registered Security which is to be redeemed only in part shall be surrendered at any Office or Agency for such Security (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Security in global form is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to the Depository for such Security in global form as shall be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Security in global form in a denomination equal to and in exchange for the unredeemed portion of the principal of the Security in global form so surrendered.

ARTICLE TWELVE

SINKING FUNDS

Section 1201. *Applicability of Article.*

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series that by its terms provides for such a sinking fund, except as otherwise permitted or required in or pursuant to this Indenture or any Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and this Indenture.

Section 1202. *Satisfaction of Sinking Fund Payments with Securities.*

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any series to be made pursuant to the terms of such Securities (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Company), together in the case of any Bearer Securities of such series with all unmatured Coupons appertaining thereto, and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such series of Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 1202, the principal amount of Securities of such series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such series for redemption, except upon Company Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, *provided, however,* that the Trustee or such Paying Agent shall at the request of the Company from time to time pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that series purchased by the Company having an unpaid principal amount equal to the cash payment requested to be released to the Company.

Section 1203. *Redemption of Securities for Sinking Fund.*

Not less than 75 days prior to each sinking fund payment date for any series of Securities, the Company shall deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 1202, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 60 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN**REPAYMENT AT THE OPTION OF HOLDERS***Section 1301. Applicability of Article.*

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Section 1301, in connection with any repayment of Securities, the Company may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the applicable repayment date an amount not less than the repayment price payable by the Company on repayment of such Securities, and the obligation of the Company to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

Unless otherwise expressly stated in this Indenture or pursuant to Section 301 with respect to the Securities of any series or unless the context otherwise requires, all references in this Indenture to the repayment of Securities at the option of the Holders thereof (and all references of like import) shall be deemed to include a reference to the repurchase of Securities at the option of the Holders thereof.

ARTICLE FOURTEEN**SECURITIES IN FOREIGN CURRENCIES***Section 1401. Applicability of Article.*

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same Currency or (ii) any distribution to Holders of Securities of any series in which not all of such Securities are denominated in the same Currency, in the absence of any provision to the contrary in or pursuant to this Indenture or the Securities of such series, any amount in respect of any Security denominated in a Currency other than Dollars shall be treated for any such action, determination or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

ARTICLE FIFTEEN

MEETINGS OF HOLDERS OF SECURITIES

Section 1501. *Purposes for Which Meetings May Be Called.*

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other Act provided by this Indenture to be made, given or taken by Holders of Securities of such series.

Section 1502. *Call, Notice and Place of Meetings.*

(1) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1501, to be held at such time and at such place in the Borough of Manhattan, The City of New York, or, if Securities of such series have been issued in whole or in part as Bearer Securities, in London or in such place outside the United States as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(2) In case at any time the Company (by or pursuant to a Board Resolution) or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1501, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of or made the first publication of the notice of such meeting within 21 days after receipt of such request (whichever shall be required pursuant to Section 106) or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or, if Securities of such series are to be issued as Bearer Securities, in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause (1) of this Section.

Section 1503. *Persons Entitled to Vote at Meetings.*

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 1504. *Quorum; Action.*

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting or duly reconvened meeting of Holders of Securities of such series; *provided, however*, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of at least 66- 2/3% in principal amount of the Outstanding Securities of a series, the Persons entitled to vote 66- 2/3% in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1502(1), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state

expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; *provided, however*, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other Act which this Indenture expressly provides may be made, given or taken by the Holders of at least 66- 2/3% in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly convened and at which a quorum is present as aforesaid only by the affirmative vote of the Holders of at least 66- 2/3% in principal amount of the Outstanding Securities of that series; and *provided, further*, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other Act which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of such series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the Coupons appertaining thereto, whether or not such Holders were present or represented at the meeting.

Section 1505. *Determination of Voting Rights; Conduct and Adjournment of Meetings.*

(1) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of such series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(2) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 1502(2), in which case the Company or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(3) At any meeting, each Holder of a Security of such series or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. If the Securities of such series are issuable in minimum denominations of less than \$1,000, then a Holder of such a Security in a principal amount of less than \$1,000 shall be entitled to a fraction

of one vote which is equal to the fraction that the principal amount of such Security bears to \$1,000. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(4) Any meeting of Holders of Securities of any series duly called pursuant to Section 1502 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

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Section 1506. Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1502 and, if applicable, Section 1504. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE SIXTEEN

SUBORDINATION OF SECURITIES

Section 1601. Agreement to Subordinate.

The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of Securities of any series by his acceptance thereof, likewise covenants and agrees, that the payment of the principal of (and premium, if any) and interest, if any (including amounts payable on redemption or repurchase), on, and Additional Amounts, if any, in respect of each and all of the Securities of such series shall be expressly subordinated, to the extent and in the manner provided in the Subordination Provisions established with respect to the Securities of such series pursuant to Section 301(25) hereof, in right of payment to the prior payment in full of all Senior Indebtedness with respect to such series.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

SUSSEX BANCORP

By: _____

Name:

Title:

[NAMES OF TRUSTEE],

as Trustee

By: _____

Name:

Title:

Exhibit 10.7

**SUPPLEMENTAL EXECUTIVE RETIREMENT AGREEMENT
FOR ANTHONY J. LABOZZETTA**

This Supplemental Executive Retirement Agreement (the "Agreement") is made this 20th day of July, 2011, by and between Sussex Bancorp, an Employer having its principal place of business at Franklin, New Jersey (the "Employer") and Anthony J. Labozzetta (the "Participant").

1. **Nature and Purpose of Agreement** The Participant currently serves as the Chief Executive Officer of the Employer and the Employer hereby wishes to provide the Participant with an incentive-driven deferred compensation vehicle that will provide him the opportunity to accumulate significant retirement funds in the event the Participant achieves the specified goals and meets the requirements set forth herein. The Agreement hereinafter set forth is intended to conform to the requirements of Section 409A.

 2. **Definitions** The following definitions shall apply:
 - (a) **"Account"** shall mean the Participant's interest in the Agreement as represented by the sum of the amounts described in Paragraphs (i) and (ii):
 - (i) the sum of the Employer contributions made in accordance with Section 3;
 - (ii) the sum of the interest credited to the amounts specified under Paragraph (i) in accordance with Section 4.

 - (b) **"Agreement Year"** shall mean the Fiscal Year that commences on the Effective Date and each Fiscal Year thereafter.

 - (c) **"Beneficiary"** shall mean the beneficiary or beneficiaries designated by the Participant in writing prior to his death or, failing such designation, the Participant's estate.

 - (d) **"Board"** shall mean the Board of Directors of the Employer.

 - (e) **"Bona Fide Leave of Absence"** shall mean a leave of absence for which there shall be a reasonable expectation that the employee shall return to perform services for the Employer. If the period of leave exceeds six months and the individual does not retain a right to reemployment under an applicable statute or by contract, the employment relationship shall be deemed to terminate on the first date immediately following such six-month period. Notwithstanding the foregoing, where a leave of absence shall be due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, where such impairment causes the employee to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a 29-month period of absence may be substituted for such six-month period.

 - (f) **"Cause"** shall mean
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- (i) intentional and egregious neglect of duty or dishonesty by the Participant;
 - (ii) any act of fraud, embezzlement or theft by the Participant;
 - (iii) indictment of a felony by the Participant if such felony is in connection with a crime against the Employer; or
 - (iv) conviction of a felony by the Participant if such felony is in connection with a crime not related to the Employer.
- (g) **“Code”** shall mean the Internal Revenue Code of 1986, as amended from time.
- (h) **“Committee”** shall mean the Board or the person or persons appointed by the Board to administer the Plan.
- (i) **“Controlled or Affiliated Service Group”** shall mean
- (i) **“Controlled Group”** - Any group of business entities under common control, including but not limited to proprietorships and partnerships, or a controlled group of corporations within the meaning of Sections 414(b), (c) and (o) of the Code.
 - (ii) **“Affiliated Service Group”** - Any group of business entities within the meaning of Section 414(m) of the Code.
- (j) **“Disability”** shall mean any medically determinable physical or mental impairment which:
- (i) causes the Participant to be unable to engage in any substantial gainful activity and can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or
 - (ii) can be expected to result in death or can be expected to last for a continuous period of not less than 12 months and for which the Participant is receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Employer.
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The Participant shall be deemed to have incurred a Disability if determined to be totally disabled by the Social Security Administration or if determined to be disabled in accordance with a disability insurance program, provided that the definition of disability applied under such disability insurance program complies with the requirements of the foregoing Paragraphs (i) or (ii).

- (k) **“Effective Date”** shall mean January 1, 2011.

 - (l) **“Employer and its Affiliates”** shall mean the Employer and any other business entity in a Controlled or Affiliated Service Group which includes the Employer.

 - (m) **“Fiscal Year”** shall mean the Employer’s fiscal year, which begins on each January 1 and ends on the subsequent December 31.

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 - (n) **“Incentive Plan”** shall mean the Employer’s Executive Incentive Compensation Plan.

 - (o) **“Normal Retirement Date”** shall mean the first day of any month coinciding with or next following the date the Participant attains age 65.

 - (p) **“Resignation for Good Reason”** shall mean the Participant’s resignation from the Employer, provided that
 - (i) the Participant is not in breach of his employment agreement with the Employer;

 - (ii) the resignation is being tendered in response to the Employer (A) reassigning the Participant to a position of lesser rank or status than Chief Executive Officer, (B) relocating the Participant’s principal place of employment by more than fifty miles from its location on the date hereof, or (C) reducing the Participant’s compensation or other benefits below the level specified in the Participant’s employment agreement.

 - (iii) upon the occurrence of any of the events specified in Paragraph (ii), the Participant provides the Employer with written notice of his intention to resign within thirty days of the applicable event.

 - (q) **“Salary”** shall mean the Participant’s base salary and shall not include any bonuses, incentive pay, fringe benefits or any other special forms of compensation.
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- (r) **“Section 409A”** shall mean Section 409A of the Code, as the same may be amended from time to time, and any successor statute to such section of the Code. References to Section 409A or any requirement under Section 409A, as the same may be interpreted, construed or applied to this Agreement at any particular time, shall be deemed to mean and include, to the extent then applicable and then in force and effect (but not to the extent overruled, limited or superseded), published rulings and similar announcements issued by the Internal Revenue Service under or interpreting Section 409A, regulations issued by the Secretary of the Treasury under or interpreting Section 409A, decisions by any court of competent jurisdiction involving a Participant or a beneficiary and any closing agreement made under Section 7121 of the Code that shall be approved by the Internal Revenue Service and involves a Participant, all as determined by the Committee in good faith, which determination may (but shall not be required to) be made in reliance on the advise of such tax counsel or other tax professional(s) with whom the Committee from time to time may elect to consult with respect to any such matter.
- (s) **“Specified Employee”** shall mean a Participant who, as of the date of the Participant’s Termination of Employment, is a key employee of an Employer and its Affiliates any stock of which is “publicly traded on an established securities market” or otherwise. For purposes of this Paragraph (s), a Participant is a key employee if the Participant meets the requirements of Code Section 416(i)(1)(A)(i), (ii), or (iii) (applied in accordance with the regulations thereunder and disregarding Section 416(i)(5)) at any time during the 12-month period

ending on a Specified Employee identification date. If a Participant is a key employee as of a Specified Employee identification date, the Participant shall be treated as a Specified Employee for purposes of this paragraph (s) for the entire 12-month period beginning on the Specified Employee effective date.

For purposes of this Paragraph (s), the following definitions and rules shall apply:

- (i) Definition of “stock of which is publicly traded on an established securities market”. In addition to stock that is traded on established U.S. markets, this term also includes stock that is publicly traded only on a foreign exchange or is traded on a U.S. exchange only as American depositary receipts or American depositary shares (ADRs).
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- (ii) Definition of compensation. For purposes of identifying a Specified Employee by applying the requirements of Section 416(i)(1)(A)(i), (ii), and (iii), the definition of compensation under Section 1.415(c)-2(a) shall be used, applied as if the Employer and its Affiliates were not using any safe harbor provided in Section 1.415(c)-2(d), were not using any of the special timing rules provided in Section 1.415(c)-2(e), and were not using any of the special rules provided in Section 1.415(c)-2(g). Notwithstanding the foregoing, an Employer and its Affiliates may elect to use any available definition of compensation under Section 415 and the regulations thereunder in accordance with the election requirements set forth in Paragraph (iv) of this section, including any available safe harbor and any available election under the timing rules or special rules, provided that the definition shall be applied consistently to all employees of the Employer and its Affiliates for purposes of identifying Specified Employees. An Employer and its Affiliates may elect to use such an alternative definition regardless of whether another definition of compensation is being used for purposes of a qualified plan sponsored by the Employer and its Affiliates. However, once a list of Specified Employees has become effective, the Employer and its Affiliates cannot change the definition of compensation for purposes of identifying Specified Employees for the period with respect to which such list is effective.
- (iii) Specified Employee identification date. Unless another date shall be designated in accordance with the requirements of Paragraphs (iv) and (v) of this section, the Specified Employee identification date shall be December 31. An Employer and its Affiliates may designate in accordance with the requirements of Paragraph (iv) of this Section any other date as the Specified Employee identification date, provided that an Employer and its Affiliates must use the same Specified Employee identification date with respect to all nonqualified deferred compensation plans, and any change to the Specified Employee identification date may not be effective for a period of at least 12 months. The Employer and its Affiliates may designate a Specified Employee identification date in each plan or in a separate document applicable to all plans, provided that the Employer and its Affiliates shall not be treated as having designated a Specified Employee identification date before the designation shall be legally binding on the Employer and its Affiliates and all affected Participants.

- (iv) Specified Employee effective date. Unless another date shall be designated in accordance with the requirements of this Paragraph (iv) and Paragraph (v) of this section, the Specified Employee effective date shall be the first day of the fourth month following the Specified Employee identification date. An Employer and its Affiliates may designate in accordance with the requirements of this Paragraph (iv) any date following the Specified Employee identification date as the Specified Employee effective date, provided that such date may not be later than the first day of the fourth month following the Specified Employee identification date, and provided further that an Employer and its Affiliates must use the same Specified Employee effective date with respect to all nonqualified deferred compensation plans, and any change to the Specified Employee effective date may not be effective for a period of at least 12 months. The Employer and its Affiliates may designate a Specified Employee effective date through inclusion in each plan document or through a separate document applicable to all plans, provided that the Employer and its Affiliates shall not be treated as having designated a Specified Employee effective date on any date before the designation shall be legally binding on the Employer and its Affiliates and all affected Participants.

 - (v) Elections affecting the identification of Specified Employees. The elections described in the foregoing paragraphs of this section are effective only as of the date that all necessary corporate action has been taken to make such elections binding for purposes of all affected nonqualified deferred compensation plans in which the Participants of the Employer and its Affiliates that would become a Specified Employee due to the application of such election participate. In the event the Employer attempts to make an election under one of the foregoing paragraphs of this section but such election shall be not binding on all the affected nonqualified deferred compensation plans and applied consistently to all such Participants, the election shall be not effective and the rule under the applicable Paragraph that would apply absent an election shall be applicable for identifying Specified Employees.

 - (t) **“Termination of Employment”** shall mean the Participant’s separation from service from the Employer and its Affiliates determined in accordance with the following guidelines: whether a separation from service has occurred shall be determined based on whether the facts and circumstances indicate that the Employer and the participant reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the participant would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36-month period (or the full period of services to the Employer if the participant has been providing services to the Employer less than 36 months). Facts and circumstances to be considered in making this determination include, but are not limited to, whether
 - (i) the participant continues to be treated as an employee for other purposes (such as continuation of salary and participation in employee benefit programs);

 - (ii) similarly situated Participants have been treated consistently, and
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- (iii) the Participant is permitted, and realistically available, to perform services for other Companies in the same line of business.

A participant shall be presumed to have separated from service where the level of bona fide services performed decreases to a level equal to 20 percent or less of the average level of services performed by the participant during the immediately preceding 36-month period. A participant shall be presumed not to have separated from service where the level of bona fide services performed continues at a level that is 50 percent or more of the average level of service performed by the participant during the immediately preceding 36-month period. No presumption applies to a decrease in the level of bona fide services performed to a level that is more than 20 percent and less than 50 percent of the average level of bona fide services performed during the immediately preceding 36-month period. The presumption shall be rebuttable by demonstrating that the Employer and the participant reasonably anticipated that as of a certain date the level of bona fide services would be reduced permanently to a level less than or equal to 20 percent of the average level of bona fide services provided during the immediately preceding 36-month period or full period of services provided to the Employer if the participant has been providing services to the Employer for a period of less than 36 months (or that the level of bona fide services would not be so reduced). For purposes of this Paragraph, for periods during which an participant is on a paid Bona Fide Leave of Absence and has not otherwise terminated employment, the participant shall be treated as providing bona fide services at a level equal to the level of services that the participant would have been required to perform to receive the compensation paid with respect to such leave of absence. Periods during which a participant is on an unpaid Bona Fide Leave of Absence and has not otherwise terminated employment, are disregarded for purposes of this Paragraph (including for purposes of determining the applicable 36-month (or shorter) period).

- (u) **"Year of Plan Participation"** shall mean each full Agreement Year during which Participant is actively employed by the Employer.
- (v) **"Valuation Date"** shall mean the last day of each Agreement Year.

3. **Employer Contributions**

- (a) At the end of each Agreement Year, the Participant's performance shall be reviewed using the same performance measures as the Incentive Plan. For purposes of this review the following definitions shall be applicable:
 - (i) "Actual ROE" shall mean the actual return on equity for the Employer for the Agreement Year of reference as determined by the Employer's Chief Financial Officer in accordance with generally accepted accounting principles and as approved by the Board.
 - (ii) "Actual NI" shall mean the actual net income of the Employer for the Agreement Year of reference as determined by the Employer's Chief

Financial Officer in accordance with generally accepted accounting principles and as approved by the Board.

- (iii) "Target ROE" shall mean the budgeted return on equity for the Employer for the Agreement Year of reference as determined in accordance with Subsection (b).
 - (iv) "Target NI" shall mean the budgeted net income for the Employer for the Agreement Year of reference as determined in accordance with Subsection (b).

 - (b) **Determination of Target Amounts:** In accordance with its annual corporate budget preparation, the Employer shall establish a "Target ROE" and "Target NI" and communicate such Targets to the Participant in writing during the first calendar quarter of the Agreement Year of reference. Once established, such Targets shall be used to calculate the Participant's ROE, NI and Overall Performance Percentages for the Agreement Year of reference in accordance with Subsections (c), (d) and (e) unless and until new Targets are established as a result of the Board, in its sole discretion, revising the Employer's corporate budget during the course of the Agreement Year. In the event that such revision occurs, the new Targets shall be used.

 - (c) **Calculation of ROE Performance Percentage:**
 - (i) Commencing with 2013 and each year thereafter, the "ROE Performance Percentage" for the Agreement Year of reference shall equal (A) divided by (B):
 - (A) the average of the Actual ROE for the Agreement Year of reference and the two preceding years;
 - (B) the average of the Target ROE for the Agreement Year of reference and the two preceding years.

 - (ii) For 2012, the "ROE Performance Percentage" shall equal (A) divided by (B):
 - (A) the average of the Actual ROE for 2012 and the two preceding years;
 - (B) the average of the Target ROE for 2012, the Target ROE for 2011 and the Actual ROE for 2010.

 - (iii) For 2011, the "ROE Performance Percentage" shall equal (A) divided by (B):
 - (A) the average of the Actual ROE for 2011 and the Actual ROE for 2010;
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(B) the average of the Target ROE for 2011 and the Actual ROE for 2010.

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- (d) **Calculation of NI Performance Percentage:** the NI Performance Percentage for the Agreement Year of reference shall equal (i) divided by (ii):
- (i) the Actual NI for the Agreement Year of reference;
 - (ii) the Target NI for the Agreement Year of reference.
- (e) **Calculation of the Overall Performance Percentage:** the Overall Performance Percentage for the Agreement Year of reference shall equal the sum of (i) and (ii):
- (i) 50% of the ROE Performance Percentage for the Agreement Year of reference; plus
 - (ii) 50% of the NI Performance Percentage for the Agreement Year of reference.
- (f) **Relationship of Overall Performance Percentage to Contribution Levels:** There shall be separate Contribution Levels for which the Participant may be eligible depending on his Overall Performance Percentage for the Agreement Year of reference as follows:
- (i) if his Overall Performance Percentage for the Agreement Year of reference is less than 90%, no contribution will be made.
 - (ii) if his Overall Performance Percentage for the Agreement Year of reference is 90% or more but less than 100%, the Participant will receive a contribution equal to a percentage of 5% or more but less than 15% of Salary.
 - (iii) if his Overall Performance Percentage for the Agreement Year of reference is 100% or more but less than 120%, the Participant will receive a contribution equal to 15% or more but less than 22% of Salary.

Interpolation shall be used to determine the exact contribution percentage (e.g., an Overall Performance Percentage of 97% shall result in a contribution of 12% of Salary).

Interpolation shall be used to determine the exact contribution percentage (e.g., an Overall Performance Percentage of 110% shall result in a contribution of 18.5% of Salary).

- (iv) if his Overall Performance Percentage for the Agreement Year of reference is equal to or greater than 120%, the Participant will receive a contribution equal to 22% of Salary.

- (g) The Employer contribution for the Agreement Year of reference determined in accordance with Sections (a), (b), (c), (d), (e) and (f) shall be allocated to the Participant's Account on the last business day of such Agreement Year, provided he is in the employ of the Employer on such day. Notwithstanding the foregoing provision, a Participant shall be entitled to a share of the Employer contributions for

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the Agreement Year of (i) his Retirement or death, (ii) the commencement or end of a Leave of Absence authorized by the Employer or (iii) his transfer to another business entity to which such Participant had been transferred by the Employer, even if the Participant is not in the employ of the Employer on the last business day of such Plan Year.

4. Valuation of Account and Allocation of Earnings and Expenses

- (a) For purposes of valuing the Participant's Account, deemed investment experience shall be credited in accordance on each Valuation date with the US 10-year Treasury Note rate in effect on the first business day of the Agreement Year of reference.

- (b) On the basis of the valuation as of a Valuation Date, the Participant's Account shall be (i) adjusted to reflect the deemed investment earnings in accordance with Subsection (a) and (ii) directly adjusted to reflect all other applicable transactions during the Plan Year attributable to such Account including, but not limited to, any allocations or distributions.

- (c) In addition to its allocations, the Employer shall pay all the administrative expenses of the Plan and all fees and retainers of the Plan's accountants, counsel, consultant, administrator or other specialist so long as the Plan remains in effect.

5. Vesting of Employer Contributions

(a) Upon Normal Retirement

Upon eligibility for Normal Retirement, a Participant shall have a 100% vested interest in his Account.

(b) Upon Disability

Upon Disability, a Participant shall have a 100% vested interest in his Account.

(c) Upon Death

Upon the death of a Participant prior to Normal Retirement, Disability or other termination of employment, such Participant's Beneficiary shall be entitled to a 100% vested interest in the Participant's Account.

(d) Upon Other Termination of Employment

- (i) Subject to Subsections (iii), (iv) and (v), upon the Participant's Termination of Employment prior to his Normal Retirement, Disability or death, he shall be entitled to a 100% vested interest in his Account, provided he has completed at least 10 Years of Plan Participation.
- (ii) Subject to Subsection (v), upon the Participant's Termination of Employment prior to his Normal Retirement, Disability or death and before completing at least 10 Years of Plan Participation, the

Participant's entire Account shall be forfeited, there shall be no benefits payable and the Employer shall have no further obligations under the Agreement.

- (iii) In the event that a Participant violates the Employer's "non-compete provisions", his entire Account shall be forfeited, there shall be no benefits payable and the Employer shall have no further obligations under the Agreement. For purposes of the Agreement, "non-compete provisions" shall refer to the non-compete provisions set forth in the Participant's employment agreement with the Employer.
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- (iii) Without limitation, a change in control shall be deemed to have occurred at such time as (i) any "person" (as the term is used in Section 13(d) and 14(d) of the Exchange Act) other than the Employer or the trustees or any administration of any employee stock ownership plan and trust, or any other employee benefit plans, established by Employer from time-to-time in is or becomes a "beneficial owner" (as defined in Rule 13-d under the Exchange Act) directly or indirectly, of securities of the Employer representing 35% or more of the Employer's outstanding securities ordinarily having the right to vote at the election of directors; or
- (iv) A tender offer is made for 35% or more of the voting securities of the Employer and the shareholders owning beneficially or of record 35% or more of the outstanding securities of the Employer have tendered or offered to sell their shares pursuant to such tender and such tendered shares have been accepted by the tender offeror.

For these purposes, "Incumbent Board" means the Board of Directors of the Employer on the date hereof, provided that any person becoming a director subsequent to the date hereof whose election was approved by a voting of at least three-quarters of the directors comprising the Incumbent Board, or whose nomination for election by members or stockholders was approved by the same nominating committee serving under an Incumbent Board, shall be considered as though he were a member of the Incumbent Board.

6. Form of Payments

(a) Normal Form of Payment

Except as provided in Subsections (b), (c) and the last sentence of Subsection 7(d)(ii), distribution of the Participant's Account shall be paid to the Participant over five years in the form of 60 equal monthly payments. The Participant's vested Account balance as of the commencement date determined in accordance with Subsection 7(a) shall be actuarially converted to the 60 monthly payments using the U.S. Treasury rate in effect on the first day of the calendar year containing the commencement date. Such conversion shall be performed without any adjustments for mortality.

The Employer may purchase and retain ownership of an annuity from an insurance company in order to provide for such payments from the Employer to the Participant.

(b) Lump Sum Cash-Out Threshold

Notwithstanding the foregoing, in the event that the Participant's Account does not exceed the applicable dollar amount under Section 402(g)(1)(B) at the time the benefit is to commence, then the Employer, at its sole discretion, may direct that

such Account be paid to the Participant or to the Participant's Beneficiary in lieu of a monthly benefit. Such lump-sum payment shall result in a complete settlement of the Participant's rights under the Plan. This Subsection (b) shall only apply if the payment results in the termination and liquidation of the entirety of the Participant's interest under the plan, including all agreements, methods, programs, or other arrangements with respect to which deferrals of compensation are treated as having been deferred under a single nonqualified deferred compensation plan under Section 1.409A-1(c)(2).

(c) **Death Prior to Commencement of Benefits**

LUMP SUM OPTION

In the event that the Participant dies prior to the commencement of benefits, distribution of the Participant's Account shall be paid to his Beneficiary in a single lump sum. If the Participant's Beneficiary predeceases the Participant, the death benefits shall be payable to the Participant's estate.

INSTALLMENT OPTION

In the event that the Participant dies prior to the commencement of benefits, distribution of the Participant's Account shall be paid to his Beneficiary (or upon the Beneficiary's death to the Participant's estate) over five years in the form of 60 equal monthly payments determined in the same manner as described under Subsection 6(a). Such death benefit shall continue to the Participant's Beneficiary (or upon the Beneficiary's death to the Participant's estate) beginning on the first day of the month following the Participant's death and continuing until the remaining balance of the 60 monthly payments is made.

(d) **Death Subsequent to Commencement of Benefits**

In the event that the Participant dies subsequent to the commencement of benefits but prior to the Participant having received 60 monthly payments, the payments described in Subsection 6(a) shall continue to the Participant's Beneficiary beginning on the first day of the month following the Participant's death and continuing until the remaining balance of the 60 monthly payments are made. If the Participant is not survived by a Beneficiary or if the Beneficiary dies before 60 monthly payments are made, payments shall continue to the Participant's estate until the remainder of the 60 monthly payments is distributed.

7. **Time of Payments**

- (a) Subject to Subsections (b), (c) and (d), the payments described in Section 6, shall commence to the Participant on the first day of the month following the later of the Participant's Termination of Employment or his Normal Retirement Date.
- (b) Notwithstanding the foregoing, in the event that the Employer is publicly-traded at the time of the Participant's Termination of Employment and the benefit is being distributed as a result of the Participant's Termination of Employment, payment shall be deferred until the first business day following the six-month anniversary of the Participant's Termination of Employment ("Mandatory

Deferred Payment Date”), if the Employer determines that such Participant is a Specified Employee. In the event that the provisions of the preceding sentence apply and the provisions of Subsection (b) are not applicable, on his Mandatory Deferred Payment Date the Participant shall receive retroactive annuity payments, without interest, to make up for the six-month delay in the starting date for such payments.

Such six-month delay shall not apply in the event that the Participant’s benefit is being distributed as a result of death or the incurrence of a Disability.

- (c) In the event the Participant incurs a Disability, the payments described in Section 6, shall commence to the Participant on the first day of the month following such Disability.

- (d) In the event of the Participant’s death
 - (i) prior to the commencement of benefits in accordance with Subsection (a), the payment described in Subsection 6(c) shall be distributed to the Participant’s Beneficiary (or, upon the Beneficiary’s death, to the Participant’s estate) on the first day of the month following his death.

 - (ii) after the commencement of benefits in accordance with Subsection (a) but prior to the Participant having received 60 monthly payments, the payments described in Subsection 6(a) shall continue to the Participant’s Beneficiary beginning on the first day of the month following his death and continuing until the remaining balance of the 60 monthly payments are made to the Beneficiary or, upon the Beneficiary’s death, to the Participant’s estate.

8. **Supplemental Executive Retirement Payments to be Unfunded**

Notwithstanding any other provision of this Agreement, the Employer shall not be required to fund its nonqualified retirement obligations under this Agreement in any manner, whether by purchase of insurance or endowment contracts, or deposits to an escrow account, or otherwise; and if the Employer does choose to do so, then the Participant shall not have any right or interest in such contract, deposit, or account, but may look only to the Employer’s unsecured promise to pay in accordance with the provisions of the Agreement.

9. **Interest in Agreement is Nonassignable**

- (a) Except as otherwise provided in Subsection (b), no right or claim to any benefit hereunder shall be assignable by any Participant or Beneficiary, nor subject to garnishment, attachment, execution or levy of any kind and no part of the amounts payable hereunder or any insurance policy referred to herein shall be subject to seizure by any creditor of the Participant, his spouse or any other beneficiary, by a proceeding at law or in equity, and no such benefit shall be transferable by operation of law in the event of bankruptcy, insolvency or death of the Participant, his spouse, or any other beneficiary hereunder. Any attempt to assign, transfer, pledge, encumber, commute or anticipate payment of benefits hereunder shall be void.
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- (b) Notwithstanding Subsection (a), the Agreement shall permit a distribution that is necessary to
- (i) fulfill a “domestic relations order” as defined in Section 414(b)(1)(B) of the Code;
 - (ii) prevent conflicts of interest as described below:
 - (A) to the extent necessary for any Federal officer or employee in the executive branch to comply with an ethics agreement with the Federal government.
 - (B) to the extent necessary to avoid the violation of an applicable Federal, state, local, or foreign ethics law or conflicts of interest law (including where such payment is reasonably necessary to permit the Participant to participate in activities in the normal course of his or her position in which the Participant would otherwise not be able to participate under an applicable rule). A payment is reasonably necessary to avoid the violation of a Federal, state, local, or foreign ethics law or conflicts of interest law if the payment is a necessary part of a course of action that results in compliance with a Federal, state, local, or foreign ethics law or conflicts of interest law that would be violated absent such course of action, regardless of whether other actions would also result in compliance with the Federal, state, local, or foreign ethics law or conflicts of interest law. For this purpose, a provision of foreign law shall be considered applicable only to foreign earned income (as defined under Section 911(b)(1) without regard to Section 911(b)(1)(B)(iv) and without regard to the requirement that the income be attributable to services performed during the period described in Section 911(d)(1)(A) or (B)) from sources within the foreign country that promulgated such law.
 - (iii) pay the Federal Insurance Contributions Act (FICA) tax imposed under Section 3101, Section 3121(a) and Section 3121(v)(2), where applicable, on compensation deferred under the arrangement (the FICA Amount);
 - (iv) pay the income tax at source on wages imposed under Section 3401 or the corresponding withholding provisions of applicable state, local, or foreign tax laws as a result of the payment of the FICA Amount, and to pay the additional income tax at source on wages attributable to the pyramiding Section 3401 wages and taxes. However, the total payment under Subparagraph (iii) and this Subparagraph (iv) must not exceed the aggregate of the FICA Amount, and the income tax withholding related to such FICA Amount; and
 - (v) pay any taxes due as a result of the Plan failing to meet the requirements of Section 409A. Any such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Section 409A.
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- 10. Amendment and Termination** During the lifetime of the Participant, this Agreement may be amended by the Board at any time or times, in whole or in part, only by the mutual written agreement of the Participant and the Board. Although the Employer expects to continue the Agreement indefinitely, it expressly reserves the right to terminate it in whole or in part at any time by an instrument in writing delivered to the Participant, effective on the date specified in such instrument, provided, however, that the Participant's accrued benefit, calculated as of the time of such termination, shall not be reduced without the Participant's consent, and shall remain payable in accordance with Sections 6 and 7 at the same time and in the same form as would have been applicable in the event that termination of the Agreement had not occurred. Earlier payment of benefits under the Agreement upon termination of the Agreement shall be permitted at the discretion of the Employer only in the event that such accelerated payment is made in accordance with the Employer's termination and liquidation of the Plan under (a), (b), (c) or (d):
- (a) within 12 months of a corporate dissolution taxed under Section 331, or with the approval of a bankruptcy court pursuant to 11 U.S.C. Section 503(b)(1)(A), provided that the amounts deferred under the plan are included in the participants' gross incomes in the latest of the following years (or, if earlier, the taxable year in which the amount is actually or constructively received),
 - (i) The calendar year in which the Plan termination occurs;
 - (ii) The calendar year in which the amount is no longer subject to a substantial risk of forfeiture; or
 - (iii) The first calendar year in which the payment is administratively practicable.
 - (b) pursuant to irrevocable action taken by the Employer's within the 30 days preceding or the 12 months following a change in control event (as defined in Treasury Regulation Section 1.409A-3(i)(5)), provided that this paragraph shall only apply to a payment under a plan if all agreements, methods, programs, and other arrangements sponsored by the Employer's immediately after the time of the change in control event with respect to which deferrals of compensation are treated as having been deferred under a single plan under Treasury Regulation Section 1.409A-1(c)(2) are terminated and liquidated with respect to each participant that experienced the change in control event, so that under the terms of the termination and liquidation all such participants are required to receive all amounts of compensation deferred under the terminated agreements, methods, programs, and other arrangements within 12 months of the date the Employer irrevocably takes all necessary action to terminate and liquidate the agreements, methods, programs, and other arrangements. Solely for purposes of this paragraph, where the change in control event results from an asset purchase transaction, the applicable Employer with the discretion to liquidate and terminate the agreements, methods, programs, and other arrangements is the Employer that is primarily liable immediately after the transaction for the payment of the deferred compensation.
 - (c) at the Employer's discretion, provided that
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- (i) the termination and liquidation does not occur proximate to a downturn in the financial health of the Employer.

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- (ii) the Employer terminates and liquidates all agreements, methods, programs, and other arrangements sponsored by the Employer that would be aggregated with any terminated and liquidated agreements, methods, programs, and other arrangements under Treasury Regulation Section 1.409A-1(c) if the Participant had deferrals of compensation under all of the agreements, methods, programs, and other arrangements that are terminated and liquidated;
 - (iii) no payments in liquidation of the Plan are made within 12 months of the date the Employer takes all necessary action to irrevocably terminate and liquidate the Plan other than payments that would be payable under the terms of the Plan if the action to terminate and liquidate the Plan had not occurred;
 - (iv) All payments are made within 24 months of months of the date the Employer takes all necessary action to irrevocably terminate and liquidate the Plan; and
 - (v) the Employer does not adopt a new plan that would be aggregated with any terminated and liquidated plan under Treasury Regulation Section 1.409A-1(c) if the Participant participated in both plans, at any time within three years following the date the Employer takes all necessary action to irrevocably terminate and liquidate the Plan.
- (d) Such other events and conditions as the Commissioner may prescribe in generally applicable guidance published in the Internal Revenue Bulletin (see Section 601.601(d)(2)) in compliance with Code Section 409A.

11. **Execution and Duplicate** This Agreement may be executed in duplicate, each copy when so executed and delivered shall be an original, but each copy together shall constitute one and the same instrument.
12. **Waiver of Breach** Any waiver of any breach of this Agreement shall not be construed to be a continuing waiver or consent to any subsequent breach on the part of either party.
13. **Reaffirmation of the Agreement** Except as the Agreement is expressly modified, amended, or revised as set forth in the foregoing provisions of this amendment and restatement, the Agreement is hereby affirmed and ratified in its entirety and shall continue in full force and effect between the Participant and the Employer.
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14. Claims

- (a) A claim for Benefits under the Plan must be made to the Committee in writing by a Participant or his Beneficiary (or a duly authorized representative of a Participant or Beneficiary). Oral communications shall not be recognized as a formal claim for Benefits.
- (b) Except as provided below with respect to a claim for disability benefits, the Committee (or its delegatee) shall deliver a reply with respect to a claim for

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Benefits under the Plan within 90 days; provided that the Committee or its delegatee) may extend the reply period for an additional 90 days if necessary. To the extent required by law, if a claim is for disability benefits, a reply with respect to the claim shall be delivered by the Committee (or its delegatee) within 45 days, unless one or two 30-day extensions are required, in which event a reply shall be provided by the end of the period(s) of extension. Any extension notice shall indicate the special circumstances requiring the extension and the date on which the reviewer expects to render a decision on the claim. If the claim is denied in whole or in part, the Committee (or its delegatee) shall issue a denial of the claim with the notice of denial (i) setting forth the specific reasons for such denial; (ii) specific references to pertinent provisions of the Plan on which such denial is based; (iii) additional material or information a description of any additional material or information necessary for the claimant to perfect the claimant's claim and an explanation why such material or such information is necessary; and (iv) appropriate information as to the steps to be taken if the claimant wishes to submit the claim for review, and the time limits for requesting such a review.

- (c) Within 60 days (180 days regarding disability benefits, to the extent required by law), after the receipt by the claimant of the written determination described in Subsection (b) above, the claimant (or his duly authorized representative) may request in writing that the Committee (or its delegatee) review the initial claim denial. The claimant or claimant's duly authorized representative may, but need not, review the pertinent documents and submit issues and comments in writing for consideration by the Committee (or its delegatee). If the claimant does not request a review of the initial claim determination within the 60 day period (180 day period in the case of a disability claim, to the extent required by law) described in Subsection (b), the claimant shall be barred and estopped from challenging the initial claim determination, and the initial claim determination shall be final.
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- (d) If within 60 days (45 days in the case of a disability claim, to the extent required by law) after the Committee's receipt of a request for a review, the Committee (or its delegatee) shall review the determination. To the extent the claim relates to disability benefits, the review should be made by a reviewer who is not the initial claim reviewer, nor his subordinate, and should otherwise comply with legal requirements. After considering all materials presented by the claimant, the Committee (or its delegatee) shall render a written determination, written in a manner calculated to be understood by the claimant, setting forth the specific reasons for the decision and containing specific references to the pertinent provisions of the Plan on which the decision is based. If special circumstances require that the 60-day time period (45-day period in the case of a disability claim, to the extent required by law) be extended, the Committee (or its delegatee) shall so notify a claimant and shall render the decision as soon as practicable, but not later than 120 days (90 days in the case of a disability claim, to the extent required by law) after receipt of the request for review.
- (e) The Secretary of the Employer shall be the agent for service of legal process.

15. **Separate Agreement** Benefits contained herein are a matter of separate agreement and not in lieu of salary or any other compensation for services.

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16. **Participant Rights** The establishment of this Agreement, its amendments and the granting of a benefit pursuant to the Agreement shall not give the Participant the right to continued employment with the Employer, or limit the right of the Employer to dismiss or impose penalties upon the Participant or modify the terms of employment of the Participant.
17. **Incapacity** If, in the opinion of the Board or committee, the Participant is unable to care for his affairs because of illness, accident or any other reason at the time benefits are payable under the terms of the Agreement, any payment due the Participant, unless prior claim therefor shall have been made by a duly qualified guardian or other duly appointed and qualified representative of such person, may be paid to some member of the person's family, or to some party who, in the opinion of the Board or committee, has incurred expense for such person. Any such payments shall be payments for the account of such person and shall be a complete discharge of the Employer's liability under the Agreement.
18. **Misstated Information** If any information has been misstated on which the Participant's benefit under the Agreement was based, such benefit shall not be invalidated but the amount of the benefit shall be adjusted to the proper amount as determined on the basis of the correct information. Overpayments, if any, with interest as determined by the Administrator shall be charged against any payments accruing with respect to the Participant. The Administrator reserves the right to require proof of age of any person entitled to a benefit under this Agreement.
19. **Tax Withholding** The Employer shall withhold the amount of any federal, state or local income tax or other tax required to be withheld by the Employer under applicable law with respect to any amount payable under the Plan.
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20. **Governing Law** The Plan shall be governed and construed according to the laws of the State of New Jersey.

IN WITNESS WHEREOF, Anthony J. Labozzetta has signed his name to this Agreement and the Chairman of the Board of Sussex Bancorp on behalf of its Board of Directors has caused this Agreement to be executed, effective as of the date first mentioned above.

SUSSEX BANCORP

Date: July 20, 2011

By: Donald L. Kovach
Title: Chairman of the Board

Date: July 20, 2011

PARTICIPANT

By: Anthony J. Labozzetta
Anthony J. Labozzetta

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SUSSEX BANCORP

**FIRST AMENDMENT TO
SUPPLEMENTAL EXECUTIVE RETIREMENT AGREEMENT FOR ANTHONY J. LABOZZETTA**

The SUPPLEMENTAL EXECUTIVE RETIREMENT AGREEMENT dated July 20, 2011 and effective January 1, 2011, by and between SUSSEX BANCORP, a New Jersey bank holding company located in Franklin, New Jersey and Anthony J. Labozzetta, is hereby amended effective January 1, 2018 to provide as follows:

1. Section 3 of the Agreement shall be restated in its entirety to read as follows:

Employer Contributions. Notwithstanding Section 4, no further Employer Contributions will be credited to the Participant's Account Balance.

2. Section 4(a) of the Agreement shall be restated in its entirety to read as follows:

For the purposes of valuating the Participant's Account, deemed investment experience shall be credited in accordance on each Valuation Date with the Crediting Rate in effect on the first business day of the Agreement Year of reference.

For the purposes of this Agreement "Crediting Rate" shall mean the Prime Rate as published in The Wall Street Journal.

3. Section 5(d) Subsections (i) and (ii) of the Agreement shall be restated in its entirety to read as follows:

- (i) Subject to Subsection (iii), (iv) and (v), upon the Participant's Termination of Employment prior to his Normal Retirement, Disability or death, he shall be entitled to a 100% vested interest in his Account.
- (ii) RESERVED

EXECUTIVE:

Anthony J. Labozzetta

Anthony J. Labozzetta

SUSSEX BANCORP:

Donald L. Kovach

Name: Donald L. Kovach

Title: Chairman of the Board

EXHIBIT 21

SUBSIDIARIES OF THE REGISTRANT

Parent Company

Provident Financial Services, Inc.

Subsidiary Companies

Provident Bank
Sussex Capital Trust II (non-consolidated)

State of Incorporation

New Jersey
Delaware

EXHIBIT 23

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Provident Financial Services, Inc.:

We consent to the incorporation by reference in the registration statements (No. 333-103041; No. 333-165018; and No. 333- 232388) on Form S-8, registration statements (No. 333-167706 and No. 333-240208) on Form S-3, registration statement (No. 333-237842) on Form S-4, registration statement (No. 333-249905) on Form S-3ASR and registration statement (No. 333-173942) on Form S-3D of Provident Financial Services, Inc. of our reports dated March 1, 2021, with respect to the consolidated statements of financial condition of Provident Financial Services, Inc. and subsidiary, as of December 31, 2020 and 2019, the related consolidated statements of income, comprehensive income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes, and the effectiveness of internal control over financial reporting as of December 31, 2020, which reports appear in the December 31, 2020 annual report on Form 10-K of Provident Financial Services, Inc.

Our report refers to a change in the Company's method of accounting for the recognition and measurement of credit losses as of January 1, 2020 due to the adoption of ASC Topic 326, Financial Instruments - Credit Losses.

/s/ KPMG LLP
Short Hills, New Jersey
3/1/2021

Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Christopher Martin, certify that:

1. I have reviewed this Annual Report on Form 10-K of Provident Financial Services, Inc.;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officers 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 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 report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this 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 officers 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 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.

Date: March 1, 2021

/s/ CHRISTOPHER MARTIN

Christopher Martin
Chairman and
Chief Executive Officer

Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Thomas M. Lyons, certify that:

1. I have reviewed this Annual Report on Form 10-K of Provident Financial Services, Inc.;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officers 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 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 report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this 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 officers 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 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 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.

Date: March 1, 2021

/s/ THOMAS M. LYONS

Thomas M. Lyons
Senior Executive Vice President and
Chief Financial Officer

**Certification pursuant to
18 U.S.C. Section 1350,
as adopted pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

Christopher Martin, Chairman, President and Chief Executive Officer and Thomas M. Lyons, Senior Executive Vice President and Chief Financial Officer of Provident Financial Services, Inc. (the "Company") each certify in his capacity as an officer of the Company that he has reviewed the Annual Report of the Company on Form 10-K for the fiscal ended December 31, 2020 and that to the best of his knowledge:

1. the report fully complies with the requirements of Sections 13(a) of the Securities Exchange Act of 1934; and
2. the information contained in the report fairly presents, in all material respects, the financial condition and results of operations.

The purpose of this statement is solely to comply with Title 18, Chapter 63, Section 1350 of the United States Code, as amended by Section 906 of the Sarbanes-Oxley Act of 2002.

Date: March 1, 2021

/s/ CHRISTOPHER MARTIN

Christopher Martin
Chairman and
Chief Executive Officer

Date: March 1, 2021

/s/ THOMAS M. LYONS

Thomas M. Lyons
Senior Executive Vice President and
Chief Financial Officer