
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **April 01, 2023**
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 number **000-11917**



THE DAVEY TREE EXPERT COMPANY

(Exact name of registrant as specified in its charter)

Ohio

34-0176110

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

**1500 North Mantua Street
P.O. Box 5193
Kent, OH 44240**

(Address of principal executive offices) (Zip code)

(330) 673-9511

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit 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 the 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

Emerging Growth Company

Non-Accelerated Filer

Smaller Reporting 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

There were 42,153,420 Common Shares, \$.50 par value, outstanding as of May 5, 2023. The registrant's Common Shares are not traded on a public market.

The Davey Tree Expert Company
Quarterly Report on Form 10-Q
April 1, 2023

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“We,” “us,” “our,” the “Company,” “The Registrant,” “Davey” and “Davey Tree,” unless the context otherwise requires, means The Davey Tree Expert Company and its subsidiaries.

THE DAVEY TREE EXPERT COMPANY
CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)
(In thousands, except per share data dollar amounts)

	April 1, 2023	December 31, 2022
Assets		
Current assets:		
Cash	\$ 24,677	\$ 18,526
Accounts receivable, net	347,570	321,810
Operating supplies	21,410	17,976
Other current assets	81,995	83,952
Total current assets	475,652	442,264
Property and equipment, net	285,066	268,539
Right-of-use assets - operating leases	109,709	104,612
Marketable securities and other investments	24,799	28,909
Other assets	22,148	22,841
Intangible assets, net	17,012	18,949
Goodwill	69,854	70,107
Total assets	<u>\$ 1,004,240</u>	<u>\$ 956,221</u>
Liabilities and shareholders' equity		
Current liabilities:		
Accounts payable	\$ 55,380	\$ 50,171
Accrued expenses	54,218	77,454
Current portion of long-term debt and finance lease liabilities	18,867	26,872
Other current liabilities	91,949	90,873
Total current liabilities	220,414	245,370
Long-term debt	291,939	230,768
Lease liabilities - finance leases	10,357	9,481
Lease liabilities - operating leases	72,236	68,878
Self-insurance accruals	85,588	77,926
Other noncurrent liabilities	22,743	24,020
Total liabilities	703,277	656,443
Commitments and contingencies (Note P)		
Redeemable common shares related to 401KSOP and Employee Stock Ownership Plan (ESOP) 9,336 and 9,188 shares at redemption value as of April 1, 2023 and December 31, 2022	172,725	169,978
Common shareholders' equity:		
Common shares, \$.50 par value, per share; 96,000 shares authorized; 76,491 and 76,640 shares issued and outstanding before deducting treasury shares and which excludes 9,336 and 9,188 shares subject to redemption as of April 1, 2023 and December 31, 2022	38,396	38,550
Additional paid-in capital	162,170	162,828
Common shares subscribed, unissued	23,864	23,864
Retained earnings	299,119	293,993
Accumulated other comprehensive loss	(5,616)	(5,588)
	517,933	513,647
Less: Cost of common shares held in treasury; 43,289 shares at April 1, 2023 and 43,110 shares at December 31, 2022	369,721	363,502
Common shares subscription receivable	19,974	20,345
Total common shareholders' equity	<u>128,238</u>	<u>129,800</u>
Total liabilities and shareholders' equity	<u>\$ 1,004,240</u>	<u>\$ 956,221</u>

See notes to condensed consolidated financial statements (unaudited).

THE DAVEY TREE EXPERT COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)
(In thousands, except per share dollar amounts)

	Three Months Ended	
	April 1, 2023	April 2, 2022
Revenues	\$ 371,334	\$ 342,644
Costs and expenses:		
Operating	249,069	234,207
Selling	68,223	60,796
General and administrative	31,437	28,995
Depreciation and amortization	13,994	13,787
Gain on sale of assets, net	(2,896)	(898)
Total costs and expenses	359,827	336,887
Income from operations	11,507	5,757
Other income (expense):		
Interest expense	(3,871)	(1,445)
Interest income	399	27
Other, net	(651)	(2,337)
Income before income taxes	7,384	2,002
Income taxes	1,388	220
Net income	\$ 5,996	\$ 1,782
Net income per share:		
Basic	\$.14	\$.04
Diluted	\$.13	\$.04
Weighted-average shares outstanding:		
Basic	43,077	44,618
Diluted	45,122	46,838

See notes to condensed consolidated financial statements (unaudited).

THE DAVEY TREE EXPERT COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (Unaudited)
(In thousands)

	<u>Three Months Ended</u>	
	<u>April 1, 2023</u>	<u>April 2, 2022</u>
Net income	\$ 5,996	\$ 1,782
Components of other comprehensive (loss) income, net of tax:		
Foreign currency translation adjustments	31	480
Unrealized loss on available-for-sale securities	(59)	—
Amortization of defined benefit pension items:		
Net actuarial loss	—	19
Prior service cost	—	5
Defined benefit pension plan adjustments	—	24
Other comprehensive (loss) income, net of tax	<u>(28)</u>	<u>504</u>
Comprehensive income	<u>\$ 5,968</u>	<u>\$ 2,286</u>

See notes to condensed consolidated financial statements (unaudited).

THE DAVEY TREE EXPERT COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (Unaudited)
(In thousands, except per share data)

	Common Shares	Additional Paid-in Capital	Common Shares Subscribed, Unissued	Retained Earnings	Accumulated Other Comprehensive Income (Loss), Net of Tax	Common Shares Held in Treasury	Common Shares Subscription Receivable	Total Common Shareholders' Equity
Balances at January 1, 2023	\$ 38,550	\$ 162,828	\$ 23,864	\$ 293,993	\$ (5,588)	\$ (363,502)	\$ (20,345)	\$ 129,800
Net income	—	—	—	5,996	—	—	—	5,996
Change in 401KSOP and ESOP related shares	(154)	(2,593)	—	7	—	—	—	(2,740)
Shares sold to employees	—	1,616	—	—	—	1,412	—	3,028
Options exercised	—	(1,205)	—	—	—	788	—	(417)
Subscription shares	—	—	—	—	—	—	371	371
Stock-based compensation	—	1,524	—	—	—	—	—	1,524
Dividends, \$.020 per share	—	—	—	(877)	—	—	—	(877)
Other comprehensive loss	—	—	—	—	(28)	—	—	(28)
Shares purchased	—	—	—	—	—	(8,419)	—	(8,419)
Balances at April 1, 2023	<u>\$ 38,396</u>	<u>\$ 162,170</u>	<u>\$ 23,864</u>	<u>\$ 299,119</u>	<u>\$ (5,616)</u>	<u>\$ (369,721)</u>	<u>\$ (19,974)</u>	<u>\$ 128,238</u>

	Common Shares	Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss), Net of Tax	Common Shares Held in Treasury	Total Common Shareholders' Equity
Balances at January 1, 2022	\$ 38,379	\$ 135,897	\$ 239,979	\$ (4,173)	\$ (306,242)	\$ 103,840
Net income	—	—	1,782	—	—	1,782
Change in 401KSOP and ESOP related shares	(311)	(3,805)	(50)	—	—	(4,166)
Shares sold to employees	—	2,869	—	—	2,194	5,063
Options exercised	—	(685)	—	—	533	(152)
Stock-based compensation	—	1,039	—	—	—	1,039
Dividends, \$.018 per share	—	—	(782)	—	—	(782)
Other comprehensive income	—	—	—	504	—	504
Shares purchased	—	—	—	—	(7,004)	(7,004)
Balances at April 2, 2022	<u>\$ 38,068</u>	<u>\$ 135,315</u>	<u>\$ 240,929</u>	<u>\$ (3,669)</u>	<u>\$ (310,519)</u>	<u>\$ 100,124</u>

See notes to condensed consolidated financial statements (unaudited).

THE DAVEY TREE EXPERT COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(In thousands)

	Three Months Ended	
	April 1, 2023	April 2, 2022
Operating activities		
Net income	\$ 5,996	\$ 1,782
Adjustments to reconcile net income to net cash (used in) provided by operating activities:		
Depreciation and amortization	13,994	13,787
Other	(1,523)	659
Changes in operating assets and liabilities, net of assets acquired:		
Accounts receivable	(25,756)	2,015
Accounts payable and accrued expenses	(18,418)	(2,041)
Self-insurance accruals	6,825	5,076
Prepaid expenses	(22)	5,660
Other, net	4,779	1,347
	<u>(20,121)</u>	<u>26,503</u>
Net cash (used in) provided by operating activities	(14,125)	28,285
Investing activities		
Capital expenditures:		
Equipment	(23,415)	(21,411)
Land and buildings	(3,633)	(5,093)
Purchases of businesses, net of cash acquired and debt incurred	(1,045)	(1,098)
Proceeds from sales of property and equipment	3,530	1,180
Purchases of marketable securities	(10,677)	(11,500)
Proceeds from sale of marketable securities	10,342	803
Net cash used in investing activities	(24,898)	(37,119)
Financing activities		
Revolving credit facility borrowings	259,854	181,168
Revolving credit facility payments	(198,288)	(157,219)
Purchase of common shares for treasury	(8,419)	(7,004)
Sale of common shares from treasury	2,988	4,910
Dividends paid	(877)	(782)
Proceeds from notes payable	5,434	7,129
Payments of notes payable	(14,771)	(16,319)
Payments of finance leases	(759)	(767)
Net cash provided by financing activities	45,162	11,116
Effect of exchange rate changes on cash	12	35
Increase in cash	6,151	2,317
Cash, beginning of period	18,526	19,460
Cash, end of period	\$ 24,677	\$ 21,777
Supplemental cash flow information follows:		
Interest paid	\$ 4,430	\$ 2,160
Income taxes paid	64	1,071

See notes to condensed consolidated financial statements (unaudited).

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

A. Basis of Financial Statement Preparation

The consolidated financial statements present the financial position, results of operations and cash flows of The Davey Tree Expert Company and its subsidiaries. When we refer to “we,” “us,” “our,” the “Company,” “Davey,” or “Davey Tree”, we mean The Davey Tree Expert Company and its subsidiaries, unless otherwise expressly stated or the context indicates otherwise.

We have prepared the accompanying unaudited condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States (“U.S. GAAP”), as codified in the Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”), and with the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial information. The condensed consolidated financial statements include all adjustments which, in the opinion of management, are necessary for a fair presentation of the results for the interim periods presented. All such adjustments are of a normal, recurring nature. All intercompany accounts and transactions have been eliminated in consolidation.

Certain information and disclosures required by U.S. GAAP for complete financial statements have been omitted in accordance with the rules and regulations of the SEC. We suggest that these condensed consolidated financial statements be read in conjunction with the financial statements included in our annual report on Form 10-K for the year ended December 31, 2022 (the “2022 Annual Report”).

Use of Estimates in Financial Statement Preparation--The preparation of financial statements in accordance with U.S. GAAP requires the use of estimates and assumptions that affect reported amounts. Our condensed consolidated financial statements include amounts that are based on management’s best estimates and judgments. Estimates are used for, but not limited to, accounts receivable valuation, depreciable lives of fixed assets, long-lived asset and goodwill valuation, self-insurance accruals, income taxes, stock valuation and revenue recognition.

Our mitigation banking business creates and sells wetland, stream and other environmental credits and provides services to those engaged in permittee-responsible mitigation and environmental restoration. When we sell and create wetland credits, we record mitigation bank credit inventory which is recorded at its net realizable value. Actual results could differ from those estimates.

Our business continues to be impacted by a number of macro-economic factors, including the trailing impact of the COVID-19 pandemic. Global supply chains and product availability remain highly challenged and ongoing global events in Eastern Europe have only exacerbated an already difficult operating environment. These factors, combined with higher fuel costs, rising interest rates and a highly competitive labor market, have created an inflationary environment and cost pressures.

The Company’s fiscal quarters each contain thirteen operating weeks, with the exception of the fourth quarter of a 53-week fiscal year, which contains fourteen operating weeks. The Company’s fiscal quarter that ended April 1, 2023 is referred to as the first quarter of 2023, and the fiscal quarter ended April 2, 2022 is referred to as the first quarter of 2022.

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

Recent Accounting Guidance

Accounting Standard Adopted in 2023

Accounting Standards Update 2020-04, Reference Rate Reform (Topic 848)--In March 2020, the FASB issued Accounting Standards Update ("ASU") 2020-04, "Reference Rate Reform (Topic 848)—Facilitation of the Effects of Reference Rate Reform on Financial Reporting". The guidance of this ASU is designed to provide relief from the accounting analysis and impacts that may otherwise be required for modifications to agreements (e.g., loans, debt securities, derivatives, borrowings) necessitated by reference rate reform. It also provides optional expedients to enable companies to continue to apply hedge accounting to certain hedging relationships impacted by reference rate reform. Application of the guidance is optional, is only available in certain situations, and is only available for companies to apply until December 31, 2022. In January 2021, the FASB amended ASU 2020-04 by issuing Accounting Standards Update No. 2021-01, Reference Rate Reform Scope ("ASU 2021-01"). ASU 2021-01 clarifies the scope of optional expedients and exceptions to derivatives that are affected by the discounting transition. In December 2022, the FASB issued ASU 2022-06, "Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848. ASU 2022-06 defers the sunset date included within Topic 848 from December 31, 2022, to December 31, 2024. In January 2023, we adopted ASU 2020-04 and amended our amended and restated credit agreement to replace the reference rate from LIBOR to the Secured Overnight Financing Rate ("SOFR"). The amendment did not have a material impact to the Company's financial statements.

Accounting Standards Update 2022-04, Liabilities - Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations--In September 2022, the FASB issued ASU No. 2022-04, Liabilities - Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations. This guidance requires annual and interim disclosure of the key terms of outstanding supplier finance programs and a roll-forward of the related obligations. The new standard does not affect the recognition, measurement or financial statement presentation of the supplier finance program obligations. These amendments are effective for fiscal years beginning after December 15, 2022, except for the amendment on roll-forward information, which is effective for fiscal years beginning after December 15, 2023. We adopted this standard and have no material supplier finance program obligations.

B. Seasonality of Business

Due to the seasonality of our business, our operating results for the three months ended April 1, 2023 are not indicative of results that may be expected for any other interim period or for the year ending December 31, 2023. Our business seasonality traditionally results in higher revenues during the second and third quarters as compared with the first and fourth quarters of the year, while the methods of accounting for fixed costs, such as depreciation expense, amortization, rent and interest expense, are not significantly impacted by business seasonality.

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

C. Accounts Receivable, Net and Supplemental Balance-Sheet Information

Accounts receivable, net, consisted of the following:

Accounts receivable, net	April 1, 2023	December 31, 2022
Accounts receivable	\$ 237,431	\$ 242,427
Unbilled receivables ⁽¹⁾	113,115	82,605
	<u>350,546</u>	<u>325,032</u>
Less allowances for credit losses	2,976	3,222
Accounts receivable, net	<u>\$ 347,570</u>	<u>\$ 321,810</u>

⁽¹⁾ Unbilled receivables consist of work-in-process in accordance with the terms of contracts, primarily with utility services customers.

The following items comprised the amounts included in the balance sheets:

Other current assets	April 1, 2023	December 31, 2022
Refundable income taxes	\$ 606	\$ 14
Prepaid expenses	25,756	32,080
Mitigation bank credit inventory	5,701	6,351
Assets invested for self-insurance	29,776	24,828
Payroll taxes refundable	18,283	18,283
Other	1,873	2,396
Total	<u>\$ 81,995</u>	<u>\$ 83,952</u>

Property and equipment, net	April 1, 2023	December 31, 2022
Land and land improvements	\$ 28,570	\$ 26,023
Buildings and leasehold improvements	81,863	80,768
Equipment	672,598	663,207
	<u>783,031</u>	<u>769,998</u>
Less accumulated depreciation	497,965	501,459
Total	<u>\$ 285,066</u>	<u>\$ 268,539</u>

Other assets, noncurrent	April 1, 2023	December 31, 2022
Investment--cost-method affiliate	\$ 1,258	\$ 1,258
Deferred income taxes	6,844	6,828
Cloud computing arrangements	1,898	2,652
Insurance receivable	7,500	7,500
Other	4,648	4,603
Total	<u>\$ 22,148</u>	<u>\$ 22,841</u>

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

	April 1, 2023	December 31, 2022
Accrued expenses		
Employee compensation	\$ 17,359	\$ 35,536
Accrued compensated absences	13,620	13,034
Self-insured medical claims	2,677	2,806
Income tax payable	8,474	6,573
Customer advances, deposits	4,918	7,736
Taxes, other than income	3,050	5,764
Other	4,120	6,005
Total	<u>\$ 54,218</u>	<u>\$ 77,454</u>
	April 1, 2023	December 31, 2022
Other current liabilities		
Current portion of:		
Lease liability-operating leases	\$ 36,565	\$ 34,652
Self-insurance accruals	55,384	56,221
Total	<u>\$ 91,949</u>	<u>\$ 90,873</u>
	April 1, 2023	December 31, 2022
Other noncurrent liabilities		
Non-qualified retirement plans	\$ 8,513	\$ 8,336
Litigation accrual	7,500	7,500
Other	6,730	8,184
Total	<u>\$ 22,743</u>	<u>\$ 24,020</u>

D. Business Combinations

Our cash investments in businesses during the first three months of 2023 were \$1,045 and we issued debt, in the form of notes payable to the sellers, of \$408 which have been included in our Residential and Commercial segment. Measurement-period adjustments are not complete. The measurement period for purchase price allocations ends as soon as information of the facts and circumstances becomes available, but does not exceed one year from the acquisition date. During the year ended December 31, 2022, our cash investments in businesses was \$23,192 and debt issued, in the form of notes payable to the sellers, was \$7,445.

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

The following table summarizes the preliminary purchase price allocation of the estimated fair values of the assets acquired and liabilities assumed:

	Three Months Ended April 1, 2023	Year Ended December 31, 2022
Detail of acquisitions:		
Assets acquired:		
Cash	\$ —	\$ 1,365
Receivables	—	10,794
Mitigation bank credit inventory	—	6,351
Operating supplies	4	48
Prepaid expense	—	126
Equipment	506	2,309
Deposits and other	668	412
Intangible assets	248	10,569
Goodwill	872	14,255
Liabilities assumed	(845)	(15,592)
Debt issued for purchases of businesses	(408)	(7,445)
Cash paid	<u>\$ 1,045</u>	<u>\$ 23,192</u>

The results of operations of acquired businesses have been included in the condensed consolidated statements of operations beginning as of the effective dates of acquisition. The effect of these acquisitions on our consolidated revenues and results of operations for the three months ended April 1, 2023 was not significant. Pro forma net sales and results of operations for the acquisitions, had they occurred at the beginning of the three months ended April 1, 2023, are not material and, accordingly, are not provided.

The acquired intangible assets consist of tradenames, non-competition agreements and customer relationships. The tradenames and customer relationships were assigned an average useful life of seven years and the non-competition agreements were assigned an average useful life of five years.

Subsequent to April 1, 2023 and through May 10, 2023, we acquired one business approximating \$17,235 with \$408 liabilities assumed and debt issued of \$3,824. The acquired company is in our Residential and Commercial segment and is located in Minnesota. We do not expect the effect of this acquisition on our consolidated revenues and results of operations to be significant.

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

E. Marketable Securities

The following table summarizes available-for-sale debt securities held at April 1, 2023 and December 31, 2022 by asset type:

	Available-For-Sale Debt Securities			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value (Net Carrying Amount)
April 1, 2023				
Fixed maturity:				
United States Government and agency securities	\$ 29,833	\$ 239	\$ (386)	\$ 29,686
Corporate notes and bonds	317	—	(42)	275
Total available-for-sale debt securities	\$ 30,150	\$ 239	\$ (428)	\$ 29,961
December 31, 2022				
Fixed maturity:				
United States Government and agency securities	\$ 25,485	\$ 84	\$ (315)	\$ 25,254
Corporate notes and bonds	315	—	(51)	264
Total available-for-sale debt securities	\$ 25,800	\$ 84	\$ (366)	\$ 25,518

Marketable securities are composed of available-for-sale debt securities and marketable equity securities and all marketable securities are held at fair value. We carry a portion of our marketable securities portfolio in long-term assets since they are generally held for the settlement of our insurance claims processed through our wholly owned captive insurance subsidiary.

Available-for-sale debt securities are included in other current assets and marketable securities and other investments totaling \$29,961 and \$25,518 at April 1, 2023 and December 31, 2022, respectively. Realized gains and losses on sales of available-for-sale debt securities are recognized in net income on the specific identification basis. Changes in the fair values of available-for-sale debt securities that are determined to be holding gains or losses are recorded through accumulated other comprehensive income (loss) net of applicable taxes, within shareholders' equity. In assessing whether a credit loss exists, we evaluate our ability to hold the investment, the strength of the underlying collateral and the extent to which the investment's amortized cost or cost, as appropriate, exceeds its related fair value.

We held approximately \$14,755 and \$18,110 in marketable equity securities as of April 1, 2023 and December 31, 2022, respectively. Realized and unrealized gains and losses on marketable equity securities are included in other income (expense) in the Consolidated Statements of Operations.

The Davey Tree Expert Company
Notes to Condensed Consolidated Financial Statements (Unaudited)
April 1, 2023
(Amounts in thousands, except share data)

The net carrying values of available-for-sale debt securities at April 1, 2023 by contractual maturity, are shown below. Expected maturities may differ from contractual maturities because the issuers of the securities may have the right to prepay obligations without prepayment penalties.

	<u>Amortized Cost</u>	<u>Fair Value</u>
Due:		
Less than one year	\$ 26,083	\$ 26,276
One year through five years	1,542	1,453
Six years through ten years	581	543
After ten years	1,944	1,689
Total	<u>\$ 30,150</u>	<u>\$ 29,961</u>

F. Identified Intangible Assets and Goodwill, Net

The carrying amounts of the identified intangible assets and goodwill acquired in connection with our acquisitions were as follows:

	<u>April 1, 2023</u>		<u>December 31, 2022</u>	
	<u>Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Carrying Amount</u>	<u>Accumulated Amortization</u>
Amortized intangible assets:				
Customer lists/relationships	\$ 36,634	\$ 26,919	\$ 36,745	\$ 26,243
Employment-related	12,030	9,172	12,242	8,931
Tradenames	11,790	7,351	12,219	7,083
Amortized intangible assets	60,454	<u>\$ 43,442</u>	61,206	<u>\$ 42,257</u>
Less accumulated amortization	43,442		42,257	
Identified intangible assets, net	<u>\$ 17,012</u>		<u>\$ 18,949</u>	
Goodwill	<u>\$ 69,854</u>		<u>\$ 70,107</u>	

Adjustments related to the carrying values are related to measurement period adjustments for acquisitions made in 2022 for which purchase accounting is not finalized.

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The changes in the carrying amounts of goodwill, by segment, for the three months ended April 1, 2023 and the year ended December 31, 2022 were as follows:

	Balance at January 1, 2023	Acquisitions	Translation and Other Adjustments	Balance at April 1, 2023
Utility	\$ 4,941	\$ —	\$ —	\$ 4,941
Residential and Commercial	65,166	872	(1,125)	64,913
Total	<u>\$ 70,107</u>	<u>\$ 872</u>	<u>\$ (1,125)</u>	<u>\$ 69,854</u>

	Balance at January 1, 2022	Acquisitions	Translation and Other Adjustments	Balance at December 31, 2022
Utility	\$ 4,911	\$ 30	\$ —	\$ 4,941
Residential and Commercial	51,069	14,225	(128)	65,166
Total	<u>\$ 55,980</u>	<u>\$ 14,255</u>	<u>\$ (128)</u>	<u>\$ 70,107</u>

Estimated future aggregate amortization expense of intangible assets--The estimated future aggregate amortization expense of intangible assets, as of April 1, 2023, was as follows:

	Estimated Future Amortization Expense
Remaining nine months of 2023	\$ 3,197
2024	4,055
2025	3,272
2026	2,430
2027	1,923
2028	1,163
Thereafter	972
	<u>\$ 17,012</u>

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G. Short and Long-Term Debt and Commitments Related to Letters of Credit

We have short-term lines of credit with several banks totaling \$11,109. At April 1, 2023, we had \$8,986 available under the lines of credit and \$2,122 committed through issued letters of credit. Borrowings outstanding generally bear interest at the banks' prime rate or LIBOR plus a margin adjustment of .75% to 1.50%.

Our long-term debt consisted of the following:

	<u>April 1, 2023</u>	<u>December 31, 2022</u>
Revolving credit facility:		
Swing-line borrowings	\$ —	\$ 25,433
SOFR borrowings	212,000	125,000
	<u>212,000</u>	<u>150,433</u>
Senior unsecured notes:		
3.99% Senior unsecured notes	50,000	50,000
4.00% Senior unsecured notes	25,000	25,000
	<u>75,000</u>	<u>75,000</u>
Term loans	20,751	29,680
	<u>307,751</u>	<u>255,113</u>
Less debt issuance costs	481	519
Less current portion	15,331	23,826
	<u>\$ 291,939</u>	<u>\$ 230,768</u>

Revolving Credit Facility--In August 2021, the Company amended and restated its revolving credit facility with its existing bank group. The amended and restated credit agreement, which expires in August 2026, permits borrowings, as defined, of up to \$325,000, including a letter of credit sublimit of \$150,000 and a swing-line commitment of \$30,000. Under certain circumstances, the amount available under the revolving credit facility may be increased to \$425,000. The revolving credit facility contains certain affirmative and negative covenants customary for this type of facility and includes financial covenant ratios with respect to a maximum leverage ratio (not to exceed 3.00 to 1.00 with exceptions in case of material acquisitions) and a minimum interest coverage ratio (not less than 3.00 to 1.00), in each case subject to certain further restrictions as described in the credit agreement. As of April 1, 2023, we had unused commitments under the facility approximating \$110,376, with \$214,624 committed, consisting of borrowings of \$212,000 and issued letters of credit of \$2,624.

In January 2023, we amended the amended and restated credit agreement to update the benchmark interest rate provisions to replace LIBOR with the Secured Overnight Financing Rate ("SOFR"). Following the amendment, borrowings outstanding bear interest, at Davey Tree's option, of either (a) the base rate or (b) SOFR plus a margin adjustment ranging from .875% to 1.50%--with the margin adjustments based on the Company's leverage ratio at the time of borrowing. The base rate is the greater of (i) the agent bank's prime rate, (ii) Adjusted Term SOFR plus 1.50%, or (iii) the federal funds rate plus .50%. A commitment fee ranging from .10% to .225% is also required based on the average daily unborrowed commitment.

3.99% Senior Unsecured Notes--On September 21, 2018, we issued 3.99% Senior Notes, Series A (the "3.99% Senior Notes"), in the aggregate principal amount of \$50,000. The 3.99% Senior Notes are due September 21, 2028.

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The 3.99% Senior Notes were issued pursuant to a Note Purchase and Private Shelf Agreement (the “Note Purchase and Shelf Agreement”) between the Company, PGIM, Inc. and the purchasers of the 3.99% Senior Notes, which was amended in September 2021. Among other things, the amendment increased the total facility limit to \$150,000 and extended the issuance period for subsequent series of promissory notes to be issued and sold pursuant to the Note Purchase and Shelf Agreement to September 2024. The amendment also amended certain provisions and covenants to generally conform them to the corresponding provisions and covenants in the amended and restated revolving credit agreement. In addition, the amendment and restatement of the revolving credit agreement in August 2021 provided that the Company is permitted to incur indebtedness arising under the Note Purchase and Shelf Agreement in an aggregate principal amount not to exceed \$150,000. As the Company has previously issued notes in an aggregate amount of \$75,000 under the Note Purchase and Shelf Agreement, it now has capacity to issue subsequent series of promissory notes pursuant to the Note Purchase and Shelf Agreement (the “Shelf Notes”) in an aggregate amount of up to \$75,000.

The 3.99% Senior Notes are equal in right of payment with our revolving credit facility and all other senior unsecured obligations of the Company. Interest is payable semiannually and five equal, annual principal payments commence on September 21, 2024 (the sixth anniversary of issuance). The Note Purchase and Shelf Agreement contains customary events of default and covenants related to limitations on indebtedness and transactions with affiliates and the maintenance of certain financial ratios. The Company may prepay at any time all, or from time to time any part of, the outstanding principal amount of the 3.99% Senior Notes, subject to the payment of a make-whole amount.

4.00% Senior Unsecured Notes--On February 5, 2019, we issued 4.00% Senior Notes, Series B (the “4.00% Senior Notes”) pursuant to the Note Purchase and Shelf Agreement in the aggregate principal amount of \$25,000. The 4.00% Senior Notes are due September 21, 2028. The 4.00% Senior Notes are equal in right of payment with our revolving credit facility and all other senior unsecured obligations of the Company. Interest is payable semiannually and five equal, annual principal payments commence on September 21, 2024.

The net proceeds of all senior notes were used to pay down borrowings under our revolving credit facility.

Term loans--Periodically, the Company will enter into term loans for the procurement of insurance or to finance acquisitions.

Aggregate Maturities of Long-Term Debt--Aggregate maturities of long-term debt based on the principal amounts outstanding at April 1, 2023 were as follows: 2023--\$14,489; 2024--\$18,508; 2025--\$17,618; 2026--\$227,136; 2027--\$15,000; and 2028--\$15,000.

Accounts Receivable Securitization Facility--In June 2022, the Company amended its Accounts Receivable Securitization Facility (the “AR Securitization program”) to extend the scheduled termination date for an additional one-year period, to June 29, 2023. In addition to extending the termination date for another year, the amendment replaced the LIBOR interest rate provisions with customary provisions based on SOFR.

The AR Securitization program has a limit of \$100,000, of which \$89,689 was issued for LCs as of April 1, 2023 and December 31, 2022.

Under the AR Securitization program, Davey Tree transfers by selling or contributing current and future trade receivables to a wholly-owned, bankruptcy-remote financing subsidiary which pledges a perfected first priority security interest in the trade receivables--equal to the issued LCs as of April 1, 2023--to the bank in exchange for the bank issuing LCs.

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Fees payable to the bank include: (a) an LC issuance fee, payable on each settlement date, in the amount of .90% per annum on the aggregate amount of all LCs outstanding plus outstanding reimbursement obligations (e.g., arising from drawn LCs), if any, and (b) an unused LC fee, payable monthly, equal to (i) .35% per annum for each day on which the sum of the total LCs outstanding plus any outstanding reimbursement obligations is greater than or equal to 50% of the facility limit and (ii) .45% per annum for each day on which the sum of the total LCs outstanding plus any outstanding reimbursement obligations is less than 50% of the facility limit. If an LC is drawn and the bank is not immediately reimbursed in full for the drawn amount, any outstanding reimbursement obligation will accrue interest at a per annum rate equal to the term SOFR, plus 0.10% or, in certain circumstances, a base rate equal to the greatest of (i) the bank's prime rate, (ii) the federal funds rate plus .50% and (iii) 1.00% above the Daily one month SOFR plus 0.10% and, following any default, 2.00% plus the greater of (a) the term SOFR plus 0.10% and (b) a base rate equal to the greatest of (i), (ii) and (iii) above.

The agreements underlying the AR Securitization program contain various customary representations and warranties, covenants, and default provisions which provide for the termination and acceleration of the commitments under the AR Securitization program in circumstances including, but not limited to, failure to make payments when due, breach of a representation, warranty or covenant, certain insolvency events or failure to maintain the security interest in the trade receivables, and defaults under other material indebtedness.

Total Commitments Related to Issued Letters of Credit--As of April 1, 2023, total commitments related to issued LCs were \$94,435, of which \$2,624 were issued under the revolving credit facility, \$89,689 were issued under the AR Securitization program, and \$2,122 were issued under short-term lines of credit. As of December 31, 2022, total commitments related to issued LCs were \$94,435, of which \$2,624 were issued under the revolving credit facility, \$89,689 were issued under the AR Securitization program, and \$2,122 were issued under short-term lines of credit.

As of April 1, 2023, we were in compliance with all debt covenants.

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H. Leases

We lease certain office and parking facilities, warehouse space, equipment, vehicles and information technology equipment under operating and finance leases. Lease expense for these leases is recognized within the Condensed Consolidated Statements of Operations on a straight-line basis over the lease term, with variable lease payments recognized in the period those payments are incurred. The following table summarizes the amounts recognized in our Condensed Consolidated Balance Sheet related to leases:

	Condensed Consolidated Balance Sheet Classification	April 1, 2023	December 31, 2022
Assets			
Operating lease assets	Right-of-use assets - operating leases	\$ 109,709	\$ 104,612
Finance lease assets	Property and equipment, net	14,218	12,948
Total lease assets		\$ 123,927	\$ 117,560
Liabilities			
Current operating lease liabilities	Other current liabilities	\$ 36,565	\$ 34,652
Non-current operating lease liabilities	Lease liabilities - operating leases	72,236	68,878
Total operating lease liabilities		108,801	103,530
Current portion of finance lease liabilities	Current portion of long-term debt and finance lease liabilities	3,536	3,046
Non-current finance lease liabilities	Lease liabilities - finance leases	10,357	9,481
Total finance lease liabilities		13,893	12,527
Total lease liabilities		\$ 122,694	\$ 116,057

The components of lease cost recognized within our Condensed Consolidated Statements of Operations were as follows:

		Three Months Ended	
	Condensed Consolidated Statements of Operations Classification	April 1, 2023	April 2, 2022
Operating lease cost	Operating expense	\$ 7,746	\$ 6,019
Operating lease cost	Selling expense	3,113	2,745
Operating lease cost	General and administrative expense	290	289
Finance lease cost:			
Amortization of right-of-use assets	Depreciation and amortization	855	730
Interest expense on lease liabilities	Interest expense	90	60
Other lease cost ⁽¹⁾	Operating expense	1,448	1,189
Other lease cost ⁽¹⁾	Selling expense	487	417
Other lease cost ⁽¹⁾	General and administrative expense	26	9
Total lease cost		\$ 14,055	\$ 11,458

⁽¹⁾ Other lease cost includes short-term lease costs and variable lease costs.

We often have options to renew lease terms for buildings and other assets. The exercise of lease renewal options is generally at our sole discretion. In addition, certain lease agreements may be terminated prior to their original expiration date at our discretion. We evaluate each renewal and termination option at the lease commencement date to determine if we are reasonably certain to exercise the option on

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the basis of economic factors. The weighted average remaining lease terms as of April 1, 2023 was 3.6 years for operating leases and 4.3 years for finance leases.

The discount rate implicit within our leases is generally not determinable, and therefore the Company determines the discount rate based on its incremental borrowing rate. The incremental borrowing rate for each lease is determined based on its term and the currency in which lease payments are made, adjusted for the impacts of collateral. The weighted average discount rates used to measure our lease liabilities as of April 1, 2023 was 3.67% for operating leases and 3.22% for finance leases.

Supplemental Cash Flow Information Related to Leases

	Three Months Ended	
	April 1, 2023	April 2, 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ (10,968)	\$ (9,194)
Operating cash flows from finance leases	(90)	(60)
Financing cash flows from finance leases	(759)	(767)
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	15,410	13,610
Finance leases	2,125	1,167

Maturity Analysis of Lease Liabilities

	As of April 1, 2023	
	Operating Leases	Finance Leases
Remaining nine months of 2023	\$ 30,464	\$ 3,039
2024	33,757	3,804
2025	25,042	3,167
2026	14,188	2,499
2027	7,821	1,371
2028	2,277	677
Thereafter	2,526	296
Total lease payments	116,075	14,853
Less interest	7,274	960
Total	<u>\$ 108,801</u>	<u>\$ 13,893</u>

I. Stock-Based Compensation

Our shareholders approved the 2014 Omnibus Stock Plan (the “2014 Stock Plan”) at our annual meeting of shareholders on May 20, 2014. The 2014 Stock Plan replaced the expired 2004 Omnibus Stock Plan (the “2004 plan”) previously approved by the shareholders in 2004. The 2014 Stock Plan is administered by the Compensation Committee of the Board of Directors and has a term of ten years. All directors of the Company and employees of the Company and its subsidiaries are eligible to participate in the 2014 Stock Plan. The 2014 Stock Plan (similar to the 2004 plan) continues the maintenance of the Employee Stock Purchase Plan, as well as provisions for the grant of stock options and other stock-based incentives. The 2014 Stock Plan provides for the grant of five percent of the number of the Company’s common shares outstanding as of the first day of each fiscal year plus the number of common shares that were available for grant of awards, but not granted, in prior years. In no event, however, may the number of common shares available for the grant of awards in any fiscal year exceed ten percent of the common shares outstanding as of the first day of that fiscal year. Common shares subject to an award

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that is forfeited, terminated, or canceled without having been exercised are generally added back to the number of shares available for grant under the 2014 Stock Plan.

Stock-based compensation expense under all share-based payment plans -- our Employee Stock Purchase Plan, stock option plans, stock-settled stock appreciation rights (“SARs”) and restricted stock units (“RSUs”) -- was included in the results of operations as follows:

	Three Months Ended	
	April 1, 2023	April 2, 2022
Compensation expense, all share-based payment plans	\$ 1,690	\$ 1,270

Stock-based compensation consisted of the following:

Employee Stock Purchase Plan--Under the Employee Stock Purchase Plan, all full-time employees with one year of service are eligible to purchase, through payroll deduction, common shares. Employee purchases under the Employee Stock Purchase Plan are at 85% of the fair market value of the common shares--a 15% discount. We recognize compensation costs as payroll deductions are made. The 15% discount of total shares purchased under the plan resulted in compensation cost of \$445 being recognized for the three months ended April 1, 2023 and \$452 for the three months ended April 2, 2022.

Stock Options Plan--The stock options outstanding were awarded under a graded vesting schedule, measured at fair value, and have a term of ten years. Compensation costs for stock options are recognized over the requisite service period on the straight-line recognition method. Compensation cost recognized for stock options was \$65 for the three months ended April 1, 2023 and \$99 for the three months ended April 2, 2022. Beginning in 2021, management and the Compensation Committee replaced the issuance of stock options with performance-based restricted stock units (“PRsUs”) for certain employees.

Stock-Settled Stock Appreciation Rights--A SSAR is an award that allows the recipient to receive common shares equal to the appreciation in the fair market value of our common shares between the date the award was granted and the conversion date of the shares vested. Effective January 1, 2019, management and the Compensation Committee replaced the issuance of future SSARs with PRsUs for certain management employees.

Compensation costs for SSARs are determined using a fair-value method and amortized over the requisite service period. “Intrinsic value” is defined as the amount by which the fair market value of a common share exceeds the grant date price of a SSAR. During 2022, all remaining SSARs awards vested. Compensation expense for SSARs was \$0 for the three months ended April 1, 2023 and \$21 for the three months ended April 2, 2022.

Restricted Stock Units--During the three months ended April 1, 2023, the Compensation Committee awarded 83,700 PRsUs to certain management employees. The Compensation Committee made similar awards in prior periods. The awards vest over specified periods. The following table summarizes PRsUs and RSUs as of April 1, 2023.

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Restricted Stock Units	Number of Stock Units	Weighted- Average Grant Date Value	Weighted- Average Remaining Contractual Life	Unrecognized Compensation Cost	Aggregate Intrinsic Value
Unvested, January 1, 2023	766,267	\$ 14.95			
Granted	83,700	18.29			
Forfeited	—	—			
Vested	(47,329)	12.26			
Unvested, April 1, 2023	<u>802,638</u>	<u>\$ 15.46</u>	<u>1.7 years</u>	<u>\$ 6,538</u>	<u>\$ 14,849</u>
Employee PRSUs	<u>744,937</u>	<u>\$ 15.54</u>	<u>1.7 years</u>	<u>\$ 6,222</u>	<u>\$ 13,781</u>
Nonemployee Director RSUs	<u>57,701</u>	<u>\$ 14.42</u>	<u>1.1 years</u>	<u>\$ 316</u>	<u>\$ 1,067</u>

Compensation cost for PRSUs and RSUs is determined using a fair-value method and amortized on the straight-line recognition method over the requisite service period. “Intrinsic value” is defined as the amount by which the fair market value of a common share exceeds the grant date price of a PRSU or an RSU. Compensation expense on PRSUs and RSUs totaled \$1,180 for the three months ended April 1, 2023 and \$698 for the three months ended April 2, 2022.

We estimated the fair value of each stock-based award on the date of grant using a binomial option-pricing model. The binomial model considers a range of assumptions related to volatility, risk-free interest rate and employee exercise behavior. Expected volatilities utilized in the binomial model are based on historical volatility of our stock prices and other factors. Similarly, the dividend yield is based on historical experience and expected future changes. The binomial model also incorporates exercise and forfeiture assumptions based on an analysis of historical data. The expected life of the stock-based awards is derived from the output of the binomial model and represents the period of time that awards granted are expected to be outstanding.

The fair values of stock-based awards granted were estimated at the dates of grant with the following weighted-average assumptions.

	Three Months Ended	
	April 1, 2023	April 2, 2022
Volatility rate	9.6 %	9.7 %
Risk-free interest rate	4.6 %	1.6 %
Expected dividend yield	.4 %	.4 %
Expected life of awards (years)	3.0	3.0

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General Stock Option Information--The following table summarizes activity under the stock option plans for the three months ended April 1, 2023.

Stock Options	Number of Options Outstanding	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Life	Aggregate Intrinsic Value
Outstanding, January 1, 2023	2,072,949	\$ 8.59		
Granted	—	—		
Exercised	(14,886)	7.81		
Forfeited	—	—		
Outstanding, April 1, 2023	<u>2,058,063</u>	<u>\$ 8.60</u>	<u>3.6 years</u>	<u>\$ 20,375</u>
Exercisable, April 1, 2023	<u>1,692,449</u>	<u>\$ 8.03</u>	<u>3.0 years</u>	<u>\$ 17,720</u>

As of April 1, 2023, there was approximately \$307 of unrecognized compensation cost related to stock options outstanding. The cost is expected to be recognized over a weighted-average period of 1.2 years. “Intrinsic value” is defined as the amount by which the market price of a common share exceeds the exercise price of an option.

Common shares are issued from treasury upon the exercise of stock options and SSARs, the vesting of RSUs and PRSUs or purchases under the Employee Stock Purchase Plan.

J. Income Taxes

Our income tax provision for interim periods is determined using an estimate of our annual effective tax rate adjusted for discrete items, if any, that are taken into account in the relevant period. Each quarter we update our estimate of the annual effective tax rate and, if our estimated annual tax rate changes, we make a cumulative adjustment. The estimated annual effective tax rate for the three months ended April 1, 2023 was 28.4%. Our actual effective tax rate was 18.8% and 11.0% for the three months ended April 1, 2023 and April 2, 2022, respectively. The change in the effective tax rate from statutory tax rates was primarily due to the impact of favorable discrete items which are a set amount and therefore have a larger impact on the rate based on our net income before tax in the first three months compared to the impact it will have on the rate for the full year.

As of April 1, 2023, we had unrecognized tax benefits of \$656, of which \$329 would affect our effective rate if recognized, and accrued interest expense related to unrecognized benefits of \$55. At December 31, 2022, we had unrecognized tax benefits of \$638, of which \$311 would affect our effective rate if recognized, and accrued interest expense related to unrecognized benefits of \$53. Unrecognized tax benefits are the differences between a tax position taken, or expected to be taken, in a tax return, and the benefit recognized for financial reporting purposes.

We recognize interest accrued related to unrecognized tax benefits in income tax expense. Penalties, if incurred, would be recognized as a component of income tax expense.

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The Company is routinely under audit by U.S. federal, state and local authorities and Canadian authorities in the area of income tax. These audits include questioning the timing and the amount of income and deductions and the allocation of income and deductions among various tax jurisdictions. With the exception of U.S. state jurisdictions and Canada, the Company is no longer subject to examination by tax authorities for the years through 2018. As of April 1, 2023, we believe it is reasonably possible that the total amount of unrecognized tax benefits will not significantly increase or decrease.

K. Accumulated Other Comprehensive Income (Loss)

Comprehensive income (or loss) is comprised of net income (or net loss) and other components, including foreign currency translation adjustments and defined benefit pension plan adjustments.

The following summarizes the components of other comprehensive income (loss) accumulated in shareholders' equity for the three months ended April 1, 2023 and April 2, 2022:

Three Months Ended April 1, 2023	Foreign Currency	Available-for- Sale Securities	Defined Benefit Pension Plans	Accumulated Other Comprehensive Income (Loss)
Balance at January 1, 2023	\$ (5,511)	\$ (199)	\$ 122	\$ (5,588)
Other comprehensive income (loss) before reclassifications				
Translation adjustment	\$ 31	\$ —	\$ —	\$ 31
Unrealized losses	—	(49)	—	(49)
Amounts reclassified from accumulated other comprehensive income (loss)	—	(26)	—	(26)
Tax effect	—	16	—	16
Net of tax amount	31	(59)	—	(28)
Balance at April 1, 2023	\$ (5,480)	\$ (258)	\$ 122	\$ (5,616)
Three Months Ended April 2, 2022	Foreign Currency	Available-for- Sale Securities	Defined Benefit Pension Plans	Accumulated Other Comprehensive Income (Loss)
Balance at January 1, 2022	\$ (3,654)	\$ —	\$ (519)	\$ (4,173)
Other comprehensive income (loss) before reclassifications				
Translation adjustment	\$ 480	\$ —	\$ —	\$ 480
Amounts reclassified from accumulated other comprehensive income (loss)	—	—	31	31
Tax effect	—	—	(7)	(7)
Net of tax amount	480	—	24	504
Balance at April 2, 2022	\$ (3,174)	\$ —	\$ (495)	\$ (3,669)

There was no change in defined benefit pension plans for the three months ended April 1, 2023 and \$31 for the three months ended April 2, 2022, which was included in net periodic pension expense classified in the condensed consolidated statement of operations as general and administrative expense or other income (expense).

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L. Per Share Amounts and Common and Redeemable Shares Outstanding

We calculate our basic earnings per share by dividing net income or net loss by the weighted average number of common shares outstanding during the period. Diluted earnings per share are calculated in a similar manner, but include the effect of dilutive securities. To the extent these securities are antidilutive, they are excluded from the calculation of earnings per share. The per share amounts were computed as follows:

	Three Months Ended	
	April 1, 2023	April 2, 2022
Income available to common shareholders:		
Net income	\$ 5,996	\$ 1,782
Weighted-average shares (in thousands):		
Basic:		
Outstanding	42,747	44,618
Partially-paid share subscriptions	330	—
Basic weighted-average shares	43,077	44,618
Diluted:		
Basic from above	43,077	44,618
Incremental shares from assumed:		
Exercise of stock subscription purchase rights	5	—
Exercise of stock options and awards	2,040	2,220
Diluted weighted-average shares	45,122	46,838
Net income per share:		
Basic	\$.14	\$.04
Diluted	\$.13	\$.04

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Common and Redeemable Shares Outstanding--A summary of the activity of the common and redeemable shares outstanding for the three months ended April 1, 2023 was as follows:

	Common Shares Net of Treasury Shares	Redeemable Shares	Total
Shares outstanding at January 1, 2023	33,529,474	9,188,010	42,717,484
Shares purchased	(434,511)	(20,844)	(455,355)
Shares sold	1,391	169,319	170,710
Stock subscription offering -- cash purchases	(300)	—	(300)
Options and awards exercised	106,136	—	106,136
Shares outstanding at April 1, 2023	<u>33,202,190</u>	<u>9,336,485</u>	<u>42,538,675</u>

On April 1, 2023, we had 42,538,675 common and redeemable shares outstanding, employee options exercisable to purchase 1,692,449 common shares, partially-paid subscriptions for 1,318,250 common shares and purchase rights outstanding for 487,421 common shares.

2022 Subscription Offering

Beginning April 2022, the Company offered to eligible employees and nonemployee directors the right to subscribe to a maximum of 2,666,667 common shares of the Company (including shares that may be issued upon the exercise of stock rights) at \$18.10 per share in accordance with the provisions of The Davey Tree Expert Company 2014 Omnibus Stock Plan and the rules of the Compensation Committee of the Company's Board of Directors. The offering period ended on August 1, 2022 and resulted in the subscription of 1,476,250 common shares for \$26,720 at \$18.10 per share.

Participants in the subscription offering who purchased common shares for an aggregate purchase price of less than \$5 were required to pay with cash. All participants (excluding Company directors and officers) purchasing common shares for an aggregate purchase price of \$5 or more had an option to finance their purchase through a down-payment of at least 10% of the total purchase price and a seven-year promissory note for the balance due with interest at the greater of 2.00% or the applicable federal rate in effect as of August 1, 2022, which was 3.15%. Payments on the promissory note can be made either by payroll deductions or annual lump-sum payments of both principal and interest. Common shares purchased in the offering were pledged as security for the payment of the promissory note, and the common shares will not be issued until the promissory note is paid-in-full. Dividends will be paid on all subscribed shares, subject to forfeiture to the extent that payment is not ultimately made for the shares.

All participants in the offering who purchased in excess of \$5 of common shares were granted a "right" to purchase one additional common share at a price of \$18.10 per share for every three common shares purchased in the offering. As a result of the stock subscription, rights to purchase 489,169 common shares were granted. Each right may be exercised at the rate of one-seventh per year and will expire seven years after the date that the right was granted. A purchaser may not exercise a right once he or she ceases to be the Company's employee or non-employee director, as applicable.

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M. Operations by Business Segment

We provide a wide range of arboricultural, horticultural, environmental and consulting services to residential, utility, commercial and government entities throughout the United States and Canada. We have two reportable operating segments organized by type or class of customer: Residential and Commercial, and Utility.

Residential and Commercial--Residential and Commercial provides services to our residential and commercial customers including: the treatment, preservation, maintenance, removal and planting of trees, shrubs and other plant life; the practice of landscaping, grounds maintenance, tree surgery, tree feeding and tree spraying; the application of fertilizer, herbicides and insecticides; and natural resource management and consulting, forestry research and development, and environmental planning.

Utility--Utility is principally engaged in providing services to our utility customers--investor-owned, municipal utilities, and rural electric cooperatives--including: the practice of line-clearing and vegetation management around power lines and rights-of-way and chemical brush control, natural resource management and consulting, forestry research and development, and environmental planning.

All other operating activities, including research, technical support and laboratory diagnostic facilities, are included in "All Other."

Measurement of Segment Profit and Loss and Segment Assets--We evaluate performance and allocate resources based primarily on operating income and also actively manage business unit operating assets. Segment information, including reconciling adjustments, is presented consistent with the basis described in our 2022 Annual Report.

Segment information reconciled to the condensed consolidated financial statements was as follows:

	Utility	Residential and Commercial	All Other	Reconciling Adjustments	Consolidated
Three Months Ended April 1, 2023					
Revenues	\$ 224,576	\$ 146,208	\$ 550	\$ —	\$ 371,334
Income (loss) from operations	<u>16,034</u>	<u>(257)</u>	<u>(4,024)</u>	(246) (a)	11,507
Interest expense				(3,871)	(3,871)
Interest income				399	399
Other income (expense), net				<u>(651)</u>	<u>(651)</u>
Income before income taxes					<u>\$ 7,384</u>
Segment assets, total	<u>\$ 399,853</u>	<u>\$ 299,896</u>	<u>\$ —</u>	<u>\$ 304,491</u> (b)	<u>\$ 1,004,240</u>
Three Months Ended April 2, 2022					
Revenues	\$ 205,167	\$ 136,931	\$ 546	\$ —	\$ 342,644
Income (loss) from operations	<u>12,723</u>	<u>1,088</u>	<u>(5,710)</u>	(2,344) (a)	5,757
Interest expense				(1,445)	(1,445)
Interest income				27	27
Other income (expense), net				<u>(2,337)</u>	<u>(2,337)</u>
Income before income taxes					<u>\$ 2,002</u>
Segment assets, total	<u>\$ 301,489</u>	<u>\$ 269,971</u>	<u>\$ —</u>	<u>\$ 227,305</u> (b)	<u>\$ 798,765</u>

Reconciling adjustments from segment reporting to the condensed consolidated financial statements include unallocated corporate items:

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- (a) Reclassification of depreciation expense and allocation of corporate expenses.
- (b) Corporate assets include cash, prepaid expenses, corporate facilities, enterprise-wide information systems and other nonoperating assets.

N. Revenue Recognition

We recognize revenue in accordance with ASC Topic 606, Revenue from Contracts with Customers.

Nature of Performance Obligations and Significant Judgments

At contract inception, the Company assesses the goods and services promised in its contracts with customers and identifies a performance obligation for each promised good or service (or bundle of goods and services) that is distinct. To identify the performance obligations, the Company considers each of the goods or services promised in the contract regardless of whether they are explicitly stated or are implied by customary business practices.

Our contracts with our customers generally originate upon the completion of a quote for services for residential and commercial customers or the receipt of a purchase order (or similar work order) for utility customers. In some cases, our contracts are governed by master services agreements, in which case our contract under ASC 606 consists of the combination of the master services agreement and the quote/purchase order. Many of our contracts have a stated duration of one year or less or contain termination clauses that allow the customer to cancel the contract after a specified notice period, which is typically less than 90 days. Due to the fact that many of our arrangements allow the customer to terminate for convenience, the duration of the contract for revenue recognition purposes generally does not extend beyond the services that we have actually transferred. As a result, many of our contracts are, in effect, day-to-day or month-to-month contracts.

Disaggregation of Revenue

The following tables disaggregate our revenue for the three months ended April 1, 2023 and April 2, 2022 by major sources:

Three Months Ended April 1, 2023	Utility	Residential and Commercial	All Other	Consolidated
Type of service:				
Tree and plant care	\$ 142,589	\$ 81,824	\$ (137)	\$ 224,276
Grounds maintenance	—	28,023	—	28,023
Storm damage services	3,973	5,022	—	8,995
Consulting and other	78,014	31,339	687	110,040
Total revenues	\$ 224,576	\$ 146,208	\$ 550	\$ 371,334
Geography:				
United States	\$ 213,819	\$ 137,740	\$ 550	\$ 352,109
Canada	10,757	8,468	—	19,225
Total revenues	\$ 224,576	\$ 146,208	\$ 550	\$ 371,334

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Three Months Ended April 2, 2022	Utility	Residential and Commercial	All Other	Consolidated
Type of service:				
Tree and plant care	\$ 136,959	\$ 81,634	\$ (42)	\$ 218,551
Grounds maintenance	—	31,596	—	31,596
Storm damage services	1,634	1,550	—	3,184
Consulting and other	66,574	22,151	588	89,313
Total revenues	<u>\$ 205,167</u>	<u>\$ 136,931</u>	<u>\$ 546</u>	<u>\$ 342,644</u>
Geography:				
United States	\$ 196,443	\$ 128,239	\$ 546	\$ 325,228
Canada	8,724	8,692	—	17,416
Total revenues	<u>\$ 205,167</u>	<u>\$ 136,931</u>	<u>\$ 546</u>	<u>\$ 342,644</u>

Contract Balances

Our contract liabilities consist of advance payments and billings in excess of costs incurred and deferred revenue. The Company recognized \$1,280 of revenue for the three months ended April 1, 2023, that was included in the contract liability balance at December 31, 2022 and \$749 of revenue for the three months ended April 2, 2022, that was included in the contract liability balance at December 31, 2021. Net contract liabilities consisted of the following:

	April 1, 2023	December 31, 2022
Contract liabilities - current	\$ 3,698	\$ 3,723
Contract liabilities - noncurrent	3,706	4,145
Net contract liabilities	<u>\$ 7,404</u>	<u>\$ 7,868</u>

O. Fair Value Measurements and Financial Instruments

FASB ASC 820, “Fair Value Measurements and Disclosures” (“Topic 820”) defines fair value based on the price that would be received to sell an asset or the exit price that would be paid to transfer a liability in an orderly transaction between market participants at the measurement date. Market participants are defined as buyers or sellers in the principal or most advantageous market for the asset or liability that are independent of the reporting entity, knowledgeable and able and willing to transact for the asset or liability.

Valuation Hierarchy--Topic 820 establishes a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair value. The hierarchy prioritizes the inputs into three broad levels:

Level 1 inputs are quoted prices in active markets for identical assets or liabilities that the entity has the ability to access.

Level 2 inputs are observable inputs other than prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated with observable market data.

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Level 3 inputs are unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets and liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Our assets and liabilities measured at fair value on a recurring basis at April 1, 2023 were as follows:

Assets and Liabilities Recorded at Fair Value on a Recurring Basis	Total Carrying Value at April 1, 2023	Fair Value Measurements at April 1, 2023 Using:		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Assets invested for self-insurance				
Certificates of deposits, current	\$ 3,500	\$ 3,500	\$ —	\$ —
Certificates of deposits, noncurrent	6,359	6,359	—	—
Available-for-sale debt securities:				
United States Government and agency securities	29,686	29,686	—	—
Corporate notes and bonds	275	275	—	—
Total available-for-sale debt securities	29,961	29,961	—	—
Marketable equity securities:				
Mutual funds	10,200	10,200	—	—
Corporate stocks	3,242	3,242	—	—
Exchange traded funds	1,313	1,313	—	—
Total marketable equity securities	14,755	14,755	—	—
Liabilities:				
Deferred compensation	\$ 4,686	\$ —	\$ 4,686	\$ —

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Our assets and liabilities measured at fair value on a recurring basis at December 31, 2022 were as follows:

Assets and Liabilities Recorded at Fair Value on a Recurring Basis	Total Carrying Value at December 31, 2022	Fair Value Measurements at December 31, 2022 Using:		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Assets invested for self-insurance				
Certificates of deposits, current	\$ 3,750	\$ 3,750	\$ —	\$ —
Certificates of deposits, noncurrent	6,359	6,359	—	—
Available-for-sale debt securities:				
United States Government and agency securities	25,254	25,254	—	—
Corporate notes and bonds	264	264	—	—
Total available-for-sale debt securities	25,518	25,518	—	—
Marketable equity securities:				
Mutual funds	13,873	13,873	—	—
Corporate stocks	3,007	3,007	—	—
Exchange traded funds	1,230	1,230	—	—
Total marketable equity securities	18,110	18,110	—	—
Liabilities:				
Deferred compensation	\$ 4,597	\$ —	\$ 4,597	\$ —

The assets invested for self-insurance are certificates of deposit, stocks, bonds, mutual funds and exchange traded funds--classified as Level 1--based on quoted market prices of the identical underlying securities in active markets. The estimated fair value of the deferred compensation--classified as Level 2--is based on the value of the Company's common shares, determined by independent valuation.

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Fair Value of Financial Instruments--The fair values of our current financial assets and current liabilities, including cash, accounts receivable, accounts payable, and accrued expenses, among others, approximate their reported carrying values because of their short-term nature. Financial instruments classified as noncurrent assets and liabilities and their carrying values and fair values were as follows:

	April 1, 2023		December 31, 2022	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Assets:				
Available-for-sale debt securities	\$ 29,961	\$ 29,961	\$ 25,518	\$ 25,518
Marketable equity securities	14,755	14,755	18,110	18,110
Liabilities:				
Revolving credit facility, noncurrent	\$ 212,000	\$ 212,000	\$ 150,433	\$ 150,433
Senior unsecured notes, noncurrent	75,000	75,481	75,000	74,968
Term loans, noncurrent	5,420	5,346	5,854	5,610
Total	\$ 292,420	\$ 292,827	\$ 231,287	\$ 231,011

The carrying value of our revolving credit facility approximates fair value--classified as Level 2--as the interest rates on the amounts outstanding are variable. The fair value of our senior unsecured notes and term loans--classified as Level 2--is determined based on expected future weighted-average interest rates with the same remaining maturities.

Market Risk--In the normal course of business, we are exposed to market risk related to changes in foreign currency exchange rates, changes in interest rates and changes in fuel prices. We do not hold or issue derivative financial instruments for trading or speculative purposes. In prior years, we have used derivative financial instruments to manage risk, in part, associated with changes in interest rates and changes in fuel prices. Presently, we are not engaged in any hedging or derivative activities.

P. Commitments and Contingencies

We are party to a number of lawsuits, threatened lawsuits and other claims arising out of the normal course of business. On a quarterly basis, we assess our liabilities and contingencies in connection with outstanding legal proceedings utilizing the latest information available. Where it is probable that we will incur a loss and the amount of the loss can be reasonably estimated, we record a liability in our consolidated financial statements. These legal accruals may be increased or decreased to reflect any relevant developments on a quarterly basis. Where a loss is not probable or the amount of the loss is not estimable, we do not record a legal accrual, consistent with applicable accounting guidance. Based on information currently available to us, advice of counsel, and available insurance coverage, we believe that our established accruals are adequate and the liabilities arising from the legal proceedings will not have a material adverse effect on our consolidated financial condition. We note, however, that in light of the inherent uncertainty in legal proceedings, there can be no assurance that the ultimate resolution of a matter will not exceed established accruals. As a result, the outcome of a particular matter or a combination of matters may be material to our results of operations for a particular period, depending upon the size of the loss or our income for that particular period.

In November 2017, a wrongful death lawsuit was filed in Savannah, Georgia in the State Court of Chatham County ("State Court") against Davey Tree, its subsidiary, Wolf Tree, Inc. ("Wolf Tree"), a former Davey employee, a Wolf Tree employee, and two former Wolf Tree

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employees. That complaint, as subsequently amended, alleges various acts of negligence and seeks compensatory damages for the wrongful death of the plaintiff's husband, a Wolf Tree employee, who was shot and killed in August 2017.

In July 2018, a related survival action was filed in Savannah, Georgia by the deceased's estate against Davey Tree, its subsidiary, Wolf Tree, and four current and former employees, which arises out of the same allegations, seeks compensatory and punitive damages and also includes three Racketeer Influenced and Corrupt Organizations Act ("RICO") claims under Georgia law seeking treble damages. The 2018 case was removed to the United States District Court for the Southern District of Georgia, Savannah Division ("Federal Court"), on August 2, 2018.

The cases were mediated unsuccessfully in December 2018 and the State Court case was originally set for trial on January 22, 2019. However, as discussed below, the two civil cases were ultimately stayed for more than four years.

On December 6, 2018, a former Wolf Tree employee pled guilty to conspiracy to conceal, harbor, and shield illegal aliens. On December 21, 2018, the United States Department of Justice ("DOJ") filed a motion to stay both actions on the grounds that on December 7, 2018, an indictment was issued charging two former Wolf Tree employees and another individual with various crimes, including conspiracy to murder the deceased. The State Court case was stayed on December 28, 2018 and the Federal Court case was stayed on January 8, 2019. On January 29, 2019, the State Court ordered the parties to return to mediation, which occurred on April 17, 2019, but was unsuccessful in resolving the matters.

By November 2022, all three of the individually charged defendants had either been convicted at trial or pled guilty to Federal criminal charges in the Federal Court related to their involvement with the murder and other illegal activities. All three criminal defendants have now been sentenced.

Since the individual defendants' criminal matters are now resolved, the State Court held a status conference with the parties on January 20, 2023. After that status conference, the State Court lifted the stay and entered a scheduling order on February 8, 2023 that, among other items, reopened discovery, which is followed by amended briefing on the parties' pending motions for summary judgment. The State Court has not yet set a trial date.

The stay in the Federal Court case was lifted on April 4, 2023. The case will now proceed to the early stages of litigation such as matters related to discovery and motions to dismiss.

In both civil cases, the Company and Wolf Tree have denied all liability and are vigorously defending against the actions. The Company also has retained separate counsel for some of the individual defendants, each of whom has denied all liability and also are vigorously defending the actions.

Previously, on December 17, 2018, the United States Attorney's Office for the Southern District of Georgia informed the Company and Wolf Tree that they are also under investigation for potential civil or other violations of immigration and other laws relating to the subject matters of the criminal investigation referenced above. The Company and Wolf Tree are fully cooperating with the investigation and have met with both the civil and criminal divisions of the DOJ. To date, the matter currently remains unresolved.

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Northern California Wildfires

Five lawsuits were filed that name contractors for PG&E Corporation and its subsidiary, Pacific Gas and Electric Company (together, “PG&E”), including Davey Tree, with respect to claims arising from wildfires that occurred in Pacific Gas and Electric Company’s service territory in northern California beginning on October 8, 2017. An action was brought on August 8, 2019 in Napa County Superior Court, entitled *Donna Walker, et al. v. Davey Tree Surgery Company, et al.*, Case No. 19CV001194. An action was brought on October 8, 2019 in San Francisco County Superior Court, entitled *Quinisha Kyree Abram, et al. v. ACRT, Inc., et al.*, Case No. CGC-19-579861. An action was brought on October 7, 2019 in San Francisco Superior Court, entitled *Adams, et al. v. Davey Resource Group, Inc., et al.*, Case No. CGC-19-579828. An action was brought on October 8, 2019 in Sacramento Superior Court, entitled *Antone, et al. v. ACRT, Inc. et al.*, Case No. 34-2019-00266662. An action was brought on October 7, 2019 in Sacramento Superior Court, entitled *Bennett, et al. v. ACRT, Inc. et al.*, Case No. 2019-00266501.

Three additional actions were brought on January 28, 2021 in San Francisco County Superior Court, by fire victims represented by a trust (“Plaintiffs’ Trust”), which was assigned contractual rights in the PG&E bankruptcy proceedings. These cases are entitled *John K. Trotter, Trustee of the PG&E Fire Victim Trust v. Davey Resource Group, Inc., et al.*, Case No. CGC-21-589438; *John K. Trotter, Trustee of the PG&E Fire Victim Trust v. Davey Resource Group, Inc., et al.*, Case No. CGC-21-589439; and *John K. Trotter, Trustee of the PG&E Fire Victim Trust v. ACRT Pacific, LLC, et al.*, Case No. CGC-21-589441. On September 22, 2021, the court granted Davey Tree's petition to coordinate all cases as a California Judicial Council Coordination Proceeding, *In Re North Bay Fire Cases*, JCCP No. 4955. As a result of the coordination order, all of the actions are stayed in their home jurisdictions. At a case management conference in JCCP No. 4955 on February 24, 2022, the Court ordered that Davey Tree and the plaintiffs participate in a mediation. An initial mediation took place on October 17, 2022. The matter did not resolve at this initial mediation.

In November 2022, Davey Tree filed a cross-complaint against the Plaintiffs’ Trust and PG&E related to the contractual obligations of limitation of liability and hold harmless. Since that time, Davey Tree has dismissed the cross-complaint against PG&E without prejudice. The Plaintiff’s Trust filed a demurrer which challenged Davey Tree’s claim that the hold harmless provisions in its contracts with PG&E are an obligation of the Plaintiffs’ Trust. In response to the demurrer, Davey Tree filed an amended cross-complaint against the Plaintiff’s Trust on April 13, 2023. The court set a trial date for October 2, 2023 that will involve the claim of the Plaintiffs’ Trust as to the Atlas fire. Separately, the court referred the *Walker* case to Napa County Superior Court for a trial setting. The Napa Court set a trial in the *Walker* case for March 4, 2024.

In addition, the parties are in the process of scheduling a second session of the mediation. The court had ordered that it be conducted by April 28, 2023, but has since moved that deadline to May 31, 2023. The Plaintiffs’ Trust filed a motion for summary adjudication which challenged the limitation of liability as set forth in the assigned contracts. The Court denied the motion for summary adjudication in an order entered April 12, 2023.

The Defendants have received evidence from the Plaintiffs' Trust and PG&E collected by those parties prior to and during the PG&E bankruptcy proceedings and Davey Tree's experts have performed inspections of the evidence. Davey Tree will be seeking further discovery as well. Davey Tree has responded to all claims asserted by the plaintiffs in these actions, denying all liability, and is vigorously defending against plaintiffs' alleged claims.

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Q. The Davey 401KSOP and Employee Stock Ownership Plan

On March 15, 1979, the Company consummated a plan, which transferred control of the Company to its employees. As a part of this plan, the Company initially sold 120,000 common shares (presently, 46,080,000 common shares adjusted for stock splits) to its Employee Stock Ownership Trust (“ESOT”) for \$2,700. The Employee Stock Ownership Plan (“ESOP”), in conjunction with the related ESOT, provided for the grant to certain employees of certain ownership rights in, but not possession of, the common shares held by the trustee of the ESOT. Annual allocations of shares have been made to individual accounts established for the benefit of the participants.

Defined Contribution and Savings Plans--Most employees are eligible to participate in The Davey 401KSOP and ESOP Plan. Effective January 1, 1997, the plan commenced operations and retained the existing ESOP participant accounts and incorporated a deferred savings plan (a “401(k) plan”) feature. Participants in the 401(k) plan are allowed to make before-tax contributions, within Internal Revenue Service established limits, through payroll deductions. Effective January 1, 2020, we match, in either cash or our common shares, 100% of the first three percent and 50% of the next two percent of each participant's before-tax contribution, limited to the first five percent of the employee’s compensation deferred each year. All non-bargaining domestic employees who attained age 21 and completed one year of service are eligible to participate. In May 2004, we adopted the 401K Match Restoration Plan, a defined contribution plan that supplements the retirement benefits of certain employees that participate in the savings plan feature of The Davey 401KSOP and ESOP Plan, but are limited in contributions because of tax rules and regulations.

Our common shares are not listed or traded on an established public trading market, and market prices are, therefore, not available. Semiannually, an independent stock valuation firm assists with the appraisal of the fair market value of our common shares based upon our performance and financial condition. The Davey 401KSOP and ESOP Plan includes a put option for shares of the Company’s common stock distributed from the plan. Shares are distributed from the Davey 401KSOP and ESOP Plan to former participants of the plan, their beneficiaries, donees or heirs (each, a “participant”). Since our common stock is not currently traded on an established securities market, if the owners of distributed shares desire to sell their shares, the Company is required to purchase the shares at fair value for two 60-day periods after distribution of the shares from the Davey 401KSOP and ESOP. The fair value of distributed shares subject to the put option totaled \$1,634 and \$1,833 as of April 1, 2023 and December 31, 2022, respectively. The fair value of the shares held in the Davey 401KSOP and ESOP totaled \$171,091 and \$168,145 as of April 1, 2023 and December 31, 2022, respectively. Due to the Company’s obligation under the put option, the distributed shares subject to the put option and the shares held in the Davey 401KSOP and ESOP (collectively referred to as 401KSOP and ESOP related shares) are recorded at fair value, classified as temporary equity in the mezzanine section of the consolidated balance sheets and totaled \$172,725 and \$169,978 as of April 1, 2023 and December 31, 2022, respectively. Changes in the fair value of the 401KSOP and ESOP Plan related shares are reflected in retained earnings while net share activity associated with the 401KSOP and ESOP Plan related shares are first reflected in additional paid-in capital and then retained earnings if additional paid-in capital is insufficient.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

(Amounts in thousands, except share data)

Management's Discussion and Analysis of Financial Condition and Results of Operations is provided as a supplement to the accompanying condensed consolidated financial statements and notes to help provide an understanding of our financial condition, cash flows and results of operations.

We provide a wide range of arboricultural, horticultural, environmental and consulting services to residential, utility, commercial and government entities throughout the United States and Canada.

Our Business--Our operating results are reported in two segments organized by type or class of customer: Residential and Commercial, and Utility. Residential and Commercial provides services to our residential and commercial customers including: the treatment, preservation, maintenance, removal and planting of trees, shrubs and other plant life; the practice of landscaping, grounds maintenance, tree surgery, tree feeding and tree spraying; the application of fertilizer, herbicides and insecticides; and natural resource management and consulting, forestry research and development, and environmental planning. Utility is principally engaged in providing services to our utility customers--investor-owned, municipal utilities, and rural electric cooperatives--including: the practice of line-clearing and vegetation management around power lines and rights-of-way and chemical brush control, natural resource management and consulting, forestry research and development, and environmental planning. All other operating activities, including research, technical support and laboratory diagnostic facilities, are included in "All Other."

Impact of COVID-19 and Recent Trends

While the coronavirus ("COVID-19") pandemic did not have a material adverse effect on our reported results for the first three months of 2023, the overall extent and duration of the impact of COVID-19 on businesses and economic activity generally remains unclear due to the inherent uncertainty surrounding COVID-19, given its continual evolution.

We have taken steps to support our employees and protect their health and safety, while also ensuring that our business can continue to operate and provide services to our customers. We continue to provide additional administrative leave for employees affected by COVID-19 directly or indirectly. During the second and third quarters of 2021, we began to bring employees back to our corporate headquarters on a limited basis with increased safety protocols and in compliance with public health and government guidance and also began to lift travel restrictions in situations where necessary.

Our business continues to be impacted by a number of other macro-economic factors, in addition to the trailing impact of the COVID-19 pandemic. Global supply chains and product availability remain highly challenged and ongoing global events in Eastern Europe have only exacerbated an already difficult operating environment. These factors, combined with higher fuel costs, increasing interest rates and a highly competitive labor market, have created an inflationary environment and cost pressures.

In regard to consumer demand, since the onset of the COVID-19 pandemic, our business has experienced an increase in demand and sales. It remains unclear, however, if these demand trends will remain intact or if they will revert to more historical levels over time, particularly as inflation begins to impact discretionary spending.

Inflation rates in the markets in which we operate have increased and may continue to rise. Recent inflation has led us to experience higher costs, including higher labor costs and costs for materials from suppliers and transportation costs, and, in the competitive markets in which we operate, we may not be able to increase our prices correspondingly to preserve our gross margins and profitability. If inflation rates

continue to rise or remain elevated for a sustained period of time, they could have a material adverse effect on our business, financial condition, results of operations and liquidity. We have generally been able to offset increases in these costs through various productivity and cost reduction initiatives, as well as adjusting our prices to pass through some of these higher costs to our customers; however, our ability to raise our prices depends on market conditions and competitive dynamics. Given the timing of our actions compared to the timing of these inflationary pressures, there may be periods during which we are unable to fully recover the increases in our costs.

2022 Subscription Offering

The Company offered to eligible employees and nonemployee directors the right to subscribe to a maximum of 2,666,667 common shares of the Company at \$18.10 per share in accordance with the provisions of The Davey Tree Expert Company 2014 Omnibus Stock Plan and the rules of the Compensation Committee of the Company's Board of Directors. The offering period ended on August 1, 2022 and resulted in the subscription of 1,476,250 common shares for \$26,720 at \$18.10 per share. For additional information regarding the offering, see "Part I - Item 1 Note L - Per Share Amounts and Common and Redeemable Shares Outstanding."

RESULTS OF OPERATIONS

The following table sets forth our consolidated results of operations as a percentage of revenues and the change in such percentages for the periods presented.

	Three Months Ended		
	April 1, 2023	April 2, 2022	Change
Revenues	100.0 %	100.0 %	— %
Costs and expenses:			
Operating	67.1	68.4	(1.3)
Selling	18.4	17.7	.7
General and administrative	8.5	8.5	—
Depreciation and amortization	3.8	4.0	(.2)
Gain on sale of assets, net	(.8)	(.3)	(.5)
Income from operations	3.1	1.7	1.4
Other income (expense):			
Interest expense	(1.0)	(.4)	(.6)
Interest income	.1	—	.1
Other, net	(.2)	(.7)	.5
Income before income taxes	2.0	.6	1.4
Income taxes	.4	.1	.3
Net income	<u>1.6 %</u>	<u>.5 %</u>	<u>1.1 %</u>

First Three Months—Three Months Ended April 1, 2023 Compared to Three Months Ended April 2, 2022

Our results of operations for the three months ended April 1, 2023 compared to the three months ended April 2, 2022 were as follows:

	Three Months Ended			
	April 1, 2023	April 2, 2022	Change	Percentage Change
Revenues	\$ 371,334	\$ 342,644	\$ 28,690	8.4 %
Costs and expenses:				
Operating	249,069	234,207	14,862	6.3
Selling	68,223	60,796	7,427	12.2
General and administrative	31,437	28,995	2,442	8.4
Depreciation and amortization	13,994	13,787	207	1.5
Gain on sale of assets, net	(2,896)	(898)	(1,998)	222.5
	<u>359,827</u>	<u>336,887</u>	<u>22,940</u>	<u>6.8</u>
Income from operations	11,507	5,757	5,750	99.9
Other income (expense):				
Interest expense	(3,871)	(1,445)	(2,426)	167.9
Interest income	399	27	372	1,377.8
Other, net	(651)	(2,337)	1,686	(72.1)
Income before income taxes	7,384	2,002	5,382	268.8
Income taxes	1,388	220	1,168	530.9
Net income	<u>\$ 5,996</u>	<u>\$ 1,782</u>	<u>\$ 4,214</u>	<u>236.5 %</u>

Revenues--Revenues of \$371,334 increased \$28,690 compared with \$342,644 in the first three months of 2022. Utility Services increased \$19,409 or 9.5% compared with the first three months of 2022. The increase was primarily attributable to additional storm work arising from the rain and wind experienced on the west coast of the U.S., new accounts obtained, as well as increased work year-over-year on other accounts and price increases on existing accounts within both our U.S. and Canadian operations. Residential and Commercial Services increased \$9,277 or 6.8% compared with the first three months of 2022. Increases were primarily in consulting and other revenue and storm damage revenue and were partially offset by a decrease in grounds maintenance revenue.

Operating Expenses--Operating expenses of \$249,069 increased \$14,862 compared with the first three months of 2022 but, as a percentage of revenue, decreased to 67.1% from 68.4%. Utility Services increased \$11,562 or 7.5% compared with the first three months of 2022 but, as a percentage of revenue, decreased to 73.6% from 74.9%. The increase was attributable to increases in labor and benefits expense, fuel expense, equipment expense, materials expense, crew meals and lodging expenses which were partially offset by decreases in tools and parts expense and subcontractor expense. Residential and Commercial Services increased \$4,834 or 6.1% compared with the first three months of 2022 but, as a percentage of revenue, decreased to 57.8% from 58.1%. The increase was primarily attributable to increases in labor and benefits expense, equipment expense and subcontractor expense which were partially offset by a decrease in materials expense.

Fuel costs of \$12,661 increased \$467, or 3.8%, from the \$12,194 incurred in the first three months of 2022 and impacted operating expenses within all segments. The \$467 increase included usage increases approximating \$20 and price increases approximating \$447.

Selling Expenses--Selling expenses of \$68,223 increased \$7,427 compared with the first three months of 2022 and, as a percentage of revenue, increased to 18.4% from 17.7%. Utility Services increased \$3,275 or 13.5% compared to the first three months of 2022 and, as a percentage of revenue, increased to 12.2% from 11.8%. The increase was primarily attributable to increases in field management wages and field management travel expense. Residential and Commercial Services experienced an increase of \$4,694 or 12.6% compared to the first three months of 2022 and, as a percentage of revenue, increased to 28.7% from 27.2%. The increase was primarily attributable to increases in field management wages and incentive expense, employee development expense and rent expense.

General and Administrative Expenses--General and administrative expenses of \$31,437 increased \$2,442 from \$28,995 in the first three months of 2022. The increase was primarily attributable to increases in salary and incentive expense, professional services expense and travel expense.

Depreciation and Amortization Expense--Depreciation and amortization expense of \$13,994 increased \$207 from \$13,787 incurred in the first three months of 2022.

Gain on the Sale of Assets, Net--Gain on the sale of assets of \$2,896 for the first three months of 2023 increased \$1,998 from the \$898 gain in the first three months of 2022. We sold more units of equipment at a higher average gain per unit during the first three months of 2023 as compared with the first three months of 2022.

Interest Expense--Interest expense of \$3,871 increased \$2,426 from the \$1,445 incurred in the first three months of 2022. The increase was attributable to higher average borrowing and increased interest rates during the first three months of 2023, as compared with the first three months of 2022.

Other, Net--Other expense, net, of \$651 decreased \$1,686 from the \$2,337 expense incurred in the first three months of 2022 and consisted of nonoperating income and expense, including losses on marketable securities, pension expense and foreign currency translation adjustments.

Income Taxes--Income taxes for the first three months of 2023 were \$1,388, as compared to \$220 for the first three months of 2022. Our tax provision for interim periods is determined using an estimate of our annual effective tax rate adjusted for discrete items, if any, that are taken into account in the relevant period. The effective tax rate for the first three months of 2023 was 18.8%. Our effective tax rate for the first three months of 2022 was 11.0%. The change in the effective tax rate from statutory tax rates was primarily due to the impact of favorable discrete items and state and local taxes.

Net Income--Net income of \$5,996 for the first three months of 2023 was \$4,214 more than the net income of \$1,782 for the first three months of 2022.

LIQUIDITY AND CAPITAL RESOURCES

Our principal financial requirements are for capital spending, working capital and business acquisitions. Cash generated from operations, our revolving credit facility and note issuances are our primary sources of capital. During 2022, we also engaged in a subscription offering of our common shares to eligible employees and nonemployee directors, which closed in the third quarter of 2022 and resulted in the subscription of 1,476,250 common shares for \$26,720 at \$18.10 per share.

Cash Flow Summary

Our cash flows from operating, investing and financing activities for the three months ended April 1, 2023 and April 2, 2022 were as follows:

	Three Months Ended	
	April 1, 2023	April 2, 2022
Cash provided by (used in):		
Operating activities	\$ (14,125)	\$ 28,285
Investing activities	(24,898)	(37,119)
Financing activities	45,162	11,116
Effect of exchange rate changes on cash	12	35
Increase in cash	<u>\$ 6,151</u>	<u>\$ 2,317</u>

Cash (Used In) Provided By Operating Activities--Cash used in operating activities was \$14,125 for the first three months of 2023, a \$42,410 decrease when compared to the first three months of 2022. The \$42,410 decrease in operating cash flow was primarily attributable to the change of \$27,771 related to accounts receivable and the change of \$16,377 related to accounts payable and accrued expenses, partially offset by a change of \$3,432 related to other operating assets and liabilities.

Overall, accounts receivable increased \$25,756 during the first three months of 2023, as compared to a decrease of \$2,015 during the first three months of 2022. With respect to the change in accounts receivable arising from business levels, the “days-sales-outstanding” in accounts receivable (sometimes referred to as “DSO”) at the end of the first three months of 2023 increased by thirteen days to 86 days, compared to 73 days at the end of the first three months of 2022. As we continue to grow and expand our service offerings, our DSO will be influenced by various factors such as individual contract terms, the nature of the work performed and special situations such as storm work. As such, we do not view an increase in DSO as a indicator of uncollectability.

Accounts payable and accrued expenses decreased \$18,418 in the first three months of 2023, a change of \$16,377 compared to the \$2,041 decrease in the first three months of 2022. The change was primarily related to the timing of estimated income tax payments and employer payroll taxes payable as well as compensated absence accruals. Self-insurance accruals increased \$6,825 in the first three months of 2023, which was \$1,749 more than the increase of \$5,076 experienced in the first three months of 2022. The increase was attributable to increased exposures within our workers compensation, general liability and vehicle liability lines of coverage.

Other operating assets and liabilities decreased \$4,779 in the first three months of 2023, a change of \$3,432 compared to the \$1,347 decrease in the first three months of 2022. The change was primarily attributable to cloud computing arrangements.

Cash Used In Investing Activities--Cash used in investing activities for the first three months of 2023 was \$24,898, a \$12,221 decrease when compared to the first three months of 2022. The decrease was primarily the result of increases in proceeds from the sale of marketable securities and property and equipment.

Cash Provided By Financing Activities--Cash provided by financing activities was \$45,162 during the first three months of 2023, an increase of \$34,046 as compared with the \$11,116 provided during the first three months of 2022. During the first three months of 2023, our revolving credit facility, net provided \$61,566 in cash as compared with \$23,949 provided during the first three months of 2022. We use the credit facility primarily for capital expenditures, redemptions of shares and payments of notes payable related to acquisitions. Notes payable decreased \$9,337 during the first three months of 2023, a decrease of \$147 when compared to the \$9,190 decrease in the first three months of 2022. Treasury share transactions (purchases and sales) used \$5,431 for the first three months of 2023, \$3,337 more than the

\$2,094 used in the first three months of 2022. Dividends paid of \$877 during the first three months of 2023 increased \$95 as compared with \$782 paid in the first three months of 2022.

The Company currently repurchases common shares at shareholders' requests in accordance with the terms of the Davey 401KSOP and ESOP Plan and also repurchases common shares from time to time at the Company's discretion. The amount of common shares offered to the Company for repurchase by the holders of shares distributed from the Davey 401KSOP and ESOP Plan is not within the control of the Company, but is at the discretion of the shareholders. The Company expects to continue to repurchase its common shares, as offered by its shareholders from time to time, at their then current fair value. However, other than for repurchases pursuant to the put option under the Davey 401KSOP and ESOP Plan, as described in Note Q, such purchases are not required, and the Company retains the right to discontinue them at any time. Repurchases of redeemable common shares at shareholders' request approximated \$19 and \$467 during the three months ended April 1, 2023 and April 2, 2022, respectively. Share repurchases, other than redeemable common shares, approximated \$8,400 and \$6,537 during the three months ended April 1, 2023 and April 2, 2022, respectively.

Contractual Obligations Summary and Commercial Commitments

As of April 1, 2023, total commitments related to issued letters of credit were \$94,435, of which \$2,624 were issued under the revolving credit facility, \$89,689 were issued under the AR Securitization program, and \$2,122 were issued under short-term lines of credit. As of December 31, 2022, total commitments related to issued letters of credit were \$94,435, of which \$2,624 were issued under the revolving credit facility, \$89,689 were issued under the AR Securitization program, and \$2,122 were issued under short-term lines of credit.

Also, as is common in our industry, we have performance obligations that are supported by surety bonds, which expire during 2023 through 2027. We intend to renew the surety bonds where appropriate and as necessary.

Capital Resources

Cash generated from operations, our revolving credit facility and note issuances are our primary sources of capital.

Business seasonality traditionally results in higher revenues during the second and third quarters as compared with the first and fourth quarters of the year, while our methods of accounting for fixed costs, such as depreciation and amortization expense, rent and interest expense, are not significantly impacted by business seasonality. Capital resources during these periods are equally affected. We satisfy seasonal working capital needs and other financing requirements with the revolving credit facility and other short-term lines of credit. We continually review our existing sources of financing and evaluate alternatives. At April 1, 2023, we had working capital of \$255,238, short-term lines of credit approximating \$8,986 and \$110,376 available under our revolving credit facility.

For more information regarding our outstanding debt, see "Part I - Item 1 - Note G, Short and Long-Term Debt and Commitments Related to Letters of Credit."

We believe our sources of capital, at this time, provide us with the financial flexibility to meet our capital-spending plans and to continue to complete business acquisitions for at least the next twelve months and for the reasonably foreseeable future.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the use of estimates, judgments and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the periods presented.

As discussed in our 2022 Annual Report, we believe that our policies related to revenue recognition, the allowance for credit losses, stock valuation and self-insurance accruals are our “critical accounting policies and estimates”--those most important to the financial presentations and those that require the most difficult, subjective or complex judgments.

On an ongoing basis, we evaluate our estimates and assumptions, including those related to accounts receivable, specifically those receivables under contractual arrangements primarily with Utility customers; allowance for credit losses; and self-insurance accruals. We base our estimates on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from these estimates. Our critical accounting policies have not changed materially from those discussed in our 2022 Annual Report.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q contains forward-looking statements (within the meaning of the Private Securities Litigation Reform Act of 1995). These statements relate to future events or our future financial performance. In some cases, forward-looking statements may be identified by terminology such as “may,” “will,” “should,” “could,” “might,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “seeks,” “predicts,” “potential,” “would,” “continue” or the negative of these terms or other comparable terminology. These statements are only predictions and involve known and unknown risks, uncertainties and other factors, many of which are difficult to predict and are outside of our control, that may cause our or our industry's actual results, levels of activity, performance or achievements to differ materially from what is expressed or implied in these forward-looking statements. Some important factors that could cause actual results to differ materially from those in the forward-looking statements or materially adversely affect our business, results of operations or financial condition include: an overall decline in the health of the economy or our industry, including as a result of rising inflation or interest rates, instability in the global banking system, the possibility of an economic recession, or the COVID-19 pandemic or other public health crises; our inability to attract and retain a sufficient number of qualified employees for our field operations or qualified management personnel and increased wage rates may result from our need to attract and retain employees; increases in the cost of obtaining adequate insurance, or the inadequacy of our self-insurance accruals or insurance coverages; inability to obtain, or cancellation of, third-party insurance coverage; the impact of wildfires in California and other areas, as well as other severe weather events and natural disasters, which events may worsen or increase due to the effects of climate change; payment delays or delinquencies resulting from financial difficulties of our significant customers, particularly utilities; the outcome of litigation and third-party and governmental regulatory claims against us; an increase in our operating expenses due to significant increases in fuel prices for extended periods of time, such as the recent increases and volatility arising from the effect of the Russia-Ukraine conflict; disruptions, delays or price increases within our supply chain; our ability to withstand intense competition; the potential impact of acquisitions or other strategic transactions; the effect of various economic factors, including inflationary pressures, that may adversely impact our customers' spending and pricing for our services, and impede our collection of accounts receivable; the impact of global climate change and related regulations; fluctuations in our quarterly results due to the seasonal nature of our business or changes in general and local economic conditions, among other factors; being contractually bound to an unprofitable contract; a disruption in our information technology systems, including a disruption related to cybersecurity, or the impact of costs incurred to comply with cybersecurity or data privacy regulations; damage to our reputation of quality, integrity and performance; limitations on our shareholders' ability to sell their common shares due to the lack of public market for such shares; our ability to continue to declare cash dividends; our failure to comply with environmental laws resulting in significant liabilities, fines and/or penalties; difficulties obtaining surety bonds or letters of credit necessary to support our operations; uncertainties in the credit and financial markets, including the negative impacts of COVID-19, the Russia-Ukraine conflict, supply chain shortages and disruptions, rising interest rates,

labor shortages and inflationary cost pressures, among other factors, potentially limiting our access to capital; fluctuations in foreign currency exchange rates; significant increases in health care costs; the impact of corporate citizenship and environmental, social and governance matters and/or our reporting of such matters; our ability to successfully implement our new enterprise resource planning system in a cost-effective and timely manner; the impact of events such as natural disasters, public health epidemics or pandemics, such as COVID-19, terrorist attacks or other external events; the impact of tax increases and changes in tax rules; and our inability to properly verify the employment eligibility of our employees.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. We are under no duty to update any of the forward-looking statements after the date of this quarterly report on Form 10-Q to conform these statements to actual future results, except as required by applicable securities laws.

The factors described above, as well as other factors that may adversely impact our actual results, are discussed in “Part I - Item 1A. Risk Factors.” of our 2022 Annual Report.

Item 3. *Quantitative and Qualitative Disclosures about Market Risk.*

While we have experienced inflation and higher interest rates during 2023, there have been no material changes in our reported market risks or risk management policies since the filing of our 2022 Annual Report on Form 10-K, which was filed with the Securities and Exchange Commission on March 16, 2023.

Item 4. *Controls and Procedures.*

(a) Management’s Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of our disclosure controls and procedures were effective at the reasonable assurance level as of the end of the period covered by this report in ensuring that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms and is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(b) Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the fiscal quarter ended April 1, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(c) Inherent Limitation on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of

the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected.

Part II. Other Information

Items 3, 4 and 5 are not applicable.

Item 1. Legal Proceedings.

We are party to a number of lawsuits, threatened lawsuits and other claims arising out of the normal course of business. On a quarterly basis, we assess our liabilities and contingencies in connection with outstanding legal proceedings utilizing the latest information available. Where it is probable that we will incur a loss and the amount of the loss can be reasonably estimated, we record a liability in our consolidated financial statements. These legal accruals may be increased or decreased to reflect any relevant developments on a quarterly basis. Where a loss is not probable or the amount of the loss is not estimable, we do not record a legal accrual, consistent with applicable accounting guidance. Based on information currently available to us, advice of counsel, and available insurance coverage, we believe that our established accruals are adequate and the liabilities arising from the legal proceedings will not have a material adverse effect on our consolidated financial condition. We note, however, that in light of the inherent uncertainty in legal proceedings there can be no assurance that the ultimate resolution of a matter will not exceed established accruals. As a result, the outcome of a particular matter or a combination of matters may be material to our results of operations for a particular period, depending upon the size of the loss or our income for that particular period.

In November 2017, a wrongful death lawsuit was filed in Savannah, Georgia in the State Court of Chatham County (“State Court”) against Davey Tree, its subsidiary, Wolf Tree, Inc. (“Wolf Tree”), a former Davey employee, a Wolf Tree employee, and two former Wolf Tree employees. That complaint, as subsequently amended, alleges various acts of negligence and seeks compensatory damages for the wrongful death of the plaintiff’s husband, a Wolf Tree employee, who was shot and killed in August 2017.

In July 2018, a related survival action was filed in Savannah, Georgia by the deceased’s estate against Davey Tree, its subsidiary, Wolf Tree, and four current and former employees, which arises out of the same allegations, seeks compensatory and punitive damages and also includes three Racketeer Influenced and Corrupt Organizations Act (“RICO”) claims under Georgia law seeking treble damages. The 2018 case was removed to the United States District Court for the Southern District of Georgia, Savannah Division (“Federal Court”), on August 2, 2018.

The cases were mediated unsuccessfully in December 2018 and the State Court case was originally set for trial on January 22, 2019. However, as discussed below, the two civil cases were ultimately stayed for more than four years.

On December 6, 2018, a former Wolf Tree employee pled guilty to conspiracy to conceal, harbor, and shield illegal aliens. On December 21, 2018, the United States Department of Justice (“DOJ”) filed a motion to stay both actions on the grounds that on December 7, 2018, an indictment was issued charging two former Wolf Tree employees and another individual with various crimes, including conspiracy to murder the deceased. The State Court case was stayed on December 28, 2018 and the Federal Court case was stayed on January 8, 2019. On January 29, 2019, the State Court ordered the parties to return to mediation, which occurred on April 17, 2019, but was unsuccessful in resolving the matters.

By November 2022, all three of the individually charged defendants had either been convicted at trial or pled guilty to Federal criminal charges in the Federal Court related to their involvement with the murder and other illegal activities. All three criminal defendants have now been sentenced.

Since the individual defendants' criminal matters are now resolved, the State Court held a status conference with the parties on January 20, 2023. After that status conference, the State Court lifted the stay and entered a scheduling order on February 8, 2023 that, among other items, reopened discovery, which is followed by amended briefing on the parties' pending motions for summary judgment. The State Court has not yet set a trial date.

The stay in the Federal Court case was lifted on April 4, 2023. The case will now proceed to the early stages of litigation such as matters related to discovery and motions to dismiss.

In both civil cases, the Company and Wolf Tree have denied all liability and are vigorously defending against the actions. The Company also has retained separate counsel for some of the individual defendants, each of whom has denied all liability and also are vigorously defending the actions.

Previously, on December 17, 2018, the United States Attorney's Office for the Southern District of Georgia informed the Company and Wolf Tree that they are also under investigation for potential civil or other violations of immigration and other laws relating to the subject matters of the criminal investigation referenced above. The Company and Wolf Tree are fully cooperating with the investigation and have met with both the civil and criminal divisions of the DOJ. To date, the matter currently remains unresolved.

Northern California Wildfires

Five lawsuits were filed that name contractors for PG&E Corporation and its subsidiary, Pacific Gas and Electric Company (together, "PG&E"), including Davey Tree, with respect to claims arising from wildfires that occurred in Pacific Gas and Electric Company's service territory in northern California beginning on October 8, 2017. An action was brought on August 8, 2019 in Napa County Superior Court, entitled *Donna Walker, et al. v. Davey Tree Surgery Company, et al.*, Case No. 19CV001194. An action was brought on October 8, 2019 in San Francisco County Superior Court, entitled *Quinisha Kyree Abram, et al. v. ACRT, Inc., et al.*, Case No. CGC-19-579861. An action was brought on October 7, 2019 in San Francisco Superior Court, entitled *Adams, et al. v. Davey Resource Group, Inc., et al.*, Case No. CGC-19-579828. An action was brought on October 8, 2019 in Sacramento Superior Court, entitled *Antone, et al. v. ACRT, Inc. et al.*, Case No. 34-2019-00266662. An action was brought on October 7, 2019 in Sacramento Superior Court, entitled *Bennett, et al. v. ACRT, Inc. et al.*, Case No. 2019-00266501.

Three additional actions were brought on January 28, 2021 in San Francisco County Superior Court, by fire victims represented by a trust ("Plaintiffs' Trust"), which was assigned contractual rights in the PG&E bankruptcy proceedings. These cases are entitled *John K. Trotter, Trustee of the PG&E Fire Victim Trust v. Davey Resource Group, Inc., et al.*, Case No. CGC-21-589438; *John K. Trotter, Trustee of the PG&E Fire Victim Trust v. Davey Resource Group, Inc., et al.*, Case No. CGC-21-589439; and *John K. Trotter, Trustee of the PG&E Fire Victim Trust v. ACRT Pacific, LLC, et al.*, Case No. CGC-21-589441. On September 22, 2021, the court granted Davey Tree's petition to coordinate all cases as a California Judicial Council Coordination Proceeding, *In Re North Bay Fire Cases*, JCCP No. 4955. As a result of the coordination order, all of the actions are stayed in their home jurisdictions. At a case management conference in JCCP No. 4955 on February 24, 2022, the Court ordered that Davey Tree and the plaintiffs participate in a mediation. An initial mediation took place on October 17, 2022. The matter did not resolve at this initial mediation.

In November 2022, Davey Tree filed a cross-complaint against the Plaintiffs' Trust and PG&E related to the contractual obligations of limitation of liability and hold harmless. Since that time, Davey Tree has dismissed the cross-complaint against PG&E without prejudice. The Plaintiff's Trust filed a demurrer which challenged Davey Tree's claim that the hold harmless provisions in its contracts with PG&E are an obligation of the Plaintiffs' Trust. In response to the demurrer, Davey Tree filed an amended cross-complaint against the Plaintiff's Trust on April 13, 2023. The court set a trial date for October 2, 2023 that will involve the claim of the Plaintiffs' Trust as to the Atlas fire. Separately, the court referred the *Walker* case to Napa County Superior Court for a trial setting. The Napa Court set a trial in the *Walker* case for March 4, 2024.

In addition, the parties are in the process of scheduling a second session of the mediation. The court had ordered that it be conducted by April 28, 2023, but has since moved that deadline to May 31, 2023. The Plaintiffs' Trust filed a motion for summary adjudication which challenged the limitation of liability as set forth in the assigned contracts. The Court denied the motion for summary adjudication in an order entered April 12, 2023.

The Defendants have received evidence from the Plaintiffs' Trust and PG&E collected by those parties prior to and during the PG&E bankruptcy proceedings and Davey Tree's experts have performed inspections of the evidence. Davey Tree will be seeking further discovery as well. Davey Tree has responded to all claims asserted by the plaintiffs in these actions, denying all liability, and is vigorously defending against plaintiffs' alleged claims.

Item 1A. Risk Factors.

Our 2022 Annual Report includes a detailed discussion of our risk factors. Disclosure of risks should not be interpreted to imply that the risks have not already materialized. There have been no material changes to the risk factors described in the 2022 Annual Report during the three months ended April 1, 2023.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

The following table provides information on purchases of our common shares outstanding made by us during the first three months of 2023.

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
Fiscal 2023				
January 1 to January 28	35	\$ 18.10	—	3,323,819
January 29 to February 25	10,122	18.10	—	3,323,819
February 26 to April 1	445,198	18.50	—	3,323,819
Total First Quarter	455,355	18.49	—	
Total Year-to-Date	455,355	\$ 18.49	—	

⁽¹⁾ During the three months ended April 1, 2023, the Company purchased 455,355 shares from shareholders excluding those purchased through publicly announced plans. The Company provides a ready market for all shareholders through our direct purchase of their common shares although we are under no obligation to do so (other than for repurchases pursuant to the put option under The Davey 401KSOP and ESOP Plan).

Our common shares are not listed or traded on an established public trading market and market prices are, therefore, not available. Semiannually, for purposes of the Davey 401KSOP and ESOP, an independent stock valuation firm assists with the appraisal of the fair market value of the common shares, based upon our performance and financial condition, using a peer group of comparable companies selected by that firm. The peer group currently consists of: ABM Industries Incorporated; Comfort Systems USA, Inc.; Dycom Industries, Inc.; FirstService Corporation; MYR Group, Inc.; Quanta Services, Inc.; Rollins, Inc.; and Scotts Miracle-Gro Company. The semiannual valuations are effective for a period of six months and the per-share price established by those valuations is the price at which our Board of Directors has determined our common shares will be bought and sold during that six-month period in transactions involving Davey Tree or one of its employee benefit or stock purchase plans. Since 1979, we have provided a ready market for all shareholders through our direct purchase of their common shares, although we are under no obligation to do so (other than for repurchases pursuant to the put option under The Davey 401KSOP and ESOP Plan, as described in “Part I - Item 1 - Note Q, The Davey 401KSOP and Employee Stock Ownership Plan”). The purchases described above were added to our treasury stock.

At the Annual Meeting of Shareholders of the Company held on May 16, 2017, the shareholders of the Company approved proposals to amend the Company's Articles of Incorporation to (i) expand the Company's right of first refusal with respect to proposed transfers of shares of the Company's common shares, (ii) clarify provisions regarding when the Company may provide notice of its decision to exercise its right of first refusal with respect to proposed transfers of common shares by the estate or personal representative of a deceased shareholder, and (iii) grant the Company a right to repurchase common shares held by certain shareholders of the Company.

On May 10, 2017, the Board of Directors of the Company adopted a policy regarding the Company's exercise of the repurchase rights granted to the Company through amendments to the Company's Articles of Incorporation, as approved by shareholders on May 16, 2017.

Until further action by the Board, it is the policy of the Company not to exercise its repurchase rights under the amended Articles with respect to shares of the Company's common shares held by current and retired employees and current and former directors of the Company (subject to exceptions set forth in the policy) (collectively, “Active Shareholders”), their spouses, their first-generation descendants and trusts established exclusively for their benefit.

Until further action by the Board, it is also the policy of the Company not to exercise its rights under the amended Articles to repurchase shares of the Company's common shares proposed to be transferred by an Active Shareholder to his or her spouse, a first-generation descendant, or a trust established exclusively for the benefit of one or more of an Active Shareholder, his or her spouse and first-generation descendants of an Active Shareholder, or upon the death of an Active Shareholder, such transfers from the estate or personal representative of a deceased Active Shareholder. The Board may suspend, change or discontinue the policy at any time without prior notice.

In accordance with the amendments to the Articles approved by the Company's shareholders at the 2017 Annual Meeting, on May 17, 2017, the Company's Board of Directors authorized the Company to repurchase up to 400,000 common shares, which authorization was increased by an additional 2,000,000 common shares in May 2018 and increased further by an additional 3,000,000 common shares in September 2021. Of the 5,400,000 total shares authorized, 3,323,819 remained available under the program, as of April 1, 2023. Share repurchases may be made from time to time and the timing of any repurchases and the actual number of shares repurchased will depend on a variety of factors. The Company is not obligated to purchase any shares, and repurchases may be commenced, suspended or discontinued from time to time without prior notice. The repurchase program does not have an expiration date.

Item 6. Exhibits.

See the Exhibit Index below.

Exhibits

Exhibit No.	Description	
10.1	First Amendment to Fourth Amended and Restated Credit Agreement, dated as of January 13, 2023, by and among The Davey Tree Expert Company, as borrower, various lending institutions party thereto, as banks, KeyBank National Association, as lead arranger, syndication agent and administrative agent, and PNC Bank, National Association and Wells Fargo Bank, N.A., as co-documentation agents (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 20, 2023).	
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed Herewith
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed Herewith
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.	Furnished Herewith
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350.	Furnished Herewith
101	The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended April 1, 2023, formatted in iXBRL (inline eXtensible Business Reporting Language): (i) the Condensed Consolidated Balance Sheets (unaudited), (ii) the Condensed Consolidated Statements of Operations (unaudited), (iii) the Condensed Consolidated Statements of Comprehensive Income (unaudited), (iv) the Condensed Consolidated Statements of Shareholders' Equity (unaudited), (v) the Condensed Consolidated Statements of Cash Flows (unaudited), and (vi) Notes to Condensed Consolidated Financial Statements (unaudited). The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.	Filed Herewith
104	Cover Page Interactive Data File (embedded within the inline XBRL document)	Filed Herewith

Signatures

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

THE DAVEY TREE EXPERT COMPANY

Date: May 10, 2023

By: /s/ Joseph R. Paul

Joseph R. Paul

Executive Vice President, Chief Financial Officer and Assistant Secretary
(Principal Financial Officer)

Date: May 10, 2023

By: /s/ Thea R. Sears

Thea R. Sears

Vice President and Controller
(Principal Accounting Officer)

EXHIBIT 10.2

THE DAVEY 401KSOP AND ESOP
(January 1, 2022 Restatement)

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THE DAVEY 401KSOP AND ESOP
(January 1, 2022 Restatement)

ARTICLE I

THE PLAN

The Davey 401KSOP and ESOP, known for periods prior to January 1, 1997 as The Davey Tree Company Employee Stock Ownership Plan, is hereby amended and restated in its entirety, effective as of January 1, 2022, except as may otherwise be provided herein. The Plan was established for the benefit of eligible employees as of January 1, 1979, and has most recently been maintained under an amendment and restatement, effective as of January 1, 2015, as amended. The portion of the Plan consisting of the Employer Stock Fund and the Suspense Fund (from time to time referred to as the “ESOP Feature”) is an employee stock ownership plan within the meaning of Section 4975(e)(7) of the Internal Revenue Code of 1986, as amended (the “Code”) designed to invest primarily in securities of The Davey Tree Expert Company and is intended to qualify under Section 401(a) of the Code as a stock bonus plan. The portion of the Plan that is not the ESOP Feature is a profit-sharing plan that is intended to qualify under Section 401(a) of the Code and includes a cash or deferred arrangement intended to qualify under Section 401(k) of the Code.

ARTICLE II

DEFINITIONS

2.1 Definitions. The following terms as used herein shall have the meanings hereinafter set forth, unless a different meaning is clearly required by the context:

(a) The term “Beneficiary” shall mean the person or persons who, under the provisions of Article XII, shall be entitled to receive distribution hereunder in the event a Participant or former Participant dies prior to full distribution of his interest. In no event shall the designation of a trust as a Beneficiary be a valid Beneficiary designation and any such designation made after May 25, 2021 shall be disregarded in determining a Participant’s or former Participant’s Beneficiary under Article XII. Notwithstanding the foregoing, any designation of a trust in effect prior to May 25, 2021 shall continue to be effective in determining a Participant’s or former Participant’s Beneficiary under Article XII.

(b) The term “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time; reference to a section of the Code shall include such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

(c) The term “Committee” shall mean the Committee established in accordance with the provisions of Article XIII.

(d) The term “Company” shall mean The Davey Tree Expert Company, its corporate successors and any corporation or corporations into or with which it may be merged or consolidated.

(e) The term “Compensation” shall mean an Employee’s wages within the meaning of Section 3401(a) of the Code for the Plan Year (or, if shorter, the portion of the Plan Year during which the Employee is eligible to participate in the Plan), determined without regard to any rules that limit compensation included in wages based on the nature or location of the employment or services performed, and all other payments made to the Employee for which his Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052 of the Code, but including elective contributions or amounts deferred under Sections 125, 132(f), 402(e)(3), 402(h), 403(b), 457(b), and 414(h)(2) of the Code; provided, however, that the Compensation of an Employee for a Plan Year shall not include any amount in excess of \$305,000 (for 2022 and subject to adjustment annually for changes in the cost of living as provided in Section 401(a)(17)(B) of the Code and Section 415(d) of the Code), and provided, further, that the Compensation of an Employee for a Plan Year shall not include amounts paid following severance from employment (other than such amounts that are excepted for purposes of Section 7.2(b) pursuant to Section 7.2(b)). Notwithstanding the foregoing, the Compensation of an Employee for a Plan Year shall include differential pay, as described in Section 7.2(b). If the Compensation of an Employee is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Employee by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided, however, that no proration is required for an Employee who is covered under the Plan for less than one full Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months or if allocations are based on the Employee’s Compensation for the portion of the Plan Year during which the Employee is eligible to participate in the Plan.

(f) The term “Continuous Service” shall mean the period of time between a Participant’s Employment Commencement Date and his most recent Severance Date.

(g) The term “Eligible Employee” shall mean an Employee who becomes eligible to participate in the Plan in accordance with the provisions of Article III.

(h) The term “Eligibility Date” shall mean the first day of each payroll period.

(i) The term “Employee” shall mean any person designated by an Employer as a common law employee of the Employer; provided, however, that the term shall not include any person who is covered by a collective bargaining agreement unless such agreement or the Plan specifically provides for coverage by the Plan.

(j) The term “Employer” shall mean the Company and each subsidiary of the Company that has adopted the Plan.

(k) The term “Employer Contribution” shall mean the amount contributed by the Employers to the Plan in accordance with the provisions of Section 5.1. On and after January 1, 2020, any Employer Contributions are hereby designated as Safe Harbor Matching Contributions and shall be accounted for separately.

(l) The term “Employer Stock Fund” shall mean the trust fund maintained by the Trustee for the Plan and referred to in Section 6.1.

(m) The term “Employment Commencement Date” shall mean the date on which a Participant first performed an Hour of Service with the Company or any Related Corporation, subject to the following provisions:

(i) If an employee performs an Hour of Service with the Company or any Related Corporation prior to attainment of age 18, his Employment Commencement Date for purposes of determining the employee’s vested interest under the Plan shall be the date on which he attains age 18.

(ii) No employee shall have an Employment Commencement Date which is earlier than January 1, 1979.

(iii) If more than 12 months after an employee’s Severance Date occurs, such employee again performs an Hour of Service, his Employment Commencement Date shall be advanced by the period of time between such Severance Date and the date he again performed an Hour of Service unless subparagraph (iv) below is applicable.

(iv) If an employee, who did not have a vested interest under the Plan as of his Severance Date again performs an Hour of Service more than twelve months after such Severance Date, his Employment Commencement Date shall be changed to the date he again completed an Hour of Service, but only if the period of time between such Severance Date and the date such employee again completed an Hour of Service equals or exceeds the greater of five years or the period of time between his Employment Commencement Date and such Severance Date.

(v) If an employee’s Severance Date occurs by reason of entering active military service with the armed forces of the United States and if he has reemployment rights with his Employer, his Employment Commencement Date shall not be advanced so long as he returns to employment with the Company or any Related Corporation within the time prescribed by federal law.

(n) The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time; reference to a section of ERISA shall include such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

(o) The term “ESOP Feature” shall mean that portion of the Plan that constitutes an employee stock ownership plan within the meaning of Section 4975(e)(7) of the Code.

(p) The term “Fund” shall mean the entire trust fund maintained by the Trustee under the Trust Agreement and shall include the Employer Stock Fund, the Investment Funds, and any other separate fund maintained by the Trustee for the Plan.

(q) The term “Highly Compensated Employee” means any Employee who (i) was a five percent owner at any time during the Plan Year or the preceding Plan Year or (ii) received compensation from an Employer or a Related Corporation during the preceding Plan Year in excess of \$135,000 (for 2022 and subject to adjustment annually at the same time and in the same manner as under Section 415(d) of the Code as modified by Section 414(q)(1) of the Code).

(r) The term “Hour of Service” shall mean each hour for which a Participant is paid, or entitled to payment, for the performance of duties for the Company or any Related Corporation.

(s) The term “Investment Fund” shall mean a trust fund maintained by the Trustee for the Plan and referred to in Section 6.4.

(t) The term “Participant” shall mean an Eligible Employee for whom an amount has been allocated to his Separate Account(s) and whose participation has not been terminated.

(u) The term “Plan” shall mean The Davey 401KSOP and ESOP (known for periods prior to January 1, 1997 as The Davey Tree Company Employee Stock Ownership Plan), with all amendments, modifications, and supplements hereafter made.

(v) The term “Plan Administrator”, which is the administrator for purposes of ERISA and the plan administrator for purposes of the Code, shall mean the Company.

(w) The term “Plan Year” shall mean a calendar year.

(x) The term “Related Corporation” shall mean any corporation, other than the Company, which is a member of the controlled group of corporations of which the Company is a member, as determined under Section 1563(a) of the Code, without regard to Section 1563(a)(4) of the Code and Section 1563(e)(3)(C) of the Code, any trade or business (whether or not incorporated) which is a member of a group under common control with the Company, as determined under Section 414(c) of the Code, any organization which is a member of an affiliated service group of which the Company is also a member, as determined under Section 414(m) of the Code, and any other entity which is required to be aggregated with the Company under Section 414(o) of the Code.

(y) The term “Rollover Contribution” shall mean any rollover contribution contributed to the Plan by a Participant as may be permitted under Article X.

(z) The term “Safe Harbor Matching Contributions” shall mean any Employer Contributions designated as such and made to the Plan as provided in Section 5.1 on and after January 1, 2020 that meet the requirements of Section 401(k)(12)(B) of the Code.

(aa) The term “Separate Account” shall mean any of the accounts maintained by the Trustee in the name of a Participant which reflects such Participant’s interest in the Fund.

(bb) The term “Settlement Date” shall mean the date on which a person’s status as a Participant ceases as determined in accordance with the provisions of Section 8.1.

(cc) The term “Severance Date” shall mean the earliest of (i) the date on which an Eligible Employee retires, dies, quits, or is discharged, (ii) the date on which an Eligible Employee ceases to accrue Continuous Service credit in accordance with a uniform policy adopted by his Employer with respect to leaves of absence but in no event earlier than the first anniversary of the first day of a period in which such Eligible Employee remains absent (with or without pay) from the service of the Company and all Related Corporations; provided however, that if he is absent from work with the Employer or a Related Corporation due to active service in the Armed Forces of the United States, his Severance Date shall be the date on which he was first so absent unless he returns to employment with the Employer or a Related Corporation within the period during which he retains rights pursuant to federal law; or (iii) the first anniversary of the first date on which an Eligible Employee is absent from employment with his Employer for maternity or paternity reasons. For purposes of this paragraph, an absence from employment for maternity or paternity reasons means an absence due to (i) the pregnancy of the Employee, (ii) the birth of a child of an Employee, (iii) the placement of a child with the Employee, or (iv) the caring of such child for a period beginning immediately following such birth or placement.

(dd) The term “Shares” shall mean common stock of the Company with voting power and dividend rights no less favorable than the voting power and dividend rights of other common stock of the Company.

(ee) The term “Tax Deferred Contribution” shall mean the amount contributed to the Plan on a Participant’s behalf by his Employer in accordance with his reduction authorization executed pursuant to Article IV.

(ff) The term “Trust Agreement” shall mean the agreement entered into between the Company and the Trustee, as provided in Article XIV hereof, together with all amendments thereto.

(gg) The term “Trustee” shall mean the trustee which at the time shall be designated, qualified, and acting under the Trust Agreement.

(hh) The term “Valuation Date” shall mean the June 30 and December 31 of each calendar year and any other date or dates designated by the Company and communicated in writing to the Trustee for the purpose of valuing the Employer Stock Fund and each Investment Fund and adjusting Separate Accounts and sub-

accounts hereunder, which other dates need not be uniform with respect to the Employer Stock Fund, each Investment Fund, Separate Account, or sub-account.

2.2 Construction. Where necessary or appropriate to the meaning hereof, the singular shall be deemed to include the plural, the plural to include the singular, the masculine to include the feminine, and the feminine to include the masculine.

ARTICLE III

EMPLOYEE PARTICIPATION

3.1 Participation. Each Employee on January 1, 2022, who was a Participant in the Plan on December 31, 2021, shall continue as a Participant hereunder. Each other Employee shall become an Eligible Employee as of the Eligibility Date next following the date on which he has both attained age 21 and completed one year of Continuous Service.

3.2 Transfers of Employment. If a person is transferred directly from employment with an Employer or with a Related Corporation in a capacity other than as an Employee to employment as an Employee, he shall become an Eligible Employee as of the date he is so transferred if prior to an Eligibility Date preceding such transfer date he has met the eligibility requirements of Section 3.1. Otherwise, the eligibility of a person who is so transferred to elect to have Tax Deferred Contributions made to the Plan on his behalf shall be determined in accordance with Section 3.1.

3.3 Reemployment. If a person whose employment terminated with an Employer and all Related Corporations is reemployed as an Employee and if he had been an Eligible Employee prior to his termination of employment, he shall again become an Eligible Employee on the date he is reemployed. Otherwise, the eligibility of a person whose employment terminated with an Employer and all Related Corporations and who is reemployed by an Employer to elect to have Tax Deferred Contributions made to the Plan on his behalf shall be determined in accordance with Section 3.1 or 3.2.

3.4 Notification Concerning New Eligible Employees. Each Employer shall notify the Committee as soon as practicable of Employees becoming Eligible Employees as of any date.

3.5 Effect and Duration. Upon becoming an Eligible Employee, an Employee shall be entitled to elect to have Tax Deferred Contributions made to the Plan on his behalf and shall be bound by all the terms and conditions of the Plan and the Trust Agreement. A person shall continue as an Eligible Employee eligible to have Tax Deferred Contributions made to the Plan on his behalf only so long as he continues employment as an Employee.

3.6 Special Provision Regarding Southeastern Reprographics, Inc. Service performed by any Employee with Southeastern Reprographics, Inc. ("SRI") prior to the date SRI became a subsidiary of the Company shall be treated as service with the Company for purposes of determining his years of Continuous Service.

3.7 Special Provision Regarding Wolf Tree, Inc. Service performed by any Employee with Wolf Tree Experts, Inc. ("Wolf") on or prior to March 14, 2008 shall be treated as service with the Company for purposes of determining his years of Continuous Service. Moreover, an Employee employed by Wolf on March 14, 2008, immediately prior to the sale of its assets to the Company or one of its affiliates shall be an Eligible Employee under the Plan on June 1, 2008.

3.8 Special Provision Regarding Hartney Greymont, Inc. Service performed by any Employee with Hartney Greymont, Inc. ("HG") on or prior to June 30, 2010 shall be treated as service with the Company for purposes of determining his years of Continuous Service. Moreover, an Employee employed by HG on June 30, 2010, immediately prior to

the sale of its assets to the Company or one of its affiliates shall be an Eligible Employee under the Plan on September 1, 2010.

3.9 Special Provision Regarding Wetland Studies and Solutions, Inc. Service performed by any Employee with Wetland Studies and Solutions, Inc. and its affiliates (“WSSI”) on or prior to the date WSSI became a subsidiary of the Company shall be treated as service with the Company for purposes of determining his years of Continuous Service.

3.10 Special Provisions Regarding Acquired Entities on and after June 1, 2021. For purposes of Section 3.1 with respect to acquisitions occurring on and after June 1, 2021, an Employee of an acquired entity shall become an Eligible Employee as soon as administratively feasible after the closing date of the applicable acquisition unless otherwise determined by the Committee, provided such Employee has attained both age 21 and has completed one year of service with the acquired entity as of such date. Each other Employee of such an acquired entity shall become an Eligible Employee in accordance with the provisions of Section 3.1, provided that service with the acquired entity shall be aggregated with service with the Company or any Related Corporation for purposes of determining Continuous Service.

3.11 Special Provisions Regarding Acquired Entities on and after January 1, 2021 and prior to June 1, 2021. For purposes of Section 3.1 with respect to acquisitions occurring on and after January 1, 2021 and prior to June 1, 2021, an Employee of an acquired entity shall become an Eligible Employee on June 1, 2021, provided such Employee has attained both age 21 and has completed one year of service with the acquired entity as of such date. Each other Employee of such an acquired entity shall become an Eligible Employee in accordance with the provisions of Section 3.1, provided that service with the acquired entity shall be aggregated with service with the Company or any Related Corporation for purposes of determining Continuous Service.

ARTICLE IV

TAX-DEFERRED CONTRIBUTIONS

4.1 Tax-Deferred Contributions. An Eligible Employee may elect in writing (or such other telephonic or electronic format as may be authorized and recognized by the Committee) in accordance with rules prescribed by the Committee, to have Tax Deferred Contributions made to the Plan on his behalf by his Employer as hereinafter provided.

Each person who is an Eligible Employee may make such an election effective (i) as of the Eligibility Date on which he becomes an Eligible Employee, or (ii) the first payroll period of any subsequent month, provided that his election is received by the Committee such number of days prior to its effective date as the Committee may prescribe. Tax Deferred Contributions on behalf of an Eligible Employee shall commence pursuant to this Section 4.1 with the first payment of compensation on or after the date on which his election is effective.

An Eligible Employee's election shall include his authorization for his Employer to reduce his Compensation and to make Tax Deferred Contributions on his behalf and shall not be valid unless it includes his proper election as to the investment of his contributions in accordance with Section 6.6.

4.2 Amount of Tax-Deferred Contributions. Subject to the provisions of Section 7.2, the amount of Tax Deferred Contributions to be made to the Plan on behalf of an Eligible Employee by his Employer shall be not less than 1% of his Compensation per payroll period nor more than such amount of his Compensation per payroll period that, when aggregated with the amount of Tax-Deferred Contributions previously made on behalf of the Eligible Employee during the Plan Year, would exceed the dollar limitation contained in Section 402(g) of the Code in effect for the taxable year beginning in the Plan Year, except to the extent permitted under Section 4.10 and Section 414(v) of the Code. In the event an Eligible Employee elects to have his Employer make Tax Deferred Contributions on his behalf, his Compensation shall be reduced for each payroll period by the amount he elects to have contributed on his behalf to the Plan in accordance with the terms of his currently effective reduction authorization.

4.3 Changes in Reduction Authorization. An Eligible Employee may change the amount of his future Compensation that his Employer contributes on his behalf as Tax Deferred Contributions at such time or times during the Plan Year as the Committee may prescribe by filing an amended reduction authorization with his Employer such number of days prior to the date such change is to become effective as the Committee shall prescribe. An Eligible Employee who changes his reduction authorization shall be limited to selecting an amount of his Compensation that is otherwise permitted under Section 4.2. Tax Deferred Contributions shall be made on behalf of such Eligible Employee by his Employer pursuant to his amended reduction authorization filed in accordance with this Section commencing with Compensation paid to the Eligible Employee on or after the date such filing is effective, until otherwise altered or terminated in accordance with the Plan.

4.4 Suspension of Tax-Deferred Contributions. An Eligible Employee on whose behalf Tax Deferred Contributions are being made may have such contributions suspended

at any time by giving such number of days advance written notice (or such other telephonic or electronic notice as may be authorized and recognized by the Committee) to his Employer as the Committee shall prescribe. Any such voluntary suspension shall take effect commencing with Compensation paid to such Eligible Employee on or after the expiration of the required notice period and shall remain in effect until Tax Deferred Contributions are resumed as hereinafter set forth.

4.5 Resumption of Tax-Deferred Contributions. An Eligible Employee who has voluntarily suspended his Tax Deferred Contributions in accordance with Section 4.4 may have such contributions resumed at such time or times during the Plan Year as the Committee may prescribe, by filing a new reduction authorization with his Employer such number of days prior to the date as of which such contributions are to be resumed as the Committee shall prescribe.

4.6 Delivery of Tax-Deferred Contributions. As soon after the date an amount would otherwise be paid to an Employee as it can reasonably be separated from Employer assets, each Employer shall cause to be delivered to the Trustee in cash all Tax Deferred Contributions attributable to such amounts, but in no event later than 15 days after the end of the month to which such Tax-Deferred Contributions apply. Subject to Section 7.2, the amount of Tax-Deferred Contributions made by each Employer on behalf of each Eligible Employee for each payroll period and received by the Trustee shall be credited to such Eligible Employee's Separate Accounts as soon as reasonably practicable after receipt thereof by the Trustee; provided, however, that for purposes of Sections 401(k)(3)(A)(ii), 404, and 415 of the Code, such contributions shall be deemed made as of the last day of the Plan Year that included such payroll period.

In no event shall an Employer deliver Tax-Deferred Contributions to the Trustee on behalf of an Eligible Employee prior to the date the Eligible Employee performs the services with respect to which the Tax-Deferred Contribution is being made, unless such pre-funding is to accommodate a bond fide administrative concern and is not for the principal purpose of accelerating deductions.

4.7 Vesting of Tax-Deferred Contributions. A Participant's vested interest in his Tax Deferred Contributions sub account shall be at all times 100 percent.

4.8 Limitation on Amount of Tax-Deferred Contributions. The amount of Tax-Deferred Contributions to be made to the Plan on behalf of an Eligible Employee by his Employer shall not, when aggregated with respect to any taxable year, exceed the dollar limitation contained in Section 402(g) of the Code in effect for the taxable year, except to the extent permitted under Section 4.10 and Section 414(v) of the Code. If an Employer notifies the Committee that the annual aggregate limitation on elective deferrals has been exceeded by an Eligible Employee for his taxable year, the Tax-Deferred Contributions that, when aggregated with elective contributions made on behalf of the Eligible Employee under any other plan of an Employer or a Related Corporation, would exceed such limit, plus any income and minus any losses attributable thereto, shall be distributed to the Eligible Employee no later than the April 15 immediately following such taxable year. Any Tax-Deferred Contributions that are distributed to an Eligible Employee in accordance with the preceding sentence shall not be taken into account in computing the Participant's actual deferral percentage for the Plan Year in which the Tax-Deferred Contributions were made, unless the Eligible Employee is a Highly Compensated Employee. If an amount of Tax Deferred Contributions is distributed to an Eligible Employee in accordance with this Section 4.8,

Employer Contributions that are attributable solely to the distributed Tax Deferred Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Eligible Employee. Any such forfeited amounts shall be treated as a forfeiture under the Plan in accordance with the provisions of Section 8.3. In the event that an Eligible Employee's aggregate elective deferrals with respect to a taxable year, including his Tax-Deferred Contributions hereunder, exceed the then applicable annual aggregate limitation on elective deferrals, the Eligible Employee, not later than March 1 of the following year, may allocate the excess deferrals among the plans under which the deferrals occurred and notify each plan of the portion allocated to it, and the Committee, not later than the April 15 of the following year, shall cause to be distributed to the Eligible Employee the annual amount of the excess deferral allocated to the Plan and any income allocable thereto, provided, however, that any such distributed excess deferral shall nevertheless be taken into account for purposes of computing deferral percentages for the Plan Year under Section 4.9.

4.9 Limitation on Tax-Deferred Contributions of Highly Compensated Employees. Notwithstanding anything to the contrary contained in the Plan, Tax-Deferred Contributions with respect to a Plan Year on behalf of Eligible Employees who are Highly Compensated Employees may not result in an average deferral percentage for Eligible Employees who are Highly Compensated Employees that exceeds the greater of:

- (a) a percentage that is equal to 125 percent of the average deferral percentage for all other Eligible Employees for the immediately preceding Plan Year; or
- (b) a percentage that is not more than 200 percent of the average deferral percentage for all other Eligible Employees and that is not more than two percentage points higher than the average deferral percentage for all other Eligible Employees for the immediately preceding Plan Year.

In the event the Tax-Deferred Contributions with respect to a Plan Year for Eligible Employees who are Highly Compensated Employees would otherwise exceed the limit specified in the preceding sentence, the "excess contributions," as hereinafter defined, made on behalf of such Highly Compensated Employees, increased by any income allocable thereto and decreased by any loss allocable thereto, shall be distributed to the Highly Compensated Employees prior to the end of the next following Plan Year. For purposes of this Section 4.9, the term "excess contributions" means, with respect to any Plan Year, the excess of (i) the aggregate amount of Tax Deferred Contributions actually paid over to the Plan on behalf of Highly Compensated Employees for such Plan Year, over (ii) the maximum amount of such contributions permitted under the limitations of the first sentence of this Section 4.9 (determined by reducing Tax-Deferred Contributions made on behalf of Highly Compensated Employees in order of the actual deferral percentages beginning with the highest of such percentages). The total amount of the excess contributions for the Plan Year shall be distributed as follows:

- (1) The Tax-Deferred Contributions of the Highly Compensated Employee with the highest dollar amount of Tax-Deferred Contributions are reduced by the amount required to cause that Highly Compensated Employee's

Contributions to equal the dollar amount of the Tax-Deferred Contributions of the Highly Compensated Employee with the next highest dollar amount of Tax-Deferred Contributions. This amount shall be distributed to the Highly Compensated Employee with the highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this paragraph (1) would equal the total excess contributions, the lesser reduction amount is distributed.

(2) If the total amount distributed under paragraph (1) above is less than the total excess contributions, the procedure in paragraph (1) is repeated.

Each Highly Compensated Employee affected by a reduction in Tax-Deferred Contributions shall be notified by the Committee of the reduction as soon as practicable. In determining the deferral percentage for any Eligible Employee who is a Highly Compensated Employee for the Plan Year, elective contributions, qualified nonelective contributions, and qualified matching contributions (to the extent that qualified nonelective contributions and qualified matching contributions are taken into account in determining deferral percentages) made to his accounts under any plan of an Employer or a Related Corporation that is not mandatorily disaggregated pursuant to Section 1.410(b)-7(c) of the Treasury Regulations, as modified by Section 1.401(k)-1(b)(4) of the Treasury Regulations (without regard to the prohibition on aggregating plans with inconsistent testing methods contained in Section 1.401(k)-1(b)(4)(iii)(B) of the Treasury Regulations and the prohibition on aggregating plans with different plan years contained in Section 1.410(b)-7(d)(5) of the Treasury Regulations), shall be treated as if all such contributions were made to the Plan; provided, however, that if such a plan has a plan year different from the Plan Year, any such contributions made to the Highly Compensated Employee's accounts under the other plan during the Plan Year shall be treated as if such contributions were made to the Plan. Notwithstanding the foregoing, such contributions shall not be treated as if they were made to the Plan if Treasury Regulations issued under Section 401(k) of the Code do not permit such plan to be aggregated with the Plan. If one or more plans of an Employer or a Related Corporation are aggregated with the Plan for purposes of satisfying the requirements of Section 401(a)(4) of the Code or Section 410(b) of the Code, then "deferral percentages" under the Plan shall be calculated as if the Plan and such one or more other plans were a single plan. Pursuant to Section 1.401(k)-1(b)(4)(v) of the Treasury Regulations, an Employer may elect to calculate "deferral percentages" aggregating ESOP and non-ESOP plans. In addition, an Employer may elect to calculate "deferral percentages" aggregating bargained and non-bargained plans and/or bargained plans maintained for different bargaining units, provided that such aggregation is done on a reasonable basis and is reasonably consistent from year to year. Plans may be aggregated under this paragraph only if they have the same plan year and utilize the same testing method to satisfy the requirements of Section 401(k) of the Code. For purposes of this Section 4.9, the "deferral percentage" of an Employee for a Plan Year shall be the ratio of his Tax-Deferred Contributions with respect to the Plan Year to his Compensation for such Plan Year, except that in no event shall Compensation in excess of \$305,000 (for 2022 and subject to adjustment annually as provided in Section 401(a)(17)(B) of the Code and Section 415(d) of the Code) be taken into account for purposes of determining an Employee's deferral percentage; the income or loss allocable to Tax-Deferred Contributions for the preceding Plan Year to be distributed shall be determined in the same manner as income and loss is otherwise determined under the Plan. In the event the Committee shall determine that it is necessary or desirable for Tax-Deferred Contributions being made or to be made for one or more eligible Highly

Compensated Employees to be reduced or suspended in order to comply with the limitations of this Section 4.9, it shall take whatever actions are necessary to accomplish the reduction or suspension. Not by way of limitation of the foregoing, the Committee may from time to time establish and communicate to Eligible Employees who are Highly Compensated Employees a limit on the percentage or amount of Tax-Deferred Contributions which may be elected by a Highly Compensated Employee, which limit shall constitute an employer-provided limit for purposes of determining catch-up contributions described in Section 4.10.

If the Plan provides that Employees are eligible to make Tax-Deferred Contributions before they have satisfied the minimum age and service requirements under Section 410(a)(1) of the Code and applies Section 410(b)(4)(B) of the Code in determining whether the cash or deferred arrangement meets the requirements of Section 410(b)(1) of the Code, the Committee may apply the limitations on Tax-Deferred Contributions of Highly Compensated Employees described in Section 4.9 either:

(a) by comparing the average deferral percentage of all Eligible Employees who are Highly Compensated Employees for the Plan Year to the average deferral percentage for the immediately preceding Plan Year of those Eligible Employees who are not Highly Compensated Employees and who have satisfied the minimum age and service requirements under Section 410(a)(1) of the Code; or

(b) separately with respect to Eligible Employees who have not satisfied the minimum age and service requirements under Section 410(a)(1) of the Code and Eligible Employees who have satisfied such minimum age and service requirements.

4.10 Catch-Up Contributions. All Employees who are eligible to make Tax-Deferred Contributions under this Plan and who would attain age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Section 402(g) of the Code and Section 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

ARTICLE V

EMPLOYER CONTRIBUTIONS

5.1 Amount of Employer Contributions. Each Employer shall make an Employer Contribution to the Plan for each Plan Year on behalf of each Eligible Employee who is eligible for an allocation of the Employer Contribution for such Plan Year under Section 7.1 in an amount equal to the following:

(a) 100 percent of the first 3% of the Eligible Employee's Compensation contributed to the Plan during the Plan Year as Tax-Deferred Contributions, plus

(b) 50 percent of the next 2% of the Eligible Employee's Compensation contributed to the Plan for the Plan Year as Tax-Deferred Contributions, reduced by any forfeitures to be applied for such purpose pursuant to Section 8.3.

5.2 Payment of Contributions. The Employer Contribution for any Plan Year shall be paid in Shares or in cash to the Trustee within the period of time established by the Code in order that the contribution shall be deductible by the Employer in computing its federal income taxes with respect to the Plan Year. Upon receipt of any such contribution, the Trustee shall deposit the same in the Employer Stock Fund.

In no event shall an Employer deliver Employer Contributions to the Trustee on behalf of an Eligible Employee prior to the date the Eligible Employee performs the services with respect to which the Employer Contribution is being made, unless such pre-funding is to accommodate a bona fide administrative concern and is not for the principal purpose of accelerating deductions.

5.3 Limitation on Amount. Notwithstanding anything to the contrary contained in the Plan, the contribution of an Employer for any Plan Year when added to the Tax-Deferred Contributions made on behalf of Participants for such Plan Year shall in no event exceed (i) the maximum amount that will constitute an allowable deduction for the year to the Employer under Section 404 of the Code, (ii) the maximum amount that may be contributed by the Employer under Section 415 of the Code, or (iii) the maximum amount that may be contributed pursuant to any wage stabilization law or any regulation, ruling, or order issued pursuant to law.

5.4 Finality of Determination. The Company shall have exclusive responsibility with respect to determining the amount of Employer Contributions and, upon determining the amount for a Plan Year, shall transmit to the Trustee and to the Committee a written statement of the amount of the contribution, together with a certificate by an authorized officer of the Company certifying to the correctness thereof. A determination so made and certified shall be final and conclusive upon the Company, the other Employers, the Trustee, the Committee and all Participants, former Participants, and Beneficiaries.

5.5 Effect of Plan Termination. Notwithstanding anything to the contrary contained in the Plan or in the Trust Agreement, the termination of the Plan shall terminate the liability of the Employers to make further contributions hereunder, other than contributions for any Plan Year ended prior to the time of such termination.

5.6 Limitation on Employer Contributions for Highly Compensated Employees. Notwithstanding anything to the contrary contained in the Plan, Employer Contributions with respect to a Plan Year on behalf of Eligible Employees who are Highly Compensated Employees may not result in an average contribution percentage for Highly Compensated Employees that exceeds the greater of:

(a) a percentage that is equal to 125 percent of the average contribution percentage for all other Eligible Employees for the immediately preceding Plan Year, or

(b) a percentage that is not more than 200 percent of the average contribution percentage for all other Eligible Employees and that is not more than two percentage points higher than the average contribution percentage for all other Eligible Employees for the immediately preceding Plan Year.

In the event the Employer Contributions with respect to a Plan Year for Eligible Employees who are Highly Compensated Employees would otherwise exceed the limit specified in the preceding sentence, a certain amount of the Employer Contributions, increased by any income allocable thereto and decreased by any loss allocable thereto, shall be forfeited, to the extent forfeitable, or distributed prior to the end of the next following Plan Year, by reducing Employer Contributions of Highly Compensated Employees (in order of the highest contribution amounts) to such amount that will result in the average contribution percentage limit specified above not being exceeded. The excess amount of Employer Contributions shall be forfeited or distributed, as the case may be. Excess Employer Contributions shall be distributable if the Eligible Employee has a vested interest in Employer Contributions and shall otherwise be forfeitable. The portion of such excess amount to be forfeited by or distributed to a Highly Compensated Employee, as the case may be, shall be determined in the same manner as provided in Section 4.9 with respect to "excess contributions" (as defined in Section 4.9). In determining the contribution percentage for any Eligible Employee who is a Highly Compensated Employee for the Plan Year, matching contributions, employee contributions, qualified nonelective contributions, and elective contributions (to the extent that qualified nonelective contributions and elective contributions are taken into account in determining contribution percentages) made to his accounts under any plan of an Employer or a Related Corporation that is not mandatorily disaggregated pursuant to Section 1.410(b)-7(c) of the Treasury Regulations, as modified by Section 1.401(m)-1(b)(4) of the Treasury Regulations (without regard to the prohibition on aggregating plans with inconsistent testing methods contained in Section 1.401(m)-1(b)(4)(iii)(B) of the Treasury Regulations and the prohibition on aggregating plans with different plan years contained in Section 1.410(b)-7(d)(5) of the Treasury Regulations), shall be treated as if all such contributions were made to the Plan; provided, however, that if such a plan has a plan year different from the Plan Year, any such contributions made to the Highly Compensated Employee's accounts under the other plan during the Plan Year shall be treated as if such contributions were made to the Plan. Notwithstanding the foregoing, such contributions shall not be treated as if they were made to the Plan if Treasury Regulations issued under Section 401(m) of the Code do not permit such plan to be aggregated with the Plan. If one or more plans of an Employer or a Related Corporation are aggregated with the Plan for purposes of satisfying the requirements of Section 401(a)(4) of the Code or Section 410(b) of the Code, then contribution percentages under the Plan shall be calculated as if the Plan and such one or more other plans were a single plan. Pursuant to Section 1.401(m)-1(b)(4)(v) of the Treasury Regulations, an Employer may elect to calculate contribution percentages aggregating ESOP and non-ESOP plans. In addition, an Employer may elect to calculate contribution percentages aggregating bargained and non-bargained plans and/or bargained plans maintained for different bargaining units, provided that such aggregation is done

on a reasonable basis and is reasonably consistent from year to year. Plans may be aggregated under this paragraph only if they have the same plan year and utilize the same testing method to satisfy the requirements of Section 401(m) of the Code. For purposes of this Section 5.6, the contribution percentage of an Eligible Employee for a Plan Year shall be the ratio of his Employer Contributions with respect to the Plan Year to his Compensation for such Plan Year, except that in no event shall compensation in excess of \$305,000 (for 2022 and subject to adjustment annually as provided in Section 401(a)(17)(B) of the Code and Section 415(d) of the Code) be taken into account for purposes of determining an Eligible Employee's contribution percentage, and provided that, to the extent permitted by Treasury Regulations issued under Section 401(m) of the Code, the Company may elect to take into account in computing the numerator of each Eligible Employee's contribution percentage the Tax-Deferred Contributions made on behalf of the Eligible Employee for the Plan Year. For purposes of this Section 5.6, the income or loss allocable to Employer Contributions to be forfeited or distributed, as the case may be, shall be determined in the same manner as income or loss is otherwise determined under the Plan. The determination hereunder of whether excess Employer Contributions have been made on behalf of an Eligible Employee with respect to a Plan Year shall occur after first determining the amount, if any, of that portion of the Tax-Deferred Contribution of the Eligible Employee that is in excess of the annual aggregate limitation on Tax-Deferred Contributions and then determining the amount, if any, of Tax-Deferred Contributions made on behalf of the Eligible Employee that are in excess of the limitations imposed under Section 4.9.

If the Plan provides that Employees are eligible to receive Employer Contributions before they have satisfied the minimum age and service requirements under Section 410(a)(1) of the Code, and applies Section 410(b)(4)(B) of the Code in determining whether the portion of the Plan subject to Section 401(m) of the Code meets the requirements of Section 410(b)(1) of the Code, the Committee may apply the limitations on Employer Contributions of Highly Compensated Employees described in Section 5.6 either:

- (a) by comparing the average contribution percentage of all Eligible Employees who are Highly Compensated Employees for the Plan Year to the average contribution percentage for the immediately preceding Plan Year of those Eligible Employees who are not Highly Compensated Employees and who have satisfied the minimum age and service requirements under Section 410(a)(1) of the Code; or
- (b) separately with respect to Eligible Employees who have not satisfied the minimum age and service requirements under Section 410(a)(1) of the Code and Eligible Employees who have satisfied such minimum age and service requirements.

Employer Contributions in excess of 100% of the Tax-Deferred Contributions of an Eligible Employee who is not a Highly Compensated Employee for a Plan Year shall not be used in computing such Eligible Employee's contribution percentage for the Plan Year to the extent that such Employer Contributions exceed the greater of (i) 5% of the Eligible Employee's Compensation for the Plan Year or (ii) the product of 2 times the Plan's representative match rate multiplied by the Eligible Employee's Tax-Deferred Contributions for the Plan Year. The Plan's "representative match rate" is the lowest match rate of any Eligible Employee who is not a Highly Compensated Employee for the Plan Year in either (i) the group consisting of half of all Eligible Employees who are not Highly Compensated Employees for the Plan Year or (ii) the group of all Eligible Employees who are not Highly Compensated Employees for the Plan Year and who are employed by the Employer or a

Related Corporation on the last day of the Plan Year and who make Tax-Deferred Contributions for the Plan Year, whichever results in the greater amount. An Eligible Employee's "match rate" means the Employer Contributions made on behalf of the Eligible Employee for the Plan Year divided by the Eligible Employee's Tax-Deferred Contributions for the Plan Year; provided, however, that if Employer Contributions are made at different rates for different levels of Compensation, the match rate shall be determined assuming Tax-Deferred Contributions equal to 6% of Compensation.

5.7 Deemed Satisfaction of the Limitations on Tax-Deferred Contributions and Employer Contributions of Highly Compensated Employees. Notwithstanding any other provision of Article IV or this Article V to the contrary, for Plan Years in which an Employer satisfies the safe harbor notice requirements described in Section 5.8, the Plan shall be deemed to have satisfied the limitations on Tax-Deferred Contributions of Highly Compensated Employees described in Section 4.9 and the limitations on Employer Contributions for Highly Compensated Employees described in Section 5.6.

The Plan includes testing provisions in Section 5.6 that are applicable for any Plan Year in which the notice requirements described in Section 401(k)(12)(D) of the Code are not satisfied and the Plan therefore does not satisfy Section 401(k)(12) of the Code. Under no circumstance do the testing provisions in Section 5.6 relieve an Employer from its obligation to make Safe Harbor Matching Contributions in accordance with the terms of the Plan. If testing applies because an Employer did not satisfy the notice requirements as described in Section 5.8, the Employer is still obligated to make Safe Harbor Matching Contributions in accordance with the Plan provisions for Plan Years beginning on and after January 1, 2020.

5.8 Notice Requirements for Safe Harbor Matching Contributions. For each Plan Year for which an Employer makes a Safe Harbor Matching Contribution on behalf of its Eligible Employees, the Employer shall provide such Eligible Employees a notice describing (i) the formula used for determining Safe Harbor Matching Contributions, (ii) any other Employer Contributions available under the Plan and the requirements that must be satisfied to receive an allocation of such Employer Contributions, (iii) the type and amount of Compensation that may be deferred under the Plan as Tax-Deferred Contributions, (iv) how to make a cash or deferred election under the Plan and the periods in which such elections may be made or changed, and (v) the withdrawal and vesting provisions applicable to contributions under the Plan. The descriptions required in items (ii) through (v) may be provided by cross references to the relevant section(s) of an up to date summary plan description.

The notice shall be written in a manner calculated to be understood by the average Eligible Employee. The Employer shall provide such notice within a reasonable period before the beginning of the Plan Year (or, in the year an Employee becomes an Eligible Employee, within a reasonable period before the Employee becomes an Eligible Employee).

ARTICLE VI

EMPLOYER STOCK FUND, SUSPENSE FUND, ESOP BORROWING, INVESTMENT FUNDS, PARTICIPANTS' ACCOUNTS AND INVESTMENT ELECTIONS

6.1 Employer Stock Fund. The Trustee shall establish a trust fund, herein referred to as the Employer Stock Fund, primarily to hold and administer any Shares which are assets of the Fund, except Shares held in the Suspense Fund. Within the Employer Stock Fund, the Trustee shall maintain an Employer stock sub-fund A, to hold and administer Shares acquired by the Trustee prior to January 1, 1987, an Employer stock sub-fund B, to hold and administer Shares acquired by the Trustee on and after January 1, 1987, and an Employer stock sub-fund C, to hold any portion of the Employer Stock Fund that is not invested in Shares. Each such sub-fund shall constitute a common trust fund and the interest of each Participant, former Participant, or Beneficiary under the Plan in each such sub-fund shall be an undivided interest.

6.2 Suspense Fund. The Trustee shall establish a trust fund, herein referred to as the Suspense Fund, to hold and administer any Shares which are pledged as collateral for any loan made to the Trustee for the purposes of the Plan. In any Plan Year as any Shares are no longer required to be pledged as collateral for such a loan, the Trustee shall release such Shares from encumbrance in the Suspense Fund and shall transfer them to the Employer Stock Fund as of the last day of such Plan Year. Any Shares so released and transferred shall be allocated as Employer Contributions for such Plan Year, as set forth in Section 7.1.

6.3 ESOP Borrowing. Under the Trust Agreement the Trustee has the power to borrow money for the purposes of the Plan to the extent permitted by the Plan. To further the purposes of the Plan, and the ESOP Feature in particular, the Trustee may borrow money upon such terms and conditions as it deems appropriate and as directed by the Investment Committee described in the Trust Agreement; provided, however, that any such loan by or guaranteed by a "disqualified person," as defined in Section 4975(e)(2) of the Code, shall be subject to the following requirements:

(a) The proceeds of the loan must be used within a reasonable period of time after receipt by the Trustee only:

- (1) to acquire Shares,
- (2) to reduce the loan, or
- (3) to repay a prior loan;

(b) the loan must be at a reasonable rate of interest and for a specific term;

(c) any collateral pledged to the creditor by the Trustee shall consist only of the assets purchased with the borrowed funds;

(d) the loan may not be payable at the demand of any person, except in the case of default, in accordance with Section 54.4975-7(b) of the Treasury Regulations;

(e) the creditor shall have no recourse against the Fund other than with respect to the collateral pledged, the contributions of the Employers (other than contributions of Shares) that are made to the Fund to meet their obligations under the loan, and the earnings attributable to the collateral and to the investment of those contributions, which shall be separately accounted for until the loan is repaid; and payments made with respect to a loan by the Trustee during a Plan Year must not exceed an amount equal to the sum of those contributions and earnings received during or prior to the Plan Year less payments made with respect to that loan in prior Plan Years;

(f) in the event of default on the loan, the value of the Fund assets transferred in satisfaction of the loan must not exceed the amount of default, and if the lender (other than a guarantor) is a disqualified person as defined in Section 4975(e)(2) of the Code, the loan shall provide for a transfer of Fund assets upon default only upon and to the extent of the failure of the Fund to meet the payment schedule of the loan; and

(g) the Trustee will establish a separate account for Shares acquired by the Trustee with the proceeds of a loan and which have not been allocated to the accounts of Participants. The Plan may release the Shares from this account using one of the following methods:

(1) For each Plan Year during the duration of the loan, the number of Shares released must equal the number of encumbered Shares held immediately before release for the current Plan Year multiplied by a fraction, the numerator of which is the amount of principal and interest paid for the Plan Year, and the denominator of which is the sum of the numerator plus the principal and interest to be paid for all future Plan Years. The number of future Plan Years under the loan must be definitely ascertainable and must be determined without taking into account any possible extensions or renewal periods. If the interest rate under the loan is variable, the interest to be paid in future Plan Years must be computed by using the interest rate applicable as of the end of the Plan Year. If collateral includes more than one class of Shares, the number of Shares of each class to be released for a Plan Year must be determined by applying the same fraction to each class.

(2) The Plan may release Shares from the account using the formula described above but calculated only with reference to principal payments. If this second formula is used, the following additional requirements apply: (i) the loan must provide for annual payments of principal and interest at a cumulative rate that is not less rapid at any time than level annual payments of such amounts for 10 years; (ii) interest included in any payment may be disregarded only to the extent that it would be determined to be interest under standard loan amortization tables; and (iii) this alternate formula may not be used from the time that, by reason of a renewal, extension, or refinancing, the sum of the expired duration of the loan, the renewal period, the extension period, and the duration of a new loan exceeds 10 years.

6.4 Investment Funds and Investment Managers. The Trustee shall establish such trust funds, herein referred to as the Investment Funds, as the Company shall direct from time to time, to hold and administer all of the assets of the Fund, except assets held in the Employer Stock Fund or the Suspense Fund. The interest of each Participant in an Investment Fund shall be an undivided interest. As provided in the Trust Agreement, the Sponsor may appoint one or more investment managers (as defined in Section 3(3) of ERISA) with respect to any portion of the Fund.

6.5 Separate Accounts. Separate Accounts and sub-accounts shall be established in the name of each Participant to reflect contributions made to the Plan by or on his behalf, as follows: (i) a Separate Account-A, which shall reflect his interest in sub-fund A of the Employer Stock Fund with respect to Employer Contributions made to the Plan on his behalf for Plan Years beginning prior to January 1, 1997, if any; (ii) a Separate Account-B, which shall reflect his interest in sub-fund B of the Employer Stock Fund with respect to Employer Contributions, Tax-Deferred Contributions, or Rollover Contributions made to the Plan on his behalf for Plan Years beginning on or after January 1, 1997, if any; (iii) such Separate Accounts as reflect his interests in the Investment Funds with respect to Tax-Deferred Contributions or Rollover Contributions made to the Plan on his behalf for Plan Years beginning on and after January 1, 1997, if any; and (iv) such other Separate Accounts as are necessary or appropriate to reflect a Participant's interest in the Fund. Each Separate Account shall be divided into sub-accounts to reflect Employer Contributions, Tax-Deferred Contributions, or Rollover Contributions, as applicable. The Trustee shall cause such Separate Accounts and sub-accounts to be maintained and administered for each Participant in accordance with the provisions of the Plan.

6.6 Investment Elections of Participants. Each Participant shall, upon commencing Tax-Deferred Contributions pursuant to Section 4.1 or making a Rollover Contribution pursuant to Article X, make an investment election in a format authorized and recognized by the Committee directing the manner in which his Tax-Deferred Contributions and Rollover Contributions, if any, shall be deposited and held by the Trustee. Such investment election shall specify that the percentage of such contributions shall be deposited in one or more of the Investment Funds and, if elected, the Employer Stock Fund in such integral percentages as may be prescribed by the Committee from time to time with the sum of such percentages not in excess of 100%; provided, however, that a Participant shall not elect to invest more than 25% of his Tax-Deferred Contributions in the Employer Stock Fund. Subject to the provisions of Section 6.9, the investment election by a Participant shall remain in effect until he ceases to have an interest under the Plan; provided, however, that a Participant may change his investment election for future contributions at such times and in accordance with such procedures and advance notice as shall be established from time to time by the Committee. Any such change must again specify a percentage of contributions to be deposited in one or more of the Investment Funds and, if elected, the Employer Stock Fund that would be a valid election under the preceding provisions of this Section 6.6, and such change shall not affect the amounts credited to any Separate Account or sub-account of the Participant as of any date prior to the date on which such change is to become effective.

6.7 Election to Transfer Interest Between Funds. A Participant, former Participant or Beneficiary who has an interest in an Investment Fund may elect to transfer all or a portion of such interest to one or more other Investment Funds at such times and in accordance with such procedures as shall be established from time to time by the Committee, and subject to any restrictions on transfers applicable to an Investment Fund. Subject to the provisions of Section 6.9, a Participant who has an interest in an Investment Fund may elect to transfer all or a portion of such interest to the Employer Stock Fund at such times and in accordance with such procedures and advance notice as shall

be established from time to time by the Committee. A Participant, former Participant or Beneficiary who has an interest in the Employer Stock Fund attributable to Tax-Deferred Contributions or Rollover Contributions may elect to transfer all or a portion of such interest to one or more Investment Funds at such times and in accordance with such procedures and advance notice as shall be established from time to time by the Committee. Such an election must specify a percentage of the amount eligible for transfer that is to be transferred, which percentage amount must be such integral percentage as may be prescribed by the Committee from time to time not in excess of 100%. The appropriate Separate Accounts and sub-accounts of such individual shall be adjusted to reflect the transfer as soon as practicable after the effective date of the election.

6.8 Separate Account Balances. For all purposes of the Plan, the combined balance of the Separate Accounts of a Participant and of each former Participant or Beneficiary as of any date, other than a Valuation Date, shall be the combined balance of such accounts as of the immediately preceding Valuation Date.

6.9 Investment Following Settlement Date. During the first Open Period which occurs one year after a former Participant's Settlement Day and based upon the valuation obtained pursuant to Section 7.3 for distributions to be made during that Open Period, the Separate Account-A and the Separate Account-B of the former Participant or his Beneficiary (including for purposes of this Section 6.9 any alternate payee whose interest is derived from such former Participant), as the case may be, shall cease to be invested in the Employer Stock Fund, and shall be reinvested in the Investment Funds, as directed by the former Participant or Beneficiary, as the case may be; provided, however, that if such former Participant or Beneficiary does not provide an investment direction, such amount shall be invested in a default fund as determined by the Committee; provided, further, that to the extent the Board of Directors of the Company determines that a sufficient amount of cash is not available to fully implement the provisions of this paragraph (a) with respect to a Plan Year, the Board may determine that only a portion of such accounts shall be so reinvested, such portion to be uniform percentage for all accounts similarly affected; and provided, further, that in the event that only a portion of such accounts are so reinvested for any Plan Year, the Board may determine that an additional portion of such accounts are to be reinvested in a subsequent Plan Year in the manner described above, such portion to be uniform percentage for all accounts similarly affected.

For purposes of this Section 6.9, an "Open Period" shall mean the period during which distributions from the Employer Stock Fund may occur following each Valuation Date as determined by the Company.

ARTICLE VII

ALLOCATIONS TO ACCOUNTS, VALUATIONS, DIVIDEND REINVESTMENT, AND VOTING SHARES

7.1 Allocation of Employer Contributions Among Participants. Within a reasonable time after the end of each calendar quarter, the Company shall certify and deliver to the Trustee and to the Committee a list of all Participants for whom an Employer Contribution is due for such calendar quarter, together with a statement of the Compensation and Tax-Deferred Contributions of each such Participant. After delivery of such list and no later than the last day of the calendar quarter following the calendar quarter for which such Employer Contribution is due, the Employer Contribution for such calendar quarter shall be allocated to the Separate Accounts of all such Participants. Subject to the provisions of Section 7.2, the share of each such Participant in the Employer Contribution shall be an amount equal to 100 percent multiplied by the amount of the Tax-Deferred Contribution made by such Employer on behalf of such Participant during such Plan Year that is not in excess of three percent of his Compensation for such Plan Year and 50 percent multiplied by the amount of the Tax-Deferred Contribution made by such Employer on behalf of such Participant during such Plan Year that is in excess of three percent but not in excess of five percent of his Compensation for such Plan Year reduced by the sum of Employer Contributions contributed previously for such Plan Year. Subject to Section 7.2, the amount so allocated to each such Participant shall be credited to his Separate Accounts as soon as practicable after receipt thereof by the Trustee; provided, however, that for purposes of Sections 401(m)(2)(A), 404, and 415 of the Code, Employer Contributions shall be deemed made no later than as of the last day of the Plan Year for which such contributions were made.

7.2 Limitation on Crediting of Contributions and Forfeitures. Notwithstanding anything to the contrary contained in the Plan, the amount of Tax-Deferred Contributions and Employer Contributions which may be credited to the Separate Accounts of any Participant shall be subject to the following provisions:

(a) For purposes of this Section 7.2, the annual addition with respect to a Participant shall mean the sum for any limitation year of the following amounts:

(i) Tax-Deferred Contributions which are credited to the Separate Accounts of such Participant for such Plan Year pursuant to Section 4.1 and Employer Contributions which are credited to the Separate Accounts of such Participant for such Plan Year pursuant to Section 7.1;

(ii) the amount for the limitation year, if any, of Employer Contributions, voluntary contributions made by the Participant, and forfeitures that are credited to the Participant under any other qualified defined contribution plan (whether or not terminated) maintained by his Employer or any Related Corporation concurrently with the Plan;

(iii) all employee contributions credited to the Participant's account for the limitation year under any qualified defined contribution plan maintained by an Employer or a Related Corporation or any qualified defined benefit plan maintained by an Employer or a Related Corporation if either separate accounts are maintained under the defined benefit plan with respect to such employee contributions or such contributions are mandatory employee contributions

within the meaning of Section 411(c)(2)(c) of the Code (without regard to whether the plan is subject to the provisions of Section 411 of the Code);

(iv) the amount, if any, attributable to medical benefits allocated to an account for such Participant established under Section 419A(d)(1) of the Code for such limitation year; and

(v) if the Participant is a key employee, as defined in Section 419A(d)(3) of the Code, all amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after that date, that are attributable to post-retirement medical benefits credited for the limitation year to the Participant's separate account under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer or a Related Corporation.

Notwithstanding the foregoing, the annual addition for limitation years beginning prior to January 1, 1987 shall not be recalculated to treat all employee contributions as annual additions.

(b) For purposes of this Section 7.2, the Plan Year shall be the "limitation year" within the meaning of Section 415 of the Code, and the "compensation" of a Participant shall mean his wages, salaries, and other amounts received for personal services actually rendered in the course of employment with an Employer or a Related Corporation, including any elective deferral (as defined in Section 402(g)(3) of the Code) and any amount which is contributed or deferred by an Employer at the election of a Participant and which is not includable in the gross income of the Participant by reason of Section 125 of the Code or Section 132(f) of the Code, excluding, however, (i) any other contributions made by an Employer or a Related Corporation to a plan of deferred compensation to the extent that, before the application of the limitations of Section 415 of the Code to such plan, the contributions are not includable in the gross income of the Participant for the taxable year in which contributed, (ii) non-elective contributions made by an Employer or a Related Corporation on his behalf to a simplified employee pension described in Section 408(k) of the Code, (iii) any distributions from a plan of deferred compensation (other than amounts received pursuant to an unfunded non-qualified plan in the year such amounts are includable in the gross income of the Participant), (iv) amounts received from the exercise of a non-qualified stock option or when restricted stock or other property held by the Participant becomes freely transferable or is no longer subject to substantial risk of forfeiture, (v) amounts received from the sale, exchange, or other disposition of stock acquired under a qualified stock option, and (vi) any other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the Participant). Notwithstanding any other provision of the Plan to the contrary, if a Participant has a severance from employment (as defined in Section 1.401(k)-1(d)(2) of the Treasury Regulations) with the Employers and all Related Corporations, compensation shall not include amounts paid or payable to the Participant following such severance from employment except that compensation shall include amounts that would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation, but only to the extent such amounts (1) would have been includable in compensation if his employment had continued and (2) are paid before the later of the close of the limitation year in which

the Participant's severance from employment occurs or within 2½ months of such severance.

If a Participant is absent from employment as an Employee to perform service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code), his compensation will include any differential pay, as defined hereunder, he receives or is entitled to receive from his Employer. For purposes of this paragraph, "differential pay" means any payment made to the Participant by the Employer after December 31, 2008, with respect to a period during which the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days that represents all or a portion of the wages the Participant would have received if he had continued employment with the Employer as an Employee.

(c) For each limitation year, the annual additions with respect to a Participant shall not exceed the lesser of (i) \$61,000 (for 2022 and subject to adjustment annually pursuant to Section 415(d)(1)(C) of the Code), or (ii) one hundred percent of the Participant's compensation for such limitation year. The limit in clause (ii) shall not apply to any contribution to an individual medical account, as defined in Section 415(l) of the Code, or to a post-retirement medical benefits account maintained for a key employee which is treated as an "annual addition" under Section 419A(d)(2) of the Code. If the annual additions to the Separate Accounts of a Participant would exceed the limitation contained in this Section 7.2 absent such limitation, the limitation shall be satisfied by reducing contributions made on behalf of the Participant to the extent necessary in the following order: (1) Tax-Deferred Contributions to be made on the Participant's behalf for the limitation year that are not to be matched, if any, shall be reduced; and (2) Tax Deferred Contributions to be made on the Participant's behalf for the limitation year that would be matched and the matching contributions attributable thereto, if any, shall be reduced pro rata, to the extent necessary. The amount of any reduction of Employer Contributions shall be deemed a forfeiture for the limitation year. Amounts deemed to be forfeitures under this Section 7.2 shall be used to reduce Employer Contributions as described in Section 8.3. If the annual addition with respect to a Participant in any limitation year nevertheless exceeds the amount that may be applied for his benefit under the limitations described in clauses (i) and (ii) above, correction shall be made in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2021-30, or any superseding guidance.

(d) If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by an Employer or a Related Corporation concurrently with the Plan, and if the annual addition to be made under the Plan for the limitation year when combined with the annual addition to be made under such other qualified defined contribution plan(s) would otherwise exceed the amount that may be applied for the Participant's benefit under the limitation contained in paragraph (c) of this Section 7.2, the annual addition to be made to such other plan(s) shall be reduced, to the extent necessary so that the limitation in such paragraph (c) is satisfied.

(e) For purposes of this Section 7.2, the meaning of “Related Corporation” shall be as modified by Section 415(h) of the Code.

7.3 Valuation of Participant’s Interest. As of each Valuation Date hereunder, each Separate Account of each Participant and each former Participant and Beneficiary shall be adjusted to reflect any increase or decrease in net worth of the Fund since the immediately preceding Valuation Date, in the following manner:

(a) All of the assets of the Employer Stock Fund, the Investment Funds, and any other separate fund established hereunder, shall be valued at fair market value.

(b) On the basis of the valuation provided under paragraph (a) of this Section 7.3, after appropriate adjustments for any distributions and withdrawals from such funds since the immediately preceding Valuation Date and prior to such date, and for any interfund transfers since such preceding Valuation Date and prior to such date, the net increase or decrease in net worth of each such fund which is attributable to net earnings and all profits and losses, realized and unrealized, since the immediately preceding Valuation Date shall be ascertained.

(c) There shall then be allocated the net increase or decrease in the net worth of each such fund thus determined among the Separate Accounts of all Participants, former Participants, and Beneficiaries who have an interest in each such fund, in proportion to the respective balances of the Separate Accounts maintained thereunder for each such fund, on the date immediately preceding such Valuation Date, and shall credit or charge, as the case may be, each such account with the amount of its allocated share.

(d) As of the last Valuation Date of each Plan Year, there shall then be credited to the Separate Accounts of each Participant the portion of the annual contribution made by the Employers for the Plan Year ending on such .

7.4 Reinvestment of Dividends. Except as provided in Section 7.6, and except as may be otherwise directed by the Committee, all dividends and other earnings of the Fund shall be deposited by the Trustee in the separate fund for which the income was received; provided, however, that any dividends and other earnings of the Suspense Fund shall be used by the Trustee to repay any loan for which the Shares in the Suspense Fund are held as collateral. After such dividends have been used to make a payment on the loan, the Trustee shall release an amount of Shares with a fair market value equal to no less than the amount of the dividends paid. Such released Shares shall be allocated to the Separate Accounts of the Participants who have an interest in such fund as if the released Shares were earnings.

7.5 Voting and Tendering of Shares. Voting of Shares and decisions relating to the tender or exchange of Shares shall be the responsibility of the Participants, former Participants,

and Beneficiaries, and the Trustee shall vote the Shares as directed by Participants, former Participants, and Beneficiaries, in accordance with the provisions of Article VI of the Trust Agreement.

7.6 Payment and Reinvestment of Dividends on Shares.

In accordance with such procedures, and subject to such limitations, as shall be established by the Committee: All cash dividends on Shares, except dividends and other earnings of the Suspense Fund which shall be used by the Trustee to repay any loan for which the Shares in the Suspense Fund are held as collateral, which are attributable as of the ex-dividend date for such dividend to the Separate Account of a Participant, former Participant, or Beneficiary (“Dividend Payee”), shall be paid to the Plan. Each Dividend Payee shall have the right to elect whether such dividends (i) shall, not later than ninety (90) days after the close of the Plan Year in which the dividends are paid to the Plan, be paid in cash to the Dividend Payee, or (ii) shall remain in the Dividend Payee’s Separate Account and be reinvested in qualifying employer securities through the Employer Stock Fund. For purposes of the immediately preceding sentence: (i) each such election by a Dividend Payee shall become irrevocable with respect to a particular dividend upon payment of such dividend to the Plan; (ii) a Dividend Payee shall be given a reasonable opportunity before a dividend is paid to the Plan in which to make such election; (iii) a Dividend Payee shall have a reasonable opportunity to change such election on a prospective basis at least annually; and (iv) if there is a change in Plan terms governing the manner in which dividends are distributed to Dividend Payees, a Dividend Payee shall be given a reasonable opportunity to make an election under the new Plan terms prior to the date on which the first dividend subject to the new Plan terms is paid to the Plan. If a Dividend Payee fails to make an affirmative election, the Dividend Payee shall be deemed to have elected to have such dividends reinvested in qualifying employer securities through the Employer Stock Fund.

A Dividend Payee shall at all times have a 100% vested interest in any dividend subject to election under this Section 7.6.

7.7 Special Nonallocation Rule.

(a) Notwithstanding any provision of the Plan to the contrary, no Section 1042 Stock (as hereafter defined) shall be allocated to any Section 1042 Participant (as hereafter defined) during the Section 1042 Nonallocation Period (as hereafter defined); provided however, Section 1042 Stock shall never be allocated to any Participant who is a Section 1042 Participant by reason of Section 7.7(b)(2)(C) of the Plan.

(b) For the purposes of this Section 7.7:

(i) “Section 1042 Stock” means Shares purchased by the Trustee, but only if in connection with such purchase, the seller of such Shares has timely elected application of Section 1042 of the Code to such sale and the sale of such Shares and purchase of replacement securities by the seller meets all applicable requirements of Section 1042 of the Code;

(ii) “Section 1042 Participant” means

- (A) a Participant who has made an election under Section 1042 with respect to Section 1042 Stock; or
- (B) any spouse, ancestor, lineal descendent or brother or sister (by whole or by half blood) of a Participant who has made an election under Section 1042 with respect to Section 1042 Stock, other than a lineal descendent who, together with all other lineal descendants, receives total allocations under this Plan during the Section 1042 Nonallocation Period of less than five percent of the Shares attributable to a sale to the Plan by any person related to such lineal descendants; or
- (C) a Participant who owns, directly or indirectly (after application of the attribution rules provided in Section 318(a) of the Code) without regard to the employee trust exception in Section 318(a)(2)(B)(i) of the Code) more than 25 percent of the value of any class of outstanding stock (or more than 25 percent of the total value of all outstanding stock) of the Company or a Related Corporation.

(iii) “Section 1042 Nonallocation Period” means the period with respect to any Section 1042 Stock beginning on the date of sale of such Section 1042 Stock and ending on the later of (i) the date of the allocation of Shares attributable to the final payment of all acquisition loans made pursuant to Section 6.3 with respect to such Section 1042 Stock, or (ii) the date which is ten years after the date of sale of such Section 1042 Stock.

(c) Nonrecognition of gain pursuant to Section 1042 of the Code applies only with respect to the sale of shares of stock issued by a domestic C corporation that has no shares outstanding that are readily tradable on an established securities market.

ARTICLE VIII

TERMINATION OF PARTICIPATION

8.1 Termination of Participation. Each Participant shall cease to be a Participant hereunder upon the first to occur of the following dates:

- (a) the date on which such Participant's employment with the Company or a Related Corporation is terminated after attainment of age 65;
- (b) the date on which such Participant's employment with the Company or a Related Corporation is terminated after attainment of age 55 and completion of at least five years of Continuous Service;
- (c) the date on which such Participant's employment with the Company or a Related Corporation is terminated because of a physical or mental disability preventing him from continuing in the employment of the Company or a Related Corporation, as determined by the Committee upon the basis of a written certificate of a physician selected by it;
- (d) the date on which such Participant's employment with the Company or a Related Corporation is terminated because of the death of such Participant;
- (e) the date on which such Participant's employment with the Company or a Related Corporation is terminated after completion of at least three years of Continuous Service;
- (f) the date on which ends the 12 month period commencing with the date on which such Participant began a period of layoff if the Participant is not recalled or does not return to employment with the Company or a Related Corporation before the end of such 12-month period; or
- (g) the date on which such Participant's employment with the Company or a Related Corporation is terminated under any other circumstances.

Notwithstanding anything to the contrary contained in the Plan, the vested interest of a Participant in his Separate Accounts upon his attainment of age 65 prior to his termination of employment shall be 100%.

8.2 Vested Interest of Participants. A Participant whose employment terminates in accordance with the provisions of paragraph (a), (b), (c), (d), or (e) of Section 8.1 shall have a vested interest in his Separate Accounts of 100%. The vested interest of a Participant whose employment terminates in accordance with the provisions of paragraph (f) of Section 8.1 shall be either (i) as provided in the immediately preceding sentence of this Section 8.2 if he has completed at least three years of Continuous Service or (ii) as provided in the next following sentence of this Section 8.2 if he has completed less than three years of Continuous Service. A Participant whose employment terminates in accordance with the provisions of paragraph (g) of Section 8.1 shall have a vested interest in his Separate Accounts attributable to Tax-Deferred Contributions and Rollover Contributions of 100% and shall have no vested interest in his Separate Accounts attributable to Employer Contributions under the Plan. Notwithstanding any other provision of this Section 8.2 of the Plan, any Employer Contribution credited to a Participant's Separate Account on and after January 1, 2020 shall be 100% vested.

8.3 Disposition of Non-vested Amounts. In the event that a Participant's Settlement Date occurs under the conditions specified in paragraphs (f) or (g) of Section 8.1, the balances remaining in the Participant's Separate Accounts that are not vested upon the occurrence of his Settlement Date shall be disposed of as follows:

(a) In the event that the Participant has no vested interest in his Separate Accounts upon the occurrence of his Settlement Date or the aggregate value as of the date of distribution does not exceed \$5,000 resulting in the Participant's receipt of a single sum payment of the vested portions of his Separate Account, the non vested balance of his Separate Accounts attributable to Employer Contributions will be forfeited and his Separate Accounts closed as of the last day of the Plan Year (i) in which such Settlement Date occurs, if the Participant has no vested interest in his Separate Accounts, or (ii) in which the single sum distribution occurs.

(b) In the event that the Participant's vested interest in his Separate Accounts has an aggregate value that exceeds \$5,000 and the Participant is eligible for and consents in writing to a single sum distribution of such vested interest, the balances remaining in the Participant's Separate Accounts will be forfeited and his Separate Accounts closed as of the last day of the Plan Year in which such single sum distribution occurs, provided that such distribution occurs prior to the end of the second Plan Year beginning on or after the Participant's Settlement Date.

(c) In the event that neither paragraph (a) nor paragraph (b) is applicable, the balances remaining in the Participant's Separate Accounts will continue to be held in such accounts and will not be forfeited until the end of the fifth Plan Year beginning on or after his Settlement Date, at which time the Participant's Separate Accounts shall be closed. In the event that such a Participant returns to employment with the Company or a Related Corporation prior to the end of such fifth Plan Year, the balance of his Separate Accounts, determined as of the Valuation Date next following his date of rehire, shall be recredited as of such Valuation Date to his Separate Accounts from which derived.

(d) In the event that a portion of the Participant's Separate Accounts to be forfeited contains Shares, the Shares in the Participant's Separate Accounts must be forfeited only after the other assets in the Participant's Separate Accounts and, if the Participant's Separate Accounts contain more than one class of Shares, the same proportion of each class of Shares must be forfeited, pursuant to Section 54.4975- 11(d)(4) of the Treasury Regulations.

Whenever the interest of a Participant in his Separate Accounts is forfeited under the provisions of the Plan with respect to a Plan Year, the amount of such forfeiture, as of the last day of such Plan Year, shall be applied against the Employer Contribution obligation of the Employers incurred during such Plan Year. Notwithstanding the foregoing, however, should the amount of all such forfeitures of Employer Contributions for any Plan Year exceed the amount of the Employer Contribution obligation of the Employers for such Plan Year, the excess amount of such forfeitures (together with any such forfeitures for prior Plan Years not theretofore applied against such a contribution obligation of the Employers) shall for all Plan purposes be applied against the Employer Contribution obligation of the Employers for the next following Plan Year.

8.4 Buy Back Provision. Notwithstanding anything to the contrary contained in the Plan, a Participant whose participation in the Plan is terminated under paragraphs (f) or (g) of Section 8.1 with a vested interest in his Separate Accounts of less than 100% may, upon becoming reemployed by an Employer, repay the amount, if any, distributed to him under the provisions of Section 9.1, in which event such Employer shall immediately credit his Separate Accounts with the amount forfeited by him as of the date of his termination of participation without adjustment for gains or losses experienced by the Fund, if applicable, during the period between his distribution date and the date of such repayment. Any repayment made pursuant to the provisions of this Section 8.4 must be made by such Participant no later than the earlier of (1) the date on which he incurs five consecutive one-year breaks in service following the date of his distribution or (2) the fifth anniversary of the date of his reemployment. Funds needed in any Plan Year to recredit the Separate Accounts pursuant to the provisions of this Section 8.4 shall first come from forfeitures that arise during such Plan Year, to the extent sufficient, next from Trust income earned in such Plan Year, to the extent sufficient, and finally from a separate Employer Contribution.

8.5 Reemployment. If a former Participant is reemployed by an Employer or a Related Corporation after his Settlement Date has occurred, (1) he shall retain the right to any distribution from the Plan arising from his prior Settlement Date with respect to Tax-Deferred Contributions allocated to his Separate Accounts for periods after January 1, 1997, (and the earnings or losses thereon), if any, (2) he shall lose his right to any distribution or further distributions from the Plan arising from his prior Settlement Date with respect to Employer Contributions allocated to his Separate Accounts for periods after December 31, 1994, (and the earnings or losses thereon), if any, and (3) he shall retain the right to distribution or further distributions from the Fund arising from his prior Settlement Date with respect to amounts allocated to his Separate Accounts for periods prior to January 1, 1995 (and the earnings or losses thereon), if any. If a former Participant is reemployed by an Employer or a Related Corporation before his Settlement Date has occurred, he shall have no right to any distribution from the Plan until he subsequently has a Settlement Date.

ARTICLE IX

DISTRIBUTION

9.1 Distribution. The Trustee shall make distribution to or for the benefit of the former Participant or his Beneficiary, as the case may be, from his interest in the Employer Stock Fund and in the Investment Funds which, on any date, shall be equal to the vested balances carried in his Separate Accounts as of such date. Distribution of Shares or cash shall be made in a single sum payment, provided that any method of periodic payment elected by a former Participant or Beneficiary under the Plan prior to January 1, 2016, may continue in effect.

Distribution under any such method shall be made as soon as reasonably practicable after the former Participant's Settlement Date or the date his application for distribution is filed with the Committee, if later. Upon the completion of distribution from the Separate Accounts of a former Participant or his Beneficiary, such Separate Accounts shall be closed.

In the event of a "mandatory distribution" greater than \$1,000 made in accordance with the provisions of this Section 9.1, if the former Participant does not elect to have such distribution paid in a direct rollover to an eligible retirement plan specified by the former Participant or to receive the distribution directly, then the Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Committee. A "mandatory distribution" means any distribution made to a former Participant without the former Participant's consent that is made before he attains age 65. Distribution to a former Participant's surviving spouse or to an alternate payee under a qualified domestic relations order is not a "mandatory distribution" for purposes of this paragraph.

Notwithstanding any other provision of the Plan and with respect to this Article IX of the Plan, single sum payments may be distributed separately with respect to a Participant's interests in (i) the Employer Stock Fund and (ii) any Fund other than the Employer Stock Fund.

Within the 120 day period ending 30 days before the date as of which distribution of a former Participant's Separate Account commences, the Committee shall provide the former Participant with a written explanation of his right to defer distribution until age 65 or such later date as may be provided in the Plan, his right to make a direct rollover, and the forms of payment available under the Plan. Distribution may commence less than 30 days after such notice is provided to the former Participant if (i) the Committee clearly informs the former Participant of his right to consider his election of whether or not to make a direct rollover or to receive a distribution prior to age 65 and his election of a form of payment for at least 30 days following his receipt of the notice and (ii) the former Participant, after receiving the notice, affirmatively elects an early distribution. The written explanation provided by the Committee in connection with a distribution shall include a description of the consequences to the former Participant of electing an immediate distribution of his vested Separate Account balance instead of deferring payment to his attainment of age 65.

9.2 Required Commencement of Distribution. Notwithstanding anything to the contrary in the Plan, in no event shall the distribution of the interest of a Participant commence later than the earlier of:

(a) the 60th day after the end of the Plan Year in which the Participant attains age 65, the tenth anniversary of the date on which he first became a Participant, or the Participant's retirement or other termination of employment, whichever is latest; or

(b) pursuant to the election of the Participant, the April 1 following the later of the calendar year in which the Participant

(i) attains age 72 (effective January 1, 2020; age 70-1/2 for a Participant reaching that age prior to January 1, 2020), or

(ii) retires;

provided, however, that clause (ii) shall not be applicable in the case of a Participant who is a five percent owner (as defined in Section 416 of the Code) with respect to the Plan Year ending in the calendar year in which the Participant attains age 72 (effective January 1, 2020; age 70-1/2 for a Participant reaching that age prior to January 1, 2020); and provided, further, that any Participant who attained age 70-1/2 prior to January 1, 1997, and commenced minimum required distributions as required under Section 401(a)(9) of the Code prior to amendment, may elect to defer further minimum required distributions until April 1 following the calendar year such Participant retires. The re-commencement of distributions to such Participant shall not constitute a new benefit payment date with respect to such Participant and distributions on re-commencement shall continue in the form elected by the Participant on his benefit payment date.

In the event a former Participant dies after commencement of the distribution of his interest, any remaining portion of such interest shall be distributed to his Beneficiary in the method which is at least as rapid as the method being used at the date of his death and in accordance with the provisions of Article XX of the Plan. In the event a former Participant dies prior to commencement of the distribution of his interest, the entire interest attributable to such former Participant shall be distributed in accordance with the provisions of Article XX of the Plan.

9.3 Form of Distribution. Each distribution or withdrawal under the Plan shall be made partially in the form of Shares (except that an amount equivalent in value to a fractional Share otherwise payable hereunder shall be paid in cash), to the extent that it represents his interest credited to his Separate Account-A, Separate Account-B, or both, and partially in the form of cash, to the extent that it represents his interest credited to his other Separate Accounts. An amount equivalent in value to a fractional Share otherwise payable hereunder shall be paid in cash. Notwithstanding the foregoing, a former Participant may elect to receive distribution entirely in the form of cash, subject to any distribution limitations which the Company may have in effect from time to time.

9.4 Effect of Committee's Determination. The Committee's determination of all questions which may arise under this Article IX shall be conclusive upon all persons claiming to have any interest hereunder. In making a determination, the Committee may rely upon any signed statement which the Participant files with it.

9.5 Facility of Payment. In the event that it shall be found that any person to whom an amount is payable hereunder is incapable of attending to his financial affairs because of any mental or physical condition, including the infirmities of advanced age, such amount (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative) may, in the discretion of the Committee, be paid to another person for the use or benefit of the person found incapable of attending to his financial affairs or in satisfaction of legal obligations incurred by or on behalf of such person. The Trustee shall make such payment only upon receipt of written instructions to such effect from the Committee. Any such payment shall be charged to the Separate Accounts of the person found incapable of attending to his financial affairs and shall be a complete discharge of any liability therefor under the Plan or the Trust Agreement.

9.6 Right to Sell Company Stock.

(a) Any former Participant receiving distributions of Shares hereunder and intending from time to time after the receipt of such distributions to sell all or any part of such Shares, shall offer to sell such Shares first to the Company and then to the Trustee, at the price set forth in paragraph (b) of this Section 9.6. Any such offer to sell shall be effected by the delivery by the former Participant to the Trustee of written notice of his intention to sell such Shares, or a specified portion thereof. Within 30 days following the receipt of such notice, the Trustee shall advise the Participant of the Company's or the Trustee's desire to purchase all or part of the offered Shares. Upon receipt of such advice, the Participant shall deliver the certificates representing the Shares to be sold duly endorsed for transfer with applicable transfer tax stamps attached thereto. Upon such delivery, such former Participant will have sold and the Company or the Trustee, as the case may be, will have purchased, the number of Shares specified in the notice.

(b) Prior to the transfer of Shares hereunder to a Beneficiary upon the death of a Participant or a former Participant, such Beneficiary shall be deemed to offer to sell such Shares first to the Company and then to the Trustee, at the price set forth in paragraph (b) of this Section 9.6. Any such deemed offer to sell such Shares shall be effected upon notice of the Participant's death by the Plan Administrator to the Trustee. Within 60 days following the receipt of such notice, the Trustee shall advise the Beneficiary of the Company's or the Trustee's desire to purchase all or part of such Shares. Upon receipt of such advice, the Beneficiary shall deliver the certificates representing the Shares to be sold duly endorsed for transfer with applicable transfer tax stamps attached thereto. Upon such delivery, such Beneficiary will have sold and the Company or the Trustee, as the case may be, will have purchased, the number of Shares specified in the notice.

(c) The purchase price per Share payable for such Shares sold to the Trustee or the Company, as the case may be, shall be the greater of (1) the fair market value of such Share, as determined by the most recent valuation of Shares made preceding the Trustee's advice to the Participant of its or the Company's, as the case may be, decision to purchase (or the date of the purchase if the transaction is between the Trustee and a "disqualified person," as defined in Section 4975(e)(2) of the Code) or (2) the purchase price offered by a buyer other than the Trustee or the Company making a good faith offer to buy the Shares.

(d) Except as hereinafter provided, the Trustee or the Company, as the case may be, shall pay for the Shares so sold to it within thirty (30) days following the date of sale. In the event and to the extent that the Trust shall not have sufficient funds to pay the purchase price of Shares so sold to it, purchase of the Shares may be deferred until the Trust has sufficient funds to pay such purchase price; provided, however, that such purchase may not be deferred beyond the period of one year and adequate security and a reasonable interest rate are provided for the period of deferral.

(e) At any time when the purchase of any Shares from a former Participant is deferred pursuant to this Section 9.6, as soon as practicable following the date funds first become available to the Trustee in excess of those needed for ordinary and routine operating expenses, such excess funds shall be used to purchase such Shares.

(f) The Trustee shall be obligated to inform any former Participant who has received distributions of Shares upon request whether the Trustee would have funds sufficient to purchase the Shares so owned by the former Participant where the former Participant then elected to sell the Shares to the Trust pursuant to this Section 9.6.

(g) In the event that neither the Trustee nor the Company desires to purchase the Shares of a Participant pursuant to the provisions of this Section 9.6, such Participant shall have the right to sell such Shares to any person upon such terms he deems appropriate.

9.7 Special Diversification Election. Any employee of the Company or a Related Corporation who has been a Participant under the Plan for ten or more years and who has attained age 55 may elect, within the 90 day election period following the close of each Plan Year during his qualified period, to transfer up to 25 percent of the aggregate balances of his Separate Account A and Separate Account B, if any, to one or more Investment Funds and to direct the investment of such amounts among such funds; provided, however, that beginning with the sixth Plan Year in his qualified period, such employee may elect to transfer up to 50 percent of such aggregate balances. A Participant who elects to transfer a portion of his Separate Account A and Separate Account B, if any, in accordance with the provisions of this Section 9.7 may elect to make further transfers hereunder only to the extent that such further transfers, when combined with all prior transfers made pursuant to this Section 9.7, do not exceed the percentage limit in effect for that Plan Year. The Trustee shall make the transfer in accordance with a Participant's election hereunder within 90 days after the end of the 90 day election period. For purposes of this Section 9.7, a Participant's "qualified period" shall mean the period beginning with the Plan Year in which the Participant (i) attains age 55 or (ii) completes his tenth year as a Participant, whichever is later.

9.8 "Put" Option. Unless Shares become readily tradable on an established securities market, the following "put" option requirements of Section 409(h) of the Code and the Treasury Regulations thereunder shall apply to any Shares acquired after December 31, 1986. A former Participant or a Beneficiary, or a donee or heir of a former Participant or Beneficiary, shall be granted at the time that Shares are distributed to him, an option to "put" such Shares to an Employer; provided, however, that the Fund may elect to assume the rights and obligations of any such Employer at the time the "put" option is exercised. A "put" option shall provide that, for a period of 60 days (excluding any period during which an Employer is prohibited from honoring the "put" option by applicable federal or state law) after such Shares are distributed by the Trustee to a former Participant or Beneficiary, the former Participant or Beneficiary, or his donee or heir, shall have the right to have an Employer purchase such Shares at their fair market value, and if the "put" option is not exercised within such 60-day

period, it may be exercised within an additional period of 60 days commencing on the first anniversary of the date such Shares were distributed by the Trustee. For purposes of this Section 9.8, fair market value shall be based on the fair market value determined as of the valuation date coinciding with or immediately preceding the date of exercise (or the date of exercise if the repurchase is by the Fund from a “disqualified person,” as defined in Section 4975(e)(2) of the Code). Such “put” option shall be exercised by notifying the Trustee in writing. If the “put” option is exercised, the Company, or the Fund if the Fund so elects, shall repurchase the Shares. In the event that Shares are acquired after December 31, 1986, the Company or the Fund, as applicable, may make installment payments under a “put” option with respect to such Shares for a period ending not later than (i) five years after the “put” option is exercised or (ii) if the Shares were acquired with a loan, the earlier of the date that is ten years after the “put” option is exercised or the date the loan proceeds used to acquire the Shares subject to the “put option” are entirely repaid; provided that adequate security and a reasonable interest rate are provided. Any such installment payments shall begin within 30 days after the “put” option is exercised, shall be not less frequent than annual, and shall be substantially equal.

9.9 Repurchase Rights. The Company and the Trustee shall have the right, at any time or times, and from time to time, at their option, to repurchase Shares held by any former Participant or Beneficiary, other than (i) the Trustee, (ii) a former Participant who has voluntarily terminated service after attainment of age 62 with at least 10 years of Continuous Service and (iii) a current Employee or a member of the Board of Directors. The Company and the Trustee may exercise their right to purchase Shares under this Section 9.9 at any time by delivering a written notice of exercise to the former Participant or Beneficiary together with payment of the purchase price for such Shares. Upon delivery of the notice of exercise and tender of the purchase price for the Shares by the Company or the Trustee, all rights of the former Participant or the Beneficiary in respect of such Shares shall cease, and the former Participant shall deliver to the Company or Trustee, as the case may be, any certificate or certificates representing the Shares duly endorsed for transfer with applicable transfer tax stamps attached thereto no later than the date specified in the notice of exercise.

9.10 Restrictions on Transfer of Shares. Except as otherwise provided in this Article IX, Shares acquired through a loan described in Section 6.3 will not be subject to a put, call, or other option, or buy-sell or similar arrangement while held under the Plan or when distributed from the Plan to a Participant, former Participant, or Beneficiary, whether or not the ESOP Feature then constitutes an “employee stock ownership plan” under Section 4975(e)(7) of the Code. The provisions of the preceding sentence and of this Section 9.10 will continue to apply to Shares acquired through such a loan after the loan has been satisfied and after the ESOP Feature ceases to constitute an “employee stock ownership plan” under Section 4975(e)(7) of the Code.

9.11 Distribution Pursuant to Qualified Domestic Relations Orders.

Notwithstanding any other provision of the Plan to the contrary, if a qualified domestic relations order so provides, distribution may be made to an alternate payee pursuant to a qualified domestic relations order, as defined in Section 414(p) of the Code, regardless of whether the Participant's Settlement Date has occurred or whether the Participant is otherwise entitled to receive a distribution under the Plan.

9.12 IRS Model Amendment for Final Regulations. The IRS Model Amendment reflecting final and temporary regulations under Section 401(a)(9) of the Code for calendar years beginning on or after January 1, 2003, is set forth in Article XX.

9.13 Unclaimed Amounts. Each Participant (including for purposes of this Section 9.13 the Beneficiary of a deceased Participant) must file with the Committee in writing his address to which United States mail to him is to be sent and each change of such address. Any communication, statement, or notice shall be addressed to a Participant at such last address filed with the Committee, or if no address is filed with the Committee, then at the last such address as shown on the Company's records. In the event that a Participant does not maintain his address on file with the Committee such that the Committee cannot locate the Participant and must incur expense on behalf of the Plan in connection with the Participant's benefit, or if for any other reason the Committee cannot locate the Participant, reasonable expenses incurred attempting to locate the Participant may be charged to his Separate Accounts.

Unclaimed Amounts shall be forfeited by the intended recipient, and the following shall apply:

(a) If benefit payments under the Plan become Unclaimed Amounts as a result of the Committee determining that the recipient cannot be located, but such recipient is later located, then such affected recipient may, by written notice to the Committee, request that the Unclaimed Amounts be reinstated (without interest) and such Unclaimed Amounts shall be paid to him in accordance with the Plan as if such forfeiture had not occurred.

(b) If benefit payments under the Plan have commenced in the form of a check and later become Unclaimed Amounts, the affected recipient may, by written notice to the Committee, request that the Unclaimed Amounts be reinstated (without interest) and such Unclaimed Amounts shall be paid to him in accordance with the Plan as if such forfeiture had not occurred.

(c) Amounts forfeited hereunder shall be applied in accordance with Section 8.3.

(d) To the extent forfeited amounts are not available to satisfy reinstatements, the Company shall contribute the amount required to reinstate the affected recipient's account.

For purposes of this Section 9.13, the term "Unclaimed Amounts" means benefit payments that under the terms of the Plan are required to be made, but such benefit payments (i) cannot be made, because after a diligent search by the Committee, the intended recipient has not

been located or (ii) have commenced in the form of a check, and the recipient fails to cash the check within one-hundred and eighty (180) days following the receipt of the check by the recipient.

ARTICLE X

ROLLOVER CONTRIBUTIONS

10.1 Rollovers Accepted. An Employee, or a former Employee who maintains an account in the Plan, who is entitled to make a rollover contribution under the Code, as determined by the Committee, may make a Rollover Contribution to the Plan by delivering, or causing to be delivered, to the Trustee the assets in cash which constitute such Rollover Contribution at such time or times and in such manner as shall be specified by the Committee. The Plan will accept such an eligible rollover distribution from:

- (a) a qualified plan described in Section 401(a) of the Code or Section 403(a) of the Code, excluding after-tax employee contributions;
- (b) an annuity contract described in Section 403(b) of the Code, excluding after-tax employee contributions; and
- (c) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Moreover, the Plan will accept a Participant contribution of such an eligible rollover distribution from:

- (d) a qualified plan described in Section 401(a) of the Code or Section 403(a) of the Code;
- (e) an annuity contract described in Section 403(b) of the Code; and
- (f) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

However, the Plan will not accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) of the Code or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

10.2 Deposit of Rollover Contribution. Upon receipt by the Trustee, such assets shall be deposited in the Fund and shall be credited to such Employee's Separate Accounts as soon as practicable after receipt thereof by the Trustee. If the Employee does not already have an investment election on file with the Committee, his election to make a rollover contribution to the Plan shall be valid only if it includes his election as to the investment of his Rollover Contribution in accordance with Section 6.6; provided, however, that no more than 25% of his Rollover Contribution may be invested in the Employer Stock Fund.

10.3 Participant Status. An Employee who makes a Rollover Contribution to the Plan and who is not otherwise an Eligible Employee shall be considered a Participant in the Plan with

respect only to his account attributable to such Rollover Contribution (unless he otherwise becomes a Participant in accordance with the Plan).

ARTICLE XI

HARDSHIP WITHDRAWALS OF TAX-DEFERRED CONTRIBUTIONS

11.1 Hardship Withdrawals of Tax-Deferred Contributions. A Participant who is determined by the Committee to have incurred a hardship as defined in Section 11.2 may elect in writing, subject to the limitations and conditions prescribed in Section 11.2, to make a cash withdrawal from his Tax-Deferred Contributions sub-account. The maximum amount that a Participant may withdraw pursuant to this Section 11.1 because of a hardship is the total balance of his Tax-Deferred Contributions subaccount.

11.2 Conditions and Limitations on Hardship Withdrawals. A Participant must file a written application for a hardship withdrawal with the Committee such number of days prior to the date as of which it is to be effective as the Committee may prescribe. Hardship withdrawals may be made effective only as of such dates as the Committee may prescribe from time to time. The Committee shall grant a hardship withdrawal only if it determines that the withdrawal is necessary to meet an immediate and heavy financial need of the Participant. An immediate and heavy financial need of the Participant means a financial need on account of:

- (a) expenses previously incurred by or necessary to obtain for the Participant, the Participant's spouse, or any dependent of the Participant (as defined in Section 152 of the Code, without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) medical care described in Section 213(d) of the Code that are in excess of \$500 during a calendar year, determined without regard to whether expenses exceed any applicable income limit, not including any such expense that would be excluded under the Company's health care plan as services or supplies that are experimental;
- (b) the need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence;
- (c) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (d) payment of funeral or burial expenses for the Participant's deceased parent, spouse, child or dependent (as defined in Section 152 of the Code, without regard to subsection (d)(1)(B) thereof);
- (e) expenses for the repair of damage to the Participant's principal residence that would qualify for a casualty loss deduction under Section 165 of the Code (determined without regard to whether the loss exceeds any applicable income limit);
- (f) expenses and losses (including the loss of income) incurred by a Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA), provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; and

(g) payment of tuition, related educational fees, and room and board expenses for the next twelve (12) months of post-secondary education for the Participant, or the Participant's spouse, child or other dependent (as defined in Section 152 of the Code, without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof).

A withdrawal shall be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant only if all of the following requirements are satisfied:

The withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant.

The Participant has obtained all distributions, other than hardship distributions, under all plans maintained by an Employer or any Related Corporation.

The amount of a hardship withdrawal may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

11.3 Withdrawal from a Participant's Separate Accounts. If the Separate Account from which a Participant is receiving a withdrawal is invested in more than one Investment Fund and, if applicable, the Employer Stock Fund, the withdrawal shall be charged against each Investment Fund and, if applicable, the Employer Stock Fund in the ratio that the balance of the Separate Account invested in the Investment Fund or Employer Stock Fund as of the most recent Valuation Date bears to the balance of the entire Separate Account as of such date, unless the Participant elects otherwise.

ARTICLE XII

BENEFICIARIES

12.1 Designation of Beneficiary. In the event of the death of a Participant or former Participant prior to distribution in full of his interest under the Plan, the surviving spouse, if any, of such Participant or former Participant shall be his Beneficiary and receive distribution of his remaining interest in accordance with the provisions of Article IX; provided, however, that a Participant may designate a person or persons other than his spouse as his Beneficiary if the requirements of Section 12.3 are met.

12.2 Beneficiary in Absence of a Designated Beneficiary. If a Participant or former Participant who dies does not have a surviving spouse and if no Beneficiary has been designated pursuant to the provisions of Section 12.1 or if no Beneficiary survives such Participant or former Participant then the Beneficiary shall be the estate of such Participant or former Participant. If any Beneficiary designated pursuant to Section 12.1 dies after becoming entitled to receive distributions hereunder and before such distributions are made in full, and if no other person or persons have been designated to receive the balance of such distributions upon the happening of such contingency, the estate of such deceased Beneficiary shall become the Beneficiary as to such balance.

12.3 Spousal Consent to Beneficiary Designation. In the event a Participant or former Participant is married, any Beneficiary designation, other than a designation of his spouse as Beneficiary, shall be effective only if his spouse consents in writing thereto, specifically acknowledges such non-spouse Beneficiary, and such consent acknowledges the effect of such action and is witnessed by a Plan representative or a notary public, unless a Plan representative finds that such consent cannot be obtained because the spouse cannot be located or because of other circumstances set forth in Section 401(a)(11) of the Code and Treasury Regulations issued thereunder.

12.4 Surviving Spouse Defined. The term surviving spouse means the deceased Participant's spouse at the time of the Participant's death.

ARTICLE XIII

THE COMMITTEE

13.1 Membership. The Company, by action of its Board of Directors, shall appoint a Committee of at least three persons to administer the Plan as hereinafter set forth. Upon his appointment to the Committee by the Company, each such appointee shall become a member of the Committee by accepting his appointment in a writing signed by him and delivered to the Company.

13.2 Rules and Regulations. The Committee may from time to time formulate such rules and regulations for its organization and the transaction of its business as it deems suitable and as are consistent with the provisions of the Plan.

13.3 Authority of Committee and Company. The Committee shall have all such powers and authorities as may be necessary to carry out the provisions of this Plan, including the sole discretionary power and authority to interpret and construe the provisions of the Plan and to resolve any disputes which arise under the Plan subject, however, to the provisions of Section 13.5, the powers and authority expressly conferred upon it herein, and all such other powers and authorities as shall be reasonably necessary to carry out the expressly conferred powers, authorities, and duties. The Committee may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist it in carrying out its duties hereunder. The Committee shall have no authority to allocate any of its powers, authority, or responsibilities for the operation and the administration of the Plan to any other person. The Employers, the Committee, and the Trustee are hereby designated as “named fiduciaries” of the Plan as such term is defined in Section 402(a)(2) of ERISA. The Company, by action of its Board of Directors, may:

(a) allocate any of the powers, authority, or responsibilities for the operation and administration of the Plan, which are retained by it or granted by this Article XIII to the Committee, to any Employer, to the Committee, or to the Trustee; and

(b) designate a person other than itself or the Committee to carry out any of such powers, authority, or responsibilities;

provided, however, that no power, authority, or responsibilities of the Trustee shall be subject to the provisions of paragraph (b) of this Section 13.3; and provided, further, that no allocation or delegation by the Company of any of its or of the Committee’s powers, authority, or responsibilities to the Trustee shall become effective unless such allocation or delegation shall first be accepted by the Trustee in a writing signed by it and delivered to the Company.

13.4 Action of Committee. Any act authorized, permitted, or required to be taken by the Committee under the Plan may be taken by a majority of the members of the Committee at the time acting hereunder, either by vote at a meeting, or in writing without a meeting. All notices, advices, directions, certifications, approvals, and instructions required or authorized to be given by the Committee under the Plan shall be in writing and signed by a majority of the members of the Committee, or by such member or members as may be designated by an instrument in writing, signed by all the members thereof and filed with the Trustee, as having authority to execute such documents on its behalf. Subject to the provisions of Section 13.5, any action taken by the Committee which is authorized, permitted, or required under the Plan shall be final and binding upon the Employers, the

Trustee, all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employers, the Committee, or the Trustee.

13.5 Claims Review Procedure. Whenever the Committee decides for whatever reason to deny, whether in whole or in part, a claim for benefits filed by any person (hereinafter referred to as the "Claimant"), the Plan Administrator shall transmit to the Claimant a written notice of the Committee's decision, which shall be written in a manner calculated to be understood by the Claimant and contain a statement of the specific reasons for the denial of the claim and a statement advising the Claimant that, within 60 days of the date on which he receives such notice, he may obtain review of the decision of the Committee in accordance with the procedures herein set forth. Within such 60-day period, the Claimant or his authorized representative may request that the claim denial be reviewed by filing with the Plan Administrator a written request therefor, which request shall contain the following information:

- (a) the date on which the Claimant's request was filed with the Plan Administrator; provided, however, that the date on which the Claimant's request for review was in fact filed with the Plan Administrator shall control in the event that the date of the actual filing is later than the date stated by the Claimant pursuant to this paragraph (a);
- (b) the specific portions of the denial of his claim which the Claimant requests the Plan Administrator to review;
- (c) a statement by the Claimant setting forth the basis upon which he believes the Plan Administrator should reverse the Committee's previous denial of his claim for benefits and accept his claim as made; and
- (d) any written material (offered as exhibits) which the Claimant desires the Plan Administrator to examine in its consideration of his position as stated pursuant to paragraph (c).

Within 60 days of the date determined pursuant to paragraph (a) of this Section 13.5, the Plan Administrator shall conduct a full and fair review of the Committee's decision denying the Claimant's claim for benefits. Within 60 days of the date of such hearing, the Plan Administrator shall render its written decision on review, written in a manner calculated to be understood by the Claimant, specifying the reasons and Plan provisions upon which its decision was based.

Notwithstanding the foregoing, in the event that a claim for benefits involves a determination of disability, the disability claims procedure described in the summary plan description for the Plan shall apply in lieu of this Section 13.5.

13.6 Exhaustion of Remedies; Limitation of Actions; Forum Selection. In the event of any dispute over benefits under the Plan, all remedies available to the Claimant under Section 13.5 must be exhausted before legal recourse of any type is sought. No legal action at law or in equity, including without limitation a civil action under Section 502(a) of ERISA, may be filed against the Plan, the Company, the Committee, any Employer, the Plan Administrator or its delegate relating to any dispute over benefits under the Plan more than one year after the Plan Administrator has made a final decision under the claims review procedure described in Section 13.5. Any proceeding arising out of or relating to the Plan shall be adjudicated in the federal courts for the Northern District of Ohio or in the courts of

the State of Ohio located in the district embraced by the federal courts for the Northern District of Ohio.

13.7 Resignation, Removal, and Designation of Successors. Any member of the Committee may at any time resign, and any member may be removed by action of the Board of Directors of the Company. Vacancies for these or other reasons shall be filled by appointees of the Board of Directors of the Company, and any such appointee shall become a member of the Committee by accepting his appointment as provided in Section 13.1. The Committee shall promptly notify the Trustee of any change in its membership. Nothing herein contained shall be construed to prevent any Participant or any director, officer, employee, or shareholder of an Employer from serving as a member of the Committee, but no member of the Committee who is a Participant shall take any part in any action relating solely to his participation.

13.8 Records. The Committee shall maintain records of all meetings, proceedings, and actions held, undertaken, or performed by it, and shall furnish to the Company such reports as it may from time to time request. The Committee may appoint as its Secretary, to keep a record of its meetings, proceedings, and actions, a person who may, but need not be, a member of the Committee.

13.9 Compensation. The members of the Committee shall receive no compensation for their services performed as such, but any and all expenses, including, without limitation, compensation of agents and counsel, reasonably incurred by them in carrying out the powers and duties herein conferred, shall be paid by the Company.

13.10 Indemnification. In addition to whatever rights of indemnification the members of the Committee or of the Board of Directors of the Company, or any other person or persons (other than the Trustee) to whom any power, authority, or responsibility of the Company is delegated pursuant to paragraph (b) of Section 13.3, may be entitled under the Articles of Incorporation, regulations, or by-laws of the Company, under any provision of law, or under any other agreement, the Company shall satisfy any liability actually and reasonably incurred by any such member or such other person or persons, including expenses, attorneys' fees, judgments, fines, and amounts paid in settlement, in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by such member or such other person or persons of any of the powers, authority, responsibilities, or discretion provided under the Plan or the Trust Agreement, or reasonably believed by such member or such other person or persons to be provided thereunder, and any action taken by such member or such other person or persons in connection therewith.

13.11 Qualified Domestic Relations Orders. The Committee shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall

be in writing and shall comply with the provisions of Section 414(p) of the Code and the Treasury Regulations issued thereunder.

ARTICLE XIV

TRUSTEE AND TRUST AGREEMENT

The Company has executed a Trust Agreement with the Trustee setting forth the terms, provisions, and conditions of a trust for the Plan, pursuant to which the Trustee shall hold, manage, and administer all trust property so as to effectuate the provisions of the Plan. The Trust Agreement is subject to amendment and termination, and the Company may change the Trustee, all as provided in the Trust Agreement. The terms and provisions of the Trust Agreement are hereby incorporated by reference into the Plan.

ARTICLE XV

AMENDMENT AND TERMINATION

15.1 Amendment. The Company may at any time and from time to time, by action of its Board of Directors, amend the Plan, subject to the terms of any applicable collective bargaining agreement; provided, however, such authority may be delegated to an officer of the Company; provided, further, that no such amendment shall result in the forfeiture or reduction of the interest of any Participant, former Participant, or Beneficiary in the Fund; and provided, further, that nothing herein contained shall restrict the right to amend the provisions hereof relating to the administration of the Plan. Moreover, no such amendment shall be made hereunder which shall permit any part of the Fund to revert to any Employer or be used for or be diverted to purposes other than the exclusive benefit of the Participants, former Participants, and their Beneficiaries, except as provided in Section 16.7.

15.2 Termination. The Company reserves the right by action of its Board of Directors, to terminate the Plan at any time, subject to the terms of any applicable collective bargaining agreement, which termination shall become effective upon notice in writing to the Committee and to the Trustee (the effective date of such termination being hereinafter referred to as the “termination date”). The Plan shall terminate automatically if there shall be a complete discontinuance of contributions hereunder by the Employers. In the event of the termination of the Plan by the Company, written notice thereof shall be given to all persons who have an interest hereunder and to the Trustee. Upon any such termination of the Plan, the Company shall cause the following actions to be taken for the benefit of Participants, former Participants, and Beneficiaries:

(a) As of the termination date, the Fund shall be valued and all Separate Accounts shall be adjusted in the manner provided in Section 7.3 with any unallocated Employer Contributions being allocated on the basis of Tax-Deferred Contributions made for the Plan Year up to the termination date as otherwise provided herein. The termination date shall become a Valuation Date for purposes of Article VII. In determining the net worth of the separate Funds, there shall be included as a liability such amounts as in the Company’s judgment shall be necessary to pay all expenses in connection with the termination of the Fund and the distribution of the property in the Fund, as well as other expenses, whether or not accrued, and there shall be included as an asset all accrued income.

(b) The Separate Accounts of each Participant, Former Participant or Beneficiary shall thereafter be disposed of to or for the benefit of such Participant, former Participant, or Beneficiary, in accordance with Article IX.

(c) Notwithstanding the provisions of paragraph (b), no distribution shall be made to a Participant of any amounts attributable to Tax-Deferred Contributions on account of Plan termination (other than a distribution made in accordance with Article IX or required in accordance with Section 401(a)(9) of the Code) unless (i) neither his Employer nor a Related Corporation establishes or maintains another defined contribution plan (other than an employee stock ownership plan as defined in Section

4975(e)(7) of the Code, a tax credit employee stock ownership plan as defined in Section 409 of the Code, a simplified employee pension as defined in Section 408(k) of the Code, a SIMPLE IRA plan as defined in Section 408(p) of the Code, a plan or contract that meets the requirements of Section 403(b) of the Code, or a plan that is described in Section 457(b) or (f) of the Code) either at the time the Plan is terminated or at any time during the period ending 12 months after distribution of all assets from the Plan; provided, however, that this provision shall not apply if fewer than 2% of the Eligible Employees under the Plan were eligible to participate at any time in such other defined contribution plan during the 24 month period beginning 12 months before the Plan termination, and (ii) the distribution the Participant receives is a "lump sum distribution" as defined in Section 402(e)(4) of the Code, without regard to clauses (I), (II), (III), and (IV) of sub paragraph (D)(i) thereof.

Notwithstanding anything to the contrary contained in the Plan or the Trust Agreement, upon any such Plan termination, the interest of each Participant, former Participant, and Beneficiary shall become fully vested and nonforfeitable. Notwithstanding any termination of the Plan, the Committee shall continue in existence for all purposes of administration until all assets of the Fund are completely distributed by the Trustee, at which time the Fund itself shall automatically terminate.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 No Commitment as to Employment. Nothing herein contained shall be construed as a commitment or agreement upon the part of any Participant hereunder to continue his employment with an Employer, and nothing herein shall be construed as a commitment on the part of an Employer to continue the employment or rate of compensation of any Participant hereunder for any period.

16.2 Benefits. Except for Section 6.3, nothing in the Plan or the Trust Agreement shall be construed to confer any right or claim upon any person, firm, or corporation other than the Employers, the Trustee, the Committee, Participants, former Participants, and Beneficiaries.

16.3 No Guarantees. No Employer nor the Committee, nor anyone else, guarantees the Fund from loss or depreciation, nor the payment of any amount which may become due to any person hereunder.

16.4 Expenses. All expenses of establishing the Plan and all expenses of administering the Plan shall be paid by the Plan, as the Committee shall from time to time direct. All such expenses not so paid shall be paid by the Company.

16.5 Precedent. Except as otherwise specifically provided, no action taken in accordance with the Plan by the Employers, the Committee, or the Trustee shall be construed or relied upon as a precedent for similar action under similar circumstances.

16.6 Merger, Consolidation, or Transfer of Plan Assets. The Plan shall not be merged or consolidated with any other plan, nor shall any of its assets or liabilities be transferred to another plan, unless, immediately after such merger, consolidation, or transfer of assets or liabilities, each Participant in the Plan would receive a benefit under the Plan which is at least equal to the benefit he would have received immediately prior to such merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

16.7 Election of Former Vesting Schedule. If there is an amendment to the vesting schedule applicable to a Participant's Separate Accounts because the Company adopts an amendment to the Plan that directly or indirectly affects the computation of a Participant's vested interest in his Separate Accounts, the following special rules shall apply:

(a) In no event shall a Participant's vested interest in his Separate Accounts accrued as of the later of (i) the effective date of such amendment or (ii) the date such amendment is adopted, be less than his vested interest in his Separate Accounts immediately prior to such date.

(b) In no event shall a Participant's vested interest in his Separate Accounts accrued as of the later of (i) the effective date of such amendment or (ii) the date such amendment is adopted, be determined on and after the effective date of such amendment under a vesting schedule that is more restrictive than the vesting schedule applicable to such Separate Accounts immediately prior to the effective date of such amendment.

(c) Any Participant with three or more years of Continuous Service shall have a right to have his vested interest in his Separate Accounts (including amounts accrued following the effective date of such amendment) continue to be determined under the vesting provisions in effect prior to the amendment rather than under the new vesting provisions, unless the vested interest of the Participant in his Separate Accounts under the Plan as amended is not at any time less than such vested interest determined without regard to the amendment. A Participant shall exercise his right under this Section 16.7 by giving written notice of his exercise thereof to the Company within 60 days after the latest of (i) the date he receives notice of the amendment from the Company, (ii) the effective date of the amendment, or (iii) the date the amendment is adopted.

16.8 Non-Alienation of Retirement Rights or Benefits. Except as provided in Section 401(a)(13)(B) of the Code relating to qualified domestic relations orders, Sections 401(a)(13)(C) and (D) of the Code (relating to offsets ordered or required under a criminal conviction involving the Plan, a civil judgment in connection with a violation or alleged violation of fiduciary responsibilities under the Act, or a settlement agreement between the Participant and the Department of Labor in connection with a violation or alleged violation of fiduciary responsibilities under the Act), Section 1.401(a)-13(b)(2) of the Treasury Regulations (relating to Federal tax levies), or as otherwise required by law, no benefit under the Plan shall be subject at any time or in any manner to alienation or encumbrance, nor be resorted to, appropriated, or seized in any proceeding at law, in equity, or otherwise. No person shall have power in any manner to transfer, assign, alienate, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void.

16.9 Internal Revenue Service Determination. Notwithstanding anything to the contrary contained in the Plan or the Trust Agreement, any obligation of the Employers to make any contribution hereunder is hereby conditioned upon the continued qualification of the Plan under Section 401(a) of the Code, the exempt status of the trust maintained in conjunction therewith under Section 501(a) of the Code, and the deductibility of the contribution under Section 404 of the Code, provided that to the extent the deduction is disallowed, such contribution may, at the direction of the Employer, be returned to the Employer within one year. Furthermore, a contribution that is made by the Employer under a mistake of fact shall be returned to the Employer within one year after the payment of the contribution. Except as otherwise provided in this Section 16.9, in no event shall any portion of the Fund revert to or otherwise inure to the benefit of the Employers.

16.10 Back Pay Awards. The provisions of this Section 16.10 shall apply only to an Employee or former Employee who becomes entitled to back pay by an award or agreement of his Employer without regard to mitigation of damages. If a person to whom this Section 16.10 applies was or would have become a Participant during the period to which the back pay award or agreement relates, he shall become a Participant as of the eligibility date he first was or would have become a Participant. To the extent required, the Employer Contribution shall be made by his Employer and such employer shall be entitled to a deduction therefor under Section 404 of the Code. Any such contribution shall be credited to his Separate Accounts as of the date paid to the Trustee. In any event, any such contribution is subject to the limitations of Section 7.2.

16.11 Validity of Plan. The validity of the Plan shall be determined and the Plan shall be construed and interpreted in accordance with the laws of the State of Ohio. The invalidity or illegality of any provision of the Plan shall not affect the legality or validity of any other part hereof.

16.12 Parties Bound. The Plan shall be binding upon the Employers, the Committee, all Participants, former Participants, and Beneficiaries hereunder, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

16.13 Leased Employees. Any person who is a “leased employee”, as hereinafter defined (other than an “excludable leased employee” as hereinafter defined), shall be treated as an Employee for all Plan purposes except eligibility to participate and benefit accrual. A “leased employee” means any person who performs services for an Employer or a Related Corporation (the “recipient”) (other than an employee of the recipient) pursuant to an agreement between the recipient and any other person (the “leasing organization”) on a substantially full-time basis for a period of at least one year under the primary direction and control of the recipient, other than an “excludable leased employee;” provided, however, that leased employees do not constitute more than 20 percent of the recipient’s non-highly compensated work force. An “excludable leased employee” means any leased employee of the recipient who is covered by a money purchase pension plan maintained by the leasing organization which provides for (i) a nonintegrated employer contribution on behalf of each participant in the plan equal to at least ten percent of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the leased employee’s gross income under Section 125 of the Code, Section 132(f) of the Code, Section 402(e)(3) of the Code, Section 402(h)(1)(B) of the Code, or Section 403(b) of the Code, (ii) full and immediate vesting, and (iii) immediate participation by employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization or whose compensation from the leasing organization in each plan year during the four-year period ending with the plan year is less than \$1,000). Moreover, for purposes of this Section 16.13, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient shall be treated as provided by the recipient.

16.14 Independent Appraisals. Notwithstanding any other provision of the Plan or the Trust Agreement to the contrary, all valuations of Shares or other Employer securities described in Section 4975(e)(8) of the Code or in Section 54.4975-12 of the Treasury Regulations, which are not readily tradable on an established securities market with respect to activities carried on by the Plan shall be made by an independent appraiser meeting requirements similar to those contained in Treasury Regulations under Section 170(a)(1) of the Code.

16.15 Contributions and Service Credit for Qualified Military Service. Notwithstanding any other provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

For purposes of determining whether a Participant is 100 percent vested under the Plan and whether his Beneficiary is eligible for a death benefit under the Plan, a Participant who is absent from employment as an Employee because of military service and who dies after

December 31, 2006, while performing qualified military service (as described in the Uniformed Services Employment and Reemployment Rights Act of 1994) shall be treated as having returned to employment with the Employer or a Related Corporation immediately prior to his death and as having died while employed by the Employer or a Related Corporation.

16.16 Application of Windsor Decision. For purposes of clarity and in accordance with Notice 2014-19 published by the Internal Revenue Service, and notwithstanding any provision of the Plan to the contrary, effective June 26, 2013, the following shall apply for purposes of the Plan:

(a) the term “spouse” includes an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex;

(b) there shall be recognized a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages; and

(c) the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

ARTICLE XVII

TOP-HEAVY PROVISIONS

17.1 Applicability. Notwithstanding any other provision of the Plan to the contrary, in the event the Plan is deemed to be a top-heavy plan for any Plan Year, the provisions contained in this Article XVII with respect to vesting and Employer Contributions shall be applicable with respect to such Plan Year. In the event that the Plan is determined to be a top-heavy plan and upon a subsequent determination date is determined to no longer be a top-heavy plan, the vesting and Employer Contribution provisions in effect immediately preceding the Plan Year in which the Plan was determined to be a top-heavy plan shall again become applicable as of such subsequent determination date; provided, however, that in the event such prior vesting schedule does again become applicable, the provisions of Section 16.7 and Section 15.1 shall apply (a) to preserve the nonforfeitable accrued benefit of any Participant, former Participant, or Beneficiary and (b) to permit any Participant with three years of continuous service to elect to continue to have his nonforfeitable interest in his Separate Account attributable to Employer Contributions determined in accordance with the vesting schedule applicable while the Plan was a top-heavy plan.

17.2 Top-Heavy Definitions. For purposes of this Article XVII, the following definitions shall apply:

(a) The term “compensation” with respect to any Participant shall mean compensation as defined under Section 415 of the Code, as further described in Section 7.2(b).

(b) The term “determination date” with respect to any Plan Year shall mean the last day of the preceding Plan Year except that with respect to the first Plan Year beginning after December 31, 1983, the determination date shall mean the last day of such Plan Year.

(c) The term “key employee” shall mean any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than \$200,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2021), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code, as further described in Section 7.2(b). The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable Treasury Regulations and other guidance of general applicability issued thereunder.

(d) The term “non-key employee” shall mean any Employee who is not a key employee.

(e) The term “permissive aggregation group” shall mean those plans included in an employer’s required aggregation group in conjunction with any other plan or plans of an Employer or a Related Corporation, so long as the entire group of plans would continue to meet the requirements of Section 401(a)(4) of the Code and Section 410 of the Code.

(f) The term “required aggregation group” shall include (i) all plans of an Employer or a Related Corporation in which a key employee is a participant, and (ii) all other plans of an Employer or a Related Corporation which enable a plan described in (i) to meet the requirements of Section 401(a)(4) of the Code or Section 410 of the Code, including any plan that terminated within the five year period ending on the relevant determination date.

(g) The term “top-heavy group” with respect to a particular Plan Year shall mean a required or a permissive aggregation group if the sum, as of the determination date, of the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group and the aggregate of the account balances of key employees under all defined contribution plans included in such group exceeds 60 percent of a similar sum determined for all employees covered by the plans included in such group.

(h) The term “top-heavy plan” with respect to a particular Plan Year shall mean (i), in the case of defined contribution plan, a plan for which, as of the determination date, the aggregate of the accounts (within the meaning of Section 416(g) of the Code and the Treasury Regulations thereunder) of key employees exceeds 60 percent of the aggregate of the accounts of all Employees who are Participants under the plan, with the accounts valued as of the most recent Valuation Date coinciding with or preceding the determination date, or (ii), in the case of a defined benefit plan, a plan for which, as of the determination date, the present value, as of the relevant Valuation Date, of the cumulative accrued benefits payable under the plan (within the meaning of Section 416(g) of the Code and the Treasury Regulations thereunder) to key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, with present value of accrued benefits to be determined as of the date plan costs for minimum funding purposes are computed under such defined benefit plan, using the actuarial assumptions specified in such defined benefit plan, and (iii) any plan included in a required aggregation group which is a top-heavy group. Notwithstanding the foregoing, if a plan is included in a required or permissive aggregation group which is not a top-heavy group, such plan shall not be a top-heavy plan.

For purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date, the following shall apply:

- (A) The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the Plan and any plan aggregated with the Plan under Section 416(g)(2) of the Code

during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period.”

- (B) The accrued benefits and accounts of any individual who has not performed services for an Employer during the 1-year period ending on the determination date shall not be taken into account.

17.3 Accelerated Vesting. In the event the Plan is determined to be a top-heavy plan with respect to any Plan Year beginning after December 31, 1983, a Participant whose employment terminates in accordance with the provisions of paragraph (f) of Section 8.1 shall have a vested interest in his Separate Account equal to a percentage determined by application of the following vesting schedule:

<u>Completed Years of Continuous Service</u>	<u>Nonforfeitable Percentage</u>
Less than 3 years	0%
3 years or more	100%

17.4 Minimum Employer Contribution. In the event the Plan is determined to be a top-heavy plan with respect to any Plan Year beginning after December 31, 1983, the Employer Contributions allocated to the Separate Account of each non-key employee who is a Participant and who is not separated from service with an Employer or a Related Corporation as of the end of such Plan Year, regardless of the number of hours of service credited to such non-key employee during such Plan Year, shall be no less than the lesser of (a) three percent of his compensation or (b) the largest percentage of compensation that is allocated for such Plan Year to the Separate Accounts of any key employee attributable to Employer Contributions, except that, in the event the Plan is part of a required aggregation group, and the plan enables a defined benefit plan included in such group to meet the requirements of Section 401(a)(4) of the Code or Section 410 of the Code, the minimum allocation of Employer Contributions to the Separate Accounts of each non-key employee shall be three percent of the compensation of such non-key employees; provided, however, that if the highest rate allocated to a key employee for a Plan Year in which the Plan is a top-heavy plan is less than three percent, amounts contributed as a result of a salary reduction agreement must be included in determining contributions made on behalf of key employees. Any minimum allocation to the Separate Accounts of a Participant required by this Section 17.4 shall be made without regard to any social security contribution made by an employer on behalf of the Participant. Notwithstanding the minimum top-heavy allocation requirements of this Section 17.4, in the event that the Plan is a top-heavy plan, each non-key employee participating hereunder who is also covered under a top-heavy defined benefit plan maintained by an Employer or a Related Corporation will receive the top-heavy benefits provided for under such defined benefit plan in lieu of the minimum top-heavy allocation under the Plan.

Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401(m) of the Code.

ARTICLE XVIII

ADOPTION BY SUBSIDIARY CORPORATIONS

18.1 Adoption of the Plan. Any subsidiary of the Company may, with the consent of the Company, adopt the Plan and become an Employer hereunder by executing an appropriate written instrument evidencing such adoption pursuant to action of its Board of Directors and by filing a copy thereof with the Company. The effective date of the Plan with respect to such adopting corporation shall be the date as of which the adoption of the Plan is made effective, as specified by the Board of Directors of such adopting corporation. Any corporation so adopting the Plan shall contribute its appropriate share, as determined by the Board of Directors of the Company, of any contributions made to the Plan.

18.2 Withdrawal of an Employer. Any corporation which has adopted the Plan in accordance with Section 18.1 hereof shall have the right to withdraw from the Plan by action of the Board of Directors of such corporation, and by filing written notice thereof with the Company, in which event such corporation shall cease to be an Employer for purposes of the Plan. Written notice of such withdrawal shall thereupon be given by the Company to the Trustee. An Employer shall be deemed automatically to withdraw from the Plan in the event of its complete discontinuance of contributions, or (subject to Section 18.4) in the event it ceases to be a subsidiary. Any such withdrawal shall effect a termination of the Plan with respect only to such withdrawing corporation subject to the Company's right to amend or terminate the Plan as provided in Article XV, unless such withdrawal is for the purpose of establishing or merging with a separate plan which meets the applicable requirements for qualification under the Code.

18.3 Effect of Withdrawal of Adopting Employer. In the event of the withdrawal of an Employer, the Trustee and the Company shall, as of the withdrawal date, take the action specified in Section 15.2, as on a termination of the Plan, except that there shall be a distribution from the Separate Accounts only of Participants who are employed solely by the withdrawing Employer, and who, upon such withdrawal, are neither transferred to nor continued in employment with any other Employer or a Related Corporation. The interest of any Participant employed by such withdrawing Employer who is transferred to or continues in employment with any other Employer or a Related Corporation or who does not incur a separation from service as a result of such withdrawal, and the interest of any Participant employed solely by an Employer other than the withdrawing Employer, or a Related Corporation, shall remain unaffected by such withdrawal; no adjustment in his Separate Accounts shall be made by reason of the withdrawal; and he shall continue as a Participant hereunder subject to the remaining provisions of the Plan.

18.4 Corporate Reorganization. The merger, consolidation, or liquidation of the Company or any Employer with or into the Company, any other Employer, or a Related Corporation shall not constitute a termination of the Plan as to the Company or such Employer.

ARTICLE XIX

DIRECT ROLLOVER

19.1 Direct Rollover Election. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article XIX, a distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

19.2 Definitions.

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any distribution made on account of hardship.

(b) Eligible Retirement Plan: An eligible retirement plan means any of the following: (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement annuity described in Section 408(b) of the Code, (iii) an annuity plan described in Section 403(a) of the Code that accepts rollovers, (iv) a qualified trust described in Section 401(a) of the Code that accepts rollovers, (v) an annuity contract described in Section 403(b) of the Code that accepts rollovers, (vi) an eligible plan under Section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and that agrees to separately account for amounts transferred into such plan from the Plan, or (vii) a Roth IRA, as described in Section 408A of the Code, provided, that for distributions made prior to January 1, 2010, such rollover shall be subject to the limitations contained in Section 408A(c)(3)(B) of the Code. Notwithstanding the foregoing, the portion of a Participant's "eligible rollover distribution" that consists of his Roth 401(k) Contributions may only be transferred to another designated Roth account under an applicable retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code. Notwithstanding the foregoing, an "eligible retirement plan" with respect to a "qualified distributee" other than the Participant, the Participant's spouse, or the Participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order, means either an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (an "IRA"). Such IRA must be treated as an IRA inherited from the deceased Participant by the "qualified distributee" and must be established in a manner that identifies it as such.

(c) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Notwithstanding the foregoing, a "qualified distributee" includes a Participant's non-spouse beneficiary who is his designated beneficiary within the meaning of Section 401(a)(9)(E) of the Code.

(d) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

ARTICLE XX

MINIMUM DISTRIBUTION REQUIREMENTS

20.1 General Rules.

(a) **Precedence.** The requirements of this Article XX are effective January 1, 2020, and will take precedence over any inconsistent provisions of the Plan.

(b) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Article XX will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code.

(c) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Article XX, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

20.2 Required Minimum Distributions During Participant's Lifetime.

(a) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(b) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(c) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section 20.3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

20.3 Required Minimum Distributions After Participant's Death.

(a) **Death On or After Date Distributions Begin.** If a Participant dies on or after the date distributions begin, the remaining portion of his account balance will be distributed at least as rapidly as under the method of distribution in effect as of the date of his death, subject to the following:

(i) If there is an eligible designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's eligible designated beneficiary, determined as follows:

- (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (B) If the Participant's surviving spouse is the Participant's sole eligible designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (C) If the Participant's surviving spouse is not the Participant's sole eligible designated beneficiary, the eligible designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) If the Participant is survived by a non-eligible designated beneficiary, distribution of the non-eligible designated beneficiary's entire interest in the Participant's account balance will be completed no later than December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(iii) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the Participant's entire interest will be distributed no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(b) Death Before Date Distributions Begin. If the Participant dies before the date distributions begin, the following rules shall apply.

(i) Life Expectancy Rule: If there is an “eligible designated beneficiary” and distribution is to be made over the lifetime of the “eligible designated beneficiary” or over a period certain no greater than the life expectancy of the “eligible designated beneficiary,” the following shall apply:

- (A) If the Participant’s surviving spouse is the Participant’s sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (age $70\frac{1}{2}$ if the Participant reached that age prior to January 1, 2020), if later.
- (B) If the Participant’s surviving spouse is not the Participant’s sole “designated beneficiary,” distribution will commence to the Participant’s “eligible designated beneficiary” by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) The minimum amount that will be distributed for each “distribution calendar year” after the year of the Participant’s death is the quotient obtained by dividing the “Participant’s account balance” by the remaining “life expectancy” of the Participant’s “designated beneficiary”, determined as provided in Section 20.3(a).
- (D) Notwithstanding any other provisions of this Section 20.3(b), if a “designated beneficiary” receiving distribution in accordance with this Section is an “eligible designated beneficiary” solely because he is the Participant’s minor child, distribution of such “designated beneficiary’s” remaining interest must be distributed in full no later than December 31 of the calendar year containing the tenth anniversary of the date the child reaches his majority.

(ii) 10-Year Rule: If the Participant is survived by a “non-eligible designated beneficiary” or distribution to an “eligible designated beneficiary” is not to be made over the “eligible designated beneficiary’s” lifetime or over a period certain no greater than the “eligible designated beneficiary’s” life expectancy, distribution of such “designated beneficiary’s” entire interest will be completed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(iii) 5-Year Rule: If there is no “designated beneficiary” as of September 30 of the year following the year of the Participant’s death, distribution of the Participant’s entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant’s death.

(iv) If the Participant dies before the date distributions begin, the Participant’s surviving spouse is the Participant’s sole “designated beneficiary”, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 20.4(b)(i)(A), this Section 20.4(b) will apply as if the surviving spouse were the Participant.

For purposes of this Section 20.4(b), unless Section 20.4(b)(iv) applies, distributions are considered to begin on the Participant’s required beginning date. If Section 20.4(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 20.4(b)(i)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant’s required beginning date (or to the Participant’s surviving spouse before the date distributions are required to begin to the surviving spouse under Section 20.4(b)(i)(A)), the date distributions are considered to begin is the date distributions actually commence.

20.4 Definitions.

(a) Designated beneficiary. The individual who is designated as the beneficiary under Section 2.1(a) and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4, Q&A-1 of the Treasury Regulations. For the avoidance of doubt, a trust designated as a beneficiary prior to May 25, 2021 shall be a designated beneficiary but a trust designated as a beneficiary on or after May 25, 2021 shall not be a designated beneficiary.

(b) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s required beginning date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 20.2(b). The required minimum distribution for the Participant’s first distribution calendar year will be made on or before the Participant’s required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant’s required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(c) Eligible designated beneficiary. A Participant’s eligible designated beneficiary means the Participant’s designated beneficiary who is:

- (i) the Participant’s spouse;
- (ii) the Participant’s minor child;

- (iii) disabled within the meaning of Section 72(m)(7) of the Code;
- (iv) chronically-ill within the meaning of Section 7702B(c)(2) of the Code, treating the requirements of subparagraph (A)(i) thereof as being met only if there is a certification that as of the Participant's date of death, the designated beneficiary's period of inability, as described in such subparagraph, is an indefinite one which is reasonable expected to be lengthy in nature; or
- (v) not more than 10 years younger than the Participant.

(d) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

(e) Non-eligible designated beneficiary. The Participant's designated beneficiary who is not an eligible designated beneficiary.

(f) Participant's account balance. The total balance of the Participant's Separate Accounts as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The total balance of the Participant's Separate Accounts for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year. If the distribution is to be made to a Participant's beneficiary and the Participant is survived by multiple beneficiaries, reference to the Participant's account balance means the portion of the account balance to which each such beneficiary is entitled.

(g) Required beginning date. The date specified in Section 9.2(b) of the Plan.

ARTICLE XXI

EFFECTIVE DATES

21.1 Effective Date. This amended and restated Plan is effective as of January 1, 2022, except as may otherwise be provided herein.

ARTICLE XXII

THE CARE OF TREES MERGER PROVISIONS

22.1 Merger of Plans. Effective September 15, 2008, The Care of Trees Employee Stock Ownership Plan (the “COT Plan”) was merged into the Plan and the assets of the trust for the COT Plan were transferred to the Fund (the “Merger”).

22.2 Protection of Code Section 411(d)(6) Protected Benefits. Notwithstanding any other provision of the Plan to the contrary, Participants under the COT Plan (“COT Participants”) shall be entitled to their accrued benefits pursuant to Section 411(d)(6) of the Code, and such benefits shall be continued on and after the Merger date under the provisions of the Plan.

22.3 Participation under the Plan. Each COT Participant became a Participant under the Plan effective September 15, 2008, but did not become an Eligible Employee for purposes of Articles IV and V by reason of the Merger.

22.4 Accounts. A Separate Account shall be maintained in the name of each COT Participant to reflect his interest in the Plan resulting from the Merger. A sub-account shall be maintained for each COT Participant to reflect each COT Participant’s interest in Shares and other investments, respectively, resulting from the Merger.

22.5 Vested Interests of COT Participants. In the case of a COT Participant who completes an Hour of Service on or after September 15, 2008, his vested interest shall be determined under Section 8.2, except that notwithstanding the provisions of Section 8.2, the vested interest of any such COT Participant in his Separate Account maintained pursuant to Section 22.4 shall not be less than his vested interest determined under the COT Plan as of December 31, 2008, had it continued in effect. In the case of each other COT Participant, his vested interest shall be determined in accordance with the provisions of the COT Plan.

ARTICLE XXIII

THE CARE OF TREES 401(k) MERGER PROVISIONS

23.1 Merger of Plans. Effective December 31, 2008, The Care of Trees, Inc. Deferred Compensation and Profit Sharing Plan (the “COT 401(k) Plan”) was merged into the Plan and the assets of the trust for the COT 401(k) Plan were transferred to the Fund (the “Merger”).

23.2 Protection of Code Section 411(d)(6) Protected Benefits. Notwithstanding any other provision of the Plan to the contrary, Participants under the COT 401(k) Plan (“COT 401(k) Participants”) shall be entitled to their accrued benefits pursuant to Section 411(d)(6) of the Code, and such benefits shall be continued on and after the Merger date under the provisions of the Plan. In particular, a COT 401(k) Participant who attains age 59 1/2 and who is fully vested in his Separate Account established pursuant to Section 23.4, may make withdrawals from such Separate Account upon written application such number of days in advance as in prescribed by the Committee, and otherwise in accordance with Section 11.3.

23.3 Participation under the Plan. Effective January 1, 2009, Hendricksen, The Care of Trees, Inc. became an Employer under the Plan, and each COT 401(k) Participant became a Participant under the Plan not later than December 31, 2008, but did not become an Eligible Employee for purposes of Articles IV and V by reason of the Merger until January 1, 2009, provided that he met the requirements of Section 3.1 on that date.

23.4 Accounts. A Separate Account shall be maintained in the name of each COT 401(k) Participant to reflect his interest in the Plan resulting from the Merger, including such subaccounts as the Committee determines to be appropriate.

23.5 Vested Interests of COT Participants. In the case of a COT 401(k) Participant who completes an Hour of Service on or after December 31, 2008, his vested interest shall be determined under Section 8.2, except that notwithstanding the provisions of Section 8.2, the vested interest of any such COT 401(k) Participant in his Separate Account maintained pursuant to Section 23.4 shall not be less than his vested interest determined under the COT 401(k) Plan as of December 31, 2008, had it continued in effect. In the case of each other COT 401(k) Participant, his vested interest shall be determined in accordance with the provisions of the COT 401(k) Plan.

23.6 Loans. In the case of any loan to a COT 401(k) Participant outstanding under the terms of the COT 401(k) Plan on December 31, 2008, which loan and associated note were transferred to the Plan as a result of the Merger, such loan shall remain in effect under the Plan, and the COT 401(k) Participant shall continue repayment in accordance with terms of such loan. Notwithstanding the forgoing, no new Participant loan or refinancing shall be made under the Plan.

23.7 Roth 401(k) Contributions. Roth 401(k) Contributions made under the COT 401(k) Plan prior to the Merger shall be separately accounted for and held subject to the following:

(a) There shall be maintained a record of the amount of Roth 401(k) Contributions in the COT 401(k) Participant's Roth 401(k) Contributions account.

(b) Earnings, losses, and other credits and charges shall be allocated on a reasonable and consistent basis among a COT 401(k) Participant's Roth 401(k) Contributions account and his other accounts under the Plan. No amounts other than Roth 401(k) Contributions and properly attributable earnings shall be credited to a COT 401(k) Participant's Roth 401(k) Contributions account.

(c) If excess contributions are to be distributed from a Highly Compensated Employee's Tax-Deferred Contributions Account in accordance with the provisions of Section 4.9, the excess contributions shall be deemed to consist first of Roth 401(k) Contributions.

(d) If excess Tax-Deferred Contributions are to be distributed as provided in Subsection (c) this Section and an Eligible Employee is eligible to make catch-up contributions for the year, the excess to be re-characterized as catch-up contributions shall be deemed to consist first of Tax-Deferred Contributions.

(e) If the Plan includes Tax-Deferred Contributions in determining contribution percentages for Highly Compensated Employees and does not satisfy the average contribution percentage test described in Section 5.6, any excess contributions that are to be distributed from a Highly Compensated Employee's Tax-Deferred Contributions account in order to satisfy the average contribution percentage test shall be deemed to consist first of Roth 401(k) Contributions.

(f) If excess Tax-Deferred Contributions are to be distributed as provided in Subsection (e) of this Section and an Eligible Employee is eligible to make catch-up contributions for the year, the excess to be re-characterized as catch-up contributions shall be deemed to consist first of Tax-Deferred Contributions.

(g) In-service withdrawals from a COT 401(k) Participant's Roth 401(k) Contributions account may be made in accordance with the provisions of Article XI if the COT 401(k) Participant has incurred a hardship, as defined in accordance with the terms of Section 11.2. Any hardship withdrawal of Roth 401(k) Contributions shall be subject to the same limitations and restrictions described in Article XI as applicable to a hardship withdrawal of Tax-Deferred Contributions.

ARTICLE XXIV

LOCAL 572 PROVISIONS

24.1 Participation in the Plan. Effective as of August 1st, 2022, employees of the Company who are members of the Public Service Employees Local Union 572 Laborers' International Union of North America and meet the requirements of Section 3.1 shall be eligible to participate in the Plan.

24.2 Terms of Plan Applicable to Local 572. Notwithstanding any provision of the Plan to the contrary, the terms of the Plan applicable to employees who are members of Local 572 are as set forth in the addendum to the Plan titled Addendum Re: Local 572.

* * *

2022 EXECUTED at Kent, Ohio, this _____ day of _____,

THE DAVEY TREE EXPERT COMPANY

By: _____

Title: _____

And _____

Title: _____

ADDENDUM RE: LOCAL 572

Pursuant to the terms of a collective bargaining agreement between the Company and Public Service Employees Local Union 572 Laborers' International Union of North America, employees of the Company covered by that agreement ("Local Union 572 Participants") are eligible to participate in the Plan in accordance with the terms of the Plan, except as follows:

- The ESOP Feature shall not be applicable.
- The provisions of Section 5.1 of the Plan shall not be applicable. For the avoidance of doubt, Local Union 572 Participants are not eligible to receive Employer Contributions.
- Under Section 9.1, the only available method of distribution shall be a single sum payment.
- Provisions not applicable to collectively bargained Participants, including Section 401(m) of the Code discrimination testing and top-heavy provisions, shall not apply.

Certification

Certification of Chief Executive Officer

I, Patrick M. Covey, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Davey Tree Expert Company;
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 officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this 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 officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: May 10, 2023

/s/ Patrick M. Covey

Patrick M. Covey

Chairman, President and Chief Executive Officer

Certification

Certification of Chief Financial Officer

I, Joseph R. Paul, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Davey Tree Expert Company;
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 officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this 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 officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: May 10, 2023

/s/ Joseph R. Paul

Joseph R. Paul

Executive Vice President, Chief Financial Officer and Assistant Secretary

Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Certification of Chief Executive Officer

I, Patrick M. Covey, Chairman, President and Chief Executive Officer of The Davey Tree Expert Company (the “Company”), do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the period ended April 1, 2023 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), as applicable; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2023

/s/ Patrick M. Covey

Patrick M. Covey

Chairman, President and Chief Executive Officer

Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Certification of Chief Financial Officer

I, Joseph R. Paul, Executive Vice President, Chief Financial Officer and Assistant Secretary of The Davey Tree Expert Company (the “Company”), do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Quarterly Report on Form 10-Q of the Company for the period ended April 1, 2023 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), as applicable; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2023

/s/ Joseph R. Paul

Joseph R. Paul

Executive Vice President, Chief Financial Officer and Assistant Secretary